

2007 SENATE BILL 36

February 12, 2007 – Introduced by Senators BRESKE, KAPANKE and SCHULTZ, cosponsored by Representatives KERKMAN, OWENS, BIES, ALBERS, A. OTT, BALLWEG, LOTHIAN, MUSSER, HINES, F. LASEE, PRIDEMORE, HAHN, VOS, GUNDERSON, SMITH, HRAYCHUCK, BOYLE, DAVIS and PETERSEN. Referred to Committee on Commerce, Utilities and Rail.

1 **AN ACT to amend** 27.08 (2) (b), 27.08 (2) (c), 28.20, 59.69 (3) (a), 59.69 (3) (b), 59.69
2 (3) (e), 60.61 (2) (intro.), 60.61 (3) (intro.), 60.62 (2), 60.62 (3), 61.34 (3), 62.22
3 (1), 62.22 (1e), 62.23 (7a) (a), 66.0105, 66.0217 (3) (intro.), 66.0219 (intro.),
4 66.0223 (1), 70.99 (8) and 236.02 (5); and **to create** 60.10 (1) (h), 60.225 and
5 60.23 (33) of the statutes; **relating to:** the powers of certain towns, authorizing
6 the creation of charter towns by certain town boards, and expanding the
7 authority of charter towns to create tax incremental financing districts.

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 relating 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 (TIF) district other than for very limited purposes related to agricultural, forestry, tourism or manufacturing projects; 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. Current law also authorizes towns that

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enter into a cooperative boundary agreement with a city or village that will annex all or part of the town to create a TIF.

This bill authorizes a town board that is authorized to exercise village powers to adopt a resolution, which is subject to ratification in a referendum that the town board must call, declaring that it is a “charter town.” The bill allows the town board of a charter town to create a TIF district to the same extent as a city or village; it allows a charter town board to exercise certain zoning powers and exempts the town from being subject to certain city and village extraterritorial powers. This bill does not allow charter towns to annex territory or to engage in extraterritorial zoning or plat approval.

The powers granted to towns in this bill apply only if certain conditions are met on the date on which the 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 2,500.
2. The town board creates a town plan commission and adopts a comprehensive land use plan.
3. The town board enacts and enforces building code ordinances.
4. The town board enacts a construction site erosion control and storm water management zoning ordinance.

In addition, certain charter towns are exempt from being subject to city and village annexation powers and land acquisition powers if certain conditions are met, and counties must recognize a charter town’s official map in the same way that it recognizes city and village official maps. Some of the conditions that must be met include the following:

1. At least 10 percent of the town residents receive water supply or sewage disposal services, or both, 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.
2. The equalized value of the town must exceed \$100,000,000.
3. The town must provide law enforcement services 24 hours a day.

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.** 27.08 (2) (b) of the statutes is amended to read:
- 2 27.08 (2) (b) ~~To~~ Except as provided in s. 60.225 (4) and (5), to acquire in the
- 3 name of the city for park, parkway, boulevard or pleasure drive purposes by gift,
- 4 devise, bequest or condemnation, either absolutely or in trust, money, real or
- 5 personal property, or any incorporeal right or privilege. Gifts to any city of money

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1 or other property, real or personal, either absolutely or in trust, for park, parkway,
2 boulevard or pleasure drive purposes shall be accepted only after they shall have
3 been recommended by the board to the common council and approved by said council
4 by resolution. Subject to the approval of the common council the board may execute
5 every trust imposed upon the use of property or property rights by the deed,
6 testament or other conveyance transferring the title of such property to the city for
7 park, parkway, boulevard or pleasure drive purposes.

8 **SECTION 2.** 27.08 (2) (c) of the statutes is amended to read:

9 27.08 (2) (c) Subject to the approval of the common council to buy or lease lands
10 in the name of the city for park, parkway, boulevard or pleasure drive purposes
11 within or without the city and, with the approval of the common council, to sell or
12 exchange property no longer required for its purposes. Every city is authorized,
13 except as provided in s. 60.225 (4) and (5). upon recommendation of its officers, board
14 or body having the control and management of its public parks, to acquire by
15 condemnation in the name of the city such lands within or without its corporate
16 boundaries as it may need for public parks, parkways, boulevards and pleasure
17 drives.

18 **SECTION 3.** 28.20 of the statutes is amended to read:

19 **28.20 Community forests.** Any Except as provided in s. 60.225 (4) and (5).
20 any city, village, town or school district may acquire land, engage in forestry and
21 appropriate funds for such purpose. The forest property may be located outside the
22 city, village, town or school district limits.

23 **SECTION 4.** 59.69 (3) (a) of the statutes is amended to read:

24 59.69 (3) (a) The county zoning agency may direct the preparation of a county
25 development plan or parts of the plan for the physical development of the

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1 unincorporated territory within the county to which the conditions under s. 60.225
2 (4) do not apply; areas within a charter town under s. 60.225, or areas within a town
3 to which s. 60.225 (4) applies, whose governing bodies by resolution agree to having
4 their areas included in the county's development plan; and areas within incorporated
5 jurisdictions whose governing bodies by resolution agree to having their areas
6 included in the county's development plan. The plan may be adopted in whole or in
7 part and may be amended by the board and endorsed by the governing bodies of
8 incorporated jurisdictions included in the plan. The county development plan, in
9 whole or in part, in its original form or as amended, is hereafter referred to as the
10 development plan. Beginning on January 1, 2010, if the county engages in any
11 program or action described in s. 66.1001 (3), the development plan shall contain at
12 least all of the elements specified in s. 66.1001 (2).

13 **SECTION 5.** 59.69 (3) (b) of the statutes is amended to read:

14 59.69 (3) (b) The development plan shall include the master plan, if any, of any
15 city or village, that was adopted under s. 62.23 (2) or (3), or of any town that was
16 adopted under s. 60.62 (1) or (4) or 62.23 (2) or (3), as described under s. 60.225 (1)
17 (c), and the official map, if any, of such city or village, that was adopted under s. 62.23
18 (6), or of any town that was adopted under s. 62.23 (6), as described under s. 60.225
19 (1) (c), in the county, without change.

20 **SECTION 6.** 59.69 (3) (e) of the statutes is amended to read:

21 59.69 (3) (e) A master plan adopted under s. 62.23 (2) and (3) and an official
22 map that is established under s. 62.23 (6) shall control in unincorporated territory
23 in a county affected thereby, other than in areas within a charter town under s.
24 60.225, or areas within a town to which s. 60.225 (4) applies, whether or not such
25 action occurs before the adoption of a development plan.

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1 **SECTION 7.** 60.10 (1) (h) of the statutes is created to read:

2 60.10 (1) (h) *Approval of resolutions.* Approve a resolution adopted by the town
3 board under s. 60.225 (1).

4 **SECTION 8.** 60.225 of the statutes is created to read:

5 **60.225 Charter towns. (1) PROCEDURE.** If a town board is authorized to
6 exercise village powers under s. 60.10 (2) (c), and subject to sub. (2), a town board may
7 adopt a resolution declaring its town to be a charter town that is subject to this
8 section if, on the date of adoption of the resolution, all of the following conditions are
9 satisfied:

10 (a) The population of the town is at least 2,500.

11 (b) The town board creates and maintains a town plan commission under s.
12 62.23.

13 (c) The town board enacts a comprehensive zoning ordinance under s. 60.61,
14 60.62, or 62.23, and establishes an official town map under s. 62.23 (6).

15 (d) The town board adopts a comprehensive land use plan under s. 66.1001.

16 (e) The town board enacts a construction site erosion control and storm water
17 management zoning ordinance under s. 60.627.

18 (f) The town board enacts a subdivision ordinance under s. 236.45.

19 (g) The town board enacts and enforces building code ordinances under s. 60.61
20 (1m).

21 **(2) RATIFICATION.** (a) If a town board adopts a resolution under sub. (1), the
22 town board shall call a referendum to ratify the resolution at the next spring primary
23 or election or September primary or general election, to be held not sooner than 45
24 days after the ratification referendum is called by the town board. The referendum

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1 question shall be: “Do you approve the town board resolution declaring [name of
2 town] to be a charter town?”

3 (b) A resolution adopted by a town board under sub. (1) may not take effect until
4 the resolution is approved by the electors in a ratification referendum under par. (a).
5 If the resolution is ratified, the town clerk shall certify that fact to the secretary of
6 state. The secretary of state shall issue a certificate of charter town status and shall
7 record that status in a book kept for that purpose.

8 (c) If a resolution adopted by a town board under sub. (1) takes effect under par.
9 (b), the town board may adopt a resolution, not sooner than 4 years after the effective
10 date of the resolution declaring the town to be a charter town, that revokes the town’s
11 charter town status. The revocation resolution may not take effect until the
12 resolution is approved by the electors in a ratification referendum called by the town
13 board for that purpose. The referendum shall comply with the requirements for a
14 ratification referendum that is held under par. (a), except that the referendum
15 question shall be: “Do you approve the town board resolution that revokes the status
16 of [name of town] as a charter town?” If the referendum revoking charter town
17 status is approved, county zoning ordinances that did not apply to the town because
18 of its former charter town status apply to the town on the effective date of the
19 revocation resolution. If a county ordinance conflicts with an ordinance enacted by
20 the former charter town board, the county ordinance shall take precedence over the
21 former charter town ordinance on the effective date of the revocation resolution.

22 **(3) ZONING.** (a) 1. Except for a wetlands in shorelands zoning ordinance, no
23 town may be subject to any county zoning ordinance that is enacted by a county board
24 after a town board adopts a resolution under sub. (1) unless the town board approves

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1 the ordinance or until the resolution adopted by the town board under sub. (1) is
2 defeated in a ratification vote by the referendum under sub. (2).

3 2. If a town board adopts a resolution under sub. (1) and the resolution is
4 ratified under sub. (2), a town board may adopt a resolution revoking its approval of
5 any county zoning ordinance, other than a wetlands in shorelands zoning ordinance,
6 if the town board notifies the county board in writing at least 60 days before the
7 resolution revoking approval of a county zoning ordinance takes effect. On the
8 effective date of the resolution revoking town approval of a county zoning ordinance,
9 the town board may act under s. 60.61 (2) or 60.62 (1).

10 (b) No town may be subject to the extraterritorial zoning jurisdiction or
11 extraterritorial plat approval jurisdiction of a city or village during the period
12 beginning after a town board adopts a resolution under sub. (1) and before a
13 ratification vote under sub. (2) or at any time after the electors of the town approve
14 the resolution under sub. (2).

15 **(4) PROTECTED STATUS.** If all of the following apply, no town territory may be
16 acquired by a city or village by any of the methods described under sub. (5) during
17 the period beginning after a town board adopts a resolution under sub. (1) and before
18 a ratification vote under sub. (2) or at any time after the electors of the town approve
19 such a resolution under sub. (2), unless the town board approves the proposed
20 acquisition:

21 (a) The equalized value of the town exceeds \$100,000,000, according to the most
22 recent assessment.

23 (b) At least 10 percent of the town residents receive either water supply or
24 sewage disposal services, or both, from one of the following:

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

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1 2. A town utility district created under s. 66.0827.

2 3. A metropolitan sewerage district created under subch. I of ch. 200 or under
3 subch. II of ch. 200.

4 4. A public utility, as defined in s. 196.01 (5).

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

6 6. A city or village.

7 (c) The town provides law enforcement services, 24 hours a day, by establishing
8 a town police department or by creating a joint police department with another city,
9 village, or town under s. 60.56.

10 **(5) LIMITS ON LAND ACQUISITION.** If the conditions described under sub. (4) apply,
11 the following city or village methods of acquiring territory in a town are limited as
12 provided under sub. (4):

13 (a) Annexation under s. 66.0217, 66.0219, or 66.0223.

14 (b) Acquisition of real or personal property for park-related purposes as
15 described in s. 27.08 (2) (b) or (c).

16 (c) Acquisition of land for community forest purposes under s. 28.20.

17 (d) Acquisition of real or personal property for any of the purposes described
18 under s. 61.34 (3).

19 (e) Acquisition of real or personal property for any of the purposes described
20 under s. 62.22 (1) or (1e).

21 **SECTION 9.** 60.23 (33) of the statutes is created to read:

22 **60.23 (33) TOWN TAX INCREMENT POWERS.** (a) Subject to par. (b), if the town is
23 a charter town under s. 60.225, exercise all powers of cities under s. 66.1105. If the
24 town board exercises the powers of a city under s. 66.1105, it is subject to the same
25 duties as a common council under s. 66.1105 and the town is subject to the same

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1 duties and liabilities as a city under s. 66.1105. If a charter town that has created
2 a tax incremental district as provided in this paragraph revokes its charter town
3 status, the town, and the department of revenue, shall continue to administer the
4 district, until the district terminates, as if the town had not revoked its charter town
5 status.

6 (b) If a town creates a tax incremental district under s. 60.85, the town may not
7 take any action with regard to that district except by acting under s. 60.85.

8 (c) If a town creates a tax incremental district under sub. (32), the town may
9 not take any action with regard to that district except by acting under sub. (32).

10 **SECTION 10.** 60.61 (2) (intro.) of the statutes is amended to read:

11 60.61 (2) EXTENT OF AUTHORITY. (intro.) Subject If a town board revokes its
12 approval of a county zoning ordinance under s. 60.225 (3) (a) 2. or, subject to subs.
13 (3) and (3m), if a town is located in a county which has not enacted a county zoning
14 ordinance under s. 59.69, the town board, by ordinance, may:

15 **SECTION 11.** 60.61 (3) (intro.) of the statutes is amended to read:

16 60.61 (3) EXERCISE OF AUTHORITY. (intro.) Before exercising authority under
17 sub. (2), the town board of a town that is located in a county that has not adopted a
18 county zoning ordinance under s. 59.69 shall petition the county board to initiate, at
19 any regular or special meeting, action to enact a county zoning ordinance under s.
20 59.69. The town board may proceed under sub. (2) if:

21 **SECTION 12.** 60.62 (2) of the statutes is amended to read:

22 60.62 (2) If the county in which the town is located has enacted a zoning
23 ordinance under s. 59.69, the exercise of the authority under sub. (1) is subject to
24 approval by the town meeting or by a referendum vote of the electors of the town held
25 at the time of any regular or special election, except that this subsection does not

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1 apply if a town board revokes its approval of a county zoning ordinance under s.
2 60.225 (3) (a) 2. The question for the referendum vote shall be filed as provided in
3 s. 8.37.

4 **SECTION 13.** 60.62 (3) of the statutes is amended to read:

5 60.62 (3) In counties having a county zoning ordinance, no zoning ordinance
6 or amendment of a zoning ordinance may be adopted under this section unless
7 approved by the county board, except that this subsection does not apply if a town
8 board revokes its approval of a county zoning ordinance under s. 60.225 (3) (a) 2.

9 **SECTION 14.** 61.34 (3) of the statutes is amended to read:

10 61.34 (3) ACQUISITION AND DISPOSAL OF PROPERTY. The Except as provided in s.
11 60.225 (4) and (5), the village board may acquire property, real or personal, within
12 or outside the village, for parks, libraries, recreation, beautification, streets, water
13 systems, sewage or waste disposal, harbors, improvement of watercourses, public
14 grounds, vehicle parking areas, and for any other public purpose; may acquire real
15 property within or contiguous to the village, by means other than condemnation, for
16 industrial sites; may improve and beautify the same; may construct, own, lease and
17 maintain buildings on such property for instruction, recreation, amusement and
18 other public purposes; and may sell and convey such property. Condemnation shall
19 be as provided by ch. 32.

20 **SECTION 15.** 62.22 (1) of the statutes is amended to read:

21 62.22 (1) PURPOSES. The Except as provided in s. 60.225 (4) and (5), the
22 governing body of any city may by gift, purchase or condemnation acquire property,
23 real or personal, within or outside the city, for parks, recreation, water systems,
24 sewage or waste disposal, airports or approaches thereto, cemeteries, vehicle
25 parking areas, and for any other public purpose; may acquire real property within

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1 or contiguous to the city, by means other than condemnation, for industrial sites; may
2 improve and beautify the same; may construct, own, lease and maintain buildings
3 on such property for public purposes; and may sell and convey such property. The
4 power of condemnation for any such purpose shall be as provided by ch. 32.

5 **SECTION 16.** 62.22 (1e) of the statutes is amended to read:

6 62.22 (1e) CERTAIN INDUSTRIAL SITES. The Except as provided in s. 60.225 (4) and
7 (5), the governing body of a 2nd class city which is adjacent to Lake Michigan and
8 which is located in a county with a population of less than 110,000, according to the
9 most recent estimate by the department of administration, may acquire real
10 property by gift outside the city boundaries for industrial sites; may improve and
11 beautify the same; may construct, own, lease and maintain buildings on such
12 property for public purposes; and may sell and convey such property.

13 **SECTION 17.** 62.23 (7a) (a) of the statutes is amended to read:

14 62.23 (7a) (a) Extraterritorial zoning jurisdiction means the unincorporated
15 area, except as provided in s. 60.225 (3) (b), within 3 miles of the corporate limits of
16 a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.
17 Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.0105
18 shall apply and any subsequent alteration of the corporate limits of the city by
19 annexation, detachment or consolidation proceedings shall not affect the dividing
20 line as initially determined under s. 66.0105. The governing body of the city shall
21 specify by resolution the description of the area to be zoned within its extraterritorial
22 zoning jurisdiction sufficiently accurate to determine its location and such area shall
23 be contiguous to the city. The boundary line of such area shall follow government lot
24 or survey section or fractional section lines or public roads, but need not extend to
25 the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption

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1 of the resolution the governing body shall declare its intention to prepare a
2 comprehensive zoning ordinance for all or part of its extraterritorial zoning
3 jurisdiction by the publication of the resolution in a newspaper having general
4 circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The
5 city clerk shall mail a certified copy of the resolution and a scale map reasonably
6 showing the boundaries of the extraterritorial jurisdiction to the clerk of the county
7 in which the extraterritorial jurisdiction area is located and to the town clerk of each
8 town, any part of which is included in such area.

9 **SECTION 18.** 66.0105 of the statutes is amended to read:

10 **66.0105 Jurisdiction of overlapping extraterritorial powers.** The
11 extraterritorial powers granted to cities and villages by statute, including ss. 30.745,
12 62.23 (2) and (7a), 66.0415, 236.10, and 254.57, may not be exercised within the
13 corporate limits of another city or village and may not be exercised within the
14 corporate limits of a town whose board has adopted a resolution under s. 60.225 (1)
15 unless a majority of the votes cast in the ratification vote on the resolution do not
16 approve the resolution. Wherever these statutory extraterritorial powers overlap,
17 the jurisdiction over the overlapping area shall be divided on a line all points of which
18 are equidistant from the boundaries of each municipality concerned so that not more
19 than one municipality shall exercise power over any area.

20 **SECTION 19.** 66.0217 (3) (intro.) of the statutes is amended to read:

21 66.0217 (3) OTHER METHODS OF ANNEXATION. (intro.) Subject to s. 66.0307 (7),
22 and except as provided in sub. (14) and s. 60.225 (4) and (5), territory contiguous to
23 a city or village may be annexed to the city or village in the following ways:

24 **SECTION 20.** 66.0219 (intro.) of the statutes is amended to read:

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1 **66.0219 Annexation by referendum initiated by city or village.** (intro.)

2 As a complete alternative to any other annexation procedure, and subject to sub. (10)
3 and s. 66.0307 (7) and except as provided in s. 60.225 (4) and (5), unincorporated
4 territory which contains electors and is contiguous to a city or village may be annexed
5 to the city or village under this section. The definitions in s. 66.0217 (1) apply to this
6 section.

7 **SECTION 21.** 66.0223 (1) of the statutes is amended to read:

8 **66.0223 (1)** In addition to other methods provided by law and subject to sub.
9 (2) and ss. 59.692 (7) and 66.0307 (7) and except as provided in s. 60.225 (4) and (5),
10 territory owned by and lying near but not necessarily contiguous to a village or city
11 may be annexed to a village or city by ordinance enacted by the board of trustees of
12 the village or the common council of the city, provided that in the case of
13 noncontiguous territory the use of the territory by the city or village is not contrary
14 to any town or county zoning regulation. The ordinance shall contain the exact
15 description of the territory annexed and the names of the towns from which
16 detached, and attaches the territory to the village or city upon the filing of 7 certified
17 copies of the ordinance in the office of the secretary of state, together with 7 copies
18 of a plat showing the boundaries of the territory attached. Two copies of the
19 ordinance and plat shall be forwarded by the secretary of state to the department of
20 transportation, one copy to the department of administration, one copy to the
21 department of natural resources, one copy to the department of revenue and one copy
22 to the department of public instruction. Within 10 days of filing the certified copies,
23 a copy of the ordinance and plat shall be mailed or delivered to the clerk of the county
24 in which the annexed territory is located. Sections 66.0203 (8) (c) and 66.0217 (11)
25 apply to annexations under this section.

