

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2007 SENATE BILL 36**

November 2, 2007 – Offered by Senator BRESKE.

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

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

This substitute amendment 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 substitute amendment 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 revoke its approval of certain county zoning ordinances and exercise certain zoning powers; and it exempts the town from being subject to certain city and village extraterritorial zoning powers. The substitute amendment does not allow charter towns to annex territory or to engage in extraterritorial zoning or plat approval. Under the substitute amendment, counties must recognize a charter town’s official map in the same way that it recognizes city and village official maps.

The powers granted to towns in this substitute amendment 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.

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 county zoning agency may direct the preparation of a county

3 development plan or parts of the plan for the physical development of the

4 unincorporated territory within the county; areas within a charter town under s.

5 60.225 whose governing bodies by resolution agree to having their areas included in

6 the county’s development plan; and areas within incorporated jurisdictions whose

7 governing bodies by resolution agree to having their areas included in the county’s

8 development plan. The plan may be adopted in whole or in part and may be amended

9 by the board and endorsed by the governing bodies of incorporated jurisdictions

10 included in the plan. The county development plan, in whole or in part, in its original

1 form or as amended, is hereafter referred to as the development plan. Beginning on
2 January 1, 2010, if the county engages in any program or action described in s.
3 66.1001 (3), the development plan shall contain at least all of the elements specified
4 in s. 66.1001 (2).

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

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

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

13 59.69 (3) (e) A master plan adopted under s. 62.23 (2) and (3) and an official
14 map that is established under s. 62.23 (6) shall control in unincorporated territory
15 in a county affected thereby, other than in areas within a charter town under s.
16 60.225, whether or not such action occurs before the adoption of a development plan.

17 **SECTION 4.** 60.10 (1) (h) of the statutes is created to read:

18 60.10 (1) (h) *Approval of resolutions.* Approve a resolution adopted by the town
19 board under s. 60.225 (1).

20 **SECTION 5.** 60.225 of the statutes is created to read:

21 **60.225 Charter towns. (1) PROCEDURE.** If a town board is authorized to
22 exercise village powers under s. 60.10 (2) (c), and subject to sub. (2), a town board may
23 adopt a resolution declaring its town to be a charter town that is subject to this
24 section if, on the date of adoption of the resolution, all of the following conditions are
25 satisfied:

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

2 (b) The town board creates and maintains a town plan commission under s.
3 62.23.

4 (c) The town board enacts a comprehensive zoning ordinance under s. 60.61,
5 60.62, or 62.23, and establishes an official town map under s. 62.23 (6).

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

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

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

10 (g) The town board enacts and enforces building code ordinances under s. 60.61
11 (1m).

12 **(2) RATIFICATION.** (a) If a town board adopts a resolution under sub. (1), the
13 town board shall call a referendum to ratify the resolution at the next spring primary
14 or election or September primary or general election, to be held not sooner than 45
15 days after the ratification referendum is called by the town board. The referendum
16 question shall be: “Do you approve the town board resolution declaring [name of
17 town] to be a charter town?”

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

23 (c) If a resolution adopted by a town board under sub. (1) takes effect under par.
24 (b), the town board may adopt a resolution, not sooner than 4 years after the effective
25 date of the resolution declaring the town to be a charter town, that revokes the town’s

1 charter town status. The revocation resolution may not take effect until the
2 resolution is approved by the electors in a ratification referendum called by the town
3 board for that purpose. The referendum shall comply with the requirements for a
4 ratification referendum that is held under par. (a), except that the referendum
5 question shall be: “Do you approve the town board resolution that revokes the status
6 of ... [name of town] as a charter town?” If the referendum revoking charter town
7 status is approved, county zoning ordinances that did not apply to the town because
8 of its former charter town status apply to the town on the effective date of the
9 revocation resolution. If a county ordinance conflicts with an ordinance enacted by
10 the former charter town board, the county ordinance shall take precedence over the
11 former charter town ordinance on the effective date of the revocation resolution.

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

17 2. If a town board adopts a resolution under sub. (1) and the resolution is
18 ratified under sub. (2), a town board may adopt a resolution revoking its approval of
19 any county zoning ordinance, other than a wetlands in shorelands zoning ordinance,
20 if the town board notifies the county board in writing at least 60 days before the
21 resolution revoking approval of a county zoning ordinance takes effect. On the
22 effective date of the resolution revoking town approval of a county zoning ordinance,
23 the town board may act under s. 60.61 (2) or 60.62 (1).

24 (b) No town may be subject to the extraterritorial zoning jurisdiction or
25 extraterritorial plat approval jurisdiction of a city or village during the period

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 the resolution under sub. (2).

4 **SECTION 6.** 60.23 (33) of the statutes is created to read:

5 60.23 (33) TOWN TAX INCREMENT POWERS. (a) Subject to par. (b), if the town is
6 a charter town under s. 60.225, exercise all powers of cities under s. 66.1105. If the
7 town board exercises the powers of a city under s. 66.1105, it is subject to the same
8 duties as a common council under s. 66.1105 and the town is subject to the same
9 duties and liabilities as a city under s. 66.1105. If a charter town that has created
10 a tax incremental district as provided in this paragraph revokes its charter town
11 status, the town, and the department of revenue, shall continue to administer the
12 district, until the district terminates, as if the town had not revoked its charter town
13 status.

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

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

18 **SECTION 7.** 60.61 (2) (intro.) of the statutes is amended to read:

19 60.61 (2) EXTENT OF AUTHORITY. (intro.) ~~Subject~~ If a town board revokes its
20 approval of a county zoning ordinance under s. 60.225 (3) (a) 2. or, subject to subs.
21 (3) and (3m), if a town is located in a county which has not enacted a county zoning
22 ordinance under s. 59.69, the town board, by ordinance, may:

23 **SECTION 8.** 60.61 (3) (intro.) of the statutes is amended to read:

24 60.61 (3) EXERCISE OF AUTHORITY. (intro.) Before exercising authority under
25 sub. (2), the town board of a town that is located in a county that has not adopted a

1 county zoning ordinance under s. 59.69 shall petition the county board to initiate, at
2 any regular or special meeting, action to enact a county zoning ordinance under s.
3 59.69. The town board may proceed under sub. (2) if:

4 **SECTION 9.** 60.62 (2) of the statutes is amended to read:

5 60.62 (2) If the county in which the town is located has enacted a zoning
6 ordinance under s. 59.69, the exercise of the authority under sub. (1) is subject to
7 approval by the town meeting or by a referendum vote of the electors of the town held
8 at the time of any regular or special election, except that this subsection does not
9 apply if a town board revokes its approval of a county zoning ordinance under s.
10 60.225 (3) (a) 2. The question for the referendum vote shall be filed as provided in
11 s. 8.37.

12 **SECTION 10.** 60.62 (3) of the statutes is amended to read:

13 60.62 (3) In counties having a county zoning ordinance, no zoning ordinance
14 or amendment of a zoning ordinance may be adopted under this section unless
15 approved by the county board, except that this subsection does not apply if a town
16 board revokes its approval of a county zoning ordinance under s. 60.225 (3) (a) 2.

17 **SECTION 11.** 62.23 (7a) (a) of the statutes is amended to read:

18 62.23 (7a) (a) Extraterritorial zoning jurisdiction means the unincorporated
19 area, except as provided in s. 60.225 (3) (b), within 3 miles of the corporate limits of
20 a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.
21 Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.0105
22 shall apply and any subsequent alteration of the corporate limits of the city by
23 annexation, detachment or consolidation proceedings shall not affect the dividing
24 line as initially determined under s. 66.0105. The governing body of the city shall
25 specify by resolution the description of the area to be zoned within its extraterritorial

1 zoning jurisdiction sufficiently accurate to determine its location and such area shall
2 be contiguous to the city. The boundary line of such area shall follow government lot
3 or survey section or fractional section lines or public roads, but need not extend to
4 the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption
5 of the resolution the governing body shall declare its intention to prepare a
6 comprehensive zoning ordinance for all or part of its extraterritorial zoning
7 jurisdiction by the publication of the resolution in a newspaper having general
8 circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The
9 city clerk shall mail a certified copy of the resolution and a scale map reasonably
10 showing the boundaries of the extraterritorial jurisdiction to the clerk of the county
11 in which the extraterritorial jurisdiction area is located and to the town clerk of each
12 town, any part of which is included in such area.

13 **SECTION 12.** 66.0105 of the statutes is amended to read:

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

24 **SECTION 13.** 70.99 (8) of the statutes is amended to read:

