

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2007 ASSEMBLY BILL 118**

January 10, 2008 – Offered by COMMITTEE ON AGRICULTURE.

1 **AN ACT** *to amend* 66.1001 (2) (g) and 88.24 (intro.); and *to create* 59.69 (5) (g),
2 60.61 (4) (g), 62.23 (7) (d) 5., 62.23 (7) (d) 6., 74.09 (3) (dm), 88.11 (1) (L), 88.212,
3 88.24 (4), 88.41 (5) and 88.95 of the statutes; **relating to:** requiring local
4 governmental units to consider relationships with drainage districts in the
5 preparation of comprehensive plans and requiring local governments to
6 provide notice to drainage districts regarding proposals that affect drainage
7 districts.

Analysis by the Legislative Reference Bureau

Under the current law commonly known as the “Smart Growth” statute, if a city, village, town, county, or regional planning commission (local governmental unit) 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.

Beginning on January 1, 2010, under current law, certain actions of a local governmental unit that affect land use must be consistent with that local

governmental unit's comprehensive plan. The actions to which this requirement applies are official mapping, local subdivision regulation, and zoning ordinances, including zoning of shorelands or wetlands in shorelands. Also beginning on January 1, 2010, under current law, if a local governmental unit engages in any of these specified actions, the comprehensive plan must contain at least all of the required planning elements.

Current law prohibits any comprehensive plan or amendment to a comprehensive plan from taking effect unless a number of conditions are met, such as, the local governmental unit must enact an ordinance or adopt a resolution that contains all of the required elements, and the local governmental unit must hold at least one public hearing at which the proposed ordinance or resolution is discussed.

Currently, the intergovernmental cooperation element must contain a compilation of objectives, policies, goals, maps, and programs for joint planning and decision making with other jurisdictions, including school districts, for siting and building public facilities and sharing public services. Also under this element, a local governmental unit must consider the maps and plans of certain military bases with which it shares common territory.

Under this substitute amendment, the intergovernmental cooperation element adds drainage districts as a jurisdiction with which a local governmental unit must engage. The substitute amendment also requires that, under this element, a local governmental unit must analyze its relationship with a drainage district.

This substitute amendment also requires that, before a city, village, town, or county (political subdivision) or any zoning entity of a political subdivision may take any action that would allow development of a residential, commercial, or industrial property in a drainage district, or affect the amount of water that a drainage district would have to accommodate, the political subdivision or zoning entity would have to send written notice to the drainage district. The written notice must describe the proposed action, and the time and date of any public hearing at which the proposed action will be discussed. The substitute amendment also allows the drainage district board to request a delay in the hearing so that the drainage board may obtain an engineering report that analyzes the effect of the proposed action.

The substitute amendment requires the Department of Agriculture, Trade and Consumer Protection (DATCP), in cooperation with the state drainage engineer, to produce in 2009, and every three years thereafter, an educational pamphlet about drainage districts. The pamphlet must be available to drainage district boards, or other persons, who request it.

The substitute amendment also requires a drainage board, in 2009 and every three years thereafter, to provide notification to all persons who own property that is located within a drainage district that they own land in such a district, and to provide annually the clerk of every taxation district in which the district is located information about the amount of the drainage board's assessments in the last year. This assessment information must be included on the property tax bill that is currently mailed out in December.

Under current law, a drainage board is required to file an annual report for each district under the board's jurisdiction with DATCP and the county zoning

administrator. The report must contain a financial statement, information on bonds, and information on work done during the preceding year. Under the substitute amendment, the report must include information on each district's practices and policies and must also be sent to zoning or planning officials in each city, village, and town in which a district is located. A political subdivision that receives the report must consider it before making a zoning or planning decision that may affect the district.

In addition, the substitute amendment requires an owner of property located in a drainage district, regardless of whether the property is residential, to disclose in a separate written notification to a potential buyer or transferee that the land is in a drainage district and subject to assessments for maintenance of the drains. A prospective buyer may rescind the contract without penalty or loss of earnest money within three days after receiving the separate notice, unless the prospective buyer knew the property was in a drainage district when he or she made the offer to purchase. The substitute amendment requires a drainage board, when issuing an assessment, to remind the person receiving the assessment of the notification requirement that is created in this substitute amendment. The substitute amendment also requires that the most recent property tax bill be attached to the separate required notice if the property is located in a drainage district.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 59.69 (5) (g) of the statutes is created to read:
- 2 59.69 (5) (g) 1. Before the board or the county zoning agency may take any
3 action under this subsection that would allow the development of a residential,
4 commercial, or industrial property that either would be located within the
5 boundaries of a drainage district or would likely increase the amount of water that
6 the main drain of a drainage district would have to accommodate, the board or zoning
7 agency shall send written notice to the secretary of the drainage district's board. The
8 secretary shall include the subject matter of that notice in the agenda of the drainage
9 board's next meeting, which shall be held within 10 business days of the date on
10 which the meeting notice is sent out.
- 11 2. The notice described under subd. 1. shall describe the proposed action and
12 the time and date of any public hearing at which the proposal is on the agenda.

1 Within 10 business days after receipt of the notice, the drainage board shall notify
2 the board or county zoning agency, in writing, that it has no objection to the proposed
3 action or that it requests that the hearing be delayed for 90 business days to enable
4 the drainage board to obtain an engineering analysis to analyze the effect of the
5 proposed action on the drainage district. The drainage board may submit the
6 engineering analysis to the county board or to the county zoning agency and may
7 object to the proposed action.

8 **SECTION 2.** 60.61 (4) (g) of the statutes is created to read:

9 60.61 **(4)** (g) 1. Before the town board or the town zoning committee may take
10 any action under this subsection that would allow the development of a residential,
11 commercial, or industrial property that either would be located within the
12 boundaries of a drainage district or would likely increase the amount of water that
13 the main drain of a drainage district would have to accommodate, the board or zoning
14 committee shall send written notice to the secretary of the drainage district's board.
15 The secretary shall include the subject matter of that notice in the agenda of the
16 drainage board's next meeting, which shall be held within 10 business days of the
17 date on which the meeting notice is sent out.

18 2. The notice described under subd. 1. shall describe the proposed action and
19 the time and date of any public hearing at which the proposal is on the agenda.
20 Within 10 business days after receipt of the notice, the drainage board shall notify
21 the town board or town zoning committee, in writing, that it has no objection to the
22 proposed action or that it requests that the hearing be delayed for 90 business days
23 to enable the drainage board to obtain an engineering analysis to analyze the effect
24 of the proposed action on the drainage district. The drainage board may submit the

1 engineering analysis to the town board or to the town zoning committee and may
2 object to the proposed action.

3 **SECTION 3.** 62.23 (7) (d) 5. of the statutes is created to read:

4 62.23 (7) (d) 5. Before the city council, plan commission, or plan committee may
5 take any action under this paragraph that would allow the development of a
6 residential, commercial, or industrial property that either would be located within
7 the boundaries of a drainage district or would likely increase the amount of water
8 that the main drain of a drainage district would have to accommodate, the city
9 council, plan commission, or plan committee shall send written notice to the
10 secretary of the drainage district's board. The secretary shall include the subject
11 matter of that notice in the agenda of the drainage board's next meeting, which shall
12 be held within 10 business days of the date on which the meeting notice is sent out.

13 **SECTION 4.** 62.23 (7) (d) 6. of the statutes is created to read:

14 62.23 (7) (d) 6. The notice described under subd. 5. shall describe the proposed
15 action and the time and date of any public hearing at which the proposal is on the
16 agenda. Within 10 business days after receipt of the notice, the drainage board shall
17 notify the city council, plan commission, or plan committee, in writing, that it has no
18 objection to the proposed action or that it requests that the hearing be delayed for
19 90 business days to enable the drainage board to obtain an engineering analysis to
20 analyze the effect of the proposed action on the drainage district. The drainage board
21 may submit the engineering analysis to the city council, plan commission, or plan
22 committee and may object to the proposed action.

23 **SECTION 5.** 66.1001 (2) (g) of the statutes is amended to read:

24 66.1001 (2) (g) *Intergovernmental cooperation element.* A compilation of
25 objectives, policies, goals, maps, and programs for joint planning and decision

1 making with other jurisdictions, including school districts, drainage districts, and
2 adjacent local governmental units, for siting and building public facilities and
3 sharing public services. The element shall analyze the relationship of the local
4 governmental unit to school districts, drainage districts, and adjacent local
5 governmental units, and to the region, the state and other governmental units. The
6 element shall consider, to the greatest extent possible, the maps and plans of any
7 military base or installation, with at least 200 assigned military personnel or that
8 contains at least 2,000 acres, with which the local governmental unit shares common
9 territory. The element shall incorporate any plans or agreements to which the local
10 governmental unit is a party under s. 66.0301, 66.0307 or 66.0309. The element shall
11 identify existing or potential conflicts between the local governmental unit and other
12 governmental units that are specified in this paragraph and describe processes to
13 resolve such conflicts.

14 **SECTION 6.** 74.09 (3) (dm) of the statutes is created to read:

15 74.09 **(3)** (dm) Indicate the amount of assessment issued by a drainage board,
16 based on the information provided under s. 88.212 (3). If no assessment was issued,
17 the property tax bill shall indicate that information.

18 **SECTION 7.** 88.11 (1) (L) of the statutes is created to read:

19 88.11 **(1)** (L) In cooperation with the state drainage engineer, produce an
20 educational pamphlet in 2009, and every 3 years thereafter, that describes the
21 function of drainage districts, costs that may be assessed to persons whose property
22 is located in a drainage district, and contact information for the state drainage
23 engineer. The pamphlet shall be distributed, upon request, to drainage boards and
24 to any person who requests the pamphlet.

25 **SECTION 8.** 88.212 of the statutes is created to read:

1 **88.212 Required actions for the drainage board.** In addition to other
2 powers expressly granted or necessarily implied, the drainage board shall:

3 **(1)** Beginning in 2009, and every 3 years thereafter, provide written notice to
4 every person who owns land that is located within the drainage district that such
5 land is in the district. The notice shall also include contact information for every
6 member of the drainage board.

7 **(2)** Annually, provide contact information for every member of the drainage
8 board to the state drainage engineer and to the clerk of every city, village, town, and
9 county in which the drainage district is located.

10 **(3)** Not later than December 1 of each year, provide the clerk of each taxation
11 district in which the drainage district is located a list of every assessment issued by
12 the drainage board from December 1 of the previous year to November 30 of the
13 current year. The information shall specify the assessment amount for every parcel
14 in the district.

15 **SECTION 9.** 88.24 (intro.) of the statutes is amended to read:

16 **88.24 Board to file annual report.** (intro.) On or before December 1 of each
17 year the board shall file with the department of agriculture, trade and consumer
18 protection; the town board or town zoning committee; the city council, plan
19 commission, or plan committee; and the county zoning administrator, in which
20 district territory is located, a separate report, for the preceding year ending August
21 31, on each drainage district under the board's jurisdiction. All local units of
22 government that receive the report shall consider it before making any zoning or
23 planning decisions that may affect a drainage district that is located within its
24 boundaries. The reports shall constitute part of the records of the districts reported

1 on, shall be verified by the oath of one or more of the board members, and shall
2 contain:

3 **SECTION 10.** 88.24 (4) of the statutes is created to read:

4 **88.24 (4)** A statement of the district's practices and policies.

5 **SECTION 11.** 88.41 (5) of the statutes is created to read:

6 **88.41 (5)** Whenever a drainage board sends out an assessment for costs, as
7 described in this section, the board shall include a notice reminding the person
8 assessed of the requirement under s. 88.95.

9 **SECTION 12.** 88.95 of the statutes is created to read:

10 **88.95 Notification requirement for transfer land. (1)** An owner of real
11 property that is located within a district who intends to transfer the real property
12 shall, not later than 10 days after acceptance of a contract of sale or option contract,
13 provide written notice to the prospective buyer or transferee that the land is located
14 within a drainage district and is subject to assessments under this chapter for
15 maintenance of the drains. A copy of the most recent property tax bill for the real
16 property shall be attached to the notice.

17 **(2) (a)** Except as provided in par. (b), a prospective buyer or transferee who
18 receives a notice under sub. (1) may timely rescind in writing the contract of sale or
19 option contract by reason of the real property's location in a drainage district, without
20 any liability on his or her part. The prospective buyer or transferee is entitled to the
21 return of any deposits or option fees paid in the transaction.

22 **(b)** A prospective buyer or transferee may not rescind a contract of sale or option
23 contract under par. (a) if he or she was aware, or had written notice, that the real
24 property is located in a drainage district at the time the contract of sale or option
25 contract was submitted to the owner or the owner's agent.

1 **(3)** Rescissions under sub. (2) (a) are timely if they are delivered to the owner
2 or the owner’s agent within 3 business days after the prospective buyer or transferee
3 receives a notice under sub. (1).

4 **(4)** An owner under this section shall act in good faith to inform a prospective
5 buyer or transferee that the real property is located within a drainage district and
6 shall perform each act, and make each disclosure, required by this section in good
7 faith with honesty in fact.

8 **SECTION 13. Nonstatutory provisions.**

9 **(1) DRAINAGE BOARD REQUIREMENTS.**

10 (a) Not later than the first day of the 3rd month beginning after the effective
11 date of this subsection, a drainage board that is in existence on the effective date of
12 this subsection, shall meet to develop a plan to notify in writing every person who
13 owns land that is located within the drainage district that such land is in the district.

14 (b) Not later than the first day of the 2nd month beginning after the meeting
15 under paragraph (a) is held, the drainage board shall send to every person who owns
16 land that is located in the drainage district all of the following:

- 17 1. Written notification that the person owns land in the drainage district.
- 18 2. Contact information for every member of the drainage board.
- 19 3. Contact information for the state drainage engineer.
- 20 4. General information about drainage districts.

21 **SECTION 14. Initial applicability.**

22 (1) The treatment of section 66.1001 (2) (g) of the statutes first applies to a city,
23 village, town, county, or regional planning commission that begins the process of
24 creating or amending a comprehensive plan on the effective date of this subsection.

