



## 2007 ASSEMBLY BILL 363

May 29, 2007 - Introduced by Representatives KLEEFISCH, J. FITZGERALD, TOWNSEND, NASS and ALBERS, cosponsored by Senator S. FITZGERALD. Referred to Committee on Urban and Local Affairs.

- 1     **AN ACT** *to amend* 9.20 (4); and *to create* 9.20 (9) of the statutes; **relating to:**  
2             limiting the scope of direct legislation.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a number of electors equal to at least 15 percent of the votes cast for governor at the last general election in their city or village may sign and file a petition with the city or village clerk requesting that a proposed ordinance or resolution, without alteration, either be adopted by the common council or village board (governing body), or referred to a vote of the electors. A number of Wisconsin Supreme Court decisions, however, have held that there are four exceptions to the general requirement that a proposed ordinance or resolution be adopted by the governing body or submitted to the voters. See, for example, *Mount Horeb Community Alert v. Village Board of Mt. Horeb* 263 Wis. 2d 544, 556 (2003). The exceptions are the following:

1. A matter that is executive or administrative in nature, rather than legislative.
2. A proposal that compels the repeal of an existing ordinance or compels the passage of an ordinance in clear conflict with an existing ordinance.
3. A proposal that seeks to exercise legislative powers not conferred on the city or village.
4. A proposal that would conflict with state law.

Following submittal of the petition and proposed ordinance or resolution to the clerk, he or she must determine, and issue certified findings, as to whether the petition is sufficient and the proposed ordinance or resolution is in proper form. The petition may be amended if it is insufficient or if the amendment is not in proper form.

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If the petition and ordinance or resolution meet the statutory requirements the governing body must, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the electors, in general, at the next spring or general election. The governing body may, by a three-quarters vote, also order a special election to vote on the ordinance or resolution.

If a majority of the votes are in favor of adoption, the proposed ordinance or resolution takes effect upon publication, which must be within ten days after the election. Currently, no ordinances or resolutions adopted either by a governing body vote, or by vote of the electors, may be repealed or amended within two years of adoption except by a vote of the electors, and the governing body may submit a proposition to repeal or amend the ordinance or resolution at any election. Direct legislation that results in a city ordinance or resolution, currently, is not to subject to a mayoral veto.

This bill creates additional exceptions to the general requirement that a proposed ordinance or resolution be adopted by the governing body or submitted to the voters. Under the bill, the governing body of a city or village is not required to act on a proposed ordinance or resolution if the proposal does not substantially relate to a local governmental function or responsibility, or if the proposal is primarily ceremonial or aspirational.

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

1           **SECTION 1.** 9.20 (4) of the statutes is amended to read:

2           9.20 (4) The Except as provided in sub. (9), the common council or village board  
3 shall, without alteration, either pass the ordinance or resolution within 30 days  
4 following the date of the clerk's final certificate, or submit it to the electors at the next  
5 spring or general election, if the election is more than 6 weeks after the date of the  
6 council's or board's action on the petition or the expiration of the 30-day period,  
7 whichever first occurs. If there are 6 weeks or less before the election, the ordinance  
8 or resolution shall be voted on at the next election thereafter. The council or board  
9 by a three-fourths vote of the members-elect may order a special election for the  
10 purpose of voting on the ordinance or resolution at any time prior to the next election,

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1 but not more than one special election for direct legislation may be ordered in any  
2 6-month period.

3 **SECTION 2.** 9.20 (9) of the statutes is created to read:

4 9.20 (9) A common council or village board is not required to act under sub. (4)  
5 if any of the following applies:

6 (a) The proposed ordinance or resolution does not substantially relate to any  
7 city or village governmental function or responsibility.

8 (b) The proposed ordinance or resolution is primarily ceremonial or  
9 aspirational.

10 **SECTION 3. Initial applicability.**

11 (1) This act first applies to a petition that is filed on the effective date of this  
12 subsection.

13 (END)