

**2009 DRAFTING REQUEST**

**Bill**

Received: **02/24/2010**

Received By: **emueller**

Wanted: **As time permits**

Identical to LRB:

For: **Mary Hubler (608) 266-2519**

By/Representing: **Steve Engelbert**

This file may be shown to any legislator: **NO**

Drafter: **emueller**

May Contact:

Addl. Drafters:

Subject: **Local Gov't - 1st class cities**  
**Local Gov't - counties**  
**Local Gov't - munis generally**  
**Local Gov't - zoning**

Extra Copies: **MES**

Submit via email: **YES**

Requester's email: **Rep.Hubler@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Changes to smart growth, comprehensive planning.

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**Instructions:**

See attached. Same as 09-3520/P4.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 02/25/2010	kfollett 02/25/2010		_____			S&L
/1			rschluet 02/25/2010	_____	lparisi 02/25/2010	cduerst 03/04/2010	

FE Sent For: **"1" @ intro. 3/11/10**

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FE Sent For:

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/?	emueller	1/15/f					
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/1	svm 2/25/10	2/25					
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FE Sent For:

<END>

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

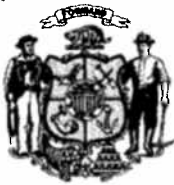
Legal (608-266-3561)

LRB

2/24 Steve @ Rep. Hubler  
Engelbert

- combs campaign to 3520/PC ~~MM~~

- contact Matt @ Sen. Kee-Haw - OK



State of Wisconsin  
2009 - 2010 LEGISLATURE

4409/1

LRB-6520/P4

EVM:kjf&wlj:jf

D Note ←

RMNR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

No changes

In 2/25/10

Soon

Regen

1 AN ACT *to repeal* 236.13 (1) (c); *to amend* 59.69 (3) (a), 60.62 (1), 62.23 (3) (b),  
2 66.1001 (1) (a) (intro.), 66.1001 (1) (a) 2., 66.1001 (3) (intro.), (g), (h) and (q) and  
3 66.1001 (4) (c); and *to create* 16.965 (5), 60.23 (33), 66.1001 (1) (am), 66.1001  
4 (2m) and 66.1001 (3m) of the statutes; **relating to:** comprehensive planning.

***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. A town may create a comprehensive plan only if it exercises village powers as authorized by the town meeting. 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.

Also under current law, beginning on January 1, 2010, 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 under current law, beginning on January 1, 2010, 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.



1 jurisdictions whose governing bodies by resolution agree to having their areas  
2 included in the county's development plan. The plan may be adopted in whole or in  
3 part and may be amended by the board and endorsed by the governing bodies of  
4 incorporated jurisdictions included in the plan. The county development plan, in  
5 whole or in part, in its original form or as amended, is hereafter referred to as the  
6 development plan. Beginning on January 1, 2010, or, if the county is exempt under  
7 s. 66.1001 (3m), the date under s. 66.1001 (3m) (b), if the county engages in any  
8 program or action described in s. 66.1001 (3), the development plan shall contain at  
9 least all of the elements specified in s. 66.1001 (2).

10 **SECTION 3.** 60.23 (33) of the statutes is created to read:

11 60.23 (33) COMPREHENSIVE PLAN. Adopt or amend a master plan under s. 62.23.

12 **SECTION 4.** 60.62 (1) of the statutes is amended to read:

13 60.62 (1) Subject Except as provided in s. 60.23 (33) and subject to subs. (2),  
14 (3) and (4), if a town board has been granted authority to exercise village powers  
15 under s. 60.10 (2) (c), the board may adopt zoning ordinances under s. 61.35.

16 **SECTION 5.** 62.23 (3) (b) of the statutes is amended to read:

17 62.23 (3) (b) The commission may adopt the master plan as a whole by a single  
18 resolution, or, as the work of making the whole master plan progresses, may from  
19 time to time by resolution adopt a part or parts of a master plan. Beginning on  
20 January 1, 2010, or, if the city is exempt under s. 66.1001 (3m), the date under s.  
21 66.1001 (3m) (b), if the city engages in any program or action described in s. 66.1001  
22 (3), the master plan shall contain at least all of the elements specified in s. 66.1001  
23 (2). The adoption of the plan or any part, amendment, or addition, shall be by  
24 resolution carried by the affirmative votes of not less than a majority of all the  
25 members of the city plan commission. The resolution shall refer expressly to the



1 elements under s. 66.1001 and other matters intended by the commission to form the  
2 whole or any part of the plan, and the action taken shall be recorded on the adopted  
3 plan or part of the plan by the identifying signature of the secretary of the  
4 commission, and a copy of the plan or part of the plan shall be certified to the common  
5 council, and also to the commanding officer, or the officer's designee, of any military  
6 base or installation, with at least 200 assigned military personnel or that contains  
7 at least 2,000 acres, that is located in or near the city. The purpose and effect of the  
8 adoption and certifying of the master plan or part of the plan shall be solely to aid  
9 the city plan commission and the council in the performance of their duties.

10 SECTION 6. 66.1001 (1) (a) (intro.) of the statutes is amended to read:

11 66.1001 (1) (a) (intro.) "Comprehensive plan" means a guide to the physical,  
12 social, and economic development of a local governmental unit that is one of the  
13 following:

14 SECTION 7. 66.1001 (1) (a) 2. of the statutes is amended to read:

15 66.1001 (1) (a) 2. For a city ~~or a~~ village, or ~~for a~~ town that exercises village  
16 powers under s. 60.22 (3), a master plan that is adopted or amended under s. 62.23  
17 (2) or (3).

18 SECTION 8. 66.1001 (1) (am) of the statutes is created to read:

19 66.1001 (1) (am) "Consistent with" means furthers or does not contradict the  
20 objectives, goals, and policies contained in the comprehensive plan.

21 SECTION 9. 66.1001 (2m) of the statutes is created to read:

22 66.1001 (2m) EFFECT OF ENACTMENT OF A COMPREHENSIVE PLAN. The enactment  
23 of a comprehensive plan by ordinance does not make the comprehensive plan by itself  
24 a regulation.

1           **SECTION 10.** 66.1001 (3) (intro.), (g), (h) and (q) of the statutes are amended to  
2 read:

3           66.1001 **(3)** ~~ACTIONS, PROCEDURES~~ ORDINANCES THAT MUST BE CONSISTENT WITH  
4 COMPREHENSIVE PLANS. (intro.) ~~Beginning~~ Except as provided in sub. (3m), beginning  
5 on January 1, 2010, if a local governmental unit ~~engages in~~ enacts or amends any of  
6 the following ~~actions, those actions~~ ordinances, the ordinance shall be consistent  
7 with that local governmental unit's comprehensive plan:

8           (g) Official mapping ~~established~~ ordinances enacted or amended under s. 62.23  
9 (6).

10           (h) Local subdivision ~~regulation~~ ordinances enacted or amended under s.  
11 236.45 or 236.46.

12           (q) ~~Zoning of shorelands~~ Shorelands or wetlands in shorelands zoning  
13 ordinances enacted or amended under s. 59.692, 61.351 or 62.231.

14           **SECTION 11.** 66.1001 (3m) of the statutes is created to read:

15           66.1001 **(3m)** DELAY OF CONSISTENCY REQUIREMENT. (a) If a local governmental  
16 unit has not adopted a comprehensive plan before January 1, 2010, the local  
17 governmental unit is exempt from the requirement under sub. (3) if any of the  
18 following applies:

19           1. The local governmental unit has applied for but has not received a  
20 comprehensive planning grant under s. 16.965 (2), and the local governmental unit  
21 adopts a resolution stating that the local governmental unit will adopt a  
22 comprehensive plan that will take effect no later than January 1, 2012.

23           2. The local governmental unit has received a comprehensive planning grant  
24 under s. 16.965 (2) and has been granted an extension of time under s. 16.965 (5) to  
25 complete comprehensive planning.

1 (b) The exemption under par. (a) shall continue until the following dates:

2 1. For a local governmental unit exempt under par. (a) 1., January 1, 2012.

3 2. For a local governmental unit exempt under par. (a) 2., the date on which the  
4 extension of time granted under s. 16.965 (5) expires.

5 **SECTION 12.** 66.1001 (4) (c) of the statutes is amended to read:

6 66.1001 (4) (c) No comprehensive plan that is recommended for adoption or  
7 amendment under par. (b) may take effect until the political subdivision enacts an  
8 ordinance or the regional planning commission adopts a resolution that adopts the  
9 plan or amendment. The political subdivision may not enact an ordinance or the  
10 regional planning commission may not adopt a resolution under this paragraph  
11 unless the comprehensive plan contains all of the elements specified in sub. (2). An  
12 ordinance may be enacted or a resolution may be adopted under this paragraph only  
13 by a majority vote of the members-elect, as defined in s. 59.001 (2m), of the governing  
14 body. ~~An ordinance that is enacted or a resolution that is adopted under this~~  
15 ~~paragraph, and the plan to which it relates, shall be filed with at least One copy of~~  
16 ~~a comprehensive plan enacted or adopted under this paragraph shall be sent to all~~  
17 of the entities specified under par. (b).

18 **SECTION 13.** 236.13 (1) (c) of the statutes is repealed.

19 (END)

DNote

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4409/?dn  
EVM...kg F

*Date*

ATTN: Rep. Mary Hubler

Per your request, I am providing this draft in introducible form. There are, however, several issues you may wish to consider in your review of this draft.

1. Most significantly, this draft may create a statutory conflict within s. 66.1001, stats. This draft adds s. 66.1001 (2m) which reads "[t]he enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation." Section 66.1001 (3), as amended by this draft, however, requires that certain ordinances enacted or amended after January 1, 2010, be consistent with the local governmental unit's comprehensive plan. Because one subsection seems to deny the comprehensive plan's regulatory effect and another describes the comprehensive plan's regulatory effect, these two provisions appear to conflict. It is not clear to me how the conflict would be resolved should the statute come under judicial review.

2. The amendments to s. 66.1001 (3) in this draft may create a loophole. Section 66.1001 (3) is amended by this draft to specify that certain ordinances must be consistent with a comprehensive plan. While most of the actions under s. 66.1001 (3) must be accomplished by ordinance, the actions under s. 66.1001 (3) (g), which covers the establishment or amendment of an official map, may be done by resolution or ordinance. See s. 62.23 (6) (b), stats. Because of the specific reference to an "ordinance," it is unclear whether s. 66.1001 (3) would require that an official map resolution under s. 62.23 (6) (b) be consistent with the local governmental unit's comprehensive plan.

3. The addition to the definition of "comprehensive plan" in s. 66.1001 (1) (a) (intro.) does not have any clear legal effect. The language appears to paraphrase the requirements under s. 66.1001 (2), stats., but without adding any legally important information.

4. The definition of "consistent with" added in this draft refers to the "objectives, goals, and policies contained in a comprehensive plan." Most elements of the comprehensive plan must also include maps and programs. The addition of the new definition will likely mean that the ordinance enactments or amendments covered by s. 66.1001 (3) will not need to be consistent with any maps or programs compiled in the comprehensive plan.

Please let me know if you have any questions or further instructions.

Eric V. Mueller  
Legislative Attorney  
Phone: (608) 261-7032  
E-mail: [eric.mueller@legis.wisconsin.gov](mailto:eric.mueller@legis.wisconsin.gov)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4409/1dn  
EVM:kjf:rs

February 25, 2010

ATTN: Rep. Mary Hubler

Per your request, I am providing this draft in introducible form. There are, however, several issues you may wish to consider in your review of this draft.

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E-mail: [eric.mueller@legis.wisconsin.gov](mailto:eric.mueller@legis.wisconsin.gov)

**Duerst, Christina**

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**From:** Engelbert, Steve  
**Sent:** Thursday, March 04, 2010 1:49 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-4409/1 Topic: Changes to smart growth, comprehensive planning.

Please Jacket LRB 09-4409/1 for the ASSEMBLY.