

2011 DRAFTING REQUEST

Bill

Received: **07/07/2011**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **Rob**

May Contact:

Drafter: **mshovers**

Subject: **Local Gov't - zoning
Real Estate - plats**

Addl. Drafters: **pkahler**

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Limit the authority of a political subdivision to impose a development moratorium

Instructions:

See attached

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>
/?				_____			S&L
/P1	mshovers 07/22/2011	wjackson 08/12/2011	rschlue 08/16/2011	_____	lparisi 08/16/2011		S&L
/P2	mshovers 12/19/2011 mshovers 01/19/2012	mduchek 12/23/2011 mduchek 01/20/2012	jmurphy 01/03/2012	_____ _____ _____	sbasford 01/03/2012		S&L

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/1

phenry _____
01/20/2012 _____

sbasford
01/20/2012

mbarman
02/21/2012

FE Sent For:

*At intro
2/22/2012*

<END>

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Adl. Drafters: pkahler

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/P1	mshovers 07/22/2011	wjackson 08/12/2011	rschluet 08/16/2011	4/30 ph	lparisi 08/16/2011		S&L
/P2	mshovers 12/19/2011	mduchek 12/23/2011	jmurphy 01/03/2012	ph x	sbasford 01/03/2012		

11 MES 1/19/12

MD 1/20/12

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By/Representing: **Rob**

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Extra Copies: **EVM**

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/?				_____			S&L
/P1	mshovers 07/22/2011	wjackson 08/12/2011	rschluet 08/16/2011	_____	lparisi 08/16/2011		
/P2	12/19/11	12/20/11	Jm 2/27	Jm 1/3/12			
FE Sent For:				<END>			

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Pre Topic:

No specific pre topic given

Topic:


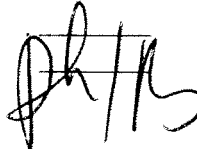
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1?	mshovers	1 MD 8/10					
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FE Sent For:

<END>

DRAFT

MORATORIUM LAW

April 13, 2011

[** Note – The intent of the bill is to have this regulatory framework apply to all development-related moratoria (e.g., zoning changes, building permits, big box retail), not just subdivision plats. Accordingly, sections 62.23, 60.61, 61.35 (and possibly others) would need to be referenced somehow.]

SECTION 1. 236.XX is created to read:

236.XX Land Development Moratoria. (1) PERMITTED

MORATORIA. Notwithstanding any other provision of law, only a city, village or town which has enacted a comprehensive plan or is in the process of preparing a comprehensive plan may adopt a moratorium on subdivision plats, certified survey maps, or other land development plans pursuant to this chapter. Such a moratorium may be adopted only for the following reasons:

(a) For the preparation and adoption of the first comprehensive plan adopted pursuant to s. 66.1001, [including the preparation and adoption or amendment to zoning or subdivision ordinances implementing the new comprehensive plan;] -

*not drafted
seems unnecessary
& has no legal effect*

(b) For the preparation and adoption of a significant amendment to a comprehensive plan adopted pursuant to s. 66.1001, in response to a substantial change in conditions not contemplated at the time the present comprehensive plan was adopted or most recently amended, and including the preparation and adoption or amendment to zoning or subdivision ordinances implementing the amended comprehensive plan;

how to show?

(c) To prevent a shortage or overburden of public facilities that would otherwise occur during the effective term of the moratorium; or

(d) For any other compelling need. A compelling need is a significant threat to the public health or safety presented by proposed or anticipated land development.

(2) **PROCEDURES FOR ENACTMENT:** (a) If the city, village or town proposes to adopt a moratorium for the purposes specified in sub. (1)(c), the moratorium may only be adopted after the city, village or town obtains a written report from an engineer registered in the State of Wisconsin indicating that there may be a shortage or overburden of public facilities that justifies the need for a moratorium.

(b) If the municipality or town proposes to adopt a moratorium for the purposes specified in sub. (1)(d), the moratorium may only be adopted after the town or municipality obtains a written report from an engineer registered in the State of Wisconsin or a public health professional licensed by the State of Wisconsin indicating that there is a significant threat to health or safety that justifies the need for a moratorium.

(3) A moratorium may only be in effect for a period time long enough to allow the municipality or town to address the reason identified for the moratorium, but in no event shall the moratorium be in effect for more than 12 months, except that the moratorium may be extended for up to an additional 6 months if the municipality or town determines that such extension is necessary to address the reason identified for the moratorium.

(4) An ordinance adopted pursuant to this section shall contain the following:

(a) A statement of the problem giving rise to the need for the moratorium;

(b) Findings on which sub. (3) is based;

(c) The term of the moratorium;

(d) A description of the of the geographic area of the local government to which the moratorium applies; and

(e) A statement of the specific and prompt action that the local government intends to take to alleviate the need for the moratorium.

(5) The ordinance establishing the moratorium shall provide an exemption from the moratorium on submissions that would have minimal or no impact on the problems giving rise to the moratorium.

(6) No city, village or town may adopt an ordinance imposing a moratorium unless the city, village or town holds at least one public hearing at which the ordinance is discussed. The hearing must be preceded by a class 2 notice under ch. 985 before the hearing is held. [If any person has informally submitted a plan for land development or other circumstances exist putting the city, village or town on notice of the intent to develop a specific site the city, village or town shall give actual notice to the person known to be considering such plan(s) for development.] The city, village or town may also provide notice of the hearing in any other means it deems appropriate. The class 2 notice shall include at least the following:

(a) The date, time and place of the hearing;

(b) A summary of the proposed moratorium, including the location of the moratorium, the length of time of the moratorium, and a statement of the problem given rise for the need for a moratorium;

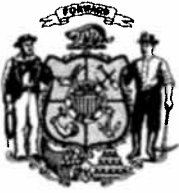
(c) The name of an individual employed by the city, village or town who may be contacted to obtain additional information about the proposed ordinance; and

(d) Information relating to where and when a copy of the proposed ordinance may be inspected prior to the hearing and how a copy of the proposed ordinance may be obtained.

(7) APPLICATION, STANDARDS AND DEFINITIONS (a) Any moratorium enacted pursuant to this section shall not apply to any preliminary or final subdivision plat, certified survey map, concept plan or other land development plan submitted to the city, village or town if that preliminary or final subdivision plat, certified survey map, concept plan or land development plan was required to be submitted to the city, village or town under the city's, village's or town's land development ordinances.

(b) For any preliminary or final subdivision plat, certified survey map, concept plan or other land development plan submitted prior to the enactment of any moratorium, the standards for approval and development shall be those standards existing at the time of the first submission required under the ordinances of city, village or town unless the developer and the city, village or town voluntarily agree to apply standards enacted after the moratorium.

(c) For purposes of this section "land development" has the meaning in Wis. Stats. §66.0617(1)(d).



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2389
MES&PJK

med
+ WLJ
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** ...; **relating to:** limiting the authority of a city, village, or town to enact
2 a development moratorium ordinance.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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:

3 **SECTION 1.** 66.1002 of the statutes is created to read:

4 **66.1002 Development moratoria.** (1) **DEFINITIONS.** In this section:

5 (a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

6 (b) "Development moratorium" means a moratorium on land development, or
7 on any subdivision or other division of land by plat or certified survey map that is
8 authorized under ch. 236.

SECTION 1

1 (c) "Land development" has the meaning given in s. 66.0617 (1) (d).

2 (d) "Municipality" means any city, village, or town.

3 (e) "Public health professional" means any of the following:

4 1. A physician as defined ^{under} ~~in~~ s. 48.375 (2) (g).

5 2. A registered professional nurse as defined ^{under} ~~in~~ s. 49.498 (1) (L).

* ****NOTE: Your instructions refer to a "public health professional licensed by WI"; does this paragraph meet your intent? Are there any other health professionals you'd like to include, such as osteopaths? See s. 49.43 (9). Would you like a broader definition of "physician?" See, for example, s. 157.06 (2) (a).

~~EN~~ ^{stats} ← Use 2x

6 (f) "Registered engineer" means an individual who satisfies the registration

7 requirements for a professional engineer as specified in s. 443.04.

8 (2) MORATORIUM ALLOWED. Subject to the limitations and requirements

9 specified in this section, a municipality may enact a development moratorium

10 ordinance under this section if the municipality has enacted a comprehensive plan,

11 or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one

12 of the following ^{applies} ~~apply~~:

13 (a) The municipality is in the process of preparing its comprehensive plan.

14 (b) The municipality is in the process of preparing a significant amendment to

15 its comprehensive plan in response to a substantial change in conditions in the

16 municipality.

****NOTE: I believe sub. (2) is drafted ^{consistently} ~~consistent~~ with your instructions, but it seems to me that pars. (a) and (b) should be in the (intro.) to sub. (2); it's sort of confusing to have them as two of the four requirements. It also seems like pars. (c) and (d) are the "events" or conditions that could lead a municipality to decide to enact a moratorium, not pars. (a) or (b). Please let me know if you think any changes are needed to sub. (2).

17 (c) The municipality's governing body adopts a resolution stating that a

18 moratorium is needed to prevent a shortage in, or the overburdening of, public

19 facilities located in the municipality and that such a shortage or overburdening

20 would otherwise occur during the period during which the moratorium would be in

1 effect, except that the governing body may not adopt such a resolution unless it
2 obtains a written report from a registered engineer stating that in his or her opinion
3 the possible shortage or overburdening of public facilities justifies the need for a
4 moratorium.

5 (d) The municipality's governing body adopts a resolution stating that a
6 moratorium is needed to address a significant threat to the public health or safety
7 that is presented by a proposed or anticipated land development, except that the
8 governing body may not adopt such a resolution unless it obtains a written report
9 from a registered engineer or public health professional stating that in his or her
10 opinion the proposed or anticipated land development presents such a significant
11 threat to the public health or safety that the need for a moratorium is justified.

12 (3) ORDINANCE REQUIREMENTS. (a) An ordinance enacted under this section
13 shall contain at least all of the following elements:

14 1. A statement describing the problem giving rise to the need for the
15 moratorium.

16 2. A statement of the specific action that the municipality intends to take to
17 alleviate the need for the moratorium.

18 3. Subject to par. (b), the length of time during which the moratorium is to be
19 in effect.

20 4. A statement describing how and why the governing body decided on the
21 length of time described in subd. 3.

22 5. A description of the area in which the ordinance applies.

23 6. An exemption for any land development that would have no impact, or slight
24 impact, on the problem giving rise to the need for the moratorium.

SECTION 1

① ^{STET} (b) 1. A development moratorium ordinance may only be in effect for a ^{length} ~~period~~
 ② ~~of time~~ that is long enough for a municipality to address the problem giving rise to
 3 the need for the moratorium but, except as provided in subd. 2., the ordinance may
 4 not remain in effect for more than 12 months.

⑤ 2. A municipality may amend the ordinance to extend the ^{length of time the moratorium} ~~effective date~~ ^{may be in effect} ~~period~~
 6 more than 6 months if the municipality's governing body determines that such an
 ⑦ ^{giving rise to the need for the moratorium} extension is necessary to address the problem described in par. (a) 1.

8 (c) A municipality may not enact a development moratorium ordinance unless
 9 it holds at least one public hearing at which the proposed ordinance is discussed. The
 10 public hearing must be preceded by a class 2 notice under ch. 985, the first notice to
 11 be at least 30 days before the hearing. The municipality may also provide notice of
 12 the hearing by any other appropriate means. The class 2 notice shall contain at least
 13 all of the following:

* ^{le} ~~period~~ ^{le} ~~of time~~ ^{le} ~~when the notice must be issued.~~
 ****NOTE: Is the "30 days before the hearing" requirement consistent with your intent? It seems like most instances in the statutes that have notice requirements tie them to a ~~period of time~~ when the notice must be issued.

- 14 1. The time, date, and place of the hearing.
- 15 2. A summary of the proposed development moratorium ordinance, including
- 16 the location where the ordinance would apply, the length of time the ordinance would
- 17 be in effect, and a statement describing the problem giving rise to the need for the
- 18 moratorium.
- 19 3. The name and contact information of a municipal official who may be
- 20 contacted to obtain additional information about the proposed ordinance.
- 21 4. Information relating to how, where, and when a copy of the proposed
- 22 ordinance may be inspected or obtained before the hearing.

1 (4) APPLICATION OF ORDINANCES, EXCEPTIONS. (a) If any person has informally
 2 submitted a plan for land development, or if other circumstances exist ^{that} ~~which~~ put the
 3 municipality on notice of a person's intent to develop a specific site, the municipality
 4 shall give actual notice of a proposed development moratorium ordinance to the
 5 person who has informally submitted the plan or whose intent is known to the
 6 municipality.

****NOTE: This paragraph is based on your instructions (pre-drafted s. 236.xx (6)), but the instructions don't indicate of what the person is to receive actual notice. Is "actual notice of a proposed ordinance" consistent with your intent? Would you like more specific information to be conveyed? Also, it's unclear what legal standard would apply to the requirement that a municipality provide actual notice to a person whose "intent is known to the municipality." How would a person's intent be known, and by whom?

7 (b) A development moratorium ordinance enacted under this [✓] section does not
 8 apply to any subdivision or other division of land by plat or certified survey map that
 9 is authorized under ch. 236, or to any land development plan, if a municipality's
 10 zoning or land development ordinances require the submission of any of those items
 11 to the municipality.

your instructions (pre-drafted s. 236.xx)
 * ****NOTE: This is based on ~~pre-drafted s. 236.xx~~ (7) (a) I'm not sure what was
 * intended and what a "concept plan" is. Also, ~~state~~ ^{state} statutes require the submission of plats
 * not sure what the intent or effect is of the ~~§~~ ^{the} paragraph.

12 (c) A development moratorium ordinance enacted under this section first
 13 applies to any subdivision or other division of land by plat or certified survey map
 14 that is authorized under ch. 236, or to any land development plan, that is first
 15 submitted to the municipality on the effective date of the ordinance, unless the
 16 municipality and a developer agree to apply the ordinance retroactively.

your instructions (pre-drafted s. 236.xx)
 * ****NOTE: This is based on ~~pre-drafted s. 236.xx~~ (7) (b). It seems like what you want *
 is an initial applicability provision, but I'm not sure to what "the standards for approval
 and development" refer. Also, the concern in the instructions seems to be addressed by
 current law in s. 236.13 (1)(b), stats.

Shovers, Marc

From: Kovach, Robert
Sent: Monday, October 24, 2011 3:48 PM
To: Kahler, Pam; Shovers, Marc
Subject: Moratorium bill (LRB 2389/1)

Dear Marc and Pam,

I have some comments for the Moratorium bill Lrb-2389/1 that we were working on:

You may have seen similar notes from the Assembly Version author sorry if it is redundant.

Section 1, line 6-7 – after “land development” add “rezonings, building permits, conditional use permits”

Section 2, lines 10-12 – after “section” add the word “only” and delete the phrase “if the municipality . . . in s. 66.1001(3m), and”

Section 2, line 13 – after “comprehensive plan” add “as defined in s. 66.1001”

Not done - this is a defined term in bill § 1, s. 66.1002(1)(a)

Section 2, line 14 – delete “significant”

Section 2, line 16 – after “municipality” add “or as required by Wis. Stat. § 66.1001”

Section 2, line 20 – replace the second “during” with “in”

Page 4, drafter’s note – follow the drafter’s recommendation – eliminate the 30 day notice requirement, and tie the notice to the time when the notice must be issued.

kept as is

Page 5 – Delete lines 1 through 6

Page 5 – Delete lines 7 through 11

req to

Page 5 – Replace lines 12 through 16 with “A development moratorium enacted under this section does not apply to any rezoning, building permit, conditional use permit, subdivision or other division of land by plat or certified survey, that is authorized under ch. 236, or to any land development plan, that is first submitted to the municipality before the moratorium ordinance is enacted.”

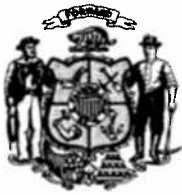
I added an init app

not needed - unless there's a specific retroactivity

Thanks again for your help,

Rob Kovach
Chief of Staff
Office of State Senator Frank Lasee
608-266-3512

*any request for re, a by, or occupying persons;
or a*



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2389/P1

MES&PJK:med&wlj:rs

Stays

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen
[Signature]

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2 a city, village, or town to enact a development moratorium ordinance.

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8 authorized under ch. 236.

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2 (d) "Municipality" means any city, village, or town.

3 (e) "Public health professional" means any of the following:

4 1. A physician, as defined under s. 48.375 (2) (g).

5 2. A registered professional nurse, as defined under s. 49.498 (1) (L).

****NOTE: Your instructions refer to a "public health professional licensed by WI"; does this paragraph meet your intent? Are there any other health professionals you'd like to include, such as osteopaths? See s. 49.43 (9), stats. Would you like a broader definition of "physician?" See, for example, s. 157.06 (2) (o), stats.

6 (f) "Registered engineer" means an individual who satisfies the registration
7 requirements for a professional engineer as specified in s. 443.04

8 (2) MORATORIUM ALLOWED. Subject to the limitations and requirements
9 specified in this section, a municipality may enact a development moratorium
10 ordinance under this section if the municipality has enacted a comprehensive plan,
11 ~~or is exempt from the requirement as described in s. 66.1001 (3m)~~, and if at least one
12 of the following applies:

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14 (b) The municipality is in the process of preparing ~~a significant~~ ^{an} amendment to
15 its comprehensive plan in response to a substantial change in conditions in the
16 municipality. ~~or as a result of an ordinance being enacted or amended as described in s. 66.1001(3)~~

****NOTE: I believe sub. (2) is drafted consistently with your instructions, but it seems to me that pars. (a) and (b) should be in the (intro.) to sub. (2); it's sort of confusing to have them as two of the four requirements. It also seems like pars. (c) and (d) are the "events" or conditions that could lead a municipality to decide to enact a moratorium, not pars. (a) or (b). Please let me know if you think any changes are needed to sub. (2).

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18 moratorium is needed to prevent a shortage in, or the overburdening of, public
19 facilities located in the municipality and that such a shortage or overburdening
20 would otherwise occur during the period ~~during~~ ⁻ⁱⁿ⁻ which the moratorium would be in

→ I did not add "or as required by s. 66.1001" as requested in the instructions because this could not happen; the statute requires that an ordinance be consistent with the plan, see s. 66.1001(3).

1 effect, except that the governing body may not adopt such a resolution unless it
2 obtains a written report from a registered engineer stating that in his or her opinion
3 the possible shortage or overburdening of public facilities justifies the need for a
4 moratorium.

5 (d) The municipality's governing body adopts a resolution stating that a
6 moratorium is needed to address a significant threat to the public health or safety
7 that is presented by a proposed or anticipated land development, except that the
8 governing body may not adopt such a resolution unless it obtains a written report
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16 2. A statement of the specific action that the municipality intends to take to
17 alleviate the need for the moratorium.

18 3. Subject to par. (b), the length of time during which the moratorium is to be
19 in effect.

20 4. A statement describing how and why the governing body decided on the
21 length of time described in subd. 3.

22 5. A description of the area in which the ordinance applies.

23 6. An exemption for any land development that would have no impact, or slight
24 impact, on the problem giving rise to the need for the moratorium.

SECTION 1

1 (b) 1. A development moratorium ordinance may be in effect only for a length
2 of time that is long enough for a municipality to address the problem giving rise to
3 the need for the moratorium but, except as provided in subd. 2., the ordinance may
4 not remain in effect for more than 12 months.

5 2. A municipality may amend the ordinance to extend the moratorium for not
6 more than 6 months if the municipality's governing body determines that such an
7 extension is necessary to address the problem giving rise to the need for the
8 moratorium.

9 (c) A municipality may not enact a development moratorium ordinance unless
10 it holds at least one public hearing at which the proposed ordinance is discussed. The
11 public hearing must be preceded by a class 2 notice under ch. 985, the first notice to
12 be at least 30 days before the hearing. The municipality may also provide notice of
13 the hearing by any other appropriate means. The class 2 notice shall contain at least
14 all of the following:

****NOTE: Is the "30 days before the hearing" requirement consistent with your
intent? It seems like most instances in the statutes that have notice requirements tie
them to a time when the notice must be issued.

15 1. The time, date, and place of the hearing.

16 2. A summary of the proposed development moratorium ordinance, including
17 the location where the ordinance would apply, the length of time the ordinance would
18 be in effect, and a statement describing the problem giving rise to the need for the
19 moratorium.

20 3. The name and contact information of a municipal official who may be
21 contacted to obtain additional information about the proposed ordinance.

22 4. Information relating to how, where, and when a copy of the proposed
23 ordinance may be inspected or obtained before the hearing.

~~(4) APPLICATION OF ORDINANCES, EXCEPTIONS~~

~~(a) If any person has informally submitted a plan for land development, or if other circumstances exist that put the municipality on notice of a person's intent to develop a specific site, the municipality shall give actual notice of a proposed development moratorium ordinance to the person who has informally submitted the plan or whose intent is known to the municipality.~~

~~****NOTE: This paragraph is based on your instructions (pre-drafted s. 236.xx (6)), but the instructions don't indicate of what the person is to receive actual notice. Is "actual notice of a proposed ordinance" consistent with your intent? Would you like more specific information to be conveyed? Also, it's unclear what legal standard would apply to the requirement that a municipality provide actual notice to a person whose "intent is known to the municipality." How would a person's intent be known, and by whom?~~

~~(b) A development moratorium ordinance enacted under this section does not apply to any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236, or to any land development plan, if a municipality's zoning or land development ordinances require the submission of any of those items to the municipality.~~

~~****NOTE: This is based on your instructions (pre-drafted s. 236.xx (7) (a)). I'm not sure what was intended and what a "concept plan" is. Also, the statutes require the submission of plats (see s. 236.10, stats.) and certified survey maps (see s. 236.34 (1) (intro.), stats.), so I'm not sure what the intent or effect is of the paragraph.~~

~~(c) A development moratorium ordinance enacted under this section first applies to any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236, or to any land development plan, that is first submitted to the municipality on the effective date of the ordinance, unless the municipality and a developer agree to apply the ordinance retroactively.~~

~~****NOTE: This is based on your instructions (pre-drafted s. 236.xx (7) (b)). It seems like what you want is an initial applicability provision, but I'm not sure to what "the standards for approval and development" refer. Also, the concern in the instructions seems to be addressed by current law in s. 236.13 (1) (b), stats.~~

(END)

INS
5-17-17

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2389/P2ins
MES&PJK:med&wlj:rs

~~INS 5-17~~

STET - Leave this word in as typed

~~(4) APPLICABILITY. A development moratorium ordinance enacted under this section ~~then~~ applies to ^{request for} any rezoning, ^a building permit, ^{or a} conditional use permit, ^{any} subdivision or other division of land by plat or certified survey map ^{that is authorized} under ~~ch. 236~~ ^{of a} or to any land development plan; that is ~~not~~ ^{first} submitted to ^{the} municipality ^{or after} on the effective date of the ordinance.~~

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2389/P2ins
MES&PJK:med&wlj:rs

INS 5-17

(4) **APPLICABILITY.** A development moratorium ordinance enacted under this section applies to any of the following that is submitted to the municipality on or after the effective date of the ordinance:

- (a) A request for rezoning.
- (b) An application for a building permit or a conditional use permit.
- (c) A plat or certified survey map.
- (d) A land development plan.

This insert in Docbase as/P2ins MD

Shovers, Marc

From: Kovach, Robert
Sent: Thursday, January 19, 2012 9:21 AM
To: Shovers, Marc; Kahler, Pam
Cc: Steineke, Jim
Subject: Moratorium Bill Draft
Attachments: 3145.2.pdf; 3145.2dn.pdf

Hi Marc,

Here is the moratorium bill draft that you finished for Rep Steineke. We are fine with this draft, except for one small change -- on page 2, line 5 -- please strike the word "building." Please use this language from his version and the sentence above to make our version match: LRB-2389.

It's my assumption that Rep. Steineke will want the same change on his draft, but I'll let him confirm that.

Apparently, if municipalities are given the authority to enact moratoria on building permits, this could deny affected property owners with all reasonable use of their property, which could result in a "taking."

Please let me know if you have questions. Thank you.

Rob Kovach
Chief of Staff
Office of Senator Frank Lasee
608-266-3512



State of Wisconsin
2011 - 2012 LEGISLATURE

2389/1



LRB-3745/2

MES&PJK:med&wlj:jm

2011 BILL

FMNR

WANTED
SOON

gjm

- 1 AN ACT *to create* 66.1002 of the statutes; **relating to:** limiting the authority of
2 a city, village, or town to enact a development moratorium ordinance.

Analysis by the Legislative Reference Bureau

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Also under current law, a city or village, or certain towns that exercise village powers, may create a city, village, or town plan commission to engage in zoning and land use planning. If a city, village, or town creates such a commission, the commission is required to adopt a master plan for the physical development of the city, village, or town, including in some instances, in the case of a city or village, unincorporated areas outside of the city or village that are related to the city's or village's development.

Under the current law commonly known as the "Smart Growth" statute, if a city, village, town, county, or regional planning commission 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.

BILL

Subject to a number of limitations and conditions, this bill authorizes a city, village, or town (municipality) to enact a development moratorium ordinance if the municipality has enacted, is in the process of enacting or amending, or is exempt from having to enact, a comprehensive plan. The municipality may enact a development moratorium ordinance (moratorium) only if its governing body adopts a resolution stating either that a moratorium is needed to prevent a shortage in or the overburdening of its public facilities or that a moratorium is needed to address a significant threat to the public health or safety. In either case, the municipality must obtain a written report from a professional engineer stating that the possible effect on public facilities, or the possible threat to public health or safety, justifies the need for a moratorium. In the case of a possible health or safety threat, the report may also be from a physician or registered nurse.

The moratorium must contain a number of elements, including a statement describing the problem giving rise to the need for the moratorium, the actions the municipality intends to take to address the problem, and the length of time the moratorium will apply. The moratorium may remain in effect only until the municipality addresses the problem giving rise to the need for the moratorium, or for 12 months, whichever occurs first. The bill also authorizes the municipality to extend the moratorium for another six months if the problem is not addressed. In addition, a municipality may not enact a moratorium unless it first holds a public hearing at which the proposed ordinance is discussed.

The bill first applies to a land development plan that is submitted to a municipality on the effective date of the bill, although the municipality and the developer could agree to apply the moratorium retroactively.

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. 66.1002 of the statutes is created to read:
- 2 **66.1002 Development moratoria. (1) DEFINITIONS.** In this section:
- 3 (a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).
- 4 (b) "Development moratorium" means a moratorium on land development,
- 5 rezoning, issuing ~~any~~ conditional use permits, or on any subdivision or other
- 6 division of land by plat or certified survey map that is authorized under ch. 236.
- 7 (c) "Land development" has the meaning given in s. 66.0617 (1) (d).
- 8 (d) "Municipality" means any city, village, or town.

BILL

1 (e) “Public health professional” means any of the following:

2 1. A physician, as defined under s. 48.375 (2) (g).

3 2. A registered professional nurse, as defined under s. 49.498 (1) (L).

4 (f) “Registered engineer” means an individual who satisfies the registration
5 requirements for a professional engineer as specified in s. 443.04

6 **(2) MORATORIUM ALLOWED.** Subject to the limitations and requirements
7 specified in this section, a municipality may enact a development moratorium
8 ordinance if the municipality has enacted a comprehensive plan, is in the process of
9 preparing its comprehensive plan, is in the process of preparing a significant
10 amendment to its comprehensive plan in response to a substantial change in
11 conditions in the municipality, or is exempt from the requirement as described in s.
12 66.1001 (3m), and if at least one of the following applies:

13 (a) The municipality’s governing body adopts a resolution stating that a
14 moratorium is needed to prevent a shortage in, or the overburdening of, public
15 facilities located in the municipality and that such a shortage or overburdening
16 would otherwise occur during the period in which the moratorium would be in effect,
17 except that the governing body may not adopt such a resolution unless it obtains a
18 written report from a registered engineer stating that in his or her opinion the
19 possible shortage or overburdening of public facilities justifies the need for a
20 moratorium.

21 (b) The municipality’s governing body adopts a resolution stating that a
22 moratorium is needed to address a significant threat to the public health or safety
23 that is presented by a proposed or anticipated land development, except that the
24 governing body may not adopt such a resolution unless it obtains a written report
25 from a registered engineer or public health professional stating that in his or her

BILL**SECTION 1**

1 opinion the proposed or anticipated land development presents such a significant
2 threat to the public health or safety that the need for a moratorium is justified.

3 **(3) ORDINANCE REQUIREMENTS.** (a) An ordinance enacted under this section
4 shall contain at least all of the following elements:

5 1. A statement describing the problem giving rise to the need for the
6 moratorium.

7 2. A statement of the specific action that the municipality intends to take to
8 alleviate the need for the moratorium.

9 3. Subject to par. (b), the length of time during which the moratorium is to be
10 in effect.

11 4. A statement describing how and why the governing body decided on the
12 length of time described in subd. 3.

13 5. A description of the area in which the ordinance applies.

14 6. An exemption for any land development that would have no impact, or slight
15 impact, on the problem giving rise to the need for the moratorium.

16 (b) 1. A development moratorium ordinance may be in effect only for a length
17 of time that is long enough for a municipality to address the problem giving rise to
18 the need for the moratorium but, except as provided in subd. 2., the ordinance may
19 not remain in effect for more than 12 months.

20 2. A municipality may amend the ordinance to extend the moratorium for not
21 more than 6 months if the municipality's governing body determines that such an
22 extension is necessary to address the problem giving rise to the need for the
23 moratorium.

24 (c) A municipality may not enact a development moratorium ordinance unless
25 it holds at least one public hearing at which the proposed ordinance is discussed. The

BILL

1 public hearing must be preceded by a class 1 notice under ch. 985, the notice to be
2 at least 30 days before the hearing. The municipality may also provide notice of the
3 hearing by any other appropriate means. The class 1 notice shall contain at least all
4 of the following:

5 1. The time, date, and place of the hearing.

6 2. A summary of the proposed development moratorium ordinance, including
7 the location where the ordinance would apply, the length of time the ordinance would
8 be in effect, and a statement describing the problem giving rise to the need for the
9 moratorium.

10 3. The name and contact information of a municipal official who may be
11 contacted to obtain additional information about the proposed ordinance.

12 4. Information relating to how, where, and when a copy of the proposed
13 ordinance may be inspected or obtained before the hearing.

14 **(4) APPLICABILITY.** A development moratorium ordinance enacted under this
15 section applies to any of the following that is submitted to the municipality on or after
16 the effective date of the ordinance:

17 (a) A request for rezoning.

18 (b) An application for a building permit or a conditional use permit.

19 (c) A plat or certified survey map.

20 (d) A land development plan.

21 **SECTION 2. Initial applicability.**

22 (1) This act first applies to any land development plan that is submitted to a
23 municipality on the effective date of this subsection, unless the municipality and a

BILL

1 developer agree to apply the municipality's development moratorium ordinance
2 retroactively.

3 (END)

Godwin, Gigi

From: Kovach, Robert

Sent: Tuesday, February 21, 2012 12:18 PM

To: LRB.Legal

Subject: please jacket for senate lrb-2389-1

please jacket for senate lrb-2389-1

Thanks!

Rob Kovach
Chief of Staff
Office of State Senator Frank Lasee
608-266-3512

2/21/2012