



2005 SENATE BILL 89

February 28, 2005 – Introduced by Senators LEIBHAM, REYNOLDS and BRESKE, cosponsored by Representatives GUNDERSON, PETTIS, MCCORMICK, ALBERS, VOS, AINSWORTH, GRONEMUS, HAHN, KERKMAN, KESTELL, KRAWCZYK, LEMAHIEU, MUSSER, NISCHKE, SUDER, TOWNS, TOWNSEND, VAN ROY and WOOD. Referred to Committee on Housing and Financial Institutions.

1 **AN ACT** *to amend* 59.69 (10) (a), 60.61 (5) (a) and 62.23 (7) (h); and *to create*
2 59.69 (10) (e), 60.61 (5) (e) and 62.23 (7) (hg) of the statutes; **relating to:** a
3 municipality's and county's ability to eliminate certain nonconforming
4 buildings or premises.

Analysis by the Legislative Reference Bureau

Under current law, cities, villages, or certain towns (municipalities) or counties are authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, and the location and use of buildings, structures, and land for various purposes.

Also under current law, a zoning ordinance adopted by a municipality or county may not prohibit the continued lawful use of any building or premises for any trade or industry for which the building or premises is used when the ordinance takes effect, although in certain towns such an ordinance may prohibit the alteration of, or addition to, any existing building or structure that is used to carry on an otherwise prohibited trade or industry within the area that is subject to the ordinance (district). In cities, villages, towns exercising village powers, and counties, the alteration of, addition to, or repair in excess of 50 percent of the assessed value of any existing building or structure to carry on any prohibited trade or industry within the district may be prohibited. Generally, if such a nonconforming use of a building or premises

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is discontinued for 12 months, any future use of the building or premises must conform to the municipality's or county's zoning ordinance.

This bill extends current law to also apply to structures and fixtures, and explicitly specifies that no municipality or county may require the removal of a nonconforming building, premises, structure, or fixture, which may be lawfully used under current law, by an amortization ordinance. The bill defines "amortization ordinance" as an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used, but only for a specified period of time, after which such lawful nonconforming use must be discontinued without the payment of just compensation.

For further information see the *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.** 59.69 (10) (a) of the statutes is amended to read:

2 59.69 (10) (a) An ordinance enacted under this section may not prohibit the
3 continuance of the lawful use of any building ~~or, premises, structure, or fixture~~ for
4 any trade or industry for which such building ~~or, premises, structure, or fixture~~ is
5 used at the time that the ordinances take effect, but the alteration of, or addition to,
6 or repair in excess of 50% 50 percent of its assessed value of any existing building ~~or,~~
7 premises, structure, or fixture for the purpose of carrying on any prohibited trade or
8 new industry within the district where such buildings ~~or, premises, structures, or~~
9 fixtures are located, may be prohibited. The continuance of the nonconforming use
10 of a temporary structure may be prohibited. If the nonconforming use is
11 discontinued for a period of 12 months, any future use of the building ~~and, premises,~~
12 structure, or fixture shall conform to the ordinance.

13 **SECTION 2.** 59.69 (10) (e) of the statutes is created to read:

14 59.69 (10) (e) 1. In this paragraph, "amortization ordinance" means an
15 ordinance that allows the continuance of the lawful use of a nonconforming building,

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1 premises, structure, or fixture that may be lawfully used as described under par. (a),
2 but only for a specified period of time, after which the lawful use of such building,
3 premises, structure, or fixture must be discontinued without the payment of just
4 compensation.

5 2. Subject to par. (a), an ordinance enacted under this section may not require
6 the removal of a nonconforming building, premises, structure, or fixture by an
7 amortization ordinance.

8 **SECTION 3.** 60.61 (5) (a) of the statutes is amended to read:

9 60.61 (5) (a) An ordinance adopted under this section may not prohibit the
10 continued use of any building ~~or, premises, structure, or fixture~~ for any trade or
11 industry for which the building ~~or, premises, structure, or fixture~~ is used when the
12 ordinance takes effect. An ordinance adopted under this section may prohibit the
13 alteration of, or addition to, any existing building ~~or, premises, structure, or fixture~~
14 used to carry on an otherwise prohibited trade or industry within the district. If a
15 use that does not conform to an ordinance adopted under this section is discontinued
16 for a period of 12 months, any future use of the land, building ~~or, premises, structure,~~
17 ~~or fixture~~ shall conform to the ordinance.

18 **SECTION 4.** 60.61 (5) (e) of the statutes is created to read:

19 60.61 (5) (e) 1. In this paragraph, “amortization ordinance” means an
20 ordinance that allows the continuance of the lawful use of a nonconforming building,
21 premises, structure, or fixture that may be lawfully used as described under par. (a),
22 but only for a specified period of time, after which the lawful use of such building,
23 premises, structure, or fixture must be discontinued without the payment of just
24 compensation.

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1 2. Subject to par. (a), an ordinance enacted under this section may not require
2 the removal of a nonconforming building, premises, structure, or fixture by an
3 amortization ordinance.

4 **SECTION 5.** 62.23 (7) (h) of the statutes is amended to read:

5 62.23 (7) (h) *Nonconforming uses.* The continued lawful use of a building or,
6 premises, structure, or fixture existing at the time of the adoption or amendment of
7 a zoning ordinance may not be ~~continued~~ prohibited although such ~~the~~ use does not
8 conform with the provisions of the ordinance. ~~Such~~ The nonconforming use may not
9 be extended. The total structural repairs or alterations in such a nonconforming
10 building, premises, structure, or fixture shall not during its life exceed 50 ~~per cent~~
11 percent of the assessed value of the building, premises, structure, or fixture unless
12 permanently changed to a conforming use. If such ~~the~~ nonconforming use is
13 discontinued for a period of 12 months, any future use of the building ~~and,~~ premises,
14 structure, or fixture shall conform to the ordinance.

15 **SECTION 6.** 62.23 (7) (hg) of the statutes is created to read:

16 62.23 (7) (hg) *Amortization prohibited.* 1. In this paragraph, “amortization
17 ordinance” means an ordinance that allows the continuance of the lawful use of a
18 nonconforming building, premises, structure, or fixture that may be lawfully used
19 as described under par. (h), but only for a specified period of time, after which the
20 lawful use of such building, premises, structure, or fixture must be discontinued
21 without the payment of just compensation.

22 2. Subject to par. (h), an ordinance enacted under this subsection may not
23 require the removal of a nonconforming building, premises, structure, or fixture by
24 an amortization ordinance.

25

(END)