



2023 ASSEMBLY BILL 881

January 2, 2024 - Introduced by Representatives VANDERMEER, ARMSTRONG, HURD, KRUG, O'CONNOR, SCHMIDT and EDMING, cosponsored by Senators BALLWEG, JACQUE, JAMES, QUINN and TOMCZYK. Referred to Committee on Local Government.

1 **AN ACT** *to renumber and amend* 66.0307 (7m); *to amend* 59.69 (3) (a), 59.69
2 (3) (b), 59.69 (5) (c), 59.69 (5) (e) 7., 59.69 (7), 60.23 (34) (title), 60.62 (6) (a),
3 61.353 (5), 61.353 (6), 62.233 (5), 62.233 (6), 66.0227 (4), 236.10 (1m) (a) and
4 236.34 (2m) (a); and *to create* 60.23 (35) and 60.62 (7) of the statutes; **relating**
5 **to:** town withdrawals from county zoning and the effect of a jurisdiction change
6 on zoning provisions.

Analysis by the Legislative Reference Bureau

This bill provides a procedure for towns to withdraw from coverage of a county zoning ordinance and standardizes statutory language related to the continuing effect of zoning requirements upon a change of the authority with jurisdiction over zoning matters.

Under the bill, beginning five years after the effective date of the bill, a town board in any county may withdraw the town from coverage of the county zoning ordinance and county development plan. In order to effectuate the withdrawal, the town must provide certain notices to the county clerk and must enact a town zoning ordinance, a comprehensive plan, and an official map.

Under current law, if a town board has been granted the authority to exercise village powers, the town board may enact zoning ordinances using the zoning statutes that are used by cities and villages, subject to a number of conditions. If the county in which the town is located has enacted a county zoning ordinance, town

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zoning ordinances may not take effect until such ordinances are approved either by a town meeting or by a referendum vote of the electors of the town and are approved by the county board. Also under current law, a county zoning ordinance may not take effect in a town unless it has been approved by the town board. With an exception, once a town board has approved a county zoning ordinance, the town may not withdraw its approval.

Also, several provisions in current law provide for continuity in zoning regulation when the governmental unit that has the authority to regulate zoning changes. For example, under one such provision, when an area that had been subject to zoning regulation by a county becomes subject to city zoning, the statutes provide that regulations imposed under the county continue in effect until changed by the city. The bill revises these provisions to be clearer and more consistent. In general, these provisions now specify that the prior zoning ordinance and any regulations, approvals, and conditions imposed under the prior zoning ordinance remain in effect until specifically changed by the new zoning authority.

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

1 **SECTION 1.** 59.69 (3) (a) of the statutes is amended to read:

2 59.69 (3) (a) The county zoning agency may direct the preparation of a county
3 development plan or parts of the plan for the physical development of the
4 unincorporated territory within the county and areas within incorporated
5 jurisdictions whose governing bodies by resolution agree to having their areas
6 included in the county's development plan. The plan may be adopted in whole or in
7 part and may be amended by the board and endorsed by the governing bodies of
8 incorporated jurisdictions included in the plan. The county development plan, in
9 whole or in part, in its original form or as amended, is hereafter referred to as the
10 development plan. ~~To the extent that the A development plan applies does not apply~~
11 ~~to unincorporated areas of a county with the population described in that have~~
12 ~~withdrawn from county zoning under s. 60.23 (34), it applies only to those~~
13 ~~unincorporated areas that are subject to county zoning or (35).~~ Beginning on
14 January 1, 2010, or, if the county is exempt under s. 66.1001 (3m), the date under s.

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1 66.1001 (3m) (b), if the county engages in any program or action described in s.
2 66.1001 (3), the development plan shall contain at least all of the elements specified
3 in s. 66.1001 (2).

4 **SECTION 2.** 59.69 (3) (b) of the statutes is amended to read:

5 59.69 (3) (b) The development plan shall include the master plan, if any, of any
6 city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any,
7 of such city or village, that was adopted under s. 62.23 (6) in the county, without
8 change. In counties ~~with a population of at least 485,000~~ containing towns that have
9 withdrawn from county zoning under s. 60.23 (34) or (35), the development plan shall
10 also include, and integrate, the master plan and the official map of a town that was
11 adopted under s. 60.23 (35) (c) or 60.62 (6) (a) or (b), without change.

12 **SECTION 3.** 59.69 (5) (c) of the statutes is amended to read:

13 59.69 (5) (c) A county ordinance enacted under this section shall not be effective
14 in any town until it has been approved by the town board. If the town board approves
15 an ordinance enacted by the county board, under this section, a certified copy of the
16 approving resolution attached to one of the copies of such ordinance submitted to the
17 town board shall promptly be filed with the county clerk by the town. The ordinance
18 shall become effective in the town as of the date of the filing, which filing shall be
19 recorded by the county clerk in the clerk's office, reported to the town board and the
20 county board, and printed in the proceedings of the county board. The ordinance
21 shall supersede any prior town ordinance in conflict therewith or which is concerned
22 with zoning, except as provided by s. 60.62. A town board may withdraw from
23 coverage of a county zoning ordinance as provided under s. 60.23 (34) or (35).

24 **SECTION 4.** 59.69 (5) (e) 7. of the statutes is amended to read:

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1 59.69 (5) (e) 7. When any lands previously under the jurisdiction of a county
2 zoning ordinance have been finally removed from ~~such~~ the county's jurisdiction by
3 reason of annexation to an incorporated municipality, and after the ordinance and
4 any regulations, approvals, and conditions imposed by under the county zoning
5 ordinance have ceased to be effective as provided in sub. (7), the board may, on the
6 recommendation of its zoning agency, enact amendatory ordinances that remove or
7 delete the annexed lands from the official zoning map or written descriptions without
8 following any of the procedures provided in subds. 1. to 6., and ~~such~~ the amendatory
9 ordinances shall become effective upon enactment and publication. A copy of the
10 ordinance shall be forwarded by the clerk to the clerk of each town in which the lands
11 affected were previously located. Nothing in this paragraph shall be construed to
12 nullify or supersede s. 66.1031.

13 **SECTION 5.** 59.69 (7) of the statutes is amended to read:

14 59.69 (7) CONTINUED EFFECT OF ORDINANCE. ~~Whenever~~ If an area ~~which~~ that has
15 been subject to a county zoning ordinance petitions to become part of a city or village,
16 the ~~regulations imposed by the county zoning ordinance shall continue~~ and any
17 regulations, approvals, and conditions imposed under the county zoning ordinance
18 continue in effect, ~~without change, and shall be enforced by the city or village until~~
19 ~~the regulations have been~~ ordinance or the particular regulation, approval, or
20 condition is specifically changed by official action of the governing body of the city
21 or village, ~~except that in the event,~~ If an ordinance of annexation is contested in the
22 courts, the county zoning ~~shall prevail~~ ordinance and any regulations, approvals,
23 and conditions imposed under the ordinance continue in effect, and the county ~~shall~~
24 have retains jurisdiction over the zoning in the area affected until ~~ultimate~~
25 ~~determination~~ final disposition of the court action.

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1 **SECTION 6.** 60.23 (34) (title) of the statutes is amended to read:

2 60.23 (34) (title) TOWN WITHDRAWAL FROM COUNTY ZONING; CERTAIN POPULOUS
3 COUNTIES.

4 **SECTION 7.** 60.23 (35) of the statutes is created to read:

5 60.23 (35) TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to subds. 1. and
6 2., after 5 years after the effective date of this paragraph [LRB inserts date], enact
7 an ordinance withdrawing the town from coverage of a county zoning ordinance that
8 was approved under s. 59.69 (5) (c) and from coverage by a county development plan
9 that was enacted under s. 59.69 (3) (a). An ordinance enacted under this paragraph
10 may not take effect until all of the following occur:

11 1. Not later than 2 years before enacting an ordinance under this paragraph,
12 the town adopts a resolution of the town's intent to enact an ordinance under this
13 paragraph and provides a copy of the resolution to the county clerk.

14 2. Not earlier than 2 years and not later than 3 years after adopting the
15 resolution under subd. 1., the town adopts a resolution informing the county of the
16 town's withdrawal from coverage of the county's zoning ordinances, and the town
17 sends certified copies of the documents under subd. 3. to the county clerk.

18 3. Not later than the effective date of the resolution adopted under subd. 2., the
19 town enacts a zoning ordinance under s. 60.62, a comprehensive plan under s.
20 66.1001, and an official map under s. 62.23 (6).

21 (b) Nothing in this subsection authorizes a town to withdraw from a county
22 shoreland zoning ordinance under s. 59.692.

23 **SECTION 8.** 60.62 (6) (a) of the statutes is amended to read:

24 60.62 (6) (a) Not later than 60 days before a town board that wishes to withdraw
25 from county zoning and the county development plan under s. 60.23 (34) may enact

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1 an ordinance under s. 60.23 (34), the town board shall enact a zoning ordinance
2 under this section, an official map under s. 62.23 (6), and a comprehensive plan under
3 s. 66.1001.

4 **SECTION 9.** 60.62 (7) of the statutes is created to read:

5 60.62 (7) (a) If a town withdraws from coverage of a county zoning ordinance
6 under s. 60.23 (35), the ordinance and any regulations, approvals, and conditions
7 imposed under the ordinance continue in effect until the ordinance or the particular
8 regulation, approval, or condition is specifically changed by official action of the
9 town.

10 (b) If a town that has been subject to a town zoning ordinance adopts a
11 resolution under s. 59.69 (5) (c) approving the application of a county zoning
12 ordinance within any part of the town, the town zoning ordinance and any
13 regulations, approvals, and conditions imposed under the town zoning ordinance,
14 that are applicable to the area within the town for which the application of the county
15 zoning ordinance is approved, continue in effect until the town zoning ordinance or
16 the particular regulation, approval, or condition is specifically changed by official
17 action of the county.

18 **SECTION 10.** 61.353 (5) of the statutes is amended to read:

19 61.353 (5) Provisions of a county shoreland zoning ordinance under s. 59.692
20 and any regulations, approvals, and conditions imposed under the ordinance that
21 were applicable, prior to annexation, to any shoreland annexed by a village after May
22 7, 1982, shall continue in effect and shall be enforced after annexation by the
23 annexing village until the effective date of an ordinance enacted by the village under
24 sub. (2).

25 **SECTION 11.** 61.353 (6) of the statutes is amended to read:

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1 61.353 (6) Provisions of a county shoreland zoning ordinance under s. 59.692
2 and any regulations, approvals and conditions imposed under the ordinance that
3 were applicable prior to incorporation to any shoreland that is part of a town that
4 incorporates as a village under s. 66.0203, 66.0211, or 66.0213 after April 30, 1994,
5 shall continue in effect ~~and shall be enforced after incorporation by the incorporated~~
6 village until the effective date of an ordinance enacted by the village under sub. (2).

7 **SECTION 12.** 62.233 (5) of the statutes is amended to read:

8 62.233 (5) Provisions of a county shoreland zoning ordinance under s. 59.692
9 and any regulations, approvals, and conditions imposed under the ordinance that
10 were applicable, prior to annexation, to any shoreland annexed by a city after May
11 7, 1982, shall continue in effect ~~and shall be enforced after annexation by the~~
12 annexing city until the effective date of an ordinance enacted by the city under sub.
13 (2).

14 **SECTION 13.** 62.233 (6) of the statutes is amended to read:

15 62.233 (6) Provisions of a county shoreland zoning ordinance under s. 59.692
16 and any regulations, approvals, and conditions imposed under the ordinance that
17 were applicable prior to incorporation to any shoreland that is part of a town that
18 incorporates as a city under s. 66.0203, 66.0211, 66.0213, or 66.0215 after April 30,
19 1994, shall continue in effect ~~and shall be enforced after incorporation by the~~
20 incorporated city until the effective date of an ordinance enacted by the city under
21 sub. (2).

22 **SECTION 14.** 66.0227 (4) of the statutes is amended to read:

23 66.0227 (4) If an area ~~which~~ that has been subject to a city or village zoning
24 ordinance is detached from one municipality and attached to another under this
25 section, ~~the regulations imposed by the zoning ordinance~~ and any regulations,

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1 approvals, and conditions imposed under the ordinance continue in effect ~~and shall~~
2 ~~be enforced by the attaching city, village or town until~~ the ordinance or the particular
3 regulation, approval, or condition is specifically changed by official action of the
4 governing body of the municipality, ~~except that if.~~ If the detachment or attachment
5 is contested in the courts, the zoning ordinance and any regulations, approvals, and
6 conditions imposed under the ordinance of the detaching municipality ~~prevails~~
7 continue in effect, and the detaching city or village ~~has~~ retains jurisdiction over the
8 zoning in the area affected until ~~ultimate determination~~ final disposition of the court
9 action.

10 **SECTION 15.** 66.0307 (7m) of the statutes is renumbered 66.0307 (7m) (a) and
11 amended to read:

12 66.0307 **(7m)** (a) If a town is a party to a cooperative plan with a city or village,
13 the town and city or village may agree, as part of the cooperative plan, to authorize
14 the town, city, or village to ~~adopt~~ enact a zoning ordinance under s. 60.61, 61.35, or
15 62.23 for all or a portion of the town territory covered by the plan. The exercise of
16 zoning authority by a town under this ~~subsection~~ paragraph is not subject to s. 60.61
17 (3) or 60.62 (3).

18 (b) 1. If a county zoning ordinance applies to the town territory covered by the
19 a cooperative plan subject to an agreement under par. (a), that ordinance and
20 amendments to it any regulations, approvals, and conditions imposed under the
21 ordinance continue in effect until ~~a zoning~~ the ordinance is adopted under this
22 ~~subsection.~~ or the particular regulation, approval, or condition is specifically
23 changed by official action of the town, city, or village with authority to enact a zoning
24 ordinance under the agreement under par. (a).

