



1997 ASSEMBLY BILL 114

February 18, 1997 - Introduced by Representatives LADWIG, URBAN, ALBERS, BRANDEMUEHL, GOETSCH, F. LASEE, OTT, OWENS, PORTER, POWERS, SCHAFFER, SERATTI, SPRINGER and WARD, cosponsored by Senators FARROW, A. LASEE and SCHULTZ. Referred to Committee on Urban and Local Affairs.

1 **AN ACT to amend** 60.61 (2) (intro.), 60.62 (1), 60.62 (2), 60.62 (3), 62.23 (7a) (a),
2 66.021 (2) (intro.), 66.024 (intro.), 66.025, 66.32 and 236.02 (5); and **to create**
3 60.10 (1) (g) and 60.225 of the statutes; **relating to:** the authority of certain
4 towns to become urban towns.

Analysis by the Legislative Reference Bureau

Under current law, if a town meeting authorizes a town board to do so, the town board may exercise powers that are related to villages and conferred on village boards by statute, except those powers that conflict with statutes relating to towns and town boards. For example, a town board exercising village powers may not create a tax incremental financing district, annex territory, exercise extraterritorial zoning jurisdiction over another town or, in counties that have adopted a county zoning ordinance, enact a town zoning ordinance unless it is approved by the county board. If a town board exercises village powers, the town is still subject to annexation by a city or village and may be subject to extraterritorial zoning powers exercised by a city or village.

Subject to several conditions, this bill authorizes a town board that is authorized to exercise village powers to adopt a resolution declaring that the town is an urban town. Under certain circumstances and subject to several limitations, the bill allows a town board that has adopted such a resolution to exercise any statutory power that a village may exercise, including the power to create a housing authority for the elderly. Before the town board may adopt a resolution declaring that the town is an urban town, the town must either: attempt, and fail, to

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consolidate with a city or village and have attempted to incorporate as a city or village between 1986 and 1996; or attempt to consolidate with a city or village and attempt, and fail, to incorporate as a city or village within 3 years after commencing the procedures that are required to become an urban town. The town board may adopt a resolution declaring that the town is an urban town only after its attempts to consolidate or incorporate fail. Once the town board adopts an urban town resolution, the resolution may take effect only after the resolution is approved by the electors of the town in a referendum.

The bill also allows the board of an urban town to exercise certain zoning powers and to remove the town from coverage of county zoning ordinances, other than a county shorelands zoning ordinance, and exempts the town from being subject to certain city and village annexation and extraterritorial powers. Also under the bill, town residents may attempt to enact direct legislation. This bill does not extend constitutional or statutory home rule powers to urban towns, nor does it allow such towns to create a tax incremental financing district, to adopt a village form of government, to annex territory or to engage in extraterritorial zoning or plat approval.

The powers granted to urban towns in this bill apply only if certain conditions are met on the date on which the town board adopts the resolution. Some of the conditions that must be satisfied include the following:

1. The population of the town must be at least 7,500.
2. The equalized value of the town must exceed \$360,000,000 and must be at least \$40,000 on a per person basis.
3. The town must provide law enforcement, fire protection and emergency medical services 24 hours a day.
4. At least 30% of the town residents must receive water supply and sewage disposal services from one of several entities, such as a town sanitary district, a town utility district, a metropolitan sewerage district or another city, village or town.
5. The town must adopt a comprehensive land use plan as part of a master plan.
6. The town board must consist of 5 supervisors.

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.** 60.10 (1) (g) of the statutes is created to read:

2 60.10 (1) (g) *Approval of resolutions.* Approve a resolution adopted by the town
3 board under s. 60.225 (1).

4 **SECTION 2.** 60.225 of the statutes is created to read:

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1 **60.225 Urban towns. (1) PROCESS; REQUIREMENTS.** Subject to sub. (1m), if a
2 town board is authorized to exercise village powers under s. 60.10 (2) (c), and subject
3 to sub. (2), a town board may adopt a resolution declaring its town to be an urban
4 town that is subject to this section if, on the date of adoption of the resolution, all of
5 the following conditions are satisfied:

6 (a) The population of the town is at least 7,500.

7 (b) The equalized value of the town exceeds all of the following amounts:

8 1. According to the most recent assessment, \$360,000,000.

9 2. On a per person basis, \$40,000 according to the most recent assessment.

10 (c) The town provides law enforcement services, 24 hours a day, by establishing
11 a town police department, by creating a joint police department with another city,
12 village or town under s. 60.56 or by contracting with another person under s. 60.56.

13 (d) The town provides fire protection services, 24 hours a day, by establishing
14 a town fire department or by creating a joint fire department with another city,
15 village or town under s. 60.55.

16 (e) The town provides emergency medical technician services, 24 hours a day,
17 by an emergency medical technician, as defined in s. 146.50 (1) (e).

18 (f) The town board adopts a comprehensive land use plan as part of a master
19 plan under s. 62.23 (2) and (3) that is administered by a planner who is employed by
20 the town.

21 (g) At least 30% of the town residents receive water supply and sanitary sewage
22 disposal services from one of the following:

23 1. A town sanitary district created by the town under subch. IX.

24 2. A town utility district created under s. 66.072.

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1 3. A metropolitan sewerage district created under ss. 66.20 to 66.26 or under
2 ss. 66.88 to 66.918.

3 4. A public utility created under s. 196.01 (5).

4 5. A town sanitary district created by another town under subch. IX.

5 6. A city or village.

6 7. A city-owned treatment works or village-owned treatment works in which
7 the town has an interest under an intergovernmental cooperation agreement under
8 s. 66.30.

9 (h) The town board consists of 5 supervisors.

10 **(1m) PROCEDURE.** (a) Subject to par. (c) and except as provided in par. (b), a town
11 board may proceed under sub. (1) only if the town board adopts a resolution declaring
12 its intent to proceed under this paragraph and only if the town board institutes
13 proceedings under s. 66.02 to consolidate the town with a city or village on or after
14 the effective date of this paragraph [revisor inserts date], and if, between 1986 and
15 1996, the town board has done one of the following:

16 1. Instituted proceedings to incorporate the town as a city or village under s.
17 66.012.

18 2. Instituted proceedings to incorporate the town as a city or village under ss.
19 66.013 to 66.019.

20 (b) Subject to par. (c), if a town board has not instituted one of the proceedings
21 under par. (a) 1. or 2. between 1986 and 1996, the town board may proceed under sub.
22 (1) only if the town board adopts a resolution declaring its intent to proceed under
23 this paragraph and only if the town board, within a 3-year period beginning on the
24 date of the adoption of the resolution declaring its intent to proceed under this

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1 paragraph, institutes proceedings under s. 66.02 to consolidate the town with a city
2 or village and the town board institutes proceedings described under par. (a) 1. or 2.

3 (c) The town board may adopt a resolution under sub. (1) only if the town board
4 institutes the proceedings under par. (a) or under par. (b) and the proceedings do not
5 result in either a consolidation under s. 66.02 or the incorporation of the town as a
6 city or village under s. 66.012 or under ss. 66.013 to 66.019.

7 **(2) RATIFICATION.** (a) If a town board adopts a resolution under sub. (1), the
8 town board shall call a referendum to approve the resolution adopted under sub. (1).
9 The referendum shall be called for that purpose at the next spring primary or election
10 or September primary or general election, or the town board may call and conduct
11 a special referendum under s. 8.55, to be held not sooner than 45 days after the
12 referendum is called by the town board. The town board shall call for a referendum
13 under this subsection not later than 90 days after the adoption of a resolution under
14 sub. (1). The referendum question shall be: "Do you approve of the town board's
15 adoption of the resolution declaring the Town of [insert name of town] to be an
16 urban town?"

17 (b) A resolution adopted by a town board under sub. (1) may not take effect until
18 the resolution is approved in a referendum called for by the town board under par.

19 (a). If the referendum is approved by the electors of the town, the town clerk shall
20 certify that fact to the secretary of state. The secretary of state shall issue a
21 certificate of urban town status and shall record that status in a book kept for that
22 purpose.

23 **(3) POWERS.** (a) A town that is subject to this section may exercise any statutory
24 power that a village may exercise, except as follows:

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1 1. A town acting under this section does not have home rule powers under
2 article XI, section 3, of the constitution or under s. 61.34 (5).

3 2. A town acting under this section may not exercise extraterritorial zoning
4 powers under s. 62.23 (7a) or 66.32, offensive industry regulation under s. 66.052 (1),
5 extraterritorial plat approval under s. 236.10 or wetlands in shorelands zoning
6 authority under s. 61.351.

7 3. A town acting under this section may not exercise annexation of territory
8 powers under s. 66.021, 66.024 or 66.025.

9 4. A town acting under this section may not create a tax incremental financing
10 district under s. 66.46.

11 5. A town acting under this section may not adopt a village form of governance
12 by acting under ss. 61.19 to 61.325.

13 (b) 1. Except for a wetlands in shorelands zoning ordinance, no town may be
14 subject to any county zoning ordinance that is enacted by a county board after a town
15 board adopts a resolution under sub. (1) unless the town board approves the
16 ordinance or until the resolution adopted by the town board under sub. (1) is defeated
17 in a referendum that is held under sub. (2).

18 2. If a town board adopts a resolution under sub. (1) and the resolution is
19 ratified under sub. (2), a town board may adopt a resolution revoking its approval of
20 any county zoning ordinance, other than a wetlands in shorelands zoning ordinance,
21 if the town board notifies the county board in writing at least 60 days before the
22 resolution revoking approval of a county zoning ordinance takes effect.

23 3. Beginning on the effective date of the resolution revoking town approval of
24 a county zoning ordinance, a town that is subject to this section may enact zoning
25 ordinances only under s. 62.23.

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1 (c) No town territory may be annexed by a city or village under s. 66.021, 66.024
2 or 66.025 during the 3-year period described under sub. (1m) (b), during the period
3 beginning after a town board adopts a resolution under sub. (1) and before a
4 ratification vote under sub. (2) or at any time after the electors of the town approve
5 such a resolution under sub. (2), unless the town board approves the proposed
6 annexation or unless the land proposed to be annexed is less than 300 acres and at
7 least 85% of the border of such land is contiguous to the annexing city or village.

8 (d) No town may be subject to the extraterritorial zoning jurisdiction or
9 extraterritorial plat approval jurisdiction of a city or village during the period
10 beginning after a town board adopts a resolution under sub. (1) and before a
11 ratification vote under sub. (2) or at any time after the electors of the town approve
12 such a resolution under sub. (2).

13 **SECTION 3.** 60.61 (2) (intro.) of the statutes is amended to read:

14 60.61 (2) EXTENT OF AUTHORITY. (intro.) Subject to subs. (3) and (3m), if a town
15 is located in a county which has not enacted a county zoning ordinance under s. 59.69,
16 the town board of a town that is not subject to s. 60.225, by ordinance, may:

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

18 60.62 (1) Subject to subs. (2) and (3) and to s. 60.225 (3) (b) 3., if a town board
19 has been granted authority to exercise village powers under s. 60.10 (2) (c), the board
20 may ~~adopt~~ enact zoning ordinances under s. 61.35.

21 **SECTION 5.** 60.62 (2) of the statutes is amended to read:

22 60.62 (2) If the county in which the town is located has enacted a zoning
23 ordinance under s. 59.69, the exercise of the authority under sub. (1) is subject to
24 approval by the town meeting or by a referendum vote of the electors of the town held
25 at the time of any regular or special election, except that this subsection does not

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1 apply if a town board revokes its approval of a county zoning ordinance under s.
2 60.225 (3) (b) 2.

3 **SECTION 6.** 60.62 (3) of the statutes is amended to read:

4 60.62 (3) In counties having a county zoning ordinance, no zoning ordinance
5 or amendment of a zoning ordinance may be ~~adopted~~ enacted under this section
6 unless it is approved by the county board, except that this subsection does not apply
7 if a town board revokes its approval of a county zoning ordinance under s. 60.225 (3)
8 (b) 2.

9 **SECTION 7.** 62.23 (7a) (a) of the statutes is amended to read:

10 62.23 (7a) (a) Extraterritorial zoning jurisdiction means the unincorporated
11 area, except as provided in s. 60.225 (3) (d), within 3 miles of the corporate limits of
12 a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.
13 Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.32
14 shall apply and any subsequent alteration of the corporate limits of the city by
15 annexation, detachment or consolidation proceedings shall not affect the dividing
16 line as initially determined under s. 66.32. The governing body of the city shall
17 specify by resolution the description of the area to be zoned within its extraterritorial
18 zoning jurisdiction sufficiently accurate to determine its location and such area shall
19 be contiguous to the city. The boundary line of such area shall follow government lot
20 or survey section or fractional section lines or public roads, but need not extend to
21 the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption
22 of the resolution the governing body shall declare its intention to prepare a
23 comprehensive zoning ordinance for all or part of its extraterritorial zoning
24 jurisdiction by the publication of the resolution in a newspaper having general
25 circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The

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1 city clerk shall mail a certified copy of the resolution and a scale map reasonably
2 showing the boundaries of the extraterritorial jurisdiction to the clerk of the county
3 in which the extraterritorial jurisdiction area is located and to the town clerk of each
4 town, any part of which is included in such area.

5 **SECTION 8.** 66.021 (2) (intro.) of the statutes is amended to read:

6 66.021 (2) METHODS OF ANNEXATION. (intro.) Subject to s. 66.023 (7) and except
7 as provided in s. 60.225 (3) (c), territory contiguous to any city or village may be
8 annexed thereto in the following ways:

9 **SECTION 9.** 66.024 (intro.) of the statutes is amended to read:

10 **66.024 Annexation by referendum; court order.** (intro.) As a complete
11 alternative to any other annexation procedure, and subject to s. 66.023 (7) and except
12 as provided in s. 60.225 (3) (c), unincorporated territory which contains electors and
13 is contiguous to a city or village may be annexed thereto in the manner hereafter
14 provided. The definitions in s. 66.021 (1) shall apply to this section.

15 **SECTION 10.** 66.025 of the statutes is amended to read:

16 **66.025 Annexation of owned territory.** In addition to other methods
17 provided by law and subject to ss. 59.692 (7) and 66.023 (7) and except as provided
18 in s. 60.225 (3) (c), territory owned by and lying near but not necessarily contiguous
19 to a village or city may be annexed to a village or city by ordinance enacted by the
20 board of trustees of the village or the common council of the city, provided that in the
21 case of noncontiguous territory the use of the territory by the city or village is not
22 contrary to any town or county zoning regulation. The ordinance shall contain the
23 exact description of the territory annexed and the names of the towns from which
24 detached, and shall operate to attach the territory to the village or city upon the filing
25 of 6 certified copies thereof in the office of the secretary of state, together with 6 copies

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1 of a plat showing the boundaries of the territory attached. Two copies of the
2 ordinance and plat shall be forwarded by the secretary of state to the department of
3 transportation, one copy to the department of natural resources, one copy to the
4 department of revenue and one copy to the department of ~~education~~ public
5 instruction.

6 **SECTION 11.** 66.32 of the statutes is amended to read:

7 **66.32 Extraterritorial powers.** The extraterritorial powers granted to cities
8 and villages by statute, including ss. 30.745, 62.23 (2) and (7a), 66.052, 236.10 and
9 254.57, may not be exercised within the corporate limits of another city or village and
10 may not be exercised within the corporate limits of a town whose board has adopted
11 a resolution under s. 60.225 (1). Wherever these statutory extraterritorial powers
12 overlap, the jurisdiction over the overlapping area shall be divided on a line all points
13 of which are equidistant from the boundaries of each municipality concerned so that
14 not more than one municipality shall exercise power over any area.

15 **SECTION 12.** 236.02 (5) of the statutes is amended to read:

16 236.02 (5) "Extraterritorial plat approval jurisdiction" means the
17 unincorporated area, except as provided in s. 60.225 (3) (d), within 3 miles of the
18 corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city
19 or a village.

20 (END)