

# State of Wisconsin



2015 Assembly Bill 563

Date of enactment: **February 29, 2016**

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## 2015 WISCONSIN ACT 178

**AN ACT** *to renumber and amend* 236.10 (1) (c); *to amend* 59.69 (3) (a), 59.69 (3) (b), 59.69 (3) (e), 59.69 (5) (c), 60.62 (1), 60.62 (3) (a), 236.10 (1) (b) 3. and 236.34 (1) (dm); and *to create* 59.69 (5m), 59.692 (1p), 60.23 (34), 60.62 (6), 87.30 (1r), 236.10 (1m) and 236.34 (2m) of the statutes; **relating to:** authorizing towns located in populous counties to withdraw from county zoning; requiring certain towns to enact a zoning ordinance and a comprehensive plan; removing plat and certified survey map approval authority from a county if the town in which the subdivision or land is located has withdrawn from county zoning; and prohibiting restrictions on land that is not shoreland or that is not within a floodplain.

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

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

59.69 (3) (a) The county zoning agency may direct the preparation of a county development plan or parts of the plan for the physical development of the unincorporated territory within the county and areas within incorporated jurisdictions whose governing bodies by resolution agree to having their areas included in the county's development plan. The plan may be adopted in whole or in part and may be amended by the board and endorsed by the governing bodies of incorporated jurisdictions included in the plan. The county development plan, in whole or in part, in its original form or as amended, is hereafter referred to as the development plan. To the extent that the development plan applies to unincorporated areas of a county with the population described in s. 60.23 (34), it applies only to those unincorporated areas that are subject to county zoning. Beginning on January 1, 2010, or, if the county is exempt under s. 66.1001 (3m), the date under s. 66.1001 (3m) (b), if the county

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

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

59.69 (3) (b) The development plan shall include the master plan, if any, of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village, that was adopted under s. 62.23 (6) in the county, without change. In counties with a population of at least 485,000, the development plan shall also include, and integrate, the master plan and the official map of a town that was adopted under s. 60.62 (6) (a) or (b), without change.

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

59.69 (3) (e) ~~A~~ Except for a town that has adopted a master plan and official map as described in par. (b), a master plan adopted under s. 62.23 (2) and (3) and an official map that is established under s. 62.23 (6) shall control in unincorporated territory in a county affected thereby, whether or not such action occurs before the adoption of a development plan.

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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

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

**SECTION 5.** 59.69 (5m) of the statutes is created to read:

59.69 (5m) TERMINATION OF COUNTY ZONING. (a) Subject to par. (b), if a county clerk receives a notice from a town under s. 60.23 (34) (b) 1. before July 1 of the year before a year in which a town may withdraw from county zoning under s. 60.23 (34), a county board may enact an ordinance, before October 1 of the year in which the county clerk receives the notice, to repeal all of its zoning ordinances enacted under this section if it so notifies, in writing, all of the towns that are subject to its zoning ordinances. If a county does not repeal all of its zoning ordinances as described in this paragraph, it shall amend its zoning ordinances to specify that the ordinances do not apply in the town from which it received the notice.

(b) An ordinance enacted under par. (a) shall have a delayed effective date of one year. No county board may repeal under this subsection a county shoreland zoning or floodplain zoning ordinance.

**SECTION 6.** 59.692 (1p) of the statutes is created to read:

59.692 (1p) This section does not authorize a county to impose a requirement, condition, or restriction on land that is not shoreland within the county.

**SECTION 7.** 60.23 (34) of the statutes is created to read:

60.23 (34) TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to pars. (b) and (c), after December 31, 2016, and before January 1, 2018, and during the one-year period every 3 years after January 1, 2017, enact an ordinance withdrawing the town from coverage of a county zoning ordinance that had previously been approved under s. 59.69 (5) (c) and from coverage by a county development plan that has been enacted under s. 59.69 (3) (a), except that a town board may act under this paragraph only if the town is located in a county with a population on January 1, 2016, of at least 485,000.

(b) Subject to pars. (c) and (d), an ordinance enacted under par. (a) may not take effect until all of the following occur:

1. Not later than 180 days before enacting an ordinance under par. (a), the town notifies the county clerk and one or more officials of every other town in the county, in writing, of the town's intent to enact an ordinance under par. (a).

2. The town enacts a zoning ordinance under s. 60.62, a comprehensive plan under s. 66.1001, and an official map under s. 62.23 (6), and the town sends certified copies of such documents to the county clerk.

3. The ordinance enacted under par. (a) is approved either at the annual town meeting or in a referendum called by the town board for that purpose at the next spring or general election, to be held not sooner than 70 days after the referendum is called by the town board.

(c) 1. The zoning ordinance that the town enacts under s. 60.62 must be essentially identical to either the county zoning ordinance that is in effect when the town issues the written notification described in par. (b) 1., or to the model ordinance described in subd. 2. A town that enacts an ordinance that is essentially identical to the county ordinance may amend the ordinance, but only to the extent that the amendment relates to the location of district boundaries, by following the procedures specified in s. 60.62.

2. All towns in a county that issue a written notification described in par. (b) 1. shall work together to develop a model zoning ordinance. The model ordinance may be recommended for enactment by a majority vote of the towns that participate in drafting the model ordinance in that county. Once the model ordinance is recommended, a town may enact the ordinance under s. 60.62. The model ordinance may be amended by a majority vote of the towns that have enacted the model ordinance in that county, except that if an amendment affects only the location of district boundaries, each town may unilaterally enact such an amendment.

3. A town which enacts either an ordinance that is essentially identical to a county ordinance, as described in subd. 1., or a model ordinance, as described in subd. 2., may switch from having one type of ordinance apply in the town to having the other type of ordinance apply in the town, except that a town may make such a switch not more than once every 3 years, and the switch may occur only during the one-year periods described in par. (a).

4. The zoning ordinance that the town enacts under s. 60.62 may not prohibit the continued use of any building, premises, structure, or land that is lawful under the county zoning ordinance that is in effect when the town issues the written notification described in par. (b) 1. With regard to the continued nonconforming use of any building, premises, structure, or land that is lawful under that county zoning ordinance, the town ordinance may

not prohibit the nonconforming use even if the building, premises, structure, or land is not in continuous use.

(d) A zoning ordinance enacted under s. 60.62, a comprehensive plan enacted under s. 66.1001, and an official map established under s. 62.23 (6), that are enacted in conjunction with an ordinance enacted under par. (a), shall all take effect on the first day of the 3rd month beginning after certified copies of the documents are sent to the county clerk under par. (b) 2.

**SECTION 8.** 60.62 (1) of the statutes is amended to read:

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

**SECTION 9.** 60.62 (3) (a) of the statutes is amended to read:

60.62 (3) (a) In counties having a county zoning ordinance, no zoning ordinance or amendment of a zoning ordinance may be adopted under this section unless approved by the county board. This paragraph applies only in counties with a population of less than 485,000, and does not apply to a town that has withdrawn from county zoning.

**SECTION 10.** 60.62 (6) of the statutes is created to read:

60.62 (6) (a) Not later than 60 days before a town board that wishes to withdraw from county zoning and the county development plan may enact an ordinance under s. 60.23 (34), the town board shall enact a zoning ordinance under this section, an official map under s. 62.23 (6), and a comprehensive plan under s. 66.1001.

(b) If a town receives notification under s. 59.69 (5m) that the county board has repealed its zoning ordinances, the town board shall enact a zoning ordinance under this section, an official map under s. 62.23 (6), and a comprehensive plan under s. 66.1001, all of which take effect on the effective date of the county's repeal of its zoning ordinance.

**SECTION 11.** 87.30 (1r) of the statutes is created to read:

87.30 (1r) LAND OUTSIDE OF FLOODPLAINS. This section does not authorize a county to impose a requirement, condition, or restriction on land that is not within any floodplain in the county.

**SECTION 13.** 236.10 (1) (b) 3. of the statutes is amended to read:

236.10 (1) (b) 3. ~~The Subject to sub. (1m), the~~ county planning agency if such agency employs on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation.

**SECTION 14.** 236.10 (1) (c) of the statutes is renumbered 236.10 (1) (c) (intro.) and amended to read:

236.10 (1) (c) (intro.) If outside the extraterritorial plat approval jurisdiction of a municipality, ~~the~~

~~1. The town board; and the~~

~~2. Subject to sub. (1m), the~~ county planning agency, if there is one.

**SECTION 15.** 236.10 (1m) of the statutes is created to read:

236.10 (1m) (a) Except as provided in par. (b), a county planning agency under sub. (1) (b) 3. or (c) 2. has no authority to approve or object to the preliminary or final plat of a subdivision that is located in a town that has, before the preliminary plat is submitted for approval, or before the final plat is submitted for approval if no preliminary plat is submitted, enacted an ordinance under s. 60.23 (34) withdrawing the town from county zoning and the county development plan.

(b) A county planning agency under sub. (1) (b) 3. or (c) 2. may object to any of the following portions of a subdivision that is located in a town described in par. (a):

1. Any portion of the subdivision that is shoreland, as defined in s. 59.692 (1) (b), in the county.

2. Any portion of the subdivision that is in a 100-year floodplain in the county.

**SECTION 16.** 236.34 (1) (dm) of the statutes is amended to read:

236.34 (1) (dm) A certified survey map that crosses the exterior boundary of a recorded plat or assessor's plat shall apply to the reconfiguration of not more than 4 parcels, or such greater maximum number specified by an ordinance enacted or resolution adopted under par. (ar) 1., by a single owner, or if no additional parcels are created. ~~Such~~ Subject to sub. (2m), such a certified survey map must be approved in the same manner as a final plat of a subdivision must be approved under s. 236.10, must be monumented in accordance with s. 236.15 (1), and shall contain owners' and mortgagees' certificates that are in substantially the same form as required under s. 236.21 (2) (a).

**SECTION 17.** 236.34 (2m) of the statutes is created to read:

236.34 (2m) COUNTY APPROVAL AUTHORITY. (a) Except as provided in par. (b), a county planning agency under s. 236.10 (1) (b) 3. or (c) 2. has no authority to approve or object to a certified survey map that divides land that is located in a town that has, before the certified survey map is submitted for approval, enacted an ordinance under s. 60.23 (34) withdrawing the town from county zoning and the county development plan.

(b) A county planning agency under s. 236.10 (1) (b) 3. or (c) 2. may object to any of the following portions of a certified survey map that divides land located in a town described in par. (a):

1. Any land shown on and subject to the certified survey map that is shoreland, as defined in s. 59.692 (1) (b), in the county.

2. Any land shown on and subject to the certified survey map that is in a 100-year floodplain in the county.

**SECTION 18. Initial applicability.**

(1) COUNTY APPROVAL OF PLAT. The treatment of section 236.10 (1) (b) 3. and (c) and (1m) of the statutes first applies to preliminary plats or, in cases in which no preliminary plats are submitted, final plats that are submitted

for approval on the effective date of this subsection.

(2) COUNTY APPROVAL OF CERTIFIED SURVEY MAP. The treatment of section 236.34 (1) (dm) and (2m) of the statutes first applies to certified survey maps that are submitted for approval on the effective date of this subsection.

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