

Summary of Recent Legislative Changes Affecting Towns: 2015-2016

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Highways, Right of Ways, and Public Construction

1. 2015 Wisconsin Acts 15 and 232: Implements of Husbandry (IOH) Trailer Bills

Act 15 provided relief from one town official needing to make the initial determination regarding an IOH permit application by exempting the initial determination dialogue from the open meeting law. Additionally, any review of an adverse determination (i.e., the applicant is appealing the denial of a permit) now must be conducted in closed session.

Act 15 primarily made technical changes to the requirements that pertain to implements of husbandry (IOH), agricultural CMV's, potato harvesters, the sale of farm equipment, the trailering of farm equipment, and the no fee permitting system.

Act 232 made additional technical changes to the implements of husbandry law including permissible widths, lighting and marking requirements for certain agricultural vehicles, the manner in which farm implement dealers must disclose axle and gross vehicle weights at the time of sale and procedures for issuing a no fee permit for multiple identical agricultural vehicles.

2. 2015 Wisconsin Act 44: Utility Vehicle Weight Limit Exemption

Provides that seasonal or special weight limitations and Class "B" highway weight limitations do not apply to vehicles operated by or at the direction of public utilities, telecommunications providers, or certain co-operative associations, when the vehicles are being operated for the purpose of responding to a service interruption.

3. 2015 Wisconsin Act 55: Prevailing Wage Rate Repeal for Local Governments

The repeal will become effective January 1, 2017. However, if bids are *solicited* for a project *before* that date, the project will still be subject to prevailing wage rates if existing project cost thresholds are met. The current thresholds for multi-trade town projects are \$100,000 or more when hiring the county or \$234,000 or more when hiring a private contractor.

4. 2015 Wisconsin Act 105: Elimination of Annual Highway Expenditure Limit

Section 82.03(2), Wis. Stat. was amended to remove the \$5,000 per mile limit on what towns may spend on their total highway expenditures each year without elector approval. While elector approval will no longer be needed for highway expenditures, levy limits still apply.

5. 2015 Wisconsin Act 125: Golf Cart Crossings on State Highways

Allows a municipality or county to establish golf cart crossings on state highways by ordinance if: (1) the highway has a 35 mph or less speed limit; (2) the crossing will connect designated golf cart routes; and (3) the municipality or county provides the state with funds to pay for the crossing signage. The state shall erect and maintain the signs.

6. 2015 Wisconsin Act 126: Sales Tax Exemption for Building Materials

Creates a sales and use tax exemption for certain sales of tangible personal property and other property to a construction contractor if the items will be transferred to a municipality (or certain other non-profit entities) and become part of a facility located in Wisconsin that is owned by the entity. Buildings, shelters, parking garages, athletic fields, storm sewers, wastewater treatment plants and certain other structures qualify for this exemption, but notably streets, roads and highways do *not*.

7. 2015 Wisconsin Act 171: Weight Limit Exemption for Loggers

This new law creates certain statutory width and weight limit exemptions for skidders, forwarders, harvesters, and wheeled feller bunchers, if the equipment is operated for logging purposes for distances of a half mile or less. In addition the equipment must be operated at times other than hours of darkness and must be operated unladen and on a highway that is not posted with seasonal or special weight limitations. But, when operated as described, this equipment *is* exempt from Class “B” highway weight restrictions.

8. 2015 Wisconsin Act 231: Manure Piping

Creates specific statutory authority for the government entity in charge of the highway to permit and place conditions on temporary or permanent manure hoses, pipelines, and other liquid manure conduits placed within or across its highway right of ways to a destination for spreading in a farm field or for storage.

9. 2015 Wisconsin Act 235: Agricultural Crop Weight Limit Exemption

Extends the weight limit exemption for transporting crops to storage or initial processing while being up to 15% in excess of weight limits allowed under s. 348.15, Wis. Stat. from August 1 to December 31 (state law previously allowed for this exemption from September 1 to December 31).

10. 2015 Wisconsin Act 236: Right of Way Plantings

If a town owns the land adjoining a highway, the town *may* (but is not required to) seek permission from the highway authority to authorize another person to plant trees, shrubs or hedges within the ten feet of right of way that are contiguous to the town’s land, s. 86.03(3), Wis. Stat.

11. 2015 Wisconsin Act 308: Banning Use of Handheld Cellphones in Construction Zones

Establishes fines for using a handheld cellphone while driving in a construction zone, except to report an emergency.

Zoning, Housing, and Property Issues

1. 2015 Wisconsin Act 41: Town Regulation of Shoreland Areas Post Hegwood

Restores town authority to adopt general zoning regulations in shoreland/floodplain areas as long as such regulations do not impose restrictions or requirements in shorelands with respect to matters already regulated by a county shoreland zoning ordinance enacted under s. 59.692 affecting the same shorelands, regardless of whether the county shoreland zoning ordinance was enacted separately from, or together with, an ordinance enacted under s. 59.69. As under prior law, if a town enacted a zoning ordinance prior to a less restrictive county shoreland zoning ordinance being enacted, the town is able to continue to enforce its greater restrictions, s. 59.692(2)(b).

2. 2015 Wisconsin Act 146: Shoreland Zoning on Islands in Lake Superior

Allows for the Town of LaPointe to adopt shoreland/floodplain zoning restrictions that are more restrictive than Ashland County’s shoreland/floodplain zoning ordinance.

3. 2015 Wisconsin Act 148: Condemnation of Public Land for Natural Gas Lines

This new law authorizes a natural gas public utility to condemn municipally owned property if the Wisconsin Public Service Commission grants the natural gas public utility a certificate of authority to construct a natural gas transmission or distribution line over, on or under property owned by a county, city, village, town or public board or commission.

4. 2015 Wisconsin Act 176: Historic Preservation/Regulation of Rental Property

Parts of this act municipalities should be aware of include: (1) a prohibition on having sprinkler ordinances that are more restrictive than the multi-family dwelling code; (2) prohibitions on certain local regulations pertaining to rental property; (3) an expansion of the prohibition on local regulations associated with the time of sale to also include taking title to or occupancy of a property; and (4) a requirement to provide notice and a public hearing before a place or structure is designated as a historic landmark or a historic district is established and allowing an owner of property that is affected by a town landmarks commission decision to appeal that decision to the town board.

5. 2015 Wisconsin Act 178: Withdrawal from Dane County Zoning

Gives towns in Dane County the option to withdraw from county zoning and removes plat and certified survey map approval from Dane County if a town has withdrawn from county zoning. Prohibits county shoreland zoning authority from being used to place conditions or restrictions on land outside of shoreland areas.

6. 2015 Wisconsin Act 211: Electronic Building Permit Application and New Reporting Requirements

Calls for the state to create an electronic system that can be used to apply for and issue building permits. The new system will also require municipalities that issue permits to submit electronic copies of those permits to the state on a timely basis. The Act calls for the state to create a standard building permit in an electronic form for municipalities to use on or before January 2, 2017. A monthly reporting requirement will apply after the new electronic application and reporting system is implemented. The reporting requirement will be as follows: not later than the 15th day of the first month after the permit is issued, the town must electronically forward a copy of the permit to the state. If this is not done by the last day of the first month after issuance, the town will have to return the building permit fees collected back to the applicant (minus any building permit fees that have already been remitted to the state for the inspections).

7. 2015 Wisconsin Act 214: County Clerk Notification of Zoning Changes

Modifies the methods by which a county clerk must provide notice of certain county zoning matters to a town clerk to permit the use of certified mail or email rather than registered mail. If a county clerk provides the notice or other materials via email, but he or she does not receive confirmation of receipt by return email from the town clerk within two business days, the county clerk must then send the materials via certified mail.

8. 2015 Wisconsin Act 219: Adverse Possession

Prohibits adverse possession or continuous adverse use against real property that is owned by the state or a political subdivision of the state and prohibits adverse possession by the state or a political subdivision of the state against private property. The prohibition applies retroactively to adverse possession where the current occupancy requirements have not been met at the time of the effective date of the Act, March 3, 2016.

9. A2015 Wisconsin Act 391: Private Property Rights:

Creates additional rights for private property owners. Towns should be aware of the following: (1) there is now a requirement to create a list of people who have requested to receive notice of any proposed zoning ordinance or amendment or comprehensive plan ordinance that affects the allowable use of the property owned by the person. Annual notice will need to be provided to residents that they may add their names to the list; (2) the law clarifies that a conditional use permit issued by a political subdivision does not need to be consistent with its comprehensive plan; (3) the new law requires a 2/3 vote of the members-elect to enact a “down zoning ordinance” that decreases development density or reduces the permitted uses of land; (4) the law prohibits a political subdivision from prohibiting or unreasonably restricting a real property owner from alienating any interest in real property; (5) it also prohibits the imposition of requirements tied to the sale, purchase, or taking occupancy of a property by ordinance, resolution or other means; and (6) requires a court to resolve any ambiguity in the meaning of a word or phrase in a zoning or shoreland zoning ordinance in favor of the free use of private property.

10. 2015 Wisconsin Act 237: Cemetery Law Changes

Most of this act deals with shifting regulatory authority and oversight of private cemeteries from a state agency to an appointed state cemetery board. But, towns should be aware that the Act also eliminates the requirement that cemetery plats and maps need to be approved by the town board and county board before being recorded at the register of deeds. And, any care funds

being held by a town for a (non-town owned) cemetery authority for investment purposes must now be returned.

Ambulances, EMS, Fire, Public Safety

1. 2015 Wisconsin Act 59: Ambulance Charge Setoffs

Allows debts for ambulance services owed to an ambulance service provider that contracts with a municipality or county to be considered a debt owed to the municipality or county and thereby collectible through the Wisconsin Department of Revenue's Tax Refund Intercept Program (TRIP).

2. 2015 Wisconsin Act 113: Ambulance Staffing

Modifies ambulance staffing requirements for three different levels of ambulance service to allow for a first responder to staff the ambulance along with a licensed EMT in ambulance service areas in which the population of the largest municipality served is *less than* 10,000. If the population of the largest municipality in the service area is between 10,000 and 20,000, the ambulance service provider may apply for a waiver of its ambulance staffing plan from the Department of Health Services if a number of factors can be shown related to ambulance staffing problems.

3. 2015 Wisconsin Act 156: Placement of Sex Offenders

Imposes restrictions and requirements on where the Department of Health Services may place a sexually violent person (SVP) who has completed his or her sentence and is on supervised release. The supervised release plan must ensure that the residence is at least 1,500 feet from any school premises, child care facility, public park, place of worship, or youth center. If the offender's offense(s) involved certain at risk groups of people, the plan may also include a 1,500 foot distance restriction from a nursing home, assisted living facility or child's primary residence. Act 156 also prohibits local sex offender residency restriction ordinances from being enforced against a SVP on supervised release or against a person who provides housing for an SVP, provided that the SVP is residing in the location ordered by the court and is in compliance with the court's orders. The Act does not affect the ability of a local government to enforce its sex offender residency restriction ordinance against any other sex offender. In addition, the new law provides that a sex offender residency restriction ordinance cannot constitute "good cause" for placing an SVP outside his or her county of residence.

4. 2015 Wisconsin Act 177: Fire Protection Well Approvals, Reporting and Fees

Exempts certain residential and fire protection wells from the regulations applicable to high capacity wells. These two types of wells would not require DNR approval, annual pumpage reports or water use fees that apply to high capacity wells, but they would be subject to DNR notification requirements before construction begins.

5. 2015 Wisconsin Act 341: Compatibility of Office

Allows for elected city, village, and town officials to serve as volunteer firefighters, EMT's and first responders as long as their annual compensation for serving in one or more of these positions, including fringe benefits, does not exceed \$25,000 if the city, village or town's population is 5,000 or less or \$15,000 if the population is more than 5,000. Under previous law, the maximum allowable compensation threshold for holding these positions had been \$15,000 for all local elected officials.

Elections

1. 2015 Wisconsin Act 39: Election Day Registration

Allows clerks to perform registration duties on election day as long as he or she is not a candidate on the ballot for that election.

2. 2015 Wisconsin Act 117: Campaign Finance Laws

Repeals and recreates the chapter of the state statutes governing campaign finance law. Municipal officials should be aware that it changes the exemption from filing campaign finance reports making such exemption effective for only the calendar year granted and then requiring annual renewal of the exemption if the person or committee wishes to remain exempt from filing campaign finance reports. A new ETHCF-1 (Campaign Registration Statement) must be filed after 12/31 and before the closing date for the first reporting period for which it would be required to file a report in order to renew the exemption.

3. 2015 Wisconsin Act 209: Absentee Voting Change

Clarifies that clerks are to respond to requests for absentee ballots within one "business" day, meaning any day Monday to Friday, but not including legal holidays.

4. 2015 Wisconsin Act 229: Election Training Synchronization

State law requires that clerks, chief inspectors, and other elections inspectors receive training every two years. Act 229 synchronizes the two year cycle for this training to be the two years beginning on January 1 of even numbered years and ending on December 31st of the following year.

5. 2015 Wisconsin Act 261: Electronic Voter Registration and Election Administration

Act 261 makes a number of election law changes. Those most relevant to towns are summarized here. The Act eliminates special registration deputies and provides for the creation of a new online voter registration system. The Act requires absentee votes to be delivered to the polling place no later than 8 p.m. on election day (there is a 6 month delayed effective date for this provision). A witness must sign the absentee certification and provide his or her address. An unexpired veteran identification card may be used as proof of identification. Clerks will need to add additional categories of information to the official voter registration list. Municipalities must report returns to the county clerk no later than 2 hours after the votes are tabulated. Election officials will be allowed to use an electronic voting system override function for “overvotes” (or make a duplicate ballot). The Act eliminates the ability to transfer voter registrations after moving within Wisconsin or due to a name change. Instead, voters will need to re-register.

Alcohol Licensing

1. 2015 Wisconsin Act 62: Wine Walks

Allows chambers of commerce to apply for temporary “Class B” wine licenses for multiple locations during a one day event at which an admission fee is charged.

2. 2015 Wisconsin Act 286: Liquor License Quotas and Reserve Licenses

Eliminates the ability to refund reserve “Class B” license fees to an applicant through a grant or tax credit program; allows transfer of reserve licenses from one municipality to another if they are contiguous or within 2 miles of each other; increases/decreases quotas when transfers occur; allows the transferring municipality to establish and receive the fee for the reserve license; limits the number of transfers to 3 per municipality; and alters the “full-service restaurant” exception to the quota requirement limiting its application to restaurants that have an interior, permanent seating capacity of at least 300 persons (for new applicants going forward).

3. 2015 Wisconsin Act 372: Repeal of Referendum Option on Retail Alcohol Licenses

Repeals s. 125.05, Wis. Stat. which provided municipalities with a petition/referendum option for deciding whether the municipality would be “wet” or “dry” for the various types of retail alcohol licenses. The repeal means that the governing body will now make this decision.

Tax Assessment and Charge Backs

1. 2015 Wisconsin Act 216: Assessor Certification

Makes it easier for the Wisconsin Department of Revenue to suspend or revoke an assessor’s certification under certain circumstances. It also authorizes DOR to require a person to take corrective action in order to avoid revocation or suspension and changes the circumstances under which DOR may revoke a person’s certification.

2. 2015 Wisconsin Act 317: Charge Backs

Requires the Wisconsin Department of Revenue to charge back the portion of taxes refunded or rescinded by a taxation district so that each taxing jurisdiction pays back its share of the taxes to the taxation district and requires the Department to adjust the equalized value of the taxation district in appropriate cases. Previously the charge back occurred only if the equalized value of the taxing district was affected. Taxes within a tax increment district (TID) are not eligible for a charge back unless the TID value is lower than the tax increment base.

3. 2015 Wisconsin Act 321: Determination of Equalized Value

Requires the Wisconsin Department of Revenue to publish equalized values on its Internet site by August 1st. If a taxation district discovers an error that would result in an overvaluation or undervaluation of the property located in the district, it shall notify the Department by August 7th. The Department shall correct any error that results in a change of equalized value greater than 2 percent (except that amended assessment reports filed after the 2nd Monday in June shall not be subject to correction by the Department as provided under this new rule).

4. 2015 Wisconsin Act 322: Supervision of Property Tax Assessments

Allows for special supervision of the assessor for a taxation district when assessed values are not within 10% of full value of the major classes for six years (i.e., the special supervision would occur in the seventh year). Previously, the special supervision occurred in the eighth year, and the seventh year was used for providing an educational program for the assessor. Now, the Wisconsin Department of Revenue may appoint someone to assist the local assessor with

assessments without the assessor first participating in an educational program. The educational program for assessors in taxation districts that were not meeting requirements has been eliminated. Act 322 also changes the definition of major class of property as one that comprises at least 10% of the full value. Previously this was 5%.

Lake Districts and Sanitary Commissions

1. 2015 Wisconsin Acts 25 and 140: Lake District Commission Appointments

Clarifies that the town, city or village within which the largest portion of the lake district lies may appoint either a member of the governing body or a resident of the district (who owns property within the district, if possible) to the board of commissioners. Also addresses appointments when there is a dam in the district that may not be located in the municipality with the largest portion of the lake district.

2. 2015 Wisconsin Act 245: Town Sanitary District Commission Membership

Creates a new power of the town electors to direct the town board to increase the size of the sanitary district commission from 3 members to 5 or to direct the town board to decrease the membership of the town sanitary district from 5 to 3.

Local Leadership Preemption

1. 2015 Wisconsin Act 65: Occupational Licenses

Prohibits towns, cities, and villages from imposing new occupational fees or licensing requirements on a profession, but allows them to continue regulation of professions they were regulating as of November 13, 2015. However, no political subdivision may impose an occupational fee or licensing requirement on photographers, even if it did so before the effective date of the Act. The Act also prohibits political subdivisions from imposing certification and educational requirements on contractors that are more stringent than those imposed by the Wisconsin Department of Safety and Professional Services.

2. 2015 Wisconsin Act 302: Auxiliary Containers

Under this new provision, no political subdivision may do any of the following: (1) enact or enforce an ordinance or adopt or enforce a resolution regulating the use, disposition, or sale of auxiliary containers; (2) prohibit or restrict auxiliary containers; or (3) impose a fee, charge, or

surcharge on auxiliary containers. Auxiliary containers are items like bags, cups, bottles, cans or other packaging that is designed to transport or protect merchandise, food or beverages from a food service or retail facility.

3. 2015 Wisconsin Act 374: Regulation of Photo ID by Local Government:

Places limitations on a town's ability to issue photo identification cards to town residents that may be used for the purpose of establishing proof of residence for voting purposes.

Increased Authority

1. 2015 Wisconsin Act 79: Posting on a Town Internet Site

Allows posting of legal notices in one physical posting place and an Internet site maintained by the municipality in instances where three physical postings would otherwise suffice under s. 985.02(2), Wis. Stat. Note that this new notice method is not applicable to all types of notices a town is required to provide.

2. 2015 Wisconsin Act 96: Tax Incremental Financing Districts

Grants towns authority to enter into multijurisdictional Tax Incremental Finance (TIF) Districts.

3. 2015 Wisconsin Act 181: Creates TIF authority for the Town of Freedom, Outagamie County.

Miscellaneous

1. 2015 Wisconsin Act 61: Utility Aid Payments for Decommissioned Power Plants

Provides that the utility aid payments to be paid in the 5 years following the decommissioning of a power plant will not be reduced by the amount of property taxes paid in each of those years by the owner of the power plant.

2. 2015 Wisconsin Act 174: Wisconsin Retirement System Participation

Allows an employer that elects to participate in WRS to only include employees hired on or after the employer's effective date of participation. The employer may decide to offer current employees the option of participating in WRS. The employer may also choose not to include its public utility employees as WRS participants.

3. 2015 Wisconsin Act 257: TIF Reform

Makes changes to the required annual tax incremental financing report procedures.

4. 2015 Wisconsin Act 278: Broadband Expansion and Broadband Forward! Certification

Imposes additional duties on the PSC related to the expansion of broadband access in Wisconsin and creates a process by which the PSC may certify political subdivisions as Broadband Forward! communities. To become certified, a political subdivision must adopt an ordinance containing specific (broadband provider friendly) content prescribed by the new law. The PSC will create a model ordinance for this purpose.

5. 2015 Wisconsin Act 301: Room Tax Changes

Broadens the definition of a “tourism entity” capable of receiving room tax funds and modifies the potential membership of the governing body of the tourism entity.

6. 2015 Wisconsin Act 356: Address Confidentiality

Creates a program to protect the confidentiality of addresses for victims of domestic abuse, sexual assault or stalking. If a person is certified to participate in the program by the Wisconsin Department of Justice and they submit a written request to the municipal clerk that their address be kept private, the local clerk may not disclose any record in his or her possession which would reveal the program participant’s actual address, except pursuant to court order.

7. 2015 Wisconsin Act 358: Managed Forest Law Changes:

Makes substantial revisions to the MFL program. Towns with land in the program should be aware that the act repeals the severance and yield taxes for timber harvesting and shifts the distribution of fees for closed MFL land to the municipalities where the closed land is located in an amount that is proportional to the amount of closed MFL land in the municipality. Towns will keep 80% of the closed acreage fees with the remaining 20% being forwarded on to the county. Any municipality that will receive less money from the closed acreage fees in 2016 than it received from severance and yield taxes in 2015 will be paid the difference by the DNR no later than December 1, 2016.

8. 2015 Wisconsin Act 364: Sales Tax Exemption for Occasional Sales:

Would broaden the sales tax exemption for occasional sales by non-profit organizations (including local governments) if sales occur on less than 75 days per year or taxable receipts do not exceed \$50,000 during the year, effective with sales made in 2017. The law currently allows the exemption if sales occur on fewer than 20 days per year or taxable receipts do not exceed \$25,000 during the year.

9. 2015 Wisconsin Act 392: Recycling Grants:

Increases the amount set aside for recycling grants to responsible units by \$3,000,000 for fiscal year 2015-2016. This means that the previous \$4,000,000 cut in the state budget is effectively reduced to a \$1,000,000 cut.