



State of Wisconsin
2011 - 2012 LEGISLATURE

3146/3



LRB-17074

RNK&MES:sbb&jld:rs

RMNR

keep

2011 BILL

LPS - FROM 2011
LRB-1707/4

NOTE

gen

X

1 AN ACT *to repeal* 59.69 (10m) (a) 1., 59.69 (10m) (a) 2., 59.69 (10m) (b), 60.61 (5m)

2 (a) 1., 60.61 (5m) (a) 2., 62.23 (7) (hc) 1. a. and 62.23 (7) (hc) 1. b.; *to renumber*

3 *and amend* 59.69 (10m) (a) (intro.), 60.61 (5m) (a) (intro.) and 62.23 (7) (hc) 1.

4 (intro.); *to amend* 59.69 (10m) (title), 60.61 (5m) (title), 60.61 (5m) (b), 62.23

5 (7) (hc) (title) and 62.23 (7) (hc) 2.; and *to create* 59.69 (10m) (ae), 59.692 (1p),

6 59.692 (2m), 60.61 (5m) (ae) and 62.23 (7) (hc) 1e. of the statutes; **relating to:**

7 certain shoreland zoning standards and ordinances that regulate the repair

8 and expansion of nonconforming structures.

Analysis by the Legislative Reference Bureau

Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area and the ordinance must meet shoreland zoning standards established by the Department of Natural Resources (DNR) by rule. Current law defines a shoreland to be an area within a certain distance from the edge of a navigable water. Current law also specifies that, if a shoreland area is annexed by a city or village (annexing municipality) or is part of a town that incorporates as a city or village (incorporated municipality), then, with certain exceptions, the county shoreland zoning ordinance continues in effect and must be enforced by the annexing or incorporated municipality. The exceptions in current

BILL

law allow the annexing or incorporated municipality to enforce its own zoning ordinance with respect to shorelands if the ordinance complies with shoreland zoning standards that are at least as restrictive as the county shoreland zoning ordinance.

This bill prohibits a county from enacting, and prohibits a county, city, or village from enforcing, any provision in a county shoreland zoning ordinance that regulates the use, location, maintenance, expansion, replacement, or relocation of a nonconforming structure if that provision is more restrictive than the shoreland zoning standards for nonconforming structures promulgated by DNR. The prohibition under the bill also applies to a shoreland zoning ordinance enacted by an annexing or incorporated municipality. The bill defines a nonconforming structure as a structure that does not conform with a county shoreland zoning ordinance but that lawfully existed before the county shoreland zoning ordinance was enacted.

The bill also provides that DNR may not establish a shoreland zoning standard, and a county may not enact or enforce a shoreland zoning ordinance, that prohibits the construction of a structure or building on certain lots, parcels, or tracts (lots). Under the bill, a shoreland zoning standard or ordinance may not prohibit the construction of a structure or a building on a lot that does not meet minimum area and width requirements if the lot met those requirements when the lot was originally created or if there was no shoreland zoning standard or ordinance in effect that established minimum area and width requirements when the lot was originally created.

Generally under current law, zoning restrictions that would otherwise apply to a damaged or destroyed nonconforming structure may not prohibit, subject to a number of conditions, the restoration of the structure if it will be restored to the size, location, and use it had before the damage or destruction occurred, unless the size must be larger to comply with state or federal requirements. In addition, and subject to the same conditions, the restrictions in the zoning ordinance may not impose limits on the costs of the repair, reconstruction, or improvement of the structure. The conditions that apply to the restrictions in the zoning ordinance are as follows:

1. The structure must have been damaged or destroyed after March 1, 2006.
2. The structure must have been damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

Under this bill, a zoning ordinance may not prohibit, or limit based on cost, the repair, maintenance, reconstruction, renovation, remodeling, or expansion of a nonconforming structure in existence on the effective date of a zoning ordinance that relates to that structure.

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 (10m) (title) of the statutes is amended to read:

BILL

1 59.69 (10m) (title) ~~RESTORATION OF CERTAIN NONCONFORMING~~ NONCONFORMING
2 STRUCTURES.

3 **SECTION 2.** 59.69 (10m) (a) (intro.) of the statutes is renumbered 59.69 (10m)
4 (am) and amended to read:

5 59.69 (10m) (am) ~~Restrictions that are applicable to damaged or destroyed An~~
6 ordinance enacted under this section may not prohibit, or limit based on cost, the
7 repair, maintenance, reconstruction, renovation, remodeling, or expansion of a
8 ~~nonconforming structures and that are contained in an ordinance enacted under this~~
9 ~~section may not prohibit the restoration of a nonconforming structure if the structure~~
10 ~~will be restored to the size, subject to par. (b), location, and use that it had~~
11 ~~immediately before the damage or destruction occurred, or impose any limits on the~~
12 ~~costs of the repair, reconstruction, or improvement if all of the following apply:~~
13 structure in existence on the effective date of an ordinance enacted under this section
14 related to that structure.

15 **SECTION 3.** 59.69 (10m) (a) 1. of the statutes is repealed.

16 **SECTION 4.** 59.69 (10m) (a) 2. of the statutes is repealed.

17 **SECTION 5.** 59.69 (10m) (ae) of the statutes is created to read:

18 59.69 (10m) (ae) In this subsection, “nonconforming structure” means a
19 structure that does not conform with a zoning ordinance enacted under this section
20 but that existed lawfully before the zoning ordinance was enacted.

21 **SECTION 6.** 59.69 (10m) (b) of the statutes is repealed.

22 **SECTION 7.** 59.692 (1p) of the statutes is created to read:

23 59.692 (1p) The department may not establish or enforce a shoreland zoning
24 standard, and a county may not enact or enforce an ordinance under this section, that
25 prohibits the construction of a structure or building on a lot, parcel, or tract that does

BILL**SECTION 7**

1 not meet minimum area or width requirements under that standard or ordinance,
2 if any of the following applies:

3 (a) The lot, parcel, or tract met the minimum area and width requirements for
4 the construction of a structure or building when the lot, parcel, or tract was originally
5 created.

6 (b) There was no shoreland zoning standard or ordinance in effect under this
7 section that established a minimum area or width requirement for the construction
8 of a structure or building on the lot, parcel, or tract when the lot, parcel, or tract was
9 originally created.

10 **SECTION 8.** 59.692 (2m) of the statutes is created to read:

11 59.692 (2m) (a) In this subsection, “nonconforming structure” means a
12 structure that does not conform with a county shoreland zoning ordinance enacted
13 under this section but that existed lawfully before the county shoreland zoning
14 ordinance was enacted.

15 (b) A county may not enact, and a county, city, or village may not enforce, a
16 provision in a county shoreland zoning ordinance that regulates the use, location,
17 maintenance, expansion, replacement, repair, or relocation of a nonconforming
18 structure if that provision is more restrictive than the shoreland zoning standards
19 for nonconforming structures promulgated by the department under this section.

20 (c) A city or village annexed as provided under sub. (7) (a) or incorporated as
21 provided under sub. (7) (ad) may not enact or enforce a provision in a city or village
22 shoreland zoning ordinance that regulates the use, location, maintenance,
23 expansion, replacement, repair, or relocation of a nonconforming structure if that
24 provision is more restrictive than the shoreland zoning standards for nonconforming
25 structures promulgated by the department under this section.

BILL

1 **SECTION 9.** 60.61 (5m) (title) of the statutes is amended to read:

2 60.61 **(5m)** (title) ~~RESTORATION OF CERTAIN NONCONFORMING~~ NONCONFORMING
3 STRUCTURES.

4 **SECTION 10.** 60.61 (5m) (a) (intro.) of the statutes is renumbered 60.61 (5m)
5 (am) and amended to read:

6 60.61 **(5m)** (am) ~~Restrictions that are applicable to damaged or destroyed~~ An
7 ordinance enacted under this section may not prohibit, or limit based on cost, the
8 repair, maintenance, reconstruction, renovation, remodeling, or expansion of a
9 nonconforming structures and that are contained in an ordinance adopted under this
10 section may not prohibit the restoration of a nonconforming structure if the structure
11 will be restored to the size, subject to par. (b), location, and use that it had
12 immediately before the damage or destruction occurred, or impose any limits on the
13 costs of the repair, reconstruction, or improvement if all of the following apply:
14 structure in existence on the effective date of an ordinance enacted under this section
15 related to that structure.

16 **SECTION 11.** 60.61 (5m) (a) 1. of the statutes is repealed.

17 **SECTION 12.** 60.61 (5m) (a) 2. of the statutes is repealed.

18 **SECTION 13.** 60.61 (5m) (ae) of the statutes is created to read:

19 60.61 **(5m)** (ae) In this subsection, “nonconforming structure” means a
20 structure that does not conform with a zoning ordinance enacted under this section
21 but that existed lawfully before the zoning ordinance was enacted.

22 **SECTION 14.** 60.61 (5m) (b) of the statutes is amended to read:

23 60.61 **(5m)** (b) An ordinance adopted under this section to which par. (a) (am)
24 applies shall allow for the size of a structure to be larger than the size it was

BILL**SECTION 14**

1 immediately before the damage or destruction if necessary for the structure to
2 comply with applicable state or federal requirements.

3 **SECTION 15.** 62.23 (7) (hc) (title) of the statutes is amended to read:

4 62.23 (7) (hc) (title) ~~Restoration of certain nonconforming~~ Nonconforming
5 structures.

6 **SECTION 16.** 62.23 (7) (hc) 1. (intro.) of the statutes is renumbered 62.23 (7) (hc)
7 1m. and amended to read:

8 62.23 (7) (hc) 1m. ~~Restrictions that are applicable to damaged or destroyed An~~
9 ordinance enacted under this subsection may not prohibit, or limit based on cost, the
10 repair, maintenance, reconstruction, renovation, remodeling, or expansion of a
11 nonconforming structures and that are contained in an ordinance enacted under this
12 subsection may not prohibit the restoration of a nonconforming structure if the
13 structure will be restored to the size, subject to subd. 2., location, and use that it had
14 immediately before the damage or destruction occurred, or impose any limits on the
15 costs of the repair, reconstruction, or improvement if all of the following apply:
16 structure in existence on the effective date of an ordinance enacted under this
17 subsection related to that structure.

18 **SECTION 17.** 62.23 (7) (hc) 1. a. of the statutes is repealed.

19 **SECTION 18.** 62.23 (7) (hc) 1. b. of the statutes is repealed.

20 **SECTION 19.** 62.23 (7) (hc) 1e. of the statutes is created to read:

21 62.23 (7) (hc) 1e. In this paragraph, “nonconforming structure” means a
22 structure that does not conform with a zoning ordinance enacted under this
23 subsection but that existed lawfully before the zoning ordinance was enacted.

24 **SECTION 20.** 62.23 (7) (hc) 2. of the statutes is amended to read:

BILL

1 62.23 (7) (hc) 2. An ordinance enacted under this subsection to which subd. ~~1~~
2 1m. applies shall allow for the size of a structure to be larger than the size it was
3 immediately before the damage or destruction if necessary for the structure to
4 comply with applicable state or federal requirements.

5

(END)

D-note
↓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

-3146/3dh
LRB-1707/4dn

RNK&MES:sbb&jld:rs

January 18, 2012

new
date

Keep

Representative Tiffany:

Please review this version of the draft very carefully to ensure that it meets your intent. Some of the instructions in the predrafted materials you submitted were inconsistent, so I'm not sure if this draft meets your intent. For example, the instructions state that the changes related to nonconforming structures should apply to structures located in shoreland areas and nonshoreland areas.

But the statutes the instructions state should be amended — the “major zoning sections” — specify ss. 59.69, 60.61, and 62.23. These statutes do not cover nonconforming structures in shorelands areas, which are addressed in s. 59.692 (1s), or in wetlands in shorelands areas, which are in ss. 61.351 (5) and (5m) and 62.231 (5) and (5m). Consequently, this draft does not change current law under ss. 61.351 (5) and (5m) and 62.231 (5) and (5m). Is this consistent with your intent?

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3146/3dn
RNK&MES:sbb&jld:jm

January 20, 2012

Representative Tiffany:

Please review this version of the draft very carefully to ensure that it meets your intent. Some of the instructions in the predrafted materials you submitted were inconsistent, so I'm not sure if this draft meets your intent. For example, the instructions state that the changes related to nonconforming structures should apply to structures located in shoreland areas and nonshoreland areas.

But the statutes the instructions state should be amended — the “major zoning sections” — specify ss. 59.69, 60.61, and 62.23. These statutes do not cover nonconforming structures in shorelands areas, which are addressed in s. 59.692 (1s), or in wetlands in shorelands areas, which are in ss. 61.351 (5) and (5m) and 62.231 (5) and (5m). Consequently, this draft does not change current law under ss. 61.351 (5) and (5m) and 62.231 (5) and (5m). Is this consistent with your intent?

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Shovers, Marc

From: Tiffany, Tom
Sent: Wednesday, February 01, 2012 1:42 PM
To: Shovers, Marc
Subject: FW: Rep. Tiffany--LRB 3146

Hi Marc—I have been working on LRB 3146 with Tom Larson. Please see his notes below. Will you incorporate them into the changes I am looking for. Be sure to contact me if you need more clarity. I would be happy to sit down and meet with you if necessary.

Rep. Tiffany
715-892-1320

From: Larson, Tom [mailto:tlarson@wra.org]
Sent: Wednesday, February 01, 2012 8:41 AM
To: Tiffany, Tom
Subject: RE: Rep. Tiffany--LRB 3146

Hi Tom,

Some of the suggestions the drafter made are fine. (See my responses below after his questions.) Also, here is the final language (in red) incorporating some of his suggestions. Please note that I put the clause “that existing lawfully before . . . “ at the beginning of the definition rather than the end so that the definition is easier to follow. Please ask him to draft it this way. Please let me know if you need any additional information from me. Thank you.

Change “development standards” to “dimensional requirements” so that both the Senate bill and Assembly bill use the same terminology. The language should read as follows:

In this subsection:

- (a) "Dimensional requirements" means the part of a zoning ordinance enacted under this section which applies to elements including setback, height, lot coverage, and side yard."
- (b) "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted, but that does not conform with one or more of the dimensional requirements in the current zoning ordinance enacted under this section that is applicable to dwellings or other buildings that are constructed on or after the effective date of that zoning ordinance."

Thomas D. Larson - Vice President of Legal and Public Affairs
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From: Tiffany, Tom [<mailto:Tom.Tiffany@legis.wisconsin.gov>]
Sent: Wednesday, February 01, 2012 7:57 AM
To: Larson, Tom
Subject: FW: Rep. Tiffany--LRB 3146

Please review Tom. I look forward to your comments. I am in the office Wednesday and Thursday.

Rep. Tiffany

From: Shovers, Marc
Sent: Tuesday, January 31, 2012 9:15 AM
To: Tiffany, Tom
Subject: RE: Rep. Tiffany--LRB 3146

Hello Representative Tiffany:

The most recent version of your draft makes most of the changes you requested, but the definition of "nonconforming structure" is different from what you requested. Your instructions requested this definition:

Please define "nonconforming structure" in the following manner – "a dwelling or building that existed lawfully before the current zoning ordinance was enacted, but does not conform with one or more of the development standards in the current zoning ordinance such as setback, size, height, lot coverage, impervious surface, or parking."

I want to make sure that I fully capture your intent. If you'd like, I can draft a definition that is identical, or nearly identical, to the language you submitted, but I think that language has some problems and I have a couple of concerns which you may wish to consider.

1) I think the word "current" is a little ambiguous, which is why I used the construction that I did. Does "current" mean "now, as of the date of enactment"? Does it mean "whatever is the

most recently enacted zoning ordinance." I think using "current" would be unclear. . I don't think the word "current" is unclear. Please keep this word.

2) "Development standards" doesn't appear in the statutes and may be ambiguous. Change "development standards" to "dimensional requirements" so that both the Senate bill and Assembly bill use the same terminology

As I said, if you want the language you've submitted, as drafted, I'll do that even though I believe that language has problems. If you share any of my concerns and would like to address them, here's my suggestion for these definitions:

In this subsection:

(a) "Development standards" means the part of a zoning ordinance enacted under this section which applies to elements including setback, size, height, lot coverage, impervious surface, or parking."

(b) "Nonconforming structure" means a dwelling or building that does not conform with one or more of the development standards in a zoning ordinance enacted under this section that is applicable to a dwelling or building that is created on or after the effective date of the zoning ordinance, but that existed lawfully before that zoning ordinance was enacted."

Please let me know how you'd like to proceed.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

From: Tiffany, Tom

Sent: Thursday, January 26, 2012 8:44 AM

To: Shovers, Marc

Subject: Rep. Tiffany--LRB 3146

Hi Marc--attached you will find changes I would like to LRB 3146/3dn. If you think we should meet to review my intent, please contact me at 715-892-1320. I am hoping to get this to committee in the next couple weeks. Thank you.

Rep. Tiffany

2/1/2012

P.S. My staff is not in for the next ten days. Please contact me directly to work on this draft. << File: 3146.pdf >>

Shovers, Marc

From: Shovers, Marc
Sent: Thursday, February 02, 2012 11:31 AM
To: Tiffany, Tom
Subject: FW: Variance bill & new Nonconforming structures draft

Hello Representative Tiffany:

Senator Lasee's office asked that I forward this email exchange to you, as you are the lead author of the assembly companion to LRB -1706. Based on the email you send me yesterday with Tom Larson's comments, I assume that you'd like your bill, LRB -3146, to be identical to what will become the newest version of Sen. Lasee's bill, LRB -1706/6, which will be based on the changes suggested in the email I'm forwarding. I will prepare a new version of your bill that will be identical to LRB -1706/6. Thanks for all your help.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

From: Kovach, Robert
Sent: Wednesday, February 01, 2012 10:04 AM
To: Shovers, Marc
Subject: RE: Variance bill & new Nonconforming structures draft

Dear Marc,

Thanks for working with me to get this as good as we can, see the red after each of your points and the Senator's note:

Some of the suggestions the drafter made are fine. (See my responses below after his questions.) Also, here is the final language (in red) incorporating some of his suggestions. Please note that I put the clause "that existing lawfully before . . ." at the beginning of the definition rather than the end so that the definition is easier to follow. PLEASE ASK HIM TO DRAFT IT THIS WAY! Please let me know if you need any additional information from me. Thank you.

In this subsection:

- (a) "Dimensional requirements" means the part of a zoning ordinance enacted under this section which applies to elements including setback, height, lot coverage, and side yard."
- (b) "Nonconforming structure" means a dwelling or other building that existed lawfully before the current

zoning ordinance was enacted, but that does not conform with one or more of the dimensional requirements in the current zoning ordinance enacted under this section that is applicable to dwellings or other buildings that are constructed on or after the effective date of that zoning ordinance."

Let me know if that will work for you also.

Thanks,

Rob Kovach
Chief of Staff
Office of State Senator Frank Lasee
608-266-3512

From: Shovers, Marc
Sent: Monday, January 30, 2012 1:59 PM
To: Kovach, Robert
Subject: RE: Variance bill & new Nonconforming structures draft

Hi Rob:

I have a question. I know that we've been working on this definition for a while and I want to make sure that I fully capture the Senator's intent. If you'd like, I can draft a definition that is identical, or nearly identical, to the language you submitted, but I think that language has some problems and I have a couple of concerns which you may wish to consider. Your instructions were the following:

a. PLEASE DEFINE "NONCONFORMING STRUCTURE" IN THE FOLLOWING

MANNER – "a dwelling or other building that existed lawfully before the **current** zoning ordinance was enacted, but does not conform with one or more of the dimensional requirements in the current zoning ordinance such as setback, height, lot coverage, or side yard that are applicable to **new structures** within the same zoning district."

1) I think the word "current" is a little ambiguous, which is why I used the construction that I did. Does "current" mean "now, as of the date of enactment"? Does it mean "whatever is the most recently enacted zoning ordinance." I think using "current" would be unclear. I don't think the word "current" is unclear. Please keep this word.

2) Do you really mean to use the phrase "new **structures**"? The response to the drafter's note said "'structure' has been interpreted to mean anything with form or shape (e.g., billboards).", so I'm wondering if you really want to use the term "structure" here, or the term "a new dwelling or other building." Use "a new dwelling or other building."

Also, when the drafter's note response says "Please draft the definition of "nonconforming structure" to **include** "dwellings and other buildings."", I assume that you really mean to say the definition should use "means" and

2/2/2012

not "includes" because "includes" is not limited to what is listed in a definition. "Means" is fine.

3) I'm also wondering what "new" refers to in the phrase "new structure." This also seems a little ambiguous. Do you mean a structure that is built on or after the effective date of the "current" zoning ordinance? O.k.

4) "Dimensional requirements" doesn't appear in the statutes is may be ambiguous. Defining "dimensional requirements" is fine.

As I said, if you want the language you've submitted, as drafted, I'll do that even though I believe that language has problems. If you share any of my concerns and would like to address them, here's my suggestion for these definitions:

In this subsection:

(a) "Dimensional requirements" means the part of a zoning ordinance enacted under this section which applies to elements including setback, height, lot coverage, and side yard."

(b) "Nonconforming structure" means a dwelling or other building that does not conform with one or more of the dimensional requirements in a zoning ordinance enacted under this section that is applicable to a structure that is created on or after the effective date of the zoning ordinance, but that existed lawfully before that zoning ordinance was enacted."

Please let me know how you'd like to proceed. Also, can I share this email with the office that has taken the lead in the Assembly for the bill originally requested by Rep. Steineke? That office is also very concerned about this definition. Yes. Please send these changes to Rep. Tiffany, who is now taking the lead in the Assembly.

Thanks for all your help, Rob.

Marc

Marc E. Shovers

Managing Attorney
Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

From: Kovach, Robert
Sent: Monday, January 30, 2012 10:21 AM
To: Shovers, Marc
Subject: Variance bill & new Nonconforming structures draft

Dear Marc,

Here is the clarification from Senator Lasee. He was very certain that he wants this language as close as you can get it to this clarification. I have sent the jacket back to LRB.

Please call me if you have any questions or problems.

2/2/2012

Thanks,

Rob Kovach
Chief of Staff
Office of State Senator Frank Lasee
608-266-3512



State of Wisconsin
2011 - 2012 LEGISLATURE

3146/4



LRB-07070
RNK&MES:sbb&jld:rs

2011 BILL

WANTED;
Friday

RMNR

~~fmr~~

4

regem

1 AN ACT to create 59.69 (10e), 59.692 (1p), 59.692 (2m), 60.61 (5e) and 62.23 (7)
2 (hb) of the statutes; relating to: certain shoreland zoning standards and
3 ordinances that regulate the repair and expansion of nonconforming
4 structures.

Analysis by the Legislative Reference Bureau

Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area and the ordinance must meet shoreland zoning standards established by the Department of Natural Resources (DNR) by rule. Current law defines a shoreland to be an area within a certain distance from the edge of a navigable water. Current law also specifies that, if a shoreland area is annexed by a city or village (annexing municipality) or is part of a town that incorporates as a city or village (incorporated municipality), then, with certain exceptions, the county shoreland zoning ordinance continues in effect and must be enforced by the annexing or incorporated municipality. The exceptions in current law allow the annexing or incorporated municipality to enforce its own zoning ordinance with respect to shorelands if the ordinance complies with shoreland zoning standards that are at least as restrictive as the county shoreland zoning ordinance.

This bill prohibits a county from enacting, and prohibits a county, city, or village from enforcing, any provision in a county shoreland zoning ordinance that regulates the use, location, maintenance, expansion, replacement, or relocation of a nonconforming structure if that provision is more restrictive than the shoreland

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zoning standards for nonconforming structures promulgated by DNR. The prohibition under the bill also applies to a shoreland zoning ordinance enacted by an annexing or incorporated municipality. The bill defines a nonconforming structure as a dwelling or building that does not conform with a county shoreland zoning ordinance, other than an ordinance regulating a nonconforming use, but that lawfully existed before the county shoreland zoning ordinance was enacted.

The bill also provides that DNR may not establish a shoreland zoning standard, and a county may not enact or enforce a shoreland zoning ordinance, that prohibits the construction of a structure or building on certain lots, parcels, or tracts (lots). Under the bill, a shoreland zoning standard or ordinance may not prohibit the construction of a structure or a building on a lot that does not meet minimum area and width requirements if the lot met those requirements when the lot was originally created or if there was no shoreland zoning standard or ordinance in effect that established minimum area and width requirements when the lot was originally created.

Generally under current law, zoning restrictions that would otherwise apply to a damaged or destroyed nonconforming structure may not prohibit, subject to a number of conditions, the restoration of the structure if it will be restored to the size, location, and use it had before the damage or destruction occurred, unless the size must be larger to comply with state or federal requirements. In addition, and subject to the same conditions, the restrictions in the zoning ordinance may not impose limits on the costs of the repair, reconstruction, or improvement of the structure. The conditions that apply to the restrictions in the zoning ordinance are as follows:

1. The structure must have been damaged or destroyed after March 1, 2006.
2. The structure must have been damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

Under this bill, a zoning ordinance may not prohibit, or limit based on cost, the repair, maintenance, reconstruction, renovation, or remodeling of a nonconforming structure in existence on the effective date of a zoning ordinance that relates to that structure, ~~other than a zoning ordinance regulating a nonconforming use.~~

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:

SECTION 1. 59.69 (10e) of the statutes is created to read:

59.69 (10e) REPAIR AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.

(a) In this subsection, "nonconforming structure" means a dwelling or building that does not conform with a zoning ordinance, ~~other than an ordinance regulating a~~ *one or more of the dimensional requirements in* ~~existed lawfully before the current zoning ordinance was enacted, but that~~

INS 2-2 ✓

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BILL

1 ~~nonconforming use~~ enacted under this section but that existed lawfully before the
2 zoning ordinance was enacted.

3 (b) An ordinance enacted under this section may not prohibit, or limit based on
4 cost, the repair, maintenance, reconstruction, renovation, or remodeling of a
5 nonconforming structure in existence on the effective date of an ordinance enacted
6 under this section related to that structure.

7 **SECTION 2.** 59.692 (1p) of the statutes is created to read:

8 59.692 (1p) The department may not establish or enforce a shoreland zoning
9 standard, and a county may not enact or enforce an ordinance under this section, that
10 prohibits the construction of a structure or building on a lot, parcel, or tract that does
11 not meet minimum area or width requirements under that standard or ordinance,
12 if any of the following applies:

13 (a) The lot, parcel, or tract met the minimum area and width requirements for
14 the construction of a structure or building when the lot, parcel, or tract was originally
15 created.

16 (b) There was no shoreland zoning standard or ordinance in effect under this
17 section that established a minimum area or width requirement for the construction
18 of a structure or building on the lot, parcel, or tract when the lot, parcel, or tract was
19 originally created.

20 **SECTION 3.** 59.692 (2m) of the statutes is created to read:

21 59.692 (2m) (a) In this subsection, "nonconforming structure" means a
22 dwelling or building that does not conform with a county shoreland zoning
23 ordinance, other than a county shoreland ordinance regulating a nonconforming use,
24 enacted under this section but that existed lawfully before the county shoreland
25 zoning ordinance was enacted.

BILL

SECTION 3

1 (b) A county may not enact, and a county, city, or village may not enforce, a
 2 provision in a county shoreland zoning ordinance that regulates the use, location,
 3 maintenance, expansion, replacement, repair, or relocation of a nonconforming
 4 structure if that provision is more restrictive than the shoreland zoning standards
 5 for nonconforming structures promulgated by the department under this section.

6 (c) A city or village annexed as provided under sub. (7) (a) or incorporated as
 7 provided under sub. (7) (ad) may not enact or enforce a provision in a city or village
 8 shoreland zoning ordinance that regulates the use, location, maintenance,
 9 expansion, replacement, repair, or relocation of a nonconforming structure if that
 10 provision is more restrictive than the shoreland zoning standards for nonconforming
 11 structures promulgated by the department under this section.

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

13 60.61 (5e) REPAIR AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES. (a)

14 In this subsection, "nonconforming structure" means a dwelling or building that does
 15 not conform with a zoning ordinance, other than an ordinance regulating a
 16 nonconforming use, enacted under this section but that existed lawfully before the
 17 zoning ordinance was enacted.

18 (b) An ordinance enacted under this section may not prohibit, or limit based on
 19 cost, the repair, maintenance, reconstruction, renovation, or remodeling of a
 20 nonconforming structure in existence on the effective date of an ordinance enacted
 21 under this section related to that structure.

22 **SECTION 5.** 62.23 (7) (hb) of the statutes is created to read:

23 62.23 (7) (hb) *Repair and maintenance of certain nonconforming structures.*

24 f. In this paragraph, "nonconforming structure" means a dwelling or building that
 25 does not conform with a zoning ordinance, other than an ordinance regulating a

INS
4-13

INS
4-23

✓
other

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2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1707/6ins
RNK&MES:sbb&jld:rs

INS 2-~~§~~ ⁽²⁾
NO
A (a) In this subsection: ⁽⁴⁾ 1. "Dimensional requirements" means the part of a zoning ordinance enacted under this section ^{e that} which applies to elements including setback, height, lot coverage, and side yard.

2. ^{fix} Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted, but that does not conform with one or more of the dimensional requirements in the current zoning ordinance enacted under this section that is applicable to a dwelling or other building that is constructed on or after the effective date of that zoning ordinance.

INS 4-13
NO
A (a) In this subsection: ⁽⁴⁾ 1. "Dimensional requirements" means the part of a zoning ordinance enacted under this section ^{e that} which applies to elements including setback, height, lot coverage, and side yard.

2. ^{fix} Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted, but that does not conform with one or more of the dimensional requirements in the current zoning ordinance enacted under this section that is applicable to a dwelling or other building that is constructed on or after the effective date of that zoning ordinance.

INS 4-23
NO
A 1. In this paragraph: ⁽⁴⁾ a. "Dimensional requirements" means the part of a zoning ordinance enacted under this ^{sub} section ^{e that} which applies to elements including setback, height, lot coverage, and side yard.



Fix ↴

b. ~~Nonconforming structure~~ means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted, but that does not conform with one or more of the dimensional requirements in the current zoning ordinance enacted under this ^{sub} section that is applicable to a dwelling or other building that is constructed on or after the effective date of that zoning ordinance.

(end of ins 4-23)

Parisi, Lori

From: Augustyn, Jessie
Sent: Tuesday, February 14, 2012 1:13 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-3146/4 Topic: Ordinances to comply with shoreland zoning rules

Please Jacket LRB 11-3146/4 for the ASSEMBLY.