

## 2011 DRAFTING REQUEST

### Bill

Received: **03/18/2011**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **Isaac**

May Contact:

Drafter: **rkite**

Subject: **Nat. Res. - wet/shore/flood**

Addl. Drafters: **mshovers**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to: **robin.kite@legis.wisconsin.gov**

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### Pre Topic:

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Ordinances to comply with shoreland zoning rules

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### Instructions:

See attached

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Adl. Drafters: **mshovers**

Extra Copies: **EJM**

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Addl. Drafters: marc shovers

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Draft -  
Nonconforming -  
take from here + make statutory.  
DEPARTMENT OF NATURAL RESOURCES  
use highlighted sections.  
Chapter NR 115

WISCONSIN'S SHORELAND PROTECTION PROGRAM

NR 115.01 Purpose.  
NR 115.02 Applicability.  
NR 115.03 Definitions.

NR 115.04 Shoreland-wetlands  
NR 115.05 Minimum zoning standards for shorelands.  
NR 115.06 Department duties.

**NR 115.01 Purpose.** Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty." Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats. for the purposes specified in s. 281.31(1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.02 Applicability.** The provisions of this chapter apply to county regulation of the use and development of unincorporated shoreland areas and to county, city or village regulation of previously unincorporated areas that were annexed by a city or village after May 7, 1982, or incorporated as a city or village after April 30, 1994. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Stats., applies.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80; correction made under s. 13.93 (2m) (b) 7., Stats.

**NR 115.03 Definitions.** For the purpose of this chapter:

(1d) "Access and viewing corridor" means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(1h) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(1p) "Building envelope" means the three dimensional space within which a structure is built.

(2) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.69 (2) (a), Stats., to act in all matters pertaining to county planning and zoning.

(3) "Department" means the department of natural resources.

(3m) "Existing development pattern" means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(4) "Flood plain" means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

(4g) "Impervious surface" means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

(4r) "Mitigation" means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(5) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

**Note:** In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In *DeGayner and Co., v. Department of Natural Resources*, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The *DeGayner* opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider



tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures, not to exceed 500 square feet, used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if the structure cannot as a practical matter be located outside the wetland, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(j) The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

*Note:* Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating,

ditching or draining necessary for the construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(L) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (e), Stats., and the procedures outlined in sub. (2) (c).

**NR 115.05 Minimum zoning standards for shorelands.** (1) ESTABLISHMENT OF SHORELAND ZONING STANDARDS. The shoreland zoning ordinance adopted by each county shall sufficiently control use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.

b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned Unit Development.' A non-riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and

**REVISIONS TO NR 115, WIS. ADMIN. CODE – as Proposed to the Natural Resources Board June 2009**

(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. Impervious surface standards shall apply to the construction, reconstruction, expansion, structural alteration, replacement or relocation of any impervious surface, and shall require all of the following:

1. 'Calculation of percentage of impervious surface.' Percentage of impervious surface shall be calculated by dividing the surface area of existing and proposed impervious surfaces on a shoreland lot or parcel by the total surface area of that shoreland lot or parcel.

2. 'Impervious surface standard.' A county may allow up to 15% impervious surface on a shoreland lot or parcel.

3. 'Maximum impervious surface.' A county may allow more than 15% impervious surface but not more than 30% impervious surface on a shoreland lot or parcel, provided that the county issues a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include existing or proposed measures that the county determines adequate to offset the impacts of the impervious surface on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the impervious surface being permitted.

**Note:** A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694(7)(c), Stats.

4. 'Existing impervious surfaces.' This chapter does not prohibit routine maintenance of all impervious surfaces that existed on the effective date of this rule ... [Legislative Reference Bureau insert date], or replacement of existing driveways, walkways, patios or similar surfaces at grade level.

(f) *Height.* To protect and preserve wildlife habitat and natural scenic beauty, on or after the effective date of this section ... [Legislative Reference Bureau insert date], a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

(g) *Nonconforming structures and uses.* 1. 'General rule for nonconforming uses.' Pursuant to ss. 59.69 (10) (a) and 59.692 (2) (a), Stats., an ordinance enacted under those provisions may not prohibit the continuation of the lawful use of a building, structure or property, that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.

2. 'Nonconforming use of temporary structure.' The continuance of the nonconforming use of a temporary structure may be prohibited.

3. 'Discontinued nonconforming use.' If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. 'Maintenance of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be maintained and repaired within its existing building envelope.

**Note:** Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.

5. 'Expansion of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be expanded beyond its existing building envelope, provided that all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. No portion of the structure expansion will be located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. Unless all portions of the structure expansion are more than 75-feet from the ordinary high-water mark, the county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include measures that exist or are proposed to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted.

e. All other provisions of the shoreland ordinance shall be met.

**Note:** Other provisions include requirements such as height and impervious surface limitations.

6. 'Replacement or relocation of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be replaced or relocated on the property provided all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b)1.

e. The county shall issue a permit that requires a mitigation plan that shall be approved by the county

**REVISIONS TO NR 115, WIS. ADMIN. CODE – as Proposed to the Natural Resources Board June 2009**

and implemented by the property owner by the date specified in the permit. The mitigation plan shall include measures that exist or are proposed to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted.

f. The county shall issue a permit that requires that all other structures on the lot or parcel that do not comply with the shoreland setback requirement in par. (b)1. and are not exempt under par. (b)1m. to be removed by the date specified in the permit.

g. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as height and impervious surface limitations.

7. 'Boathouses.' The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Stats.

(2) ESTABLISHMENT OF LAND DIVISION REVIEW. Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

(a) Hazards to the health, safety or welfare of future residents.

(b) Proper relationship to adjoining areas.

(c) Public access to navigable waters, as required by law.

(d) Adequate storm drainage facilities.

(e) Conformity to state law and administrative code provisions.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812.

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. Comm 83, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

(4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. The shoreland ordinance adopted by each county shall require all of the following:

(a) The appointment of an administrator and such additional staff as the workload may require.

(b) The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(c) A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of all

applications shall be required to be filed in the office of the county zoning administrator.

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

(f) A special exception (conditional use) procedure for uses presenting special problems.

(g) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(h) Written notice to the appropriate regional office of the department at least 10 days prior to any hearing on a proposed variance, special exception (conditional use) permit, appeal for a map or text interpretation, map or text amendment, or permit issued under sub.

(1) (b), and copies of all proposed land divisions submitted to the county for review under sub. (2).

(hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, of copies of any permit granted under sub. (1) (g), any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(j) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(k) The prosecution of violations of the shoreland ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. (2) (a) 3., am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (c) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**NR 115.06 Department duties. (1) ASSISTANCE TO COUNTIES.** To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties



State of Wisconsin  
2011 - 2012 LEGISLATURE

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LRB-1707

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SBB  
+ JLD  
e JLD

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

2011 BILL

In  
3/22

LX

gen cat

1 AN ACT ...; relating to: shoreland zoning standards for nonconforming  
2 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 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 people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 59.692 (2m) of the statutes is created to read:

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

(b) A county may not enact, and a county, city, or village may not enforce, a provision in a county shoreland 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 the department under this section.

(c) A city or village annexed as provided under sub. (7) (a) or incorporated as provided under sub. (7) (ad) may not enact or enforce a provision in a city or village 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 the department under this section.

(END)

**Godwin, Gigi**

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**From:** Kruse, Jon

**Sent:** Tuesday, May 17, 2011 4:27 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 11-1707/1 Topic: Ordinances to comply with shoreland zoning rules

Please Jacket LRB 11-1707/1 for the SENATE.

Thanks!

Jon Kruse

Redraft instructions -

Rob Kovach

Lasse

6-3512

1707 -

Also - prohibit ordinances that require combining "substandard size lots" that have a common owner -

Rob will return the packet

7-5-2011 -

follow up phone conf w/ Rob -

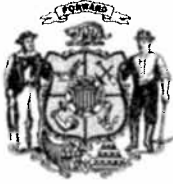
wants this issue to apply to all zoning and not just shoreland zoning

i.e. - if a lot is platted as a standard lot + thereafter the zoning body revises its zoning so that the lot is "substandard" (eg too small)

then the zoning as it applied when it was first "platted" will still apply

Phone conf w/ Rob -

just shoreland zoning and not other zoning -



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1707/8  
RNK:sbb&jld:rs

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2011 BILL

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the  
and construction  
of structures  
and buildings ✓

AN ACT *to create* 59.692 (2m) of the statutes; *relating to:* *shoreland zoning standards for nonconforming structures*

and ordinances  
that regulate

*Certain*

**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 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



**BILL**

*Insert Analysis* ✓

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.

*INS. 2-1* ✓ **The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

1 SECTION 1. 59.692 (2m) <sup>x</sup> of the statutes is created to read:

2 59.692 (2m) (a) In this subsection, "nonconforming structure" means a  
3 structure that does not conform with a county shoreland zoning ordinance enacted  
4 under this section but that existed lawfully before the county shoreland zoning  
5 ordinance was enacted.

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

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

17 (END)

INSERT ANALYSIS

\* 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.

INSERT 2-1

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SECTION 1. 59.692 (1p) of the statutes is created to read  
(1p) The department may not establish or enforce a shoreland zoning standard, and a county may not enact or enforce an ordinance under this section, that prohibits the construction of a structure or building on a lot, parcel, or tract that does not meet minimum area or width requirements under that standard or ordinance, if any of the following applies:  
(a) The lot, parcel, or tract met the minimum area and width requirements for the construction of a structure or building when the lot, parcel, or tract was originally created.  
(b) There was no shoreland zoning standard or ordinance in effect under this section that established a minimum area or width requirement for the construction of a structure or building on the lot, parcel, or tract when the lot, parcel, or tract was originally created.

(end ins 2-1)

**Kite, Robin**

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**From:** Kovach, Robert  
**Sent:** Tuesday, September 27, 2011 3:15 PM  
**To:** Kite, Robin  
**Subject:** lrb-1707

**Attachments:** Comments on Nonconforming structures bill.doc

This is the info that we want to add to the lrb-1707 that you worked on for me.

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

10/5/2011

Nonconforming structures -- Comments on LRB 1707/2

Changes to the current draft

1. Section 1 -- This section is somewhat different than the substandard lot provisions in NR 115. To build on a substandard lot, NR 115 indicates that the lot cannot have been previously merged with another lot. Specifically, the lot can only be built upon if the lot or parcel (a) was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel, (b) has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel, (c) is developed to comply with all other ordinance requirements.

If we want to mirror NR 115 on this section, the above changes would need to be made.

2. Section (2m)(a) -- The definition of "nonconforming structure" should be modified to clearly different from a "nonconforming use." A "nonconforming structure" means 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.
3. Section (2m)(b) (line 7) -- Add "repair" after "replacement."
4. Section (2m)(b) (line 11) -- Add "repair" after "replacement."

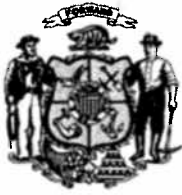
Other additions to the bill

1. Define nonconforming structure for purposes of all general zoning (in addition to shoreland zoning) -- A "nonconforming structure" means 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.
2. Allow property owners to repair and maintain all structures (other than billboards) located in both shoreland areas and nonshoreland areas -- "A county, city, village or town may not enact or enforce any local ordinance or regulation that prohibits or restricts the ability of property owners to maintain or repair a nonconforming structure."

10-5-11  
don't see Rob Kovack -  
with these changes

not needed

10/26  
Rob says allow prohibition of continued use of a temporary structure, as under current law, but note this in the Dr note.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1707/2  
RNK:sbb&jld:jf

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RNR

2011 BILL

P-NOTE

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Regen

1 AN ACT to create 59.692 (1p) and 59.692 (2m) of the statutes; relating to: certain  
2 shoreland zoning standards and ordinances that regulate nonconforming  
3 structures and the construction of structures and buildings

and → INS 1-3 ✓

**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 zoning standards for nonconforming structures promulgated by DNR. The

**BILL**

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.

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

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

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

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

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

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

# 2007 BILL

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1 AN ACT *to amend* 59.69 (10) (a), 59.69 (10) (b) 3., 59.69 (10) (c), 59.69 (10) (e),  
 2 59.69 (10m) (a) (intro.), 59.69 (10m) (a) 1., 59.69 (10m) (b), 60.61 (5), 62.23 (7)  
 3 (h), 62.23 (7) (hc) 1. (intro.), 62.23 (7) (hc) 1. a., 62.23 (7) (hc) 2. and 62.23 (7) (hg)  
 4 of the statutes; **relating to:** limiting the designation of a nonconforming use  
 5 under local zoning ordinances.

### Analysis by the Legislative Reference Bureau

Under current law, cities, villages, certain towns (municipalities) and counties are authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, and the location and use of buildings, structures, and land for various purposes.

Also under current law, a zoning ordinance enacted by a municipality or county may not prohibit the continued lawful use of any building, premises, structure, or fixture for any trade or industry for which the building, premises, structure, or fixture is used when the ordinance takes effect, although in certain towns such an ordinance may prohibit the alteration of, or addition to, any existing building, premises, structure, or fixture that is used to carry on an otherwise prohibited trade or industry within the area that is subject to the ordinance (district).

In cities, villages, towns exercising village powers, and counties, the alteration of, addition to, or repair in excess of 50 percent of the assessed value of any existing

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**BILL**

building, premises, structure, or fixture to carry on any prohibited trade or industry within the district may be prohibited. Generally, if such a nonconforming use of a building, premises, structure, or fixture is discontinued for 12 months, any future use of the building, premises, structure, or fixture must conform to the municipality's or county's zoning ordinance. Under county law, the continued use of a nonconforming temporary structure may be prohibited.

Under this bill, no city, village, town, or county may prohibit the continued lawful use of any building, premises, structure, or fixture for any trade or industry for which the building, premises, structure, or fixture is used when the ordinance takes effect, but the continuance of the nonconforming use of a temporary structure may be prohibited. Generally under the bill, any zoning restriction that may be applied currently to a building, premises, structure, or fixture, and would be currently considered a nonconforming use, may only be applied to a temporary structure.

For further information see the **local** fiscal estimate, which will be printed as an appendix to this bill.

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P. 2008

except for certain structures that are damaged or destroyed by the elements, fire, vandalism, or infestation of a building, premises, structure, or fixture, other than a billboard, or fixture.

except for certain damaged or destroyed temporary structures

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

**SECTION 1.** 59.69 (10) (a) of the statutes is amended to read:

59.69 (10) (a) An ordinance enacted under this section may not prohibit the continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time that the ordinances take effect, but the alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building, premises, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such buildings, premises, structures, or fixtures are located, may be prohibited. The continuance of the nonconforming use of a temporary structure may be prohibited. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, temporary structure, or fixture shall conform to the ordinance.

**SECTION 2.** 59.69 (10) (b) 3. of the statutes is amended to read:

premises, structure other than a billboard, or fixture,

or the repair or maintenance of any building, or fixture

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59.69 (10) (b) 3. The officer designated under subd. 1. or 2. shall cause a record to be made immediately after the enactment of an ordinance or amendment thereto, or change in district boundary, approved by the town board, of all <sup>plain</sup> ~~lands, premises and buildings~~ temporary structures in the town used for purposes not conforming to the regulations applicable to the district in which they are situated. The record shall include the legal description of the lands on which the structures are located, the nature and extent of the uses therein, and the names and addresses of the owner or occupant or both. Promptly on its completion the record shall be published in the county as a class 1 notice, under ch. 985. The record, as corrected, shall be on file with the register of deeds 60 days after the last publication and shall be prima facie evidence of the extent and number of nonconforming uses existing on the effective date of the ordinance in the town. Corrections before the filing of the record with the register of deeds may be made on the filing of sworn proof in writing, satisfactory to the officer administering the zoning ordinance.

**SECTION 3.** 59.69 (10) (c) <sup>x</sup> of the statutes is amended to read:

59.69 (10) (c) The board shall prescribe a procedure for the annual listing of nonconforming uses of temporary structures, discontinued or created, since the previous listing and for all other nonconforming uses of temporary structures. Discontinued and newly created nonconforming uses of temporary structures shall be recorded with the register of deeds immediately after the annual listing.

**SECTION 4.** 59.69 (10) (e) of the statutes is amended to read:

59.69 (10) (e) 1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, temporary structure, ~~or fixture~~ that may be lawfully used as described under par. (a), but only for a specified period of time, after which the lawful use of

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such ~~building, premises, structure, or fixture~~ must be discontinued without the payment of just compensation.

2. Subject to par. (a), an ordinance enacted under this section may not require the removal of a nonconforming ~~building, premises, temporary structure, or fixture~~ by an amortization ordinance.

**SECTION 5.** 59.69 (10m) (a) (intro.) of the statutes is amended to read:

59.69 (10m) (a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming temporary structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming temporary structure if the temporary structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

**SECTION 6.** 59.69 (10m) (a) 1. of the statutes is amended to read:

59.69 (10m) (a) 1. The nonconforming temporary structure was damaged or destroyed on or after March 2, 2006.

**SECTION 7.** 59.69 (10m) (b) of the statutes is amended to read:

59.69 (10m) (b) An ordinance enacted under this section to which par. (a) applies shall allow for the size of a temporary structure to be larger than the size it was immediately before the damage or destruction if necessary for the temporary structure to comply with applicable state or federal requirements.

**SECTION 8.** 60.61 (5) of the statutes is amended to read:

60.61 (5) ~~NONCONFORMING USES~~ (a) An ordinance adopted under this section may not prohibit the continued use of any building, premises, structure, or fixture, or the repair or maintenance of any building, premises, structure other than a bill board, or fixture, for any trade or industry for which the building, premises, structure, or fixture is

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END OF INS 2-1

than a bill board, or fixture,

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used when the ordinance takes effect. ~~An ordinance adopted under this section may prohibit the alteration of, or addition to, any existing building, premises, structure, or fixture used to carry on an otherwise prohibited trade or industry within the district, but the continuance of the nonconforming use of a temporary structure may be prohibited.~~ If a use that does not conform to an ordinance adopted under this section is discontinued for a period of 12 months, any future use of the <sup>land,</sup> ~~building,~~ <sup>plain</sup> ~~premises, temporary~~ structure, ~~or fixture~~ shall conform to the ordinance.

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(b) Except as provided in par. (d), immediately after the publication of a town zoning ordinance, the town board shall provide for the compilation of a record of the present use of all <sup>plain</sup> ~~buildings and premises~~ temporary structures used for purposes not in conformity with the zoning ordinance. The record shall contain the names and addresses of the owner of the nonconforming use and any occupant other than the owner, the legal description of the land, and the nature and extent of the use of the land. The record shall be published in the town as a class 1 notice under ch. 985. Within 60 days after final publication, upon presentation of proof to the town board, errors or omissions in the record may be corrected. At the expiration of the 60-day period, the record shall be filed in the office of the town clerk after the record is first recorded in the office of the register of deeds. The record is prima facie evidence of the extent and number of nonconforming uses of temporary structures existing at the time the ordinance takes effect. Errors or omissions in the record shall be corrected by the town board upon petition of any citizen or by the board on its own motion. The decision of the board concerning errors or omissions is final.

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(c) Immediately after the record of nonconforming uses of temporary structures is filed with the town clerk, the clerk shall furnish the town assessor the record of such nonconforming uses within the town. After the assessment for the following

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year and each succeeding assessment, the town assessor shall file a written report, certified by the board of review, with the town clerk listing all nonconforming uses of temporary structures which have been discontinued since the prior assessment. The town clerk shall record such discontinued nonconforming uses as soon as reported by the assessor. In this paragraph, "town assessor" includes the county assessor assessing the town under s. 70.99.

(d) Paragraphs (b) and (c) do not apply to towns issuing building permits as a means of enforcing the zoning ordinance or of identifying nonconforming uses of temporary structures or to towns which have established other procedures for this purpose.

(e) 1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, ~~premises,~~ temporary structure, or ~~fixture~~ that may be lawfully used as described under par. (a), but only for a specified period of time, after which the lawful use of such ~~building,~~ premises, temporary structure, or ~~fixture~~ must be discontinued without the payment of just compensation.

2. Subject to par. (a), an ordinance enacted under this section may not require the removal of a nonconforming ~~building, premises,~~ temporary structure, or ~~fixture~~ by an amortization ordinance.

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

62.23 (7) (h) *Nonconforming uses.* The continued lawful use of a building, ~~or the repair or maintenance of a building, premises, structure~~ other than a billboards or fixtures existing at the time of the adoption or amendment of a zoning ordinance may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises,

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billboards  
or fixtures

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~~structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use~~ continuance of the nonconforming use of a temporary structure may be prohibited. If the nonconforming use is discontinued for a period of 12 months, any future use of the ~~building, premises, temporary structure, or fixture~~ shall conform to the ordinance.

SECTION 10. 62.23 (7) (hc) 1. (intro.) of the statutes is amended to read:

62.23 (7) (hc) 1. (intro.) Restrictions that are applicable to damaged or destroyed nonconforming temporary structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration of a nonconforming temporary structure if the temporary structure will be restored to the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

SECTION 11. 62.23 (7) (hc) 1. a. of the statutes is amended to read:

62.23 (7) (hc) 1. a. The nonconforming temporary structure was damaged or destroyed on or after March 2, 2006.

SECTION 12. 62.23 (7) (hc) 2. of the statutes is amended to read:

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

SECTION 13. 62.23 (7) (hg) of the statutes <sup>1. and 2.</sup> are amended to read:

62.23 (7) (hg) Amortization prohibited. 1. In this paragraph, "amortization ordinance" means an ordinance that allows the continuance of the lawful use of a

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1 nonconforming ~~building, premises,~~ temporary ~~structure, or fixture~~ ✓ that may be  
 2 lawfully used as described under par. (h), but only for a specified period of time, after  
 3 which the lawful use of such ~~building, premises,~~ structure, ~~or fixture~~ ✓ must be  
 4 discontinued without the payment of just compensation.

5 2. Subject to par. (h), an ordinance enacted under this subsection may not  
 6 require the removal of a nonconforming ~~building, premises,~~ temporary ~~structure, or~~  
 7 ~~fixture~~ by an amortization ordinance.

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INS B ✓

1 ~~INS B~~

end of INS 3-15

INS 2-13

Sec. #; AM; 59.692(1s) (a) (intro.) and 1. ✓  
59.692(1s) letter

temporary ✓

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location and use that it had immediately before the damage or destruction occurred or impose any limits on the costs of the repair, reconstruction or improvement if all of the following apply:

temporary ✓

plain language

1. The nonconforming structure was damaged or destroyed after October 14, 1997.

INSERT A 2

60.61(5m) Sec. #; AM; 60.61(5m) (a) (intro.) and 1. ✓

temporary

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance adopted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

temporary ✓

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

Sec. #; AM; 61.351(5) and (5m) (a) (intro.) and 1. ✓  
61.351 NO (B) ✓

temporary

(5) Repair and expansion of existing structures permitted. Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on the effective date of an ordinance adopted under this section related to that structure.

temporary

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance adopted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006 (revis A)

Sec. #; AM; 62.231(5) and (5m) (a) (intro.) and 1. ✓

temporary

(5) Repair and expansion of existing structures permitted. Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on May 7, 1982 related to that structure.

INS B P. 1012 62.231

(5m)

temporary ✓

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair,

reconstruction, or improvement if all of the following apply:

~~BECAUSE~~ temporary  
¶1. The nonconforming structure was damaged or destroyed on or after March 2, 2006. ✓

(end ins B)

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1           59.692 (2m) (a) In this subsection, "nonconforming structure" means a  
2 structure that does not conform with a county shoreland zoning ordinance enacted  
3 under this section but that existed lawfully before the county shoreland zoning  
4 ordinance was enacted.

5           (b) A county may not enact, and a county, city, or village may not enforce, a  
6 provision in a county shoreland zoning ordinance that regulates the use, location,  
7 maintenance, expansion, replacement, <sup>repair, ✓</sup> or relocation of a nonconforming structure if  
8 that provision is more restrictive than the shoreland zoning standards for  
9 nonconforming structures promulgated by the department under this section.

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

16 (END)

✓  
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O-NOTE

Senator Lasee:  
This bill continues the current law practice of allowing a political subdivision to prohibit the continued use of a nonconforming temporary structure. Please let me know if this is not consistent with your intent.

AMZJ

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

LRB-1707/3dn  
MES:jld:ph

November 9, 2011

Senator Lasee:

This bill continues the current law practice of allowing a political subdivision to prohibit the continued use of a nonconforming temporary structure. Please let me know if this is not consistent with your intent.

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

**Shovers, Marc**

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**From:** Kovach, Robert  
**Sent:** Thursday, December 22, 2011 5:10 PM  
**To:** Kite, Robin; Shovers, Marc  
**Subject:** FW: Nonconforming structures bill  
**Attachments:** 1707.pdf

Dear Robin and Marc,

After further review, Frank wants to back away from the changes made to "Non-conforming use". It's ok for local control to continue as it is for on the non-conforming uses, but we wan't to focus more on standardizing the non-conforming structures-shoreline, and statewide.

Take a look at the pdf attachment and see if any of that helps clarify the direction that Frank wants to go with this bill.

Thanks again for all of your hard work. I'm sorry that I had to take it into a different direction.

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

The proposed bill draft (LRB 1707/3) does not accomplish the intent of the bill and needs the following changes:

1. The bill draft further confuses nonconforming uses with nonconforming structures. Nonconforming uses are different than nonconforming structures. The intent of the bill is NOT to make any changes to the nonconforming use sections in the statutes, so all changes to nonconforming use sections of the statutes should be eliminated. In addition, the word "temporary" should be removed from all sections of the bill.
  - a. Delete sections – 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 17, 18, 19
  - b. Keep only sections – 8, 10
  
2. The definition of "nonconforming structure" should be added to all major zoning sections in the statutes. (e.g., 59.69, 60.61, 62.23)
  - a. Add -- A "nonconforming structure" means 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.
  
  - b. Remove all references to billboard or fixtures. The definition of nonconforming structure above defines the scope of the proposed regulations.
  
3. Allow property owners to repair and maintain all nonconforming structures located anywhere in the community (i.e., in both shoreland areas and nonshoreland areas)
  - a. Add -- "An ordinance adopted under this section shall not prohibit or limit the value of repairs, maintenance, reconstruction, renovation or remodeling of a nonconforming structure in existence on the effect date of an ordinance adopted under this section." (Add to Wis. Stat. sec. 59.69, 60.61, 62.23)

59.69(10m)(a)

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

59.69(10m)(a)1.

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

59.692(1s)(a)

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location and use that it had immediately before the damage or destruction occurred or impose any limits on the costs of the repair, reconstruction or improvement if all of the following apply:

59.692(1s)(a)1.

1. The nonconforming structure was damaged or destroyed after October 14, 1997.

60.61(5m)(a)

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance adopted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

60.61(5m)(a)1.

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

61.351(5)

**(5) Repair and expansion of existing structures permitted.** Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on the effective date of an ordinance adopted under this section related to that structure.

61.351(5m)(a)

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance adopted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

61.351(5m)(a)1.

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

62.23(7)(hc)1.

1. (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

62.23(7)(hc)1.a.

a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

62.231(5)

**(5) Repair and expansion of existing structures permitted.** Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on May 7, 1982 related to that structure.

62.231(5m)(a)

(a) (intro.) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

62.231(5m)(a)1.

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.