

State of Wisconsin
2011 - 2012 LEGISLATURE



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LRB-17078

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from
DUE FRIDAY or sooner,
2011 BILL if possible

O-NOTE

In
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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), 59.692 (1s) (a) (intro.)
 3 and 1., 60.61 (5) (a) to (e), 60.61 (5m) (a) (intro.) and 1., 61.351 (5), (5m) (a)
 4 (intro.) and 1., 62.23 (7) (h), 62.23 (7) (hc) 1. (intro.), 62.23 (7) (hc) 1. a., 62.23
 5 (7) (hc) 2., 62.23 (7) (hg) 1. and 2. and 62.231 (5) and (5m) (a) (intro.) and 1.; and
 6 **to create** 59.692 (1p) and 59.692 (2m) of the statutes; **relating to:** certain
 7 shoreland zoning standards and ordinances that regulate ^{the repair and} nonconforming
 8 structures ~~and the construction of structures and buildings and limiting the~~
 9 ~~designation of a nonconforming use under local zoning ordinances.~~

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8
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the repair and
expansion of

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

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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 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.

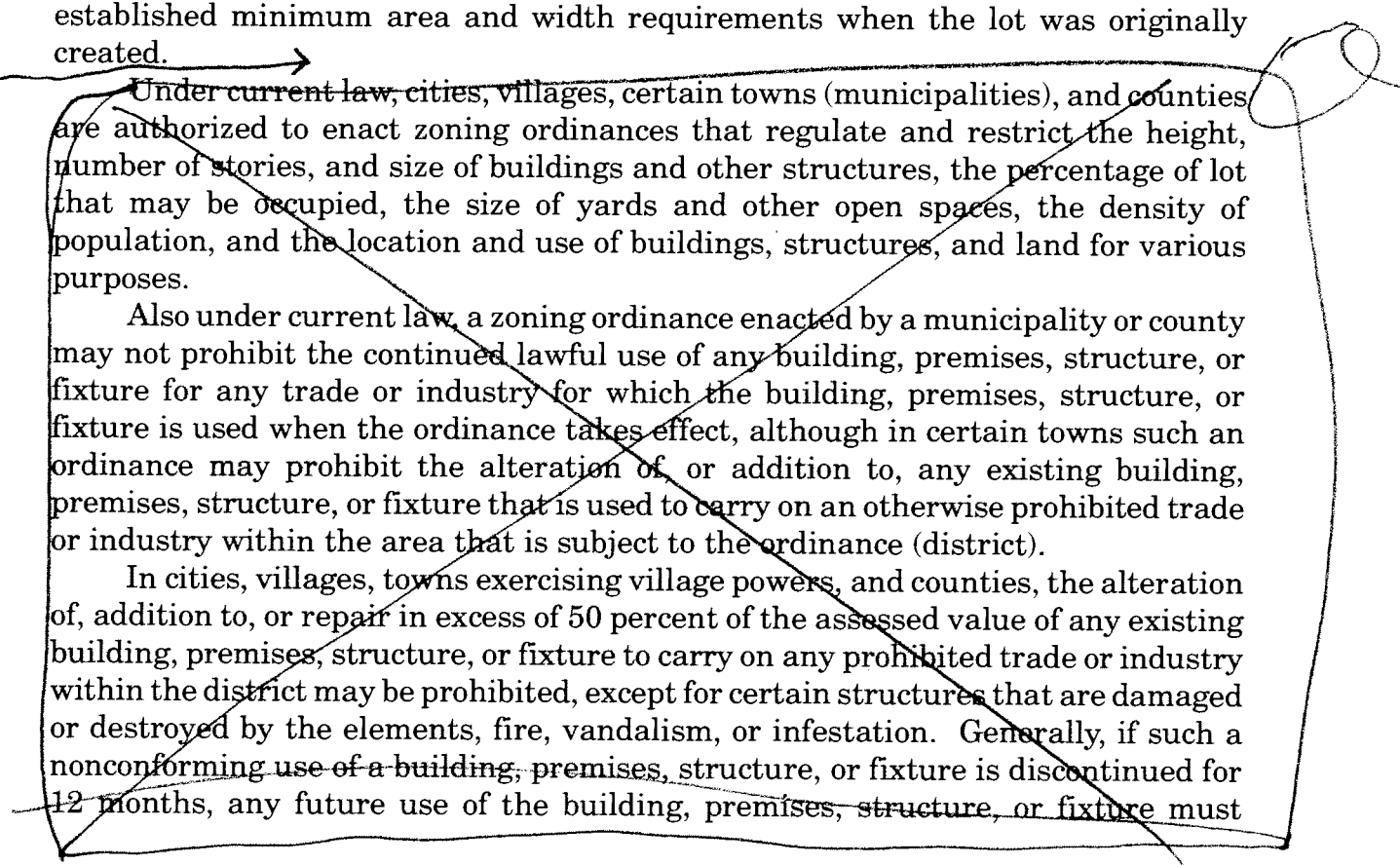
The bill also provides that DNR may not establish a shoreland zoning standard, and a county may not enact or enforce a shoreland zoning ordinance, that prohibits the construction of a structure or building on certain lots, parcels, or tracts (lots). Under the bill, a shoreland zoning standard or ordinance 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.

~~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 building, premises, structure, or fixture to carry on any prohibited trade or industry within the district may be prohibited, except for certain structures that are damaged or destroyed by the elements, fire, vandalism, or infestation. 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~~

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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 or the repair or maintenance of a building premises, structure other than billboard, 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, except for certain damaged or destroyed temporary structures. 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.

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, or the repair or maintenance of any building, premises, structure other than a billboard, 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:

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SECTION 2

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

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

16 59.69 (10) (c) The board shall prescribe a procedure for the annual listing of
 17 nonconforming uses of temporary structures, discontinued or created, since the
 18 previous listing and for all other nonconforming uses of temporary structures.
 19 Discontinued and newly created nonconforming uses of temporary structures shall
 20 be recorded with the register of deeds immediately after the annual listing.

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

22 59.69 (10) (e) 1. In this paragraph, "amortization ordinance" means an
 23 ordinance that allows the continuance of the lawful use of a nonconforming building,
 24 premises, temporary structure, or fixture that may be lawfully used as described
 25 under par. (a), but only for a specified period of time, after which the lawful use of

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or size

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An ordinance enacted under this section SECTION 4 may not prohibit, or limit the value of, repairs, maintenance, reconstruction, renovation, or remodeling of

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

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

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

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

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

15 59.69 (10m) (a) 1. The nonconforming temporary structure was damaged or
16 destroyed on or after March 2, 2006.

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

18 59.69 (10m) (b) An ordinance enacted under this section to which par. (a)
19 applies shall allow for the size of a temporary structure to be larger than the size it
20 was immediately before the damage or destruction if necessary for the temporary
21 structure to comply with applicable state or federal requirements.

22 **SECTION 8.** 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

INC 5-14

BILL

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 9. 59.692 (1s) (a) (intro.) and 1. of the statutes are amended to read:~~

11 ~~59.692 (1s) (a) (intro.) Restrictions that are applicable to damaged or destroyed~~
12 ~~nonconforming temporary structures and that are contained in an ordinance enacted~~
13 ~~under this section may not prohibit the restoration of a nonconforming temporary~~
14 ~~structure if the temporary structure will be restored to the size, subject to par. (b),~~
15 ~~location and use that it had immediately before the damage or destruction occurred~~
16 ~~or impose any limits on the costs of the repair, reconstruction or improvement if all~~
17 ~~of the following apply:~~

18 ~~1. The nonconforming temporary structure was damaged or destroyed after~~
19 ~~October 14, 1997.~~

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

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

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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.

INS
7-11

12 ~~SECTION 11. 60.61 (5) (a) to (e) of the statutes are amended to read:~~
13 ~~60.61 (5) (a) An ordinance adopted under this section may not prohibit the~~
14 ~~continued use of any building, premises, structure, or fixture, or the repair or~~
15 ~~maintenance of any building, premises, structure other than a billboard, or fixture,~~
16 ~~for any trade or industry for which the building, premises, structure, or fixture is~~
17 ~~used when the ordinance takes effect. An ordinance adopted under this section may~~
18 ~~prohibit the alteration of, or addition to, any existing building, premises, structure,~~
19 ~~or fixture used to carry on an otherwise prohibited trade or industry within the~~
20 ~~district, but the continuance of the nonconforming use of a temporary structure may~~
21 ~~be prohibited. If a use that does not conform to an ordinance adopted under this~~
22 ~~section is discontinued for a period of 12 months, any future use of the land, building,~~
23 ~~premises, temporary structure, or fixture shall conform to the ordinance.~~

24 (b) Except as provided in par. (d), immediately after the publication of a town
25 zoning ordinance, the town board shall provide for the compilation of a record of the

BILL**SECTION 11**

1 ~~present use of all buildings and premises temporary structures used for purposes not~~
2 ~~in conformity with the zoning ordinance. The record shall contain the names and~~
3 ~~addresses of the owner of the nonconforming use and any occupant other than the~~
4 ~~owner, the legal description of the land, and the nature and extent of the use of the~~
5 ~~land. The record shall be published in the town as a class 1 notice under ch. 985.~~
6 ~~Within 60 days after final publication, upon presentation of proof to the town board,~~
7 ~~errors or omissions in the record may be corrected. At the expiration of the 60-day~~
8 ~~period, the record shall be filed in the office of the town clerk after the record is first~~
9 ~~recorded in the office of the register of deeds. The record is prima facie evidence of~~
10 ~~the extent and number of nonconforming uses of temporary structures existing at the~~
11 ~~time the ordinance takes effect. Errors or omissions in the record shall be corrected~~
12 ~~by the town board upon petition of any citizen or by the board on its own motion. The~~
13 ~~decision of the board concerning errors or omissions is final.~~

14 (c) Immediately after the record of nonconforming uses of temporary structures
15 is filed with the town clerk, the clerk shall furnish the town assessor the record of
16 such nonconforming uses within the town. After the assessment for the following
17 year and each succeeding assessment, the town assessor shall file a written report,
18 certified by the board of review, with the town clerk listing all nonconforming uses
19 of temporary structures which have been discontinued since the prior assessment.
20 The town clerk shall record such discontinued nonconforming uses as soon as
21 reported by the assessor. In this paragraph, "town assessor" includes the county
22 assessor assessing the town under s. 70.99.

23 (d) Paragraphs (b) and (c) do not apply to towns issuing building permits as a
24 means of enforcing the zoning ordinance or of identifying nonconforming uses of

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1 ~~temporary structures or to towns which have established other procedures for this~~
2 ~~purpose.~~

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

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

12 **SECTION 12.** 60.61 (5m) (a) (intro.) and 1. of the statutes are amended to read:

13 60.61 (5m) (a) (intro.) Restrictions that are applicable to damaged or destroyed
14 nonconforming temporary structures and that are contained in an ordinance
15 adopted under this section may not prohibit the restoration of a nonconforming
16 temporary structure if the temporary structure will be restored to the size, subject
17 to par. (b), location, and use that it had immediately before the damage or destruction
18 occurred, or impose any limits on the costs of the repair, reconstruction, or
19 improvement if all of the following apply:

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

22 **SECTION 13.** 61.351 (5), (5m) (a) (intro.) and 1. of the statutes are amended to
23 read:

24 **61.351 (5) REPAIR AND EXPANSION OF EXISTING TEMPORARY STRUCTURES PERMITTED.**

25 Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not

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SECTION 13

1 ~~prohibit the repair, reconstruction, renovation, remodeling or expansion of a~~
 2 ~~nonconforming temporary structure in existence on the effective date of an ordinance~~
 3 ~~adopted under this section or any environmental control facility in existence on the~~
 4 ~~effective date of an ordinance adopted under this section related to that temporary~~
 5 ~~structure.~~

6 ~~(5m) (a) (intro.) Restrictions that are applicable to damaged or destroyed~~
 7 ~~nonconforming temporary structures and that are contained in an ordinance~~
 8 ~~adopted under this section may not prohibit the restoration of a nonconforming~~
 9 ~~temporary structure if the temporary structure will be restored to the size, subject~~
 10 ~~to par. (b), location, and use that it had immediately before the damage or destruction~~
 11 ~~occurred, or impose any limits on the costs of the repair, reconstruction, or~~
 12 ~~improvement if all of the following apply:~~

13 ~~1. The nonconforming temporary structure was damaged or destroyed on or~~
 14 ~~after March 2, 2006.~~

15 **SECTION 14.** 62.23 (7) (h) of the statutes is amended to read:

16 ~~62.23 (7) (h) *Nonconforming uses.* The continued lawful use of a building,~~
 17 ~~premises, structure, or fixture, or the repair or maintenance of a building, premises,~~
 18 ~~structure other than a billboard, or fixture, existing at the time of the adoption or~~
 19 ~~amendment of a zoning ordinance may not be prohibited although the use does not~~
 20 ~~conform with the provisions of the ordinance. The nonconforming use may not be~~
 21 ~~extended. The total structural repairs or alterations in such a nonconforming~~
 22 ~~building, premises, structure, or fixture shall not during its life exceed 50 percent of~~
 23 ~~the assessed value of the building, premises, structure, or fixture unless~~
 24 ~~permanently changed to a conforming use continuance of the nonconforming use of~~
 25 ~~a temporary structure may be prohibited. If the nonconforming use is discontinued~~

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1 ~~for a period of 12 months, any future use of the building, premises, temporary~~
2 ~~structure, or fixture shall conform to the ordinance.~~

3 **SECTION 15.** 62.23 (7) (hc) 1. (intro.) of the statutes is amended to read:

4 62.23 (7) (hc) 1. (intro.) Restrictions that are applicable to damaged or
5 destroyed nonconforming temporary structures and that are contained in an
6 ordinance enacted under this subsection may not prohibit the restoration of a
7 nonconforming temporary structure if the temporary structure will be restored to the
8 size, subject to subd. 2., location, and use that it had immediately before the damage
9 or destruction occurred, or impose any limits on the costs of the repair,
10 reconstruction, or improvement if all of the following apply:

11 **SECTION 16.** 62.23 (7) (hc) 1. a. of the statutes is amended to read:

12 62.23 (7) (hc) 1. a. The nonconforming temporary structure was damaged or
13 destroyed on or after March 2, 2006.

14 **SECTION 17.** 62.23 (7) (hc) 2. of the statutes is amended to read:

15 62.23 (7) (hc) 2. An ordinance enacted under this subsection to which subd. 1.
16 applies shall allow for the size of a temporary structure to be larger than the size it
17 was immediately before the damage or destruction if necessary for the temporary
18 structure to comply with applicable state or federal requirements.

19 **SECTION 18.** 62.23 (7) (hg) 1. and 2. of the statutes are amended to read:

20 62.23 (7) (hg) 1. In this paragraph, "amortization ordinance" means an
21 ordinance that allows the continuance of the lawful use of a nonconforming ~~building,~~
22 ~~premises, temporary structure, or fixture~~ that may be lawfully used as described
23 under par. (h), but only for a specified period of time, after which the lawful use of
24 such ~~building, premises, structure, or fixture~~ must be discontinued without the
25 payment of just compensation.

INS 7-11
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existence on the effective date of an ordinance enacted under this section related to that structure.

History: 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 a. 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3.; 2001 a. 50; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 97; 2009 a. 351.

SECTION 14. 60.61 (5m) (a) 1. of the statutes is repealed.

SECTION 15. 60.61 (5m) (a) 2. of the statutes is repealed.

SECTION 16. 60.61 (5m) (ae) of the statutes is created to read:

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

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~~**SECTION 17.** 61.351 (1) (a) of the statutes is renumbered 61.351 (1) (as).~~

~~**SECTION 18.** 61.351 (1) (ae) of the statutes is created to read:~~

~~61.351 (1) (ae) "Nonconforming structure" means a structure that does not conform with a zoning ordinance enacted under this section but that existed lawfully before the zoning ordinance was enacted.~~

SECTION 19. 62.23 (7) (hc) (title) of the statutes is amended to read:

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

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208; 2007 a. 20 ss. 1868 to 1873, 9121 (6) (a); 2007 a. 72; 2009 a. 28, 209, 276, 351, 372, 405; 2011 a. 32.

SECTION 20. 62.23 (7) (hc) 1. (intro.) of the statutes is renumbered 62.23 (7) (hc)

1m. and amended to read:

62.23 (7) (hc) 1m. ~~Restrictions that are applicable to damaged or destroyed~~ An ordinance enacted under this subsection may not prohibit, or limit based on cost, the repair, maintenance, reconstruction, renovation, remodeling, or expansion of a nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration of a nonconforming structure if the

~~structures~~ STRIKE



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Section #. 60.61 (5m) (b) of the statutes is amended to read:

60.61 (5m) (b) An ordinance adopted under this section to which par. ~~(a)~~^(am) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

History: 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 a. 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3.; 2001 a. 50; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 97; 2009 a. 351.

(end ins MES-A to Ins 7-10)

INS MES-B

Section #. 62.23 (7) (hc) 2. of the statutes is amended to read:

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

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208; 2007 a. 20 ss. 1868 to 1873, 9121 (6) (a); 2007 a. 72; 2009 a. 28, 209, 276, 351, 372, 405; 2011 a. 32.

(end ins MES-B to Ins 7-11)

INS 5-14
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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: in existence on the effective date of an ordinance enacted under this section related to that structure. Structure

History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28, 2009 a. 351, 372, 405; 2011 a. 32.

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

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

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

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

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

INS 6 0

end ins 5-14

SECTION 7. 59.692 (1s) (a) (intro.) of the statutes is renumbered 59.692 (1s) (am) and amended to read:

59.692 (1s) (am) (intro.) ~~Restrictions that are applicable to damaged or destroyed~~ An ordinance enacted under this section may not prohibit, or limit based on cost, the repair, maintenance, reconstruction, renovation, remodeling, or expansion of a 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

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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, or in the case of a structure located in shorelands on navigable waters, after October 14, 1997. *SNOW*

2. The structure must have been damaged or destroyed by violent wind, vandalism, fire, flood, ice, ~~shov~~, 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.

INS 4-25

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

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

(end ins 4-25)
History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28, 209, 351, 372, 405; 2011 a. 32.

INS 5-14

SECTION 2. 59.69 (10m) (a) (intro.) of the statutes is renumbered 59.69 (10m)

(am) and amended to read:

59.69 (10m) (am) ~~Restrictions that are applicable to damaged or destroyed~~ An ordinance enacted under this section may not prohibit, or limit based on cost, the repair, maintenance, reconstruction, renovation, remodeling, or expansion of a 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

~~apply in existence on the effective date of an ordinance enacted under this section related to that structure.~~

~~History: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 112; 2011 a. 6.~~

~~SECTION 8. 59.692 (1s) (a) 1. of the statutes is repealed.~~

~~SECTION 9. 59.692 (1s) (a) 2. of the statutes is repealed.~~

~~SECTION 10. 59.692 (1s) (ae) of the statutes is created to read:~~

~~59.692 (1s) (ae) In this subsection, "nonconforming structure" means a structure that does not conform with a zoning ordinance enacted under this section but that existed lawfully before the zoning ordinance was enacted.~~

~~SECTION 11. 59.692 (1s) (b) of the statutes is repealed.~~

INS 7-11

SECTION 12. 60.61 (5m) (title) of the statutes is amended to read:

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

History: 1983 a. 532, 538; 1985 a. 136, 316; 1991 a. 255; 1993 a. 246, 301, 400, 414, 491; 1995 a. 27 s. 9130 (4); 1995 a. 201; 1997 a. 3.; 2001 a. 50; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 97; 2009 a. 351.

SECTION 13. 60.61 (5m) (a) (intro.) of the statutes is renumbered 60.61 (5m) (am) and amended to read:

60.61 (5m) (am) ~~Restrictions that are applicable to damaged or destroyed~~ An ordinance enacted under this section may not prohibit, or limit based on cost, the repair, maintenance, reconstruction, renovation, remodeling, or expansion of a 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:

↓

✓ structure

INS 7-11
CONF

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: in existence on the effective date of an ordinance enacted under this subsection related to that structure. ✓

Structure

History: 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208; 2007 a. 20 ss. 1868 to 1873, 9121 (6) (a); 2007 a. 72; 2009 a. 28, 209, 276, 351, 372, 405; 2011 a. 32.

SECTION 21. 62.23 (7) (hc) 1. a. of the statutes is repealed. ✓

SECTION 22. 62.23 (7) (hc) 1. b. of the statutes is repealed. ✓

SECTION 23. 62.23 (7) (hc) 1e. of the statutes is created to read:

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

INS
MES-B

~~**SECTION 24.** 62.231 (1) (a) of the statutes is renumbered 62.231 (1) (as).~~

~~**SECTION 25.** 62.231 (1) (ae) of the statutes is created to read:~~

~~62.231 (1) (ae) "Nonconforming structure" means a structure that does not conform with a zoning ordinance enacted under this section but that existed lawfully before the zoning ordinance was enacted.~~

(end ins 7-11)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1707/4dn
RNK&MES:sbb&jld:ph

date

Senator Lasee: ✓

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 ^(=m) in the "major zoning sections" specify ss. 59.69, 60.61, and 62.23. These statutes do not ~~include~~ shorelands areas, which are addressed in s. 59.692 (1s), or wetlands in shorelands areas, which are in ss. 61.351 (5) and (5m) ^{covered} and 62.231 (5) and (5m).

cover nonconforming structures in

Marc E. Shovers
Managing Attorney
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RNK

NO
Consequently, this draft does not change current law under ss. 61.351(5) and (5m) and 62.231(5) and (5m). I is this consistent with your intent?

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

LRB-1707/4dn
RNK&MES:sbb&jld:rs

January 18, 2012

Senator Lasee:

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
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Nonconforming Structures

Changes to LRB 3146/3dn

Drafter's Note – The intent is to have the maintenance/repair sections of the bill apply in ss. 61.351(5) and (5m) and 62.231(5) and (5m).

The bill needs the following changes:

1. Changes to s. 59.69(10m) (Sections 1 through 6 of the bill) – Please do not make changes to 59.69(10m), which allows owners of nonconforming structures to rebuild, make repairs, etc. if the structure is destroyed by natural disaster. This is a separate body of law and we are not trying to make changes in this area. The purpose of the bill is to allow owners of such nonconforming structures to maintain and repair nonconforming structures that are not destroyed by natural disaster.
 - a. Please delete “expansion” from line 7. Communities often prohibit the expansion of nonconforming structures unless a variance is obtained. We don't want to change this.
 - b. Create a separate section under 59.69(10) titled “Repair and Maintenance of Certain Nonconforming Structures”
 - c. Sections 3, 4 and 6 – do not repeal these sections of s. 59.69(10m)
 - d. The actual language used in Section 2 of the bill is fine (except for the word “expansion”), but it should go into a separate section of the statutes, rather than inserting it into the current section 59.69(10m).
2. Definition of “nonconforming structure” (Section 5) – This definition is too broad. As drafted, it would seemingly apply to (a) all structures, rather than dwellings and buildings (which is not the intent of the bill), and (b) structures that are nonconforming because they violate a use provision in the zoning ordinance (i.e., nonconforming uses) (which is not the intent of the bill).
 - a. 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.”
3. Section 7 of the bill is fine
4. Section 8 – Subsection (a) – the definition of “nonconforming structure” is too broad. See comments above. Subsections (b) and (c) are fine.
5. Changes to s. 60.61(5m) (Sections 10 through 14 of the bill) – Please do not make changes to 60.61(5m), which allows owners of nonconforming structures to rebuild, make repairs, etc. if the structure is destroyed by natural disaster. This is a separate body of law and we are not trying to make changes in this area. The purpose of the bill is to allow owners of such nonconforming structures to maintain and repair nonconforming structures that are not destroyed by natural disaster.

- a. Please delete "expansion" from line 8. Communities often prohibit the expansion of nonconforming structures unless a variance is obtained. We don't want to change this
 - b. Create a separate section under 60.61 titled "Repair and Maintenance of Certain Nonconforming Structures"
 - c. Sections 11 and 12 – do not repeal these sections of s. 60.61(5m)
 - d. The actual language used in Section 10 of the bill is fine (except for the word "expansion"), but it should go into a separate section of the statutes, rather than inserting it into the current section 60.61(5m).
6. Definition of "nonconforming structure" (Section 13) – This definition is too broad. As drafted, it would seemingly apply to (a) all structures, rather than dwellings and buildings (which is not the intent of the bill), and (b) structures that are nonconforming because they violate a use provision in the zoning ordinance (i.e., nonconforming uses) (which is not the intent of the bill).
- a. 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."
7. Changes to s. 62.23(7)(hc) (Sections 15 through 20 of the bill) – Please do not make changes to 62.23(7)(hc), which allows owners of nonconforming structures to rebuild, make repairs, etc. if the structure is destroyed by natural disaster. This is a separate body of law and we are not trying to make changes in this area. The purpose of the bill is to allow owners of such nonconforming structures to maintain and repair nonconforming structures that are not destroyed by natural disaster.
- a. Please delete "expansion" from line 10. Communities often prohibit the expansion of nonconforming structures unless a variance is obtained. We don't want to change this
 - b. Create a separate section under 62.23(7) titled "Repair and Maintenance of Certain Nonconforming Structures"
 - c. Sections 17 and 18 – do not repeal these sections of s. 62.23(7)
 - d. The actual language used in Section 16 of the bill is fine (except for the word "expansion"), but it should go into a separate section of the statutes, rather than inserting it into the current section 62.23(7)(hc).
8. Definition of "nonconforming structure" (Section 19) – This definition is too broad. As drafted, it would seemingly apply to (a) all structures, rather than dwellings and buildings (which is not the intent of the bill), and (b) structures that are nonconforming because they violate a use provision in the zoning ordinance (i.e., nonconforming uses) (which is not the intent of the bill).
- a. 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."

Shovers, Marc

From: Kovach, Robert
Sent: Wednesday, January 25, 2012 2:09 PM
To: Shovers, Marc; Kite, Robin
Subject: shoreland zoning/nonconforming structures bill
Attachments: 1707.4.pdf

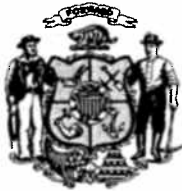
Dear Marc & Robin,

New instructions for the draft of 1707. I will send the jacket back to lrb.

Senator is worried we won't get this done on time, can we get a rush on this?

Thanks,

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



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1707/5
RNK&MES:sbb&jld:rs

RMR

2011 BILL

D-note

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4

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

✓ other than an ordinance regulating a nonconforming use,

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.

✓ dwelling or building

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 ~~or expansion~~ 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*

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

nonconforming use

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

1

SECTION 1.059.69 (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: ~~4(b)~~

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, ^{or} 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)~~ (a) of the statutes is created to read:

18 ~~59.69 (10m)~~ (a) In this subsection, "nonconforming structure" means a
19 ~~structure~~ ^{dwelling or building} 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

plain

plain

move

nonconforming structures

regulating a nonconforming use,

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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~~ ^{dwelling or building} 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.

✓ other than a ordinance regulating a nonconforming use,
county shoreland

BILL

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

60.61 (5m) (title) ~~RESTORATION OF CERTAIN NONCONFORMING~~ NONCONFORMING
STRUCTURES

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

~~60.61 (5m) (a) Restrictions that are applicable to damaged or destroyed~~ An
ordinance enacted under this section may not prohibit, or limit based on cost, the
repair, maintenance, reconstruction, renovation, ^{or} remodeling ~~or expansion~~ of a

~~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:

~~structure in existence on the effective date of an ordinance enacted under this section~~
related to that structure.

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

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

~~SECTION 13.~~ 60.61 (5m) (a) of the statutes is created to read:

~~60.61 (5m) (a)~~ In this subsection, "nonconforming structure" means a
~~structure~~ ^{dwelling or building} that does not conform with a zoning ordinance enacted under this section
but that existed lawfully before the zoning ordinance was enacted.

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

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

Plain

move

nonconforming structures.

CS

other than an ordinance regulating a nonconforming use,

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 1a. and amended to read:

8 ~~62.23 (7) (hc) 1a. (intro.) of the statutes is renumbered 62.23 (7) (hc) 1a. and amended to read:~~ Restrictions that are applicable to damaged or destroyed ^{plain}

9 ordinance enacted under this subsection may not prohibit, or limit based on cost, the
10 repair, maintenance, reconstruction, renovation, ^{or} remodeling ~~or expansion~~ of a ^{plain}

11 nonconforming structures and that are contained in an ordinance enacted under this ^{keep}

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) ^(hb) ~~(hc)~~ of the statutes is created to read:

21 62.23 (7) ^(hb) ~~(hc)~~ In this paragraph, "nonconforming structure" means a ^{structures,}

22 ~~structure~~ ^{dwelling or building} that does not conform with a zoning ordinance ^{other than an ordinance regulating} enacted under this

23 subsection but that existed lawfully before the zoning ordinance was enacted. ^{a nonconforming use,}

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

BILL

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

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1707/5dn
RNK&MES:sbb&jld:rs

date

Senator Lasee: ✓

Please review this version of the draft to ensure that it meets your intent. I've substituted the phrase "a dwelling or building" for the word "structure" although I'm not sure what this phrase excludes that "structure" would include. I've also changed the definition of "nonconforming structure" in a way that I believe is consistent with your intent. I did not, however, use the phrase "development standards" as that phrase is not used in the statutes and seems ambiguous. Let me know if the the definition in the bill does not meet your intent. # *

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

not

In addition, "dwelling or building" implies that a dwelling could be something other than a building. I'm not sure what this could be, other than perhaps a tent. You may wish to consider using the word "building."

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

LRB-1707/5dn
MES:sbb&jld:rs

January 27, 2012

Senator Lasee:

Please review this version of the draft to ensure that it meets your intent. I've substituted the phrase "a dwelling or building" for the word "structure," although I'm not sure what this phrase excludes that "structure" would include. In addition, "dwelling or building" implies that a dwelling could be something other than a building. I'm not sure what this could be, other than perhaps a tent. You may wish to consider using the word "building."

I've also changed the definition of "nonconforming structure" in a way that I believe is consistent with your intent. I did not, however, use the phrase "development standards" as that phrase is not used in the statutes and seems ambiguous. Let me know if the the definition in the bill does not meet your intent.

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

Nonconforming Structures

Changes to LRB 1707/5

Response to Drafter's Note – The intent is to have the bill specifically identify both dwellings and other buildings. Without these limitations, "structure" has been interpreted to mean anything with form or shape (e.g., billboards). Please draft the definition of "nonconforming structure" to include "dwellings and other buildings."

The bill needs the following changes:

1. Definition of "nonconforming structure" (Sections 1, 3, 4, 5) – This definition does not accomplish the intent of the author. As drafted, a "nonconforming structure" would be required to conform to nonconforming use regulations in order to qualify for the maintenance and repair protections in the bill. This will create further confusion between nonconforming structures and nonconforming uses, which is the opposite intent of this bill.
 - 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."

Shovers, Marc

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."

this was in red

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.”

The sender's comments that are in red in the email:

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. (red)

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." (red)

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

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. (red)

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

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. (red)

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

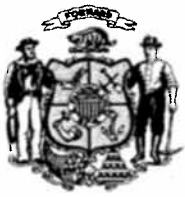
Dear Marc,

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.

Thanks,

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



fmr

2011 BILL

WANTED,
Friday

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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

BILL

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, ~~rather 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, ^{one or more of the dimensional requirements in} other than an ordinance regulating a ~~structure~~ ^{structure} that existed lawfully before the current zoning ordinance was enacted, but that

INS 2-27 ✓

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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
a

BILL

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~~nonconforming use, enacted under this subsection but that existed lawfully before
the zoning ordinance was enacted.~~

2. An ordinance enacted under this subsection[✓] 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 an ordinance enacted under this subsection[✓] related to that structure.

(END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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

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



b. ^{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 ^{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 ins 4-23)