

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB183)

Received: **10/31/2013** Received By: **rkite**
 Wanted: **As time permits** Same as LRB:
 For: **Robert Cowles (608) 266-0484** By/Representing: **Toni Herkert**
 May Contact: Drafter: **rkite**
 Subject: **Nat. Res. - wet/shore/flood** Addl. Drafters:
 Extra Copies:

Submit via email: **YES**
 Requester's email: **Sen.Cowles@legis.wisconsin.gov**
 Carbon copy (CC) to: **toni.herkert@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Changes to shoreland zoning requirements for annexed or incorporated areas

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 11/1/2013			_____			
/P1	rkite 11/7/2013	wjackson 11/7/2013	jmurphy 11/1/2013	_____	srose 11/1/2013		
/P2	rkite 11/8/2013		rschluet 11/7/2013	_____	lparisi 11/7/2013		
/1		evinz	jmurphy	_____	srose	srose	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		11/8/2013	11/8/2013	_____	11/8/2013	11/8/2013	

FE Sent For:

<END>

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Extra Copies: RNK

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See attached

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/P1	rkite 11/7/2013	wjackson 11/7/2013	jmurphy 11/1/2013	_____	srose 11/1/2013		
/P2			rschluet 11/7/2013	_____	lparisi 11/7/2013		

1 eev 11/8/13
1 eev 11/8/13
gm 11/8

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<END>

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Extra Copies: EVM

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No specific pre topic given

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Instructions:

See attached

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/?	rkite 11/1/2013			_____			
/P1		scalvin 11/1/2013	jmurphy 11/1/2013	_____	srose 11/1/2013		

FE Sent For:

/p2 Wlj 11/7
S
11/7/13
<END>

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Pre Topic:

No specific pre topic given

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Changes to shoreland zoning requirements for annexed or incorporated areas ✓

Instructions:

See attached

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1?	rkite	/PI SAC 11/01/2013	<i>Jim</i> 11/1/13	<i>Justin</i> 11/1			
FE Sent For:							

<END>

Kite, Robin

From: Herkert, Toni
Sent: Thursday, October 31, 2013 9:46 AM
To: Kite, Robin
Cc: Herkert, Toni
Subject: AMENDMENT to SB 183
Attachments: Shoreland Amendment to SB 183 AB 75 draft 2.doc

Importance: High

Hi Robin,

Last week, I sent you a heads up on a potential amendment for SB 183. After several negotiations, we have final language agreed to in a compromise. Senator Cowles would like to have this drafted ASAP. We would like to have it back in the office later this afternoon or tomorrow am. The Senate would like to schedule this bill for Tuesday and Rob needs to review the amendment before he feels comfortable with the bill being scheduled. Please give me a call if you have questions or would like to talk through the issue.

Thanks,

Toni

Toni R. Herkert
Policy Analyst
Office of State Senator Rob Cowles
2nd Senate District
(608) 266-0484 or Toll-Free: 800-334-1465
State Capitol
PO Box 7882
Madison, WI 53707

Proposed Amendment to AB 75/SB 183

Background:

- 1. Setbacks. NR 151.121(5)(d) requires that any impervious surface (roads, buildings, parking lots, et al) be set back not less than 50 feet from lakes. It is unclear if this setback is triggered if less than one acre of land is disturbed.

per
Toni
ignore

To avoid any possible situation where land annexed or incorporated could be developed too close to a navigable water body, we suggest amending the bill to require land located adjacent to a water body that has been annexed or incorporated to maintain a setback from the OHWM that is equal to or greater than;

New Concept – Modifies NR 151 language to make certain “all new construction in annexed or incorporated areas shall be setback at least 50 feet from the ordinary high water mark of a navigable water body unless the municipality has a differing standard or an existing pattern of developing exists.”

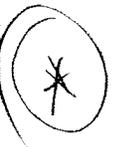
115

New Concept = Taken directly from NR 115 – “Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.”

non-
accessory
structure

Note: This section should only apply to principal structures

New Concept – Add definition of existing development pattern from NR 115 - “Existing development pattern” means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.



New Concept – In annexed and incorporated areas, shoreland setback regulations do not apply to manmade constructed drainage ditches, runoff detention basins or ponds if they are not hydrologically connected to a navigable water body.

Natural (non-made made)

New Concept – Cities and villages shall maintain a vegetative buffer zone that extends from the ordinary high water mark of a navigable water body to a minimum of 35 feet inland. Within the vegetative buffer zone, cities and villages shall allow no more than 30 feet in any 100 feet of land to be clear cut to provide an access corridor to the water. Invasive species may also be removed from the buffer zone. When removing any other vegetation, the property owner shall place an emphasis on maintaining trees to protect the land from erosion.

prop
owner
area of
vegetation

could be
less if
invasive
species

Meet or exceed these standards

lot -
100 ft. width

Kite, Robin

From: Herkert, Toni
Sent: Thursday, October 31, 2013 10:20 AM
To: Kite, Robin
Subject: RE: AMENDMENT to SB 183

I cut and pasted some definitions you may want for the amendment. Hope this helps and sorry to try to place code in the statutes, I know it is a drafting problem.

Chapter NR 115 WISCONSIN'S SHORELAND PROTECTION PROGRAM

"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:

NR 115.03(5)(a)(a) Such lands are not adjacent to a natural navigable stream or river;

NR 115.03(5)(b)(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

NR 115.03(5)(c)(c) Such lands are maintained in nonstructural agricultural use.

Chapter NR 118 STANDARDS FOR THE LOWER ST. CROIX NATIONAL SCENIC RIVERWAY

(34) "Principal structure" means the main building or other structure on a lot that is utilized for the property's principal use. The term "principal structure" includes attached garages and porches

Note: NR 118 is another zoning code for a specific area of the state

Hope this helps!

Toni
Toni R. Herkert
Policy Analyst
Office of State Senator Rob Cowles
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Kite, Robin

From: Herkert, Toni
Sent: Thursday, October 31, 2013 12:06 PM
To: Kite, Robin
Subject: Shoreland Diagram

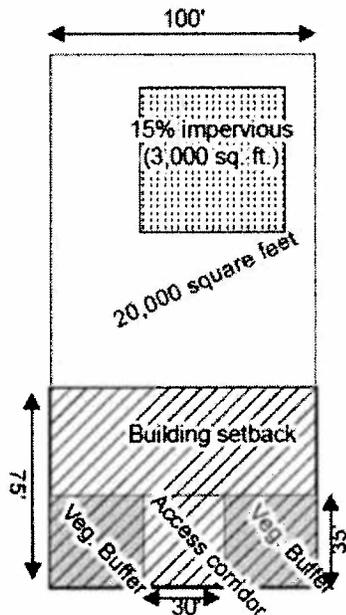
Importance: High

Robin,

I finally found a diagram, DNR has removed all diagrams from their website, so it took me some time to find one. This is from Dane County, but it is describing the minimum standards in NR 115 – don't worry about the impervious surface area diagram. The sketch has the water at the bottom with a 30 ft access corridor (this is the area that can be clear cut), a 75 foot setback (which in the bill would be decreased to 50 feet) and the 35 foot buffer area (as the first or waterward portion of the setback). As you can see, there are vegetated areas within the 35 foot buffer, but outside the 30 ft access corridor.

I hope this helps, call with questions,
Thanks,
Toni

NR 115 Minimum Standards Unsewered Lot w/i 300' of OHWM



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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE SUBSTITUTE AMENDMENT ,
TO SENATE BILL 183**

D-Note

1 AN ACT ^{gen cat} relating to: shoreland zoning ordinances that apply to shoreland
2 areas that are annexed by a city or village or that are part of a town incorporated
3 as a city or village.

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

INS. 1-4 → 4 SECTION 1. 59.692 (8) of the statutes is created to read:

5 59.692 (8) (a) In this subsection:

6 1. "County shoreland area" means a shoreland area that prior to annexation by
7 a city or village was subject to a county shoreland zoning ordinance or that prior to
8 incorporation as a city or village was part of a town that was subject to a county
9 shoreland zoning ordinance.

10 2. "Principal building" means the main building or structure on a single lot or
11 parcel of land and includes any attached garage or attached porch.

1 (b) No city or village may annex a county shoreland area unless the city or
2 village enacts, prior to annexation, an ordinance that applies to annexed county
3 shoreland areas, except as provided in par. (f).⁴

4 (c) A city or village that is incorporated under s. 66.0203, 66.0211, 66.0213, or
5 66.0215⁴ shall, on or before the first day of the 7th month beginning after the effective
6 date of this subsection⁴ [LRB inserts date], enact an ordinance that applies to any
7 county shoreland area that prior to incorporation was subject to a county shoreland
8 ordinance, except as provided in par. (f).⁴

9 (d) A city or village ordinance enacted under par. (b) or (c) shall include all of
10 the following:

11 1. A provision establishing a shoreland setback area of at least 50 feet from the
12 ordinary high water mark⁴, except as provided in subd. 2.

13 2. A provision authorizing construction or placement of a principal building
14 within the shoreland setback area established under subd. 1. if all of the following
15 apply:

16 a. The principal building is constructed or placed on a lot or parcel of land that
17 is immediately adjacent on each side to a lot or parcel of land containing a principal
18 building.

19 b. The principal building is constructed or placed within a distance equal to the
20 average setback of the principal building on the adjacent lots or 35 feet from the
21 ordinary high water mark, whichever distance is greater.

22 3. A provision requiring a person who is authorized under subd. 2. to construct
23 or place a building on property within a shoreland setback area to preserve or
24 establish a vegetative buffer zone along the entire shoreline of the property and
25 extending 35 feet inland from the ordinary high water mark of the navigable water,

1 unless the removal of invasive species results in a vegetative buffer zone extending
2 less than 35 feet inland from the ordinary high water mark of the navigable water.

3 4. A provision allowing a person who is required to preserve or establish a
4 vegetative buffer zone under subd. 3. to remove all of the vegetation in a part of that
5 zone in order to establish a viewing or access corridor if the shoreline frontage of the
6 corridor is no greater than 30 feet wide and the corridor extends no more than 35 feet
7 inland from the ordinary high water mark.

8 5. A provision that requires a person who is authorized to establish a viewing
9 or access corridor as provided under subd. 4 to avoid the removal of trees in the
10 vegetative buffer zone to the extent practicable in order to protect the land from
11 erosion.

12 (e) Provisions of a county shoreland zoning ordinance that were applicable
13 prior to incorporation to any shoreland area that is part of a town that incorporates
14 as a city or village under s. 66.0203, 66.0211, 66.0213, or 66.0215 shall continue in
15 effect and shall be enforced after incorporation by the incorporated city or village
16 until the effective date of an ordinance enacted by the city or village under par. (c).

17 (f) An ordinance enacted under par. (b) or (c) does not apply to the shoreland
18 of an artificially constructed drainage ditch or stormwater retention basin if the
19 drainage ditch or retention basin is not hydrologically connected to a natural
20 navigable water body.

INS. →
3-20 21

(END)

D-Note

SENATE BILL 183

INS
3-20

1 sub. (6) the governing body shall first review the reasons given by the department
2 that the proposed annexation is against the public interest. ~~Subject to s. 59.692 (7),~~
3 ~~an~~ An ordinance under this subsection may temporarily designate the classification
4 of the annexed area for zoning purposes until the zoning ordinance is amended as
5 prescribed in s. 62.23 (7) (d). Before introduction of an ordinance containing a
6 temporary classification, the proposed classification shall be referred to and
7 recommended by the plan commission. The authority to make a temporary
8 classification is not effective when the county ordinance prevails during litigation as
9 provided in s. 59.69 (7).

10 ^x
SECTION 11. 66.0219 (6) of the statutes is amended to read:

11 66.0219 (6) TEMPORARY ZONING OF AREA PROPOSED TO BE ANNEXED. An interim
12 zoning ordinance to become effective only upon approval of the annexation at the
13 referendum election may be enacted by the governing body of the city or village.
14 ~~Subject to s. 59.692 (7),~~ the The ordinance may temporarily designate the
15 classification of the annexed area for zoning purposes until the zoning ordinance is
16 amended as prescribed in s. 62.23 (7) (d). The proposed interim zoning ordinance
17 shall be referred to and recommended by the plan commission prior to introduction.
18 Authority to make a temporary classification is not effective when the county zoning
19 ordinance prevails during litigation as provided in s. 59.69 (7).

20 ^x
SECTION 12. 66.0223 (1) of the statutes is amended to read:

21 66.0223 (1) In addition to other methods provided by law and subject to sub.
22 (2) and ss. ~~59.692 (7),~~ 66.0301 (6) (d), and 66.0307 (7), territory owned by and lying
23 near but not necessarily contiguous to a village or city may be annexed to a village
24 or city by ordinance enacted by the board of trustees of the village or the common
25 council of the city, provided that in the case of noncontiguous territory the use of the

SENATE BILL 183

SECTION 12

1 territory by the city or village is not contrary to any town or county zoning regulation.
 2 The ordinance shall contain the exact description of the territory annexed and the
 3 names of the towns from which detached, and attaches the territory to the village or
 4 city upon the filing of 7 certified copies of the ordinance in the office of the secretary
 5 of state, together with 7 copies of a plat showing the boundaries of the territory
 6 attached. Two copies of the ordinance and plat shall be forwarded by the secretary
 7 of state to the department of transportation, one copy to the department of
 8 administration, one copy to the department of natural resources, one copy to the
 9 department of revenue and one copy to the department of public instruction. Within
 10 10 days of filing the certified copies, a copy of the ordinance and plat shall be mailed
 11 or delivered to the clerk of the county in which the annexed territory is located.
 12 Sections 66.0203 (8) (c) and 66.0217 (11) apply to annexations under this section.

SECTION 13. Nonstatutory provisions.

13
 14 (1) ^A Shoreland ~~territory~~ ^{area} in a city or village that was made subject to a county
 15 shoreland zoning ordinance under section 59.692 (7) (a), 2011 stats., section 59.692
 16 (7) (ad), 2011 stats., section 66.0203 (10), 2011 stats., section 66.0213 (2) (b), 2011
 17 stats., section 66.0215 (7) (b), 2011 stats., or section 66.0216 (8) (b), 2011 stats., is not
 18 subject to that county shoreland zoning ordinance on or after the effective date of this
 19 subsection.

(END)

END
INS
3-2

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

LRBs0170/?dn

RNK:f:...

SM

p1

-date-

Toni Herkert:

This draft is in preliminary form to facilitate any redrafting that may be needed. Please note that the draft reflects my understanding of the intent of the request based not only on the written instructions but also on the various telephone conversations that we had about the draft. Consequently some of the requested language in your written instructions are not included in this substitute amendment. For example, the draft does not include a definition of "existing development pattern" because that definition is not necessary to accomplish what I understand to be the objective of this substitute amendment. Please feel free to give me a call if you think that I have misunderstood your objective.

Please also note that the definition of "principal building" in this substitute amendment specifically includes an attached garage or attached porch. You may want to modify this definition so that it includes other types of attached accessory structures such as a deck or a carport.

You had asked for language that would require a property owner to place an emphasis on maintaining trees to protect land from erosion. I have, instead, drafted a provision requiring an owner to maintain trees to "the extent practicable". Does this meet your intent?

tr

Please also note that under this substitute amendment, a shoreland ^{area} that was annexed or incorporated before the date on which this bill, if enacted, will become law, will not be subject to a county shoreland ordinance under s. ~~29.59~~ or to an ordinance enacted in accordance with the provisions of this substitute amendment. Does this meet your intent?

*

59.692

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0170/P1dn
RNK:sac:jm

November 1, 2013

Toni Herkert:

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You had asked for language that would require a property owner to place an emphasis on maintaining trees to protect land from erosion. I have, instead, drafted a provision requiring an owner to maintain trees to "the extent practicable." Does this meet your intent?

Please also note that under this substitute amendment, a shoreland area that was annexed or incorporated before the date on which this bill, if enacted, will become law, will not be subject to a county shoreland ordinance under s. 59.692 or to an ordinance enacted in accordance with the provisions of this substitute amendment. Does this meet your intent?

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Herkert, Toni
Sent: Tuesday, November 05, 2013 2:47 PM
To: Kite, Robin
Cc: Herkert, Toni
Subject: RE: AMENDMENT to SB 183

Importance: High

Robin –

Thanks for working so hard to get the Senate Sub for SB 183 completed and to our office in a very timely manner. After review of the draft amendment, I would like to request a couple of modifications which include;

- ✓ Page 2, lines 1-14 – Replace this section and specify that “the county shoreland zoning ordinance continues to apply after annexation unless the municipality enacts, administers and enforces a zoning ordinance applicable to the annex area that complies with the standards outlined in the proposed amendment. (As drafted, enacting an ordinance for the annexed shoreland area is a precondition to annexation. The intent of the bill was not to condition annexation or incorporation, but to provide standards for shoreland construction in annexed or incorporated areas.”]
- Page 2, lines 16-20 – This section applies the new standards retroactively to existing land that was incorporated since April 30, 1994, the intent of the compromise language was to have a similar section drafted that applies the new standards retroactively to existing land that was annexed since May 7, 1982.
- 70 • Page 3, lines 10-13 – Should be revised to read “A provision requiring a person who is authorized under subd. 1 or 2 to construct or place a building on property within a shoreland setback area to preserve or establish maintain a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high water mark of the navigable water.”
- Page 3, lines 14-15 - Modify to state; “Within this vegetative buffer zone, a person may remove invasive species and dead or diseased vegetation.”
- ✓ Page 3, lines 19-20 - Modify to state; “...corridor is no greater than 30 feet wide for every 100 feet of shoreland frontage and the corridor extends not more than 35 feet inland from the ordinary high water mark.”
- ✓ Page 4, lines 1-5 – I think we need this same provision for annexations too. This section applies to incorporations that have shoreland zoning ordinance in effect now because the incorporations took place after April 30, 1994. A previous section on page 2 applies new standards retroactively and this section provides that although new ordinances adopted under this new statutory language can apply retroactively, the current county shoreland ordinance standards apply until the effective date of an ordinance enacted by the city or village under par. (c). Current provisions of a county shoreland zoning ordinance that are applicable in annexed areas should also continue in effect until the city or village adopts a new ordinance under these provisions.
- ✓ Page 4 line 7 – add pond to listing stating, “...of an artificially constructed drainage ditch, pond or stormwater retention basin if the”
- ✓ Page 4 line 8 – add pond to the listing stating “...drainage ditch, pond or stormwater retention basin is not hydrologically connected to a natural”

I hope that these requested changes can be made to the Senate Substitute Amendment. If you should have questions, please feel free to give me a call at your convenience.

Thanks again,

Toni

Toni R. Herkert
Policy Analyst
Office of State Senator Rob Cowles

– Give 6 months –
shall include “at least” pg. 2 line 71
1

if central
to
need of
x
x