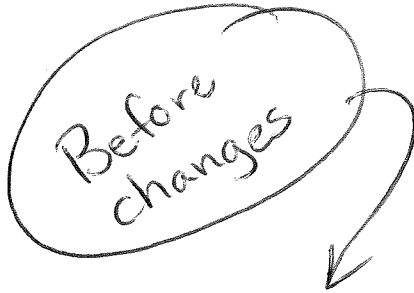




State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0222/1
EHS/MES/GMM:klm

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 582**



January 19, 2016 – Offered by Representative JARCHOW.

1 **AN ACT** *to renumber* 66.1001 (2m), 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22
2 (2) (a) 3.; *to renumber and amend* 70.32 (2) (c) 4., 706.22 (2) (b) and 706.22
3 (3); *to amend* 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2.,
4 59.692 (1k) (a) 4., 59.692 (1k) (b), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am),
5 62.23 (7) (d) 4., 66.1001 (2m) (title), 66.1001 (4) (f), 66.10015 (title), 66.10015 (1)
6 (a), 74.485 (4) (a), 227.57 (10), 236.45 (2) (am) (intro.), 706.22 (title), 706.22 (2)
7 (title) and 706.22 (2) (a) (intro.); and *to create* 59.692 (1h), 59.692 (1k) (a) 6.,
8 59.692 (1p), 59.692 (7), 66.1001 (2m) (b), 66.10015 (1) (as), 66.10015 (1) (bs),
9 66.10015 (3), 66.1036, 70.32 (2) (c) 4. b., 227.137 (3) (g), 227.445, 227.57 (11),
10 700.28, 706.22 (2) (a) 2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and
11 895.463 of the statutes; **relating to:** government actions affecting rights to real
12 property; the regulation of shoreland zoning; the contents of an economic
13 impact analysis of a proposed administrative rule; the substitution of hearing

1 examiners in Department of Natural Resources and Department of
2 Agriculture, Trade and Consumer Protection contested cases; the standard for
3 judicial review of a state agency action or decision affecting a property owner's
4 use of the owner's property; and the property tax treatment of unoccupied
5 property.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This substitute amendment makes various changes to the regulation of property rights and shoreland zoning, requires an economic impact analysis of a proposed administrative rule to analyze any limitations that the rule would place on the free use of private property, allows for the substitution of hearing examiners in contested case hearings, and requires a court to accord no deference to a state agency's interpretation of law when reviewing an agency action or decision that restricts a property owner's free use of the owner's property.

PROPERTY RIGHTS

PROCEDURAL PROTECTIONS

Restrictions on sale, purchase, development, or occupancy of real property

This substitute amendment does all of the following:

1. Prohibits a local governmental unit from requiring a person to take certain actions with respect to real property, or pay a related fee, before purchasing, taking title to, or occupying the property.
2. Provides that a local governmental unit may require a real property owner to take certain actions with respect to property that are not related to purchasing the property.
3. Invalidates any ordinance, resolution, or policy currently in effect that is inconsistent with the prohibitions in the substitute amendment.
4. Provides that the prohibitions in the substitute amendment, and related prohibitions under current law, do not affect the ability of a local governmental unit to enforce any state or federal requirement.
5. Specifically prohibits a county from enacting a development moratorium.
6. Prohibits a city, village, town, or county (political subdivision) from prohibiting or unreasonably restricting a real property owner from selling or transferring title to any interest in the real property.

Individual notice requirements

This substitute amendment requires a political subdivision to provide written notice to a landowner, and annual notification to residents of a political subdivision that they may request such notice, that potential action by the political subdivision may affect the allowable use of the landowner's property. The substitute amendment

also requires counties and towns to provide such notice if a proposed zoning ordinance will affect the size or density requirements of a landowner's property. In addition, the substitute amendment limits a political subdivision's authority under current law to impose a fee for providing notice to charges for 1st class mailings.

SHORELAND ZONING

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 DNR by rule. Current law defines shorelands to be the area within a certain distance from the OHWM of a navigable water. Current law requires a county to establish a shoreland setback area, which is an area within a certain distance of the OHWM in which the construction or placement of structures is limited or prohibited. Under this substitute amendment, if a professional land surveyor, in measuring a setback from an OHWM of a navigable water, relies on a map, plat, or survey that incorporates or approximates the OHWM, the setback measured is the setback with respect to a structure constructed on that property if the map, plat, or survey relied upon is prepared by a professional land surveyor and DNR has not identified the OHWM on its Internet site at the time the setback is measured.

Current law prohibits DNR from impairing the interest of a landowner in shoreland property by establishing a shoreland zoning standard, and prohibits a county from impairing the interest of a landowner in shoreland property by enacting or enforcing a shoreland zoning ordinance, that regulates certain activities in certain ways. These prohibited regulations include the prohibition or regulation of the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of a nonconforming structure if that activity does not expand the structure's footprint and the prohibition or regulation of the vertical expansion of a nonconforming structure. This substitute amendment expands these prohibitions to a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015.

The substitute amendment also provides that if DNR or a county is prohibited from impairing the interest of a landowner in shoreland property by regulating an activity and if that activity requires a building permit, the city, village, or town that issues the building permit must send a copy of the building permit to the county clerk.

Under the substitute amendment, neither DNR nor a county shoreland zoning ordinance may prohibit the owner of a boathouse with a flat roof from using the roof as a deck if the roof has no side walls or screens or from having or installing a railing around the roof that is not inconsistent with Department of Safety and Professional Services standards.

This substitute amendment provides that a shoreland zoning standard or ordinance may not prohibit placement of a device or system that retains runoff in a shoreland setback area.

The substitute amendment also provides that the construction or maintenance of property or equipment used for the transmission, delivery, or furnishing of natural gas, heat, light, or power and owned by a public utility or cooperative association

organized for the purpose of producing or furnishing heat, light, or power to its members only is considered to satisfy shoreland zoning laws and a county's shoreland zoning ordinance if DNR has issued all required navigable water, water and sewage, and pollution discharge permits or approvals authorizing the construction or maintenance or, if no such permits or approvals are required, if the construction and maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from that infrastructure.

RESOLUTION OF CHALLENGE TO ZONING RESTRICTIONS

This substitute amendment requires a court to resolve any ambiguity in a matter involving a zoning ordinance or shoreland zoning ordinance in favor of the free use of private property.

SUPERMAJORITY VOTE TO DOWN ZONE A PROPERTY

The substitute amendment allows a political subdivision to enact a down zoning ordinance only if the ordinance is approved by at least two-thirds of the members of its governing body. The substitute amendment defines a down zoning ordinance as an ordinance that affects an area of land by rezoning it to a usage that is less dense than its previous usage.

PROPERTY TAX TREATMENT OF UNDEVELOPED LAND

This substitute amendment defines, for property tax purposes, "undeveloped land" to include land that is platted and zoned for residential, commercial, or manufacturing use until such time that a permit is issued for constructing a building or other structure on the land. The substitute amendment provides that such land be assessed at its unimproved value, although the land is subject to a conversion charge if its assessment changes from agricultural to unimproved. Other undeveloped land under current law is assessed at 50 percent of its full value. Generally, these provisions do not apply to land that is located in a tax incremental financing district.

ADMINISTRATIVE RULE-MAKING AND PROCEEDINGS

ECONOMIC IMPACT ANALYSES

This substitute amendment requires an economic impact analysis of a proposed administrative rule to include an analysis of the ways in which and the extent to which the proposed rule would place any limitations on the free use of private property, including a discussion of alternatives to the proposed rule that would minimize any such limitations.

CONTESTED CASE HEARINGS

Under this substitute amendment, a person who has applied for a contract, permit, or other approval that is the subject of a contested case hearing for which the Division of Hearings and Appeals in the Department of Administration has assigned a hearing examiner may file one written request per hearing for a substitution of a new hearing examiner. If the request is timely and in proper form, the matter must be transferred to a new hearing examiner.

JUDICIAL REVIEW OF AGENCY ACTIONS AND DECISIONS

This substitute amendment requires a court, on review of a state agency action or decision affecting a property owner's use of the owner's property, to accord no deference to the agency's interpretation of law if the agency action or decision restricts the property owner's free use of the owner's property.

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

1 **SECTION 1.** 59.69 (4) (intro.) of the statutes is amended to read:

2 59.69 (4) **EXTENT OF POWER.** (intro.) For the purpose of promoting the public
3 health, safety and general welfare the board may by ordinance effective within the
4 areas within such county outside the limits of incorporated villages and cities
5 establish districts of such number, shape and area, and adopt such regulations for
6 each such district as the board considers best suited to carry out the purposes of this
7 section. The board may establish mixed-use districts that contain any combination
8 of uses, such as industrial, commercial, public, or residential uses, in a compact
9 urban form. The board may not enact a development moratorium, as defined in s.
10 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting
11 under any other law, except that this prohibition does not limit any authority of the
12 board to impose a moratorium that is not a development moratorium. The powers
13 granted by this section shall be exercised through an ordinance which may, subject
14 to sub. (4e), determine, establish, regulate and restrict:

15 **SECTION 2.** 59.69 (4) (j) of the statutes is amended to read:

16 59.69 (4) (j) The Subject to s. 66.10015 (3), the density and distribution of
17 population.

18 **SECTION 3.** 59.69 (5) (f) of the statutes is amended to read:

1 by a city, village, town, or county that affects the allowable use of land on the effective
2 date of this subsection.

3 (2) DEVELOPMENT REGULATION AUTHORITY. The treatment of section 66.10015 (1)
4 (a) of the statutes first applies to a project for which the first request for approval is
5 submitted on the effective date of this subsection.

6 (3) DOWN ZONING. The treatment of sections 59.69 (4) (j), 60.61 (2) (a) 6., 62.23
7 (7) (am), and 66.10015 (title), (1) (as) and (bs), and (3) of the statutes first applies to
8 a down zoning ordinance that is enacted on the effective date of this subsection.

9 (4) CONDITIONAL USE PERMITS. The treatment of section 66.1001 (2m) (b) of the
10 statutes first applies to a conditional use permit that is in effect on the effective date
11 of this subsection.

12 (END)

Shovers, Marc

From: Shea, Elisabeth
Sent: Thursday, January 21, 2016 11:52 AM
To: Shovers, Marc
Subject: FW: AB 582

Hi Marc,

Larry found some inconsistencies between the AB582 analysis and what is now in the bill. I haven't actually looked closely at these yet. Larry was going to mention this to Rep. Jarchow and see what he'd like to do. We could do (another) corrected copy to fix these (I've already done 2 for my mistakes!).

Lis

From: Konopacki, Larry
Sent: Thursday, January 21, 2016 11:28 AM
To: Shea, Elisabeth <Elisabeth.Shea@legis.wisconsin.gov>
Subject: AB 582

Hi Liz,

The material beginning with "with regard to" on page 15, line 10 and ending with the material on line 14 needs to be removed – I think of this as a technical fix, but see what you all think. *redundant - old to remove*

With respect to the analysis, some of these might technically be OK as written, but others are more clearly incorrect. Take a look and see what you think.

"Individual Notice Requirements"

- Notice can be either in writing or in another agreed upon form.
- Annual notification that such notice can be requested may be provided by the local government in a number of alternative ways other than by writing.

"Resolution of Challenge to Zoning Restrictions"

- Updated language only applies to ambiguity in the meaning of a word or phrase in such an ordinance.

"Supermajority Vote to Down Zone a Property"

- The definition of "down zoning" now means decreasing the development density of the land to be less dense than was allowed under its previous usage or reducing the permitted uses of the land specified in a zoning ordinance or other land use regulation, to fewer uses than were allowed under its previous usage.

"Property Tax Treatment of Undeveloped Land"

- The amendment no longer applies this new tax treatment until a building permit is issued, but until all permits to permit the use are issued.
- The amendment no longer requires that such land be taxed at its "unimproved value."

2. JK check good.



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8 59.692 (1p), 59.692 (7), 66.1001 (2m) (b), 66.10015 (1) (as), 66.10015 (1) (bs),
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10 700.28, 706.22 (2) (a) 2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and
11 895.463 of the statutes; **relating to:** government actions affecting rights to real
12 property; the regulation of shoreland zoning; the contents of an economic
13 impact analysis of a proposed administrative rule; the substitution of hearing

1 examiners in Department of Natural Resources and Department of
 2 Agriculture, Trade and Consumer Protection contested cases; the standard for
 3 judicial review of a state agency action or decision affecting a property owner's
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INTRODUCTION

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3. Invalidates any ordinance, resolution, or policy currently in effect that is inconsistent with the prohibitions in the substitute amendment.
4. Provides that the prohibitions in the substitute amendment, and related prohibitions under current law, do not affect the ability of a local governmental unit to enforce any state or federal requirement.
5. Specifically prohibits a county from enacting a development moratorium.
6. Prohibits a city, village, town, or county (political subdivision) from prohibiting or unreasonably restricting a real property owner from selling or transferring title to any interest in the real property.

Individual notice requirements # *current law*

the ~~This~~ substitute amendment requires a political subdivision to provide ~~written~~ notice to a landowner, and annual notification to residents of a political subdivision that they may request such notice, that potential action by the political subdivision may affect the allowable use of the landowner's property. The substitute amendment

*requires a political
 subdivision to
 provide*

also requires counties and towns to provide such notice if a proposed zoning ordinance will affect the size or density requirements of a landowner's property. In addition, the substitute amendment limits a political subdivision's authority under current law to impose a fee for providing notice to charges for 1st class mailings.

SHORELAND ZONING

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 DNR by rule. Current law defines shorelands to be the area within a certain distance from the OHWM of a navigable water. Current law requires a county to establish a shoreland setback area, which is an area within a certain distance of the OHWM in which the construction or placement of structures is limited or prohibited. Under this substitute amendment, if a professional land surveyor, in measuring a setback from an OHWM of a navigable water, relies on a map, plat, or survey that incorporates or approximates the OHWM, the setback measured is the setback with respect to a structure constructed on that property if the map, plat, or survey relied upon is prepared by a professional land surveyor and DNR has not identified the OHWM on its Internet site at the time the setback is measured.

Current law prohibits DNR from impairing the interest of a landowner in shoreland property by establishing a shoreland zoning standard, and prohibits a county from impairing the interest of a landowner in shoreland property by enacting or enforcing a shoreland zoning ordinance, that regulates certain activities in certain ways. These prohibited regulations include the prohibition or regulation of the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of a nonconforming structure if that activity does not expand the structure's footprint and the prohibition or regulation of the vertical expansion of a nonconforming structure. This substitute amendment expands these prohibitions to a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015.

The substitute amendment also provides that if DNR or a county is prohibited from impairing the interest of a landowner in shoreland property by regulating an activity and if that activity requires a building permit, the city, village, or town that issues the building permit must send a copy of the building permit to the county clerk.

Under the substitute amendment, neither DNR nor a county shoreland zoning ordinance may prohibit the owner of a boathouse with a flat roof from using the roof as a deck if the roof has no side walls or screens or from having or installing a railing around the roof that is not inconsistent with Department of Safety and Professional Services standards.

This substitute amendment provides that a shoreland zoning standard or ordinance may not prohibit placement of a device or system that retains runoff in a shoreland setback area.

The substitute amendment also provides that the construction or maintenance of property or equipment used for the transmission, delivery, or furnishing of natural gas, heat, light, or power and owned by a public utility or cooperative association

organized for the purpose of producing or furnishing heat, light, or power to its members only is considered to satisfy shoreland zoning laws and a county's shoreland zoning ordinance if DNR has issued all required navigable water, water and sewage, and pollution discharge permits or approvals authorizing the construction or maintenance or, if no such permits or approvals are required, if the construction and maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from that infrastructure.

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This substitute amendment requires a court to resolve any ambiguity in a matter involving a zoning ordinance or shoreland zoning ordinance in favor of the free use of private property.

word or phrase in a

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either

or by reducing permitted uses of the land

PROPERTY TAX TREATMENT OF UNDEVELOPED LAND

This substitute amendment defines, for property tax purposes, "undeveloped land" to include land that is platted and zoned for residential, commercial, or manufacturing use until such time that a permit is issued for constructing a building or other structure on the land. The substitute amendment provides that such land be assessed at its unimproved value, although the land is subject to a conversion charge if its assessment changes from agricultural to unimproved. Other undeveloped land under current law is assessed at 50 percent of its full value. Generally, these provisions do not apply to land that is located in a tax incremental financing district.

all approvals required for use of the land are issued

also may

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ECONOMIC IMPACT ANALYSES

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CONTESTED CASE HEARINGS

Under this substitute amendment, a person who has applied for a contract, permit, or other approval that is the subject of a contested case hearing for which the Division of Hearings and Appeals in the Department of Administration has assigned a hearing examiner may file one written request per hearing for a substitution of a new hearing examiner. If the request is timely and in proper form, the matter must be transferred to a new hearing examiner.

JUDICIAL REVIEW OF AGENCY ACTIONS AND DECISIONS

This substitute amendment requires a court, on review of a state agency action or decision affecting a property owner's use of the owner's property, to accord no deference to the agency's interpretation of law if the agency action or decision restricts the property owner's free use of the owner's property.

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

1 **SECTION 1.** 59.69 (4) (intro.) of the statutes is amended to read:

2 59.69 (4) EXTENT OF POWER. (intro.) For the purpose of promoting the public
3 health, safety and general welfare the board may by ordinance effective within the
4 areas within such county outside the limits of incorporated villages and cities
5 establish districts of such number, shape and area, and adopt such regulations for
6 each such district as the board considers best suited to carry out the purposes of this
7 section. The board may establish mixed-use districts that contain any combination
8 of uses, such as industrial, commercial, public, or residential uses, in a compact
9 urban form. The board may not enact a development moratorium, as defined in s.
10 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting
11 under any other law, except that this prohibition does not limit any authority of the
12 board to impose a moratorium that is not a development moratorium. The powers
13 granted by this section shall be exercised through an ordinance which may, subject
14 to sub. (4e), determine, establish, regulate and restrict:

15 **SECTION 2.** 59.69 (4) (j) of the statutes is amended to read:

16 59.69 (4) (j) The Subject to s. 66.10015 (3), the density and distribution of
17 population.

18 **SECTION 3.** 59.69 (5) (f) of the statutes is amended to read:

1 59.69 (5) (f) The county zoning agency shall maintain a list of persons who
2 submit a written or electronic request to receive notice of any proposed ordinance or
3 amendment that affects the allowable use of the property owned by the person.
4 Annually, the agency shall inform residents of the county that they may add their
5 names to the list. The agency may satisfy this requirement to provide such
6 information by any of the following means: publishing a 1st class notice under ch.
7 985; publishing on the county's Internet site; 1st class mail; or including the
8 information in a mailing that is sent to all property owners. If the county zoning
9 agency completes a draft of a proposed zoning ordinance under par. (a) or if the
10 agency receives a petition under par. (e) 2., the agency shall send a notice, which
11 contains a copy or summary of the proposed ordinance or petition, to each person on
12 the list whose property, the allowable use or size or density requirements of which,
13 may be affected by the proposed ordinance or amendment. The notice shall be by
14 mail or in any reasonable form that is agreed to by the person and the agency,
15 including electronic mail, voice mail, or text message. The agency may charge each
16 person on the list who receives a notice by 1st class mail a fee that does not exceed
17 the approximate cost of providing the notice to the person. An ordinance or
18 amendment that is subject to this paragraph may take effect even if the agency fails
19 to send the notice that is required by this paragraph.

20 **SECTION 4.** 59.692 (1h) of the statutes is created to read:

21 59.692 (1h) If a professional land surveyor licensed under ch. 443, in
22 measuring a setback from an ordinary high-water mark of a navigable water as
23 required by an ordinance enacted under this section, relies on a map, plat, or survey
24 that incorporates or approximates the ordinary high-water mark in accordance with

1 s. 236.025, the setback measured is the setback with respect to a structure
2 constructed on that property if all of the following apply:

3 (a) The map, plat, or survey is prepared by a professional land surveyor,
4 licensed under ch. 443, after the effective date of this paragraph [LRB inserts
5 date]. The same professional land surveyor may prepare the map, plat, or survey and
6 measure the setback.

7 (b) The department has not identified the ordinary high-water mark on its
8 Internet site as is required under s. 30.102 at the time the setback is measured.

9 **SECTION 5.** 59.692 (1k) (a) 2. of the statutes, as created by 2015 Wisconsin Act
10 55, is amended to read:

11 59.692 (1k) (a) 2. Except as provided in par. (b), requires any approval or
12 imposes any fee or mitigation requirement for, or otherwise prohibits or regulates,
13 the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all
14 or any part of a nonconforming structure or a structure of which any part is legally
15 located in the shoreland setback area by operation of a variance granted before July
16 13, 2015, if the activity does not expand the footprint of the ~~nonconforming~~ structure.

17 **SECTION 6.** 59.692 (1k) (a) 4. of the statutes, as created by 2015 Wisconsin Act
18 55, is amended to read:

19 59.692 (1k) (a) 4. Requires any approval or imposes any fee or mitigation
20 requirement for, or otherwise prohibits or regulates, the vertical expansion of a
21 nonconforming structure or a structure of which any part is legally located in the
22 shoreland setback area by operation of a variance granted before July 13, 2015,
23 unless the vertical expansion would extend more than 35 feet above grade level.

24 **SECTION 7.** 59.692 (1k) (a) 6. of the statutes is created to read:

1 59.692 (1k) (a) 6. Prohibits placement in a shoreland setback area of a device
2 or system authorized under par. (a) 5.

3 **SECTION 8.** 59.692 (1k) (b) of the statutes, as created by 2015 Wisconsin Act 55,
4 is amended to read:

5 59.692 (1k) (b) A county shoreland zoning ordinance shall allow an activity
6 specified under par. (a) 2. to expand the footprint of a nonconforming structure or a
7 structure of which any part is legally located in the shoreland setback area by
8 operation of a variance granted before July 13, 2015, if the expansion is necessary
9 for the structure to comply with applicable state or federal requirements.

10 **SECTION 9.** 59.692 (1p) of the statutes is created to read:

11 59.692 (1p) The department may not promulgate a standard and a county may
12 not enact an ordinance under this section that prohibits the owner of a boathouse in
13 the shoreland setback area that has a flat roof from using the roof as a deck if the roof
14 has no side walls or screens or from having or installing a railing around that roof
15 if the railing is not inconsistent with standards promulgated by the department of
16 safety and professional services under ch. 101.

17 **SECTION 10.** 59.692 (7) of the statutes is created to read:

18 59.692 (7) (a) In this subsection, “facility” means any property or equipment
19 of a public utility, as defined in s. 196.01 (5), or a cooperative association organized
20 under ch. 185 for the purpose of producing or furnishing heat, light, or power to its
21 members only, that is used for the transmission, delivery, or furnishing of natural
22 gas, heat, light, or power.

23 (b) The construction and maintenance of a facility is considered to satisfy the
24 requirements of this section and any county ordinance enacted under this section if
25 any of the following applies:

1 1. The department has issued all required permits or approvals authorizing the
2 construction or maintenance under ch. 30, 31, 281, or 283.

3 2. No department permit or approval under subd. 1. is required for the
4 construction or maintenance and the construction or maintenance is conducted in a
5 manner that employs best management practices to infiltrate or otherwise control
6 storm water runoff from the facility.

7 **SECTION 11.** 60.61 (2) (a) 6. of the statutes is amended to read:

8 60.61 (2) (a) 6. The Subject to s. 66.10015 (3), the density and distribution of
9 population.

10 **SECTION 12.** 60.61 (4) (f) of the statutes is amended to read:

11 60.61 (4) (f) The town board shall maintain a list of persons who submit a
12 written or electronic request to receive notice of any proposed ordinance or
13 amendment that affects the allowable use of the property owned by the person.
14 Annually, the town board shall inform residents of the town that they may add their
15 names to the list. The town board may satisfy this requirement to provide such
16 information by any of the following means: publishing a 1st class notice under ch.
17 985; publishing on the town's Internet site; 1st class mail; or including the
18 information in a mailing that is sent to all property owners. If the town zoning
19 committee completes a final report on a proposed zoning ordinance and the town
20 board is prepared to vote on the proposed ordinance under par. (b) or if the town board
21 is prepared to vote on a proposed amendment under par. (c) 1., the town board shall
22 send a notice, which contains a copy or summary of the proposed ordinance or
23 amendment, to each person on the list whose property, the allowable use or size or
24 density requirements of which, may be affected by the proposed ordinance or
25 amendment. The notice shall be by mail or in any reasonable form that is agreed to

1 by the person and the town board, including electronic mail, voice mail, or text
2 message. The town board may charge each person on the list who receives a notice
3 by 1st class mail a fee that does not exceed the approximate cost of providing the
4 notice to the person. An ordinance or amendment that is subject to this paragraph
5 may take effect even if the town board fails to send the notice that is required by this
6 paragraph.

7 **SECTION 13.** 62.23 (7) (am) of the statutes is amended to read:

8 62.23 (7) (am) *Grant of power.* For the purpose of promoting health, safety,
9 morals or the general welfare of the community, the council may regulate and restrict
10 by ordinance, subject to par. (hm), the height, number of stories and size of buildings
11 and other structures, the percentage of lot that may be occupied, the size of yards,
12 courts and other open spaces, subject to s. 66.10015 (3) the density of population, and
13 the location and use of buildings, structures and land for trade, industry, mining,
14 residence or other purposes if there is no discrimination against temporary
15 structures. This subsection and any ordinance, resolution or regulation enacted or
16 adopted under this section, shall be liberally construed in favor of the city and as
17 minimum requirements adopted for the purposes stated. This subsection may not
18 be deemed a limitation of any power granted elsewhere.

19 **SECTION 14.** 62.23 (7) (d) 4. of the statutes is amended to read:

20 62.23 (7) (d) 4. The city council shall maintain a list of persons who submit a
21 written or electronic request to receive notice of any proposed zoning action that may
22 be taken under subd. 1. a. or b. or 2. that affects the allowable use of the person's
23 property. Annually, the city council shall inform residents of the city that they may
24 add their names to the list. The city council may satisfy this requirement to provide
25 such information by any of the following means: publishing a 1st class notice under

1 ch. 985; publishing on the city's Internet site; 1st class mail; or including the
2 information in a mailing that is sent to all property owners. If the plan commission,
3 the board of public land commissioners, or city plan committee of the city council
4 completes action on any tentative recommendations that are noticed under subd. 1.
5 a., proposed changes to a proposed district plan and regulations that are submitted
6 under subd. 1. b., or proposed amendments that are submitted under subd. 2., and
7 the city council is prepared to vote on the tentative recommendations, proposed
8 changes to a proposed district plan, and regulations or proposed amendments, the
9 city council shall send a notice, which contains a copy or summary of the tentative
10 recommendations, proposed changes to a proposed district plan, and regulations or
11 proposed amendments, to each person on the list whose property, the allowable use
12 of which, may be affected by the tentative recommendations or proposed changes or
13 amendments. The notice shall be by mail or in any reasonable form that is agreed
14 to by the person and the city council, including electronic mail, voice mail, or text
15 message. The city council may charge each person on the list who receives a notice
16 by 1st class mail a fee that does not exceed the approximate cost of providing the
17 notice to the person. An ordinance or amendment that is subject to this subdivision
18 may take effect even if the city council fails to send the notice that is required by this
19 subdivision.

20 **SECTION 15.** 66.1001 (2m) (title) of the statutes is amended to read:

21 66.1001 (2m) (title) EFFECT OF ENACTMENT OF A COMPREHENSIVE PLAN,
22 CONSISTENCY REQUIREMENTS.

23 **SECTION 16.** 66.1001 (2m) of the statutes is renumbered 66.1001 (2m) (a).

24 **SECTION 17.** 66.1001 (2m) (b) of the statutes is created to read:

1 66.1001 (2m) (b) A conditional use permit that may be issued by a political
2 subdivision does not need to be consistent with the political subdivision's
3 comprehensive plan.

4 **SECTION 18.** 66.1001 (4) (f) of the statutes is amended to read:

5 66.1001 (4) (f) A political subdivision shall maintain a list of persons who
6 submit a written or electronic request to receive notice of any proposed ordinance,
7 described under par. (c), that affects the allowable use of the property owned by the
8 person. Annually, the political subdivision shall inform residents of the political
9 subdivision that they may add their names to the list. The political subdivision may
10 satisfy this requirement to provide such information by any of the following means:
11 publishing a 1st class notice under ch. 985; publishing on the political subdivision's
12 Internet site; 1st class mail; or including the information in a mailing that is sent to
13 all property owners. At least 30 days before the hearing described in par. (d) is held
14 a political subdivision shall provide written notice, including a copy or summary of
15 the proposed ordinance, to all such persons whose property, the allowable use of
16 which, may be affected by the proposed ordinance. The notice shall be by mail or in
17 any reasonable form that is agreed to by the person and the political subdivision,
18 including electronic mail, voice mail, or text message. The political subdivision may
19 charge each person on the list who receives a notice by 1st class mail a fee that does
20 not exceed the approximate cost of providing the notice to the person.

21 **SECTION 19.** 66.10015 (title) of the statutes is amended to read:

22 **66.10015 (title) Limitation on development regulation authority and**
23 **down zoning.**

24 **SECTION 20.** 66.10015 (1) (a) of the statutes is amended to read:

1 66.10015 (1) (a) “Approval” means a permit or authorization for building,
2 zoning, driveway, stormwater, or other activity related to land development a project.

3 **SECTION 21.** 66.10015 (1) (as) of the statutes is created to read:

4 66.10015 (1) (as) “Down zoning ordinance” means a zoning ordinance that
5 affects an area of land in one of the following ways:

6 1. By decreasing the development density of the land to be less dense than was
7 allowed under its previous usage.

8 2. By reducing the permitted uses of the land, that are specified in a zoning
9 ordinance or other land use regulation, to fewer uses than were allowed under its
10 previous usage.

11 **SECTION 22.** 66.10015 (1) (bs) of the statutes is created to read:

12 66.10015 (1) (bs) “Members–elect” means those members of the governing body
13 of a political subdivision, at a particular time, who have been duly elected or
14 appointed for a current regular or unexpired term and whose service has not
15 terminated by death, resignation, or removal from office.

16 **SECTION 23.** 66.10015 (3) of the statutes is created to read:

17 66.10015 (3) DOWN ZONING. A political subdivision may enact a down zoning
18 ordinance only if the ordinance is approved by at least two–thirds of the
19 members–elect, except that if the down zoning ordinance is requested, or agreed to,
20 by the person who owns the land affected by the proposed ordinance, the ordinance
21 may be enacted by a simple majority of the members–elect.

22 **SECTION 24.** 66.1036 of the statutes is created to read:

23 **66.1036 Building permit for a shoreland structure.** If an activity in a
24 shoreland setback area to which s. 59.692 (1k) (a) or (b) applies requires a building

1 permit, the city, village, or town that issues the building permit for that activity shall
2 provide a copy of the building permit to the county clerk.

3 **SECTION 25.** 70.32 (2) (c) 4. of the statutes is renumbered 70.32 (2) (c) 4. (intro.)
4 and amended to read:

5 70.32 (2) (c) 4. (intro.) “Undeveloped land” means ~~bog~~ all of the following:

6 a. Bog, marsh, lowland brush, uncultivated land zoned as shoreland under s.
7 59.692 and shown as a wetland on a final map under s. 23.32, or other nonproductive
8 lands not otherwise classified under this subsection.

9 **SECTION 26.** 70.32 (2) (c) 4. b. of the statutes is created to read:

10 70.32 (2) (c) 4. b. Land not used for agricultural purposes that is platted and
11 zoned for residential, commercial, or manufacturing use, and improvements on that
12 land, until such time that all approvals, including post–construction inspection
13 approvals and occupancy permits, required before the initial use of the land for a
14 residential, commercial, or manufacturing use are issued. This subd. 4. b. applies
15 only to land that was assessed as agricultural land for the 2 consecutive years
16 immediately prior to being converted to residential, commercial, or manufacturing
17 use. With regard to a parcel that is located in a tax incremental district on the
18 effective date of this subd. 4. b. [LRB inserts date], this subd. 4. b. first applies on
19 January 1 of the year following the year in which either the tax incremental district
20 terminates or the parcel is subtracted from the district as described in s. 66.1105 (4)
21 (h) 2. With regard to a parcel that is not located in a tax incremental district on the
22 effective date of this subd. 4. b. [LRB inserts date], this subd. 4. b. first applies on
23 January 1 of the 2nd year beginning after the effective date of this subd. 4. b. [LRB
24 inserts date].

25 **SECTION 27.** 74.485 (4) (a) of the statutes is amended to read:

1 74.485 (4) (a) A person who owns land that has been assessed as agricultural
2 land under s. 70.32 (2r) and who converts the land's use so that the land is not eligible
3 to be assessed as agricultural land under s. 70.32 (2r) is not subject to a conversion
4 charge under sub. (2) if the converted land may be assessed as undeveloped under
5 s. 70.32 (2) (a) 5., as agricultural forest under s. 70.32 (2) (a) 5m., as productive forest
6 land under s. 70.32 (2) (a) 6., or as other under s. 70.32 (2) (a) 7. or if the amount of
7 the conversion charge determined under sub. (2) represents less than \$25 for each
8 acre of converted land. The exception to liability for a conversion charge that is
9 described under this paragraph does not apply to land that is described under s.
10 70.32 (2) (c) 4. b. With regard to land that is subject to a conversion charge under this
11 paragraph and is located in a tax incremental district on the effective date of this
12 paragraph [LRB inserts date], this paragraph first applies on January 1 of the
13 year following the year in which either the tax incremental district terminates or the
14 parcel is subtracted from the district as described in s. 66.1105 (4) (h) 2.

15 **SECTION 28.** 227.137 (3) (g) of the statutes is created to read:

16 227.137 (3) (g) An analysis of the ways in which and the extent to which the
17 proposed rule would place any limitations on the free use of private property,
18 including a discussion of alternatives to the proposed rule that would minimize any
19 such limitations.

20 **SECTION 29.** 227.445 of the statutes is created to read:

21 **227.445 Substitution of hearing examiner assigned by division of**
22 **hearings and appeals.** (1) A person who has applied for a contract, permit, or
23 other approval from the department of natural resources or the department of
24 agriculture, trade and consumer protection that is the subject of a contested case
25 hearing for which the division of hearings and appeals has assigned a hearing

1 examiner may file a written request with the administrator of the division of
2 hearings and appeals in the department of administration, not later than 10 days
3 after receipt of the notice under s. 227.44 (1), for a substitution of a new hearing
4 examiner.

5 (2) No person may file more than one request under sub. (1) for a single hearing.

6 (3) Upon receipt of a request under sub. (1), the administrator of the division
7 of hearings and appeals shall determine if the request was made timely and in proper
8 form. If the request was made timely and in proper form, the administrator of the
9 division of hearings and appeals shall transfer the matter to another hearing
10 examiner and shall transmit to the new hearing examiner all materials relating to
11 the matter.

12 **SECTION 30.** 227.57 (10) of the statutes is amended to read:

13 227.57 (10) Upon ~~Subject to sub. (11), upon~~ such review due weight shall be
14 accorded the experience, technical competence, and specialized knowledge of the
15 agency involved, as well as discretionary authority conferred upon it.

16 (12) The right of the appellant to challenge the constitutionality of any act or
17 of its application to the appellant shall not be foreclosed or impaired by the fact that
18 the appellant has applied for or holds a license, permit, or privilege under such act.

19 **SECTION 31.** 227.57 (11) of the statutes is created to read:

20 227.57 (11) (a) Upon review of an agency action or decision affecting a property
21 owner's use of the property owner's property, the court shall accord no deference to
22 the agency's interpretation of law if the agency action or decision restricts the
23 property owner's free use of the property owner's property.

24 **SECTION 32.** 236.45 (2) (am) (intro.) of the statutes, as affected by 2015
25 Wisconsin Act 48, is amended to read:

1 236.45 (2) (am) (intro.) Ordinances under par. (ac) may include provisions
2 regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land
3 into less than 5 parcels, and, except as provided in s. 59.69 (4) (intro.) and subject to
4 s. 66.1002, may prohibit the division of land in areas where such prohibition will
5 carry out the purposes of this section. Such ordinances shall make applicable to such
6 divisions all of the provisions of this chapter, or may provide other surveying,
7 monumenting, mapping and approving requirements for such division. The
8 governing body of the municipality, town, or county shall require that a plat of such
9 division be recorded with the register of deeds and kept in a book provided for that
10 purpose or stored electronically. “COUNTY PLAT,” “MUNICIPAL PLAT,” or “TOWN
11 PLAT” shall be printed on the map in prominent letters with the location of the land
12 by government lot, recorded private claim, quarter-quarter section, section,
13 township, range, and county noted. When so recorded, the lots included in the plat
14 shall be described by reference to “COUNTY PLAT,” “MUNICIPAL PLAT,” or
15 “TOWN PLAT,” the name of the plat and the lot and block in the plat, for all purposes,
16 including those of assessment, taxation, devise, descent, and conveyance as defined
17 in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5
18 parcels, shall not apply to:

19 **SECTION 33.** 700.28 of the statutes is created to read:

20 **700.28 Prohibiting unreasonable restrictions on alienation of**
21 **property.** (1) In this section, “political subdivision” means a city, village, town, or
22 county.

23 (2) A political subdivision may not prohibit or unreasonably restrict a real
24 property owner from alienating any interest in the real property.

1 **SECTION 34.** 706.22 (title) of the statutes, as created by 2015 Wisconsin Act 55,
2 is amended to read:

3 **706.22 (title) Prohibition on imposing time-of-sale, purchase, or**
4 **occupancy requirements.**

5 **SECTION 35.** 706.22 (2) (title) of the statutes, as created by 2015 Wisconsin Act
6 55, is amended to read:

7 **706.22 (2) (title) REQUIREMENTS TIED TO SALE, PURCHASE, OR TAKING OCCUPANCY**
8 **OF PROPERTY PROHIBITED.**

9 **SECTION 36.** 706.22 (2) (a) (intro.) of the statutes, as created by 2015 Wisconsin
10 Act 55, is amended to read:

11 706.22 (2) (a) (intro.) Except as provided in par. (b), no local governmental unit
12 may by ordinance, resolution, or any other means restrict do any of the following:

13 1m. Restrict the ability of an owner of real property to sell or otherwise transfer
14 title to or refinance the property by requiring the owner or an agent of the owner to
15 take certain actions with respect to the property or pay a related fee, to show
16 compliance with taking certain actions with respect to the property, or to pay a fee
17 for failing to take certain actions with respect to the property, at any of the following
18 times:

19 **SECTION 37.** 706.22 (2) (a) 1. of the statutes, as created by 2015 Wisconsin Act
20 55, is renumbered 706.22 (2) (a) 1m. a.

21 **SECTION 38.** 706.22 (2) (a) 2. of the statutes, as created by 2015 Wisconsin Act
22 55, is renumbered 706.22 (2) (a) 1m. b.

23 **SECTION 39.** 706.22 (2) (a) 2m. of the statutes is created to read:

24 706.22 (2) (a) 2m. Restrict the ability of a person to purchase or take title to real
25 property by requiring the person or an agent of the person to take certain actions with

1 respect to the property or pay a related fee, to show compliance with taking certain
2 actions with respect to the property, or to pay a fee for failing to take certain actions
3 with respect to the property, at any of the following times:

- 4 a. Before the person may complete the purchase of or take title to the property.
- 5 b. At the time of completing the purchase of or taking title to the property.
- 6 c. Within a certain period of time after completing the purchase of or taking title
7 to the property.

8 **SECTION 40.** 706.22 (2) (a) 3. of the statutes, as created by 2015 Wisconsin Act
9 55, is renumbered 706.22 (2) (a) 1m. c.

10 **SECTION 41.** 706.22 (2) (a) 3m. of the statutes is created to read:

11 706.22 (2) (a) 3m. Restrict the ability of a purchaser of or transferee of title to
12 residential real property to take occupancy of the property by requiring the
13 purchaser or transferee or an agent of the purchaser or transferee to take certain
14 actions with respect to the property or pay a related fee, to show compliance with
15 taking certain actions with respect to the property, or to pay a fee for failing to take
16 certain actions with respect to the property, at any of the following times:

- 17 a. Before the purchaser or transferee may take occupancy of the property.
- 18 b. At the time of taking occupancy of the property.
- 19 c. Within a certain period of time after taking occupancy of the property.

20 **SECTION 42.** 706.22 (2) (b) of the statutes, as created by 2015 Wisconsin Act 55,
21 is renumbered 706.22 (2) (b) (intro.) and amended to read:

22 706.22 (2) (b) (intro.) Paragraph (a) does not prohibit do any of the following:

- 23 1. Prohibit a local governmental unit from requiring a real property owner or
24 the owner's agent to take certain actions with respect to the property not in

1 connection with the purchase, sale, or refinancing of, or the transfer of title to, the
2 property.

3 **SECTION 43.** 706.22 (2) (b) 2. of the statutes is created to read:

4 706.22 (2) (b) 2. Prohibit a local governmental unit from enforcing, or otherwise
5 affect the responsibility, authority, or ability of a local governmental unit to enforce,
6 a federal or state requirement that does any of the things a local governmental unit
7 is prohibited from doing under par. (a).

8 **SECTION 44.** 706.22 (3) of the statutes, as created by 2015 Wisconsin Act 55, is
9 renumbered 706.22 (3) (a) and amended to read:

10 706.22 (3) (a) If a local governmental unit has in effect on July 14, 2015, an
11 ordinance, resolution, or policy that is inconsistent with sub. (2) (a) 1m., the
12 ordinance, resolution, or policy does not apply and may not be enforced.

13 **SECTION 45.** 706.22 (3) (b) of the statutes is created to read:

14 706.22 (3) (b) If a local governmental unit has in effect on the effective date of
15 this paragraph ... [LRB inserts date], an ordinance, resolution, or policy that is
16 inconsistent with sub. (2) (a) 2m. or 3m., the ordinance, resolution, or policy does not
17 apply and may not be enforced.

18 **SECTION 46.** 895.463 of the statutes is created to read:

19 **895.463 Zoning ordinances.** In any matter relating to a zoning ordinance
20 or shoreland zoning ordinance enacted or enforced by a city, village, town, or county,
21 the court shall resolve an ambiguity in the meaning of a word or phrase in a zoning
22 ordinance or shoreland zoning ordinance in favor of the free use of private property.

23 **SECTION 47. Initial applicability.**

24 (1) ACTIONS AFFECTING LAND USE. The treatment of sections 59.69 (5) (f), 60.61
25 (4) (f), 62.23 (7) (d) 4., and 66.1001 (4) (f) of the statutes first applies to an action taken

1 by a city, village, town, or county that affects the allowable use of land on the effective
2 date of this subsection.

3 (2) DEVELOPMENT REGULATION AUTHORITY. The treatment of section 66.10015 (1)
4 (a) of the statutes first applies to a project for which the first request for approval is
5 submitted on the effective date of this subsection.

6 (3) DOWN ZONING. The treatment of sections 59.69 (4) (j), 60.61 (2) (a) 6., 62.23
7 (7) (am), and 66.10015 (title), (1) (as) and (bs), and (3) of the statutes first applies to
8 a down zoning ordinance that is enacted on the effective date of this subsection.

9 (4) CONDITIONAL USE PERMITS. The treatment of section 66.1001 (2m) (b) of the
10 statutes first applies to a conditional use permit that is in effect on the effective date
11 of this subsection.

12

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

CORRECTED
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LRBs0222/1
EHS/MES/GMM:klm

ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 582

01-27-2016
After changes
(by KLM)

January 19, 2016 - Offered by Representative JARCHOW.

1 AN ACT *to renumber* 66.1001 (2m), 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22
2 (2) (a) 3.; *to renumber and amend* 70.32 (2) (c) 4., 706.22 (2) (b) and 706.22
3 (3); *to amend* 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2.,
4 59.692 (1k) (a) 4., 59.692 (1k) (b), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am),
5 62.23 (7) (d) 4., 66.1001 (2m) (title), 66.1001 (4) (f), 66.10015 (title), 66.10015 (1)
6 (a), 74.485 (4) (a), 227.57 (10), 236.45 (2) (am) (intro.), 706.22 (title), 706.22 (2)
7 (title) and 706.22 (2) (a) (intro.); and *to create* 59.692 (1h), 59.692 (1k) (a) 6.,
8 59.692 (1p), 59.692 (7), 66.1001 (2m) (b), 66.10015 (1) (as), 66.10015 (1) (bs),
9 66.10015 (3), 66.1036, 70.32 (2) (c) 4. b., 227.137 (3) (g), 227.445, 227.57 (11),
10 700.28, 706.22 (2) (a) 2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and
11 895.463 of the statutes; **relating to:** government actions affecting rights to real
12 property; the regulation of shoreland zoning; the contents of an economic
13 impact analysis of a proposed administrative rule; the substitution of hearing

1 examiners in Department of Natural Resources and Department of
2 Agriculture, Trade and Consumer Protection contested cases; the standard for
3 judicial review of a state agency action or decision affecting a property owner's
4 use of the owner's property; and the property tax treatment of unoccupied
5 property.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This substitute amendment makes various changes to the regulation of property rights and shoreland zoning, requires an economic impact analysis of a proposed administrative rule to analyze any limitations that the rule would place on the free use of private property, allows for the substitution of hearing examiners in contested case hearings, and requires a court to accord no deference to a state agency's interpretation of law when reviewing an agency action or decision that restricts a property owner's free use of the owner's property.

PROPERTY RIGHTS

PROCEDURAL PROTECTIONS

Restrictions on sale, purchase, development, or occupancy of real property

This substitute amendment does all of the following:

1. Prohibits a local governmental unit from requiring a person to take certain actions with respect to real property, or pay a related fee, before purchasing, taking title to, or occupying the property.

2. Provides that a local governmental unit may require a real property owner to take certain actions with respect to property that are not related to purchasing the property.

3. Invalidates any ordinance, resolution, or policy currently in effect that is inconsistent with the prohibitions in the substitute amendment.

4. Provides that the prohibitions in the substitute amendment, and related prohibitions under current law, do not affect the ability of a local governmental unit to enforce any state or federal requirement.

5. Specifically prohibits a county from enacting a development moratorium.

6. Prohibits a city, village, town, or county (political subdivision) from prohibiting or unreasonably restricting a real property owner from selling or transferring title to any interest in the real property.

Individual notice requirements

Current law requires a political subdivision to provide notice to a landowner, and the substitute amendment requires a political subdivision to provide annual notification to residents of the political subdivision that they may request such notice, that potential action by the political subdivision may affect the allowable use

of the landowner's property. The substitute amendment also requires counties and towns to provide such notice if a proposed zoning ordinance will affect the size or density requirements of a landowner's property. In addition, the substitute amendment limits a political subdivision's authority under current law to impose a fee for providing notice to charges for 1st class mailings.

SHORELAND ZONING

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 DNR by rule. Current law defines shorelands to be the area within a certain distance from the OHWM of a navigable water. Current law requires a county to establish a shoreland setback area, which is an area within a certain distance of the OHWM in which the construction or placement of structures is limited or prohibited. Under this substitute amendment, if a professional land surveyor, in measuring a setback from an OHWM of a navigable water, relies on a map, plat, or survey that incorporates or approximates the OHWM, the setback measured is the setback with respect to a structure constructed on that property if the map, plat, or survey relied upon is prepared by a professional land surveyor and DNR has not identified the OHWM on its Internet site at the time the setback is measured.

Current law prohibits DNR from impairing the interest of a landowner in shoreland property by establishing a shoreland zoning standard, and prohibits a county from impairing the interest of a landowner in shoreland property by enacting or enforcing a shoreland zoning ordinance, that regulates certain activities in certain ways. These prohibited regulations include the prohibition or regulation of the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of a nonconforming structure if that activity does not expand the structure's footprint and the prohibition or regulation of the vertical expansion of a nonconforming structure. This substitute amendment expands these prohibitions to a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015.

The substitute amendment also provides that if DNR or a county is prohibited from impairing the interest of a landowner in shoreland property by regulating an activity and if that activity requires a building permit, the city, village, or town that issues the building permit must send a copy of the building permit to the county clerk.

Under the substitute amendment, neither DNR nor a county shoreland zoning ordinance may prohibit the owner of a boathouse with a flat roof from using the roof as a deck if the roof has no side walls or screens or from having or installing a railing around the roof that is not inconsistent with Department of Safety and Professional Services standards.

This substitute amendment provides that a shoreland zoning standard or ordinance may not prohibit placement of a device or system that retains runoff in a shoreland setback area.

The substitute amendment also provides that the construction or maintenance of property or equipment used for the transmission, delivery, or furnishing of natural

gas, heat, light, or power and owned by a public utility or cooperative association organized for the purpose of producing or furnishing heat, light, or power to its members only is considered to satisfy shoreland zoning laws and a county's shoreland zoning ordinance if DNR has issued all required navigable water, water and sewage, and pollution discharge permits or approvals authorizing the construction or maintenance or, if no such permits or approvals are required, if the construction and maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from that infrastructure.

RESOLUTION OF CHALLENGE TO ZONING RESTRICTIONS

This substitute amendment requires a court to resolve any ambiguity in a matter involving a word or phrase in a zoning ordinance or shoreland zoning ordinance in favor of the free use of private property.

SUPERMAJORITY VOTE TO DOWN ZONE A PROPERTY

The substitute amendment allows a political subdivision to enact a down zoning ordinance only if the ordinance is approved by at least two-thirds of the members of its governing body. The substitute amendment defines a down zoning ordinance as an ordinance that affects an area of land by either rezoning it to a usage that is less dense than its previous usage or by reducing permitted uses of the land.

PROPERTY TAX TREATMENT OF UNDEVELOPED LAND

This substitute amendment defines, for property tax purposes, “undeveloped land” to include land that is platted and zoned for residential, commercial, or manufacturing use until such time that all approvals required for use of the land are issued. The substitute amendment also provides that such land may be subject to a conversion charge if its assessment changes from agricultural to unimproved. Other undeveloped land under current law is assessed at 50 percent of its full value. Generally, these provisions do not apply to land that is located in a tax incremental financing district.

ADMINISTRATIVE RULE-MAKING AND PROCEEDINGS

ECONOMIC IMPACT ANALYSES

This substitute amendment requires an economic impact analysis of a proposed administrative rule to include an analysis of the ways in which and the extent to which the proposed rule would place any limitations on the free use of private property, including a discussion of alternatives to the proposed rule that would minimize any such limitations.

CONTESTED CASE HEARINGS

Under this substitute amendment, a person who has applied for a contract, permit, or other approval that is the subject of a contested case hearing for which the Division of Hearings and Appeals in the Department of Administration has assigned a hearing examiner may file one written request per hearing for a substitution of a new hearing examiner. If the request is timely and in proper form, the matter must be transferred to a new hearing examiner.

JUDICIAL REVIEW OF AGENCY ACTIONS AND DECISIONS

This substitute amendment requires a court, on review of a state agency action or decision affecting a property owner's use of the owner's property, to accord no deference to the agency's interpretation of law if the agency action or decision restricts the property owner's free use of the owner's property.

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

1 **SECTION 1.** 59.69 (4) (intro.) of the statutes is amended to read:

2 59.69 (4) **EXTENT OF POWER.** (intro.) For the purpose of promoting the public
3 health, safety and general welfare the board may by ordinance effective within the
4 areas within such county outside the limits of incorporated villages and cities
5 establish districts of such number, shape and area, and adopt such regulations for
6 each such district as the board considers best suited to carry out the purposes of this
7 section. The board may establish mixed-use districts that contain any combination
8 of uses, such as industrial, commercial, public, or residential uses, in a compact
9 urban form. The board may not enact a development moratorium, as defined in s.
10 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting
11 under any other law, except that this prohibition does not limit any authority of the
12 board to impose a moratorium that is not a development moratorium. The powers
13 granted by this section shall be exercised through an ordinance which may, subject
14 to sub. (4e), determine, establish, regulate and restrict:

15 **SECTION 2.** 59.69 (4) (j) of the statutes is amended to read:

16 59.69 (4) (j) The Subject to s. 66.10015 (3), the density and distribution of
17 population.

18 **SECTION 3.** 59.69 (5) (f) of the statutes is amended to read:

1 by a city, village, town, or county that affects the allowable use of land on the effective
2 date of this subsection.

3 (2) DEVELOPMENT REGULATION AUTHORITY. The treatment of section 66.10015 (1)
4 (a) of the statutes first applies to a project for which the first request for approval is
5 submitted on the effective date of this subsection.

6 (3) DOWN ZONING. The treatment of sections 59.69 (4) (j), 60.61 (2) (a) 6., 62.23
7 (7) (am), and 66.10015 (title), (1) (as) and (bs), and (3) of the statutes first applies to
8 a down zoning ordinance that is enacted on the effective date of this subsection.

9 (4) CONDITIONAL USE PERMITS. The treatment of section 66.1001 (2m) (b) of the
10 statutes first applies to a conditional use permit that is in effect on the effective date
11 of this subsection.

12

(END)