



1995 ASSEMBLY BILL 424

June 1, 1995 - Introduced by Representatives HARS DORF, JOHNSRUD, OWENS, GRONEMUS, OTTE, ZUKOWSKI, LEHMAN, MUSSER, BRANDEMUEHL, HAHN, OLSEN, JENSEN, SERATTI, AINSWORTH, GROTHMAN, UNDERHEIM, ALBERS, RYBA, KLUSMAN and SILBAUGH, cosponsored by Senators A. LASEE and COWLES. Referred to Committee on Natural Resources.

1 **AN ACT to repeal** 59.972 and 87.307; **to amend** 61.351 (1) (a), 62.231 (1) (a) and
2 144.26 (2) (f); and **to create** 59.971 (1) (ag), (am) and (ar), 59.971 (1t) and 87.30
3 (1d) of the statutes; **relating to:** the establishment of certain restrictions on
4 floodplain and shoreland zoning ordinances that regulate improvements to
5 nonconforming buildings, the elimination of other restrictions on floodplain
6 and shoreland zoning ordinances that regulate improvements and repairs to
7 nonconforming buildings or buildings with nonconforming uses that are
8 applicable to Trenton Island in Pierce County and granting rule-making
9 authority.

Analysis by the Legislative Reference Bureau

Under rules promulgated by the department of natural resources (DNR) pursuant to its authority to regulate the adoption of local floodplain and shoreland zoning ordinances, DNR has imposed some state requirements that are stricter than those required under the national flood insurance program administered by the federal emergency management agency. One of these stricter requirements is that such a local ordinance must limit the cost of any improvements to a nonconforming building that is located in a shoreland or a floodplain to 50% of the building's equalized assessed value over the life of the building. A nonconforming building is a building that is not in conformity with the provisions of the floodplain or shoreland zoning ordinance for the area of the floodplain or shoreland that the building occupies.

Under this bill, for nonconforming buildings that are damaged or destroyed by fire or a natural disaster other than flooding, the only limitations that a local

floodplain or shoreland zoning ordinance may impose on the cost of an improvement are those that are minimally required by the national flood insurance program. Under the program, the minimum requirement that a floodplain zoning ordinance may impose on the cost of an improvement is that the cost of the improvement may not exceed 50% of the market value, as opposed to the equalized assessed value, of the nonconforming building on the date on which the improvement is started for buildings that have not been substantially damaged. For those buildings that have been substantially damaged, the market value before the disaster occurred is used for calculating the 50% limitation. For purposes of the federal program, a building is considered substantially damaged if the cost of restoring the building would equal or exceed 50% of the market value of the building before the disaster occurred. As a result, under this bill, an ordinance may not impose the 50% limitation over the life of the building but must use the market value of the building each time in order to calculate the 50% limitation a nonflood disaster affects the building.

This bill also repeals provisions under current law that are similar to those in this bill but that apply only to Trenton Island in Pierce County.

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

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

1 **SECTION 1.** 59.971 (1) (ag), (am) and (ar) of the statutes are created to read:

2 59.971 (1) (ag) “Nonconforming building” has the meaning specified by rule by
3 the department of natural resources for purposes of floodplain zoning under s. 87.30
4 and includes a building with a nonconforming use.

5 (am) “Nonconforming use” has the meaning specified by rule by the department
6 of natural resources for purposes of floodplain zoning under s. 87.30.

7 (ar) “Nonflood disaster” means a fire or an ice storm, tornado, windstorm,
8 mudslide or other destructive act of nature, but excludes a flood.

9 **SECTION 2.** 59.971 (1t) of the statutes is created to read:

10 59.971 (1t) (a) For nonconforming buildings that are damaged or destroyed by
11 a nonflood disaster an ordinance enacted under this section shall permit the repair,
12 reconstruction or improvement of any such nonconforming building in order to
13 restore it after the nonflood disaster, except as provided in par. (b).

1 (b) An ordinance enacted under this section may not permit the repair,
2 reconstruction or improvement of a nonconforming building if the nonconforming
3 building, after repair, reconstruction or improvement, will fail to conform to the
4 requirements specified in s. 87.30 (1d) (c).

5 **SECTION 3.** 59.972 of the statutes is repealed.

6 **SECTION 4.** 61.351 (1) (a) of the statutes is amended to read:

7 61.351 (1) (a) "Shorelands" has the meaning specified under s. 59.971 (1) (b).

8 **SECTION 5.** 62.231 (1) (a) of the statutes is amended to read:

9 62.231 (1) (a) "Shorelands" has the meaning specified under s. 59.971 (1) (b).

10 **SECTION 6.** 87.30 (1d) of the statutes is created to read:

11 87.30 (1d) IMPROVEMENTS TO NONCONFORMING BUILDINGS. (a) In this subsection:

12 1. "Nonconforming building" has the meaning specified by rule by the
13 department for purposes of floodplain zoning under this section and includes a
14 building with a nonconforming use.

15 2. "Nonconforming use" has the meaning specified by rule by the department
16 for purposes of floodplain zoning under this section.

17 3. "Nonflood disaster" means a fire or an ice storm, tornado, windstorm,
18 mudslide or other destructive act of nature, but excludes a flood.

19 (b) For nonconforming buildings that are damaged or destroyed by a nonflood
20 disaster a floodplain zoning ordinance shall permit the repair, reconstruction or
21 improvement of any such nonconforming building, in order to restore it after the
22 nonflood disaster except as provided in par. (c).

23 (c) A floodplain zoning ordinance may not permit the repair, reconstruction or
24 improvement of a nonconforming building if the nonconforming building, after
25 repair, reconstruction or improvement, will fail to meet one or more of the minimum

1 requirements applicable to such a nonconforming building under 42 USC 4001 to
2 4129 or under the regulations promulgated thereunder.

3 **SECTION 7.** 87.307 of the statutes is repealed.

4 **SECTION 8.** 144.26 (2) (f) of the statutes is amended to read:

5 144.26 (2) (f) "Shorelands" means the lands specified under par. (e) and s.
6 59.971 (1) (b).

7 **SECTION 9. Initial applicability; natural resources.**

8 (1) The treatment of section 59.971 (1t) of the statutes first applies to
9 provisions under a county shoreland zoning ordinance on the effective date of this
10 subsection regardless of when the county shoreland zoning ordinance was enacted.

11 (2) The treatment of section 59.971 (1t) of the statutes first applies to repairs,
12 reconstruction and improvements that begin on the effective date of this subsection.

13 (3) The treatment of section 87.30 (1d) of the statutes first applies to
14 provisions under a floodplain zoning ordinance on the effective date of this
15 subsection regardless of when the floodplain zoning ordinance was enacted.

16 (4) The treatment of section 87.30 (1d) of the statutes first applies to repairs,
17 reconstruction and improvements that begin on the effective date of this subsection.

18 (END)