



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-6237/1  
EHS:cjs&amn

## 2021 SENATE BILL 1090

March 10, 2022 - Introduced by Senators SMITH, BEWLEY, LARSON, ROYS and L. TAYLOR, cosponsored by Representatives SHANKLAND, ANDRACA, CABRERA, CONSIDINE, HEBL, B. MEYERS, MILROY, SINICKI, SPREITZER, SUBECK and POPE. Referred to Committee on Natural Resources and Energy.

1     **AN ACT to repeal** 59.692 (1d) and 59.692 (2m); **to amend** 59.692 (1k) (a) (intro.),  
2             59.692 (1k) (a) 2. (intro.), 59.692 (1k) (a) 2m., 59.692 (1k) (a) 4., 59.692 (1k) (am)  
3             (intro.), 59.692 (4) (b), 59.692 (5m), 61.353 (3) (intro.) and 62.233 (3) (intro.); and  
4             **to create** 59.692 (1k) (ag) of the statutes; **relating to:** the restrictiveness of  
5             shoreland zoning ordinances.

---

### *Analysis by the Legislative Reference Bureau*

This bill makes various changes to limits on the restrictiveness of shoreland zoning ordinances.

Current law requires a county to enact shoreland zoning ordinances for all shorelands in its unincorporated area and requires those ordinances to meet shoreland zoning standards established by the Department of Natural Resources by rule. Current law generally defines a shoreland to be an area within a specified distance from the edge of a navigable water.

This bill eliminates a provision under current law that prohibits a county shoreland zoning ordinance from regulating a matter more restrictively than the matter is regulated by a shoreland zoning standard promulgated by DNR. The bill also eliminates a provision under current law that prohibits a county shoreland zoning ordinance from regulating the construction of a structure on a substandard lot in a manner that is more restrictive than the DNR shoreland zoning standards for substandard lots.

Current law provides that a county board of adjustment has authority to decide upon variances and appeals from county decisions regarding shorelands within the

**SENATE BILL 1090**

county. The bill eliminates a current law exception that prohibits DNR from appealing a county decision to grant or deny a variance relating to shoreland zoning. Under current law, DNR may only, upon the request of a county board of adjustment, issue an opinion on whether a variance should be granted or denied.

Current law prohibits DNR and counties from impairing the interest of a landowner in shoreland property by establishing a shoreland zoning standard or enacting or enforcing a shoreland zoning ordinance that does any of a number of specified things. The bill removes the language prohibiting the impairment of the interest of a landowner in shoreland property, but leaves the prohibition on establishing a shoreland zoning standard or enacting or enforcing a shoreland zoning ordinance.

Among the things that under current law DNR and counties may not do through a shoreland zoning standard or ordinance is require any approval or impose any fee or mitigation requirement for, or otherwise prohibit or regulate, any of the following:

1. The maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of certain nonconforming structures or structures legally within the shoreland setback area if the activity does not expand the footprint of the structure.

2. The vertical expansion of certain nonconforming structures or structures legally within the shoreland setback area unless the expansion would extend more than 35 feet above grade level.

The bill removes the prohibition on DNR and counties imposing a fee with respect to these activities.

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

1           **SECTION 1.** 59.692 (1d) of the statutes is repealed.

2           **SECTION 2.** 59.692 (1k) (a) (intro.) of the statutes is amended to read:

3           59.692 (1k) (a) (intro.) The department may not ~~impair the interest of a~~  
4 ~~landowner in shoreland property by establishing~~ establish a shoreland zoning  
5 standard, and a county may not ~~impair the interest of a landowner in shoreland~~  
6 ~~property by enacting or enforcing~~ enact or enforce a shoreland zoning ordinance, that  
7 does any of the following:

8           **SECTION 3.** 59.692 (1k) (a) 2. (intro.) of the statutes is amended to read:

**SENATE BILL 1090**

1           59.692 (1k) (a) 2. (intro.) Except as provided in ~~par.~~ pars. (ag) and (b), requires  
2 any approval or imposes any fee or mitigation requirement for, or otherwise prohibits  
3 or regulates, the maintenance, repair, replacement, restoration, rebuilding, or  
4 remodeling of all or any part of any of the following if the activity does not expand  
5 the footprint of the structure:

6           **SECTION 4.** 59.692 (1k) (a) 2m. of the statutes is amended to read:

7           59.692 (1k) (a) 2m. Except as provided in pars. (ag), (b), and (bm), requires any  
8 approval or imposes any fee or mitigation requirement for, or otherwise prohibits or  
9 regulates, the maintenance, repair, replacement, restoration, rebuilding, or  
10 remodeling of all or any part of a structure listed under sub. (1n) (d) that was legally  
11 constructed wholly or partially within the shoreland setback area if the activity does  
12 not expand the footprint of the existing structure.

13           **SECTION 5.** 59.692 (1k) (a) 4. of the statutes is amended to read:

14           59.692 (1k) (a) 4. Requires Except as provided in par. (ag), requires any  
15 approval or imposes any fee or mitigation requirement for, or otherwise prohibits or  
16 regulates, the vertical expansion of a nonconforming structure or a structure of  
17 which any part is legally located in the shoreland setback area by operation of a  
18 variance granted before July 13, 2015, unless the vertical expansion would extend  
19 more than 35 feet above grade level.

20           **SECTION 6.** 59.692 (1k) (ag) of the statutes is created to read:

21           59.692 (1k) (ag) Paragraph (a) 2., 2m., and 4. do not prohibit the department  
22 or a county from imposing a fee with respect to the activities described in those  
23 subdivisions.

24           **SECTION 7.** 59.692 (1k) (am) (intro.) of the statutes is amended to read:

**SENATE BILL 1090****SECTION 7**

1           59.692 **(1k)** (am) (intro.) The department may not ~~impair the interest of a~~  
2 ~~landowner in shoreland property by establishing~~ establish a shoreland zoning  
3 standard, and a county may not ~~impair the interest of a landowner in shoreland~~  
4 ~~property by enacting or enforcing~~ enact or enforce a shoreland zoning ordinance, that  
5 establishes standards for impervious surfaces unless all of the following apply:

6           **SECTION 8.** 59.692 (2m) of the statutes is repealed.

7           **SECTION 9.** 59.692 (4) (b) of the statutes is amended to read:

8           59.692 **(4)** (b) Variances and appeals regarding shorelands within a county are  
9 for the board of adjustment for that county under s. 59.694, and the procedures of  
10 that section apply. ~~Notwithstanding s. 59.694 (4), the department may not appeal~~  
11 ~~a decision of the county to grant or deny a variance under this section but may, upon~~  
12 ~~the request of a county board of adjustment, issue an opinion on whether a variance~~  
13 ~~should be granted or denied.~~

14           **SECTION 10.** 59.692 (5m) of the statutes is amended to read:

15           59.692 **(5m)** If a county has in effect on or after July 14, 2015, a provision in  
16 an ordinance that is inconsistent with sub. ~~(1d)~~, (1f), or (1k), ~~or (2m)~~, the provision  
17 does not apply and may not be enforced.

18           **SECTION 11.** 61.353 (3) (intro.) of the statutes is amended to read:

19           61.353 **(3)** (intro.) A village ordinance enacted under this section shall accord  
20 and be consistent with the requirements and limitations under s. 59.692 ~~(1d)~~, (1f),  
21 and (1k) and shall include at least all of the following provisions:

22           **SECTION 12.** 62.233 (3) (intro.) of the statutes is amended to read:

