

2005 DRAFTING REQUEST

Bill

Received: 01/25/2005

Received By: rnelson2

Wanted: As time permits

Identical to LRB:

For: Cathy Stepp (608) 266-1832

By/Representing: Scott

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: **Local Gov't - zoning
Nat. Res. - wet/shore/flood**

Extra Copies: **MGG, RPN**

Submit via email: YES

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Ordinance re rebuilding of nonconforming shoreline structures damaged in natural disasters.

Instructions:

See Attached. Apply provisions of s. 59.692 (1s) to general city, village, town, county zoning ordinances, and city and village zoning of wetlands ordinances.

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> |
|--------------|------------------------|------------------------|------------------------|----------------|------------------------|------------------------|-----------------|
| /? | rnelson2 01/27/2005 | | | _____ | | | S&L |
| /1 | mshovers 03/31/2005 | wjackson 04/01/2005 | pgreensl 04/01/2005 | _____ | sbasford 04/01/2005 | | S&L |
| /2 | mshovers 04/20/2005 | wjackson 04/20/2005 | rschluet 04/21/2005 | _____ | mbarman 04/21/2005 | sbasford 05/04/2005 | |

FE Sent For:

<END>

↳ At
Intro.

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AMES
FE Sent For:

4/20/05
12 Wlj 4/20

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21
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<END>

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By/Representing: **Scott**

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|--------------|---|-------------------|--------------|----------------|------------------|-----------------|-----------------|
| 1/? | <i>rnelson2</i> 01/27/2005 mshovers | <i>1 WLJ 4/11</i> | <i>4/1</i> | <i>4/1</i> | | | |
| <i>1/1</i> | <i>MES 3/31/05</i> | | <i>PS</i> | <i>PS/RO</i> | | | |

FE Sent For:

<END>

Sen. Stepp Scott 1/29/05

apply 0.59,692 (13) ^(a) to include
mimis -

if you have a nonconforming
structure destroyed by nat. disaster
you can rebuild it

Nelson, Robert P.

From: Manley, Scott
Sent: Thursday, January 27, 2005 2:11 PM
To: Nelson, Robert P.
Subject: Nonconforming Structure Draft

Bob,

Here is a definition of "legal, nonconforming structure":

"Legal, nonconforming structure" is defined as "any building or structure that was legally constructed according to the development and building regulations in place at the time of construction, but which no longer comply with new development regulations or amendments to existing development regulations. Development regulations include regulations such as density, setbacks, height, lot coverage, impervious surface standards, or any other regulations relating to the size, location, or appearance of a building or structure."

60.61(5)(a)

(a) An ordinance adopted under this section may not prohibit the continued use of any building or premises for any trade or industry for which the building or premises is used when the ordinance takes effect. An ordinance adopted under this section may prohibit the alteration of, or addition to, any existing building or structure used to carry on an otherwise prohibited trade or industry within the district. If a use that does not conform to an ordinance adopted under this section is discontinued for a period of 12 months, any future use of the land, building or premises shall conform to the ordinance.

60.61(5)(b)

(b) Except as provided in par. (d), immediately after the publication of a town zoning ordinance, the town board shall provide for the compilation of a record of the present use of all buildings and premises used for purposes not in conformity with the zoning ordinance. The record shall contain the names and addresses of the owner of the nonconforming use and any occupant other than the owner, the legal description of the land, and the nature and extent of the use of the land. The record shall be published in the town as a class 1 notice under ch. 985. Within 60 days after final publication, upon presentation of proof to the town board, errors or omissions in the record may be corrected. At the expiration of the 60-day period, the record shall be filed in the office of the town clerk after the record is first recorded in the office of the register of deeds. The record is prima facie evidence of the extent and number of nonconforming uses existing at the time the ordinance takes effect. Errors or omissions in the record shall be corrected by the town board upon petition of any citizen or by the board on its own motion. The decision of the board concerning errors or omissions is final.

61.351

61.351 Zoning of wetlands in shorelands.

61.351(3)

(3) Adoption of ordinance. To effect the purposes of s. 281.31 and to promote the public health, safety and general welfare, each village shall zone by ordinance all unfilled wetlands of 5 acres or more which are shown on the final wetland inventory maps prepared by the department of natural resources for the village under s. 23.32, which are located in any shorelands and which are within its incorporated area. A village may zone by ordinance any unfilled wetlands which are within its incorporated area at any time.

61.351(5)

(5) Repair and expansion of existing structures permitted. Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on the effective date of an ordinance adopted under this section related to that structure.

61.351(6)

(6) Failure to adopt ordinance. If any village does not adopt an ordinance required under sub. (3) within 6 months after receipt of final wetland inventory maps prepared by the department of natural resources for the village under s. 23.32, or if the department of natural resources, after notice and hearing, determines that a village adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives of s. 281.31 (1), the department of natural resources shall adopt an ordinance for the village. As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

62.23(7)(h)

(h) *Nonconforming uses.* The lawful use of a building or premises existing at the time of the adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. Such nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 per cent of the assessed value of the building unless permanently changed to a conforming use. If such nonconforming use is discontinued for a period of 12 months, any future use of the building and premises shall conform to the ordinance.

62.231

62.231 Zoning of wetlands in shorelands.

62.231(3)

(3) **Adoption of ordinance.** To effect the purposes of s. 281.31 and to promote the public health, safety and general welfare, each city shall zone by ordinance all unfilled wetlands of 5 acres or more which are shown on the final wetland inventory maps prepared by the department of natural resources for the city under s. 23.32, which are located in any shorelands and which are within its incorporated area. A city may zone by ordinance any unfilled wetlands which are within its incorporated area at any time.

62.231(5)

(5) **Repair and expansion of existing structures permitted.** Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on May 7, 1982 related to that structure.

281.31(6)

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.



WIS
RMA

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-NOTEV

WANTED!
Fri 4/1

gen

- 1 AN ACT ...; relating to: authorizing the restoration of a nonconforming structure
- 2 that is destroyed by ^{vandalism or} certain natural forces.

Analysis by the Legislative Reference Bureau

Under current law, with regard to county zoning of shorelands on navigable waters, restrictions that are contained in such zoning ordinances that would apply to a damaged or destroyed nonconforming structure may not prohibit, subject to a number of conditions, the restoration of the structure if it will be restored to the size, location, and use it had before the damage or destruction occurred, unless the size must be larger to comply with state or federal requirements. In addition, and subject to the same conditions, the restrictions in the zoning ordinance may not impose limits on the repair, reconstruction, or improvement of the structure.

5
cost of
the

The conditions that apply to the restrictions in the zoning ordinance are as follows:

1. The structure must have been damaged or destroyed after October 14, 1997.
2. The structure must have been damaged or destroyed by violent wind, vandalism, fire, or flood.

Under the bill, restrictions that are contained in general city, village, town, and county zoning ordinances, and city and village zoning of wetlands in shorelands ordinances, may not prohibit the restoration of a nonconforming structure subject to the same provisions and conditions that currently apply to county zoning of shorelands on navigable waters. Under the bill, however, with regard to the conditions that apply to the restrictions in the zoning ordinances, the structure must have been damaged on or after the effective date of the bill.

or destroyed

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.** 59.69 (10m) of the statutes is created to read:

2 **59.69 (10m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.** (a)

3 Restrictions that are applicable to damaged or destroyed nonconforming structures

4 and that are contained in an ordinance enacted under this section may not prohibit

5 the restoration of a nonconforming structure if the structure will be restored to the

6 size, subject to par. (b), location, and use that it had immediately before the damage

7 or destruction occurred, or impose any limits on the costs of the repair,

8 reconstruction, or improvement if all of the following apply:

9 1. The nonconforming structure was damaged or destroyed on or after the
10 effective date of this subdivision . . . [revisor inserts date].

11 2. The damage or destruction was caused by violent wind, vandalism, fire, or
12 a flood.

13 (b) An ordinance enacted under this section to which par. (a) applies shall allow
14 for the size of a structure to be larger than the size it was immediately before the
15 damage or destruction if necessary for the structure to comply with applicable state
16 or federal requirements.

17 **SECTION 2.** 60.61 (5m) of the statutes is created to read:

18 **60.61 (5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.** (a)

19 Restrictions that are applicable to damaged or destroyed nonconforming structures

20 and that are contained in an ordinance ^{adopted} enacted under this section may not prohibit

21 the restoration of a nonconforming structure if the structure will be restored to the

1 size, subject to par. (b), location, and use that it had immediately before the damage
2 or destruction occurred, or impose any limits on the costs of the repair,
3 reconstruction, or improvement if all of the following apply:

4 1. The nonconforming structure was damaged or destroyed on or after the
5 effective date of this subdivision . . . [revisor inserts date].

6 2. The damage or destruction was caused by violent wind, vandalism, fire, or
7 a flood.

8 (b) An ordinance ^{adopted} ~~enacted~~ under this section to which par. (a) [✓] applies shall allow
9 for the size of a structure to be larger than the size it was immediately before the
10 damage or destruction if necessary for the structure to comply with applicable state
11 or federal requirements.

12 SECTION 3. 61.351 (5m) of the statutes is created to read:

13 61.351 (5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES. (a)
14 Restrictions that are applicable to damaged or destroyed nonconforming structures
15 and that are contained in an ordinance ^{adopted} ~~enacted~~ under this section may not prohibit
16 the restoration of a nonconforming structure if the structure will be restored to the
17 size, subject to par. (b), location, and use that it had immediately before the damage
18 or destruction occurred, or impose any limits on the costs of the repair,
19 reconstruction, or improvement if all of the following apply:

20 1. The nonconforming structure was damaged or destroyed on or after the
21 effective date of this subdivision . . . [revisor inserts date].

22 2. The damage or destruction was caused by violent wind, vandalism, fire, or
23 a flood.

24 (b) An ordinance ^{adopted} ~~enacted~~ under this section to which par. (a) [✓] applies shall allow
25 for the size of a structure to be larger than the size it was immediately before the

1 damage or destruction if necessary for the structure to comply with applicable state
2 or federal requirements.

3 SECTION 4. 62.23 (7) (hc) of the statutes is created to read:

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

11 a. The nonconforming structure was damaged or destroyed on or after the
12 effective date of this subdivision paragraph [revisor inserts date].

13 b. The damage or destruction was caused by violent wind, vandalism, fire, or
14 a flood.

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

19 SECTION 5. 62.231 (5m) of the statutes is created to read:

20 62.231 (5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES. (a)
21 Restrictions that are applicable to damaged or destroyed nonconforming structures
22 and that are contained in an ordinance enacted under this section may not prohibit
23 the restoration of a nonconforming structure if the structure will be restored to the
24 size, subject to par. (b), location, and use that it had immediately before the damage

1 or destruction occurred, or impose any limits on the costs of the repair,
2 reconstruction, or improvement if all of the following apply:

3 1. The nonconforming structure was damaged or destroyed on or after the
4 effective date of this subdivision [✓] [revisor inserts date].

5 2. The damage or destruction was caused by violent wind, vandalism, fire, or
6 a flood.

7 (b) An ordinance enacted under this section to which par. (a) [✓] applies shall allow
8 for the size of a structure to be larger than the size it was immediately before the
9 damage or destruction if necessary for the structure to comply with applicable state
10 or federal requirements.

11 (END)

D-NOTE

Sen Stepp

Created sections 610351(5m) and 620231(5m) are similar to, but somewhat broader than current law sections 610351(5) and 620231(5). I included the created sections because they are based on ss 59.692(15). Do this OK, or would you like ss 61.351(5m) and 620231(5m) removed from the bill?

AM ZJ

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

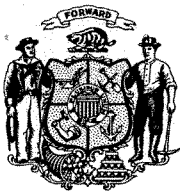
LRB-1871/1dn
MES:wlj:pg

April 1, 2005

Sen. Stepp:

Created sections 61.351 (5m) and 62.231 (5m) are similar to, but somewhat broader than, current law sections 61.351 (5) and 62.231 (5). I included the created sections because they are based on s. 59.692 (1s). Is this OK, or would you like ss. 61.351 (5m) and 62.231 (5m) removed from the bill?

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1871/1

MES:wlj:pg

fma

2005 BILL

regen

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2 that is destroyed by vandalism or certain natural forces.

Analysis by the Legislative Reference Bureau

Under current law, with regard to county zoning of shorelands on navigable waters, restrictions that are contained in such zoning ordinances that would apply to a damaged or destroyed nonconforming structure may not prohibit, subject to a number of conditions, the restoration of the structure if it will be restored to the size, location, and use it had before the damage or destruction occurred, unless the size must be larger to comply with state or federal requirements. In addition, and subject to the same conditions, the restrictions in the zoning ordinance may not impose limits on the costs of the repair, reconstruction, or improvement of the structure.

The conditions that apply to the restrictions in the zoning ordinance are as follows:

1. The structure must have been damaged or destroyed after October 14, 1997.
2. The structure must have been damaged or destroyed by violent wind, vandalism, fire, or flood.

Under the bill, restrictions that are contained in general city, village, town, and county zoning ordinances, and city and village zoning of wetlands in shorelands ordinances, may not prohibit the restoration of a nonconforming structure subject to the same provisions and conditions that currently apply to county zoning of shorelands on navigable waters. Under the bill, however, with regard to the conditions that apply to the restrictions in the zoning ordinances, the structure must have been damaged or destroyed on or after the effective date of the bill.

including the addition of other natural occurrence
other natural occurrence is added to the ways in which a structure must have been damaged. Also under the bill,

BILL

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

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1 **SECTION 1.** 59.69 (10m) of the statutes is created to read:

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4 and that are contained in an ordinance enacted under this section may not prohibit
5 the restoration of a nonconforming structure if the structure will be restored to the
6 size, subject to par. (b), location, and use that it had immediately before the damage
7 or destruction occurred, or impose any limits on the costs of the repair,
8 reconstruction, or improvement if all of the following apply:

9 1. The nonconforming structure was damaged or destroyed on or after the
10 effective date of this subdivision [revisor inserts date].

11 2. The damage or destruction was caused by violent wind, vandalism, fire, ~~or~~
12 flood, ^{↑ or other natural occurrence}

13 (b) An ordinance enacted under this section to which par. (a) applies shall allow
14 for the size of a structure to be larger than the size it was immediately before the
15 damage or destruction if necessary for the structure to comply with applicable state
16 or federal requirements.

17 **SECTION 2.** 60.61 (5m) of the statutes is created to read:

18 **60.61 (5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.** (a)

19 Restrictions that are applicable to damaged or destroyed nonconforming structures
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20 1. The nonconforming structure was damaged or destroyed on or after the
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BILL

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

11 a. The nonconforming structure was damaged or destroyed on or after the
12 effective date of this subdivision paragraph [revisor inserts date].

13 b. The damage or destruction was caused by violent wind, vandalism, fire, or
14 flood, or other natural occurrence

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

19 **SECTION 5.** 62.231 (5m) of the statutes is created to read:

20 62.231 (5m) **RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.** (a)
21 Restrictions that are applicable to damaged or destroyed nonconforming structures
22 and that are contained in an ordinance enacted under this section may not prohibit
23 the restoration of a nonconforming structure if the structure will be restored to the
24 size, subject to par. (b), location, and use that it had immediately before the damage

BILL

1 or destruction occurred, or impose any limits on the costs of the repair,
2 reconstruction, or improvement if all of the following apply:

3 1. The nonconforming structure was damaged or destroyed on or after the
4 effective date of this subdivision [revisor inserts date].

5 2. The damage or destruction was caused by violent wind, vandalism, fire, or
6 floods *or other natural occurrence*

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

11 (END)

FNS 2-16

Section #. 59.692 (1s) (a) 2. of the statutes is amended to read:

59.692 (1s) (a) 2. The damage or destruction was caused by violent wind, vandalism, fire ^{strike} ~~or a~~ ^{score}
floods [↑] or other natural occurrence

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

Northrop, Lori

From: Manley, Scott
Sent: Wednesday, May 04, 2005 11:43 AM
To: LRB.Legal
Subject: Draft review: LRB 05-1871/2 Topic: Ordinance re rebuilding of nonconforming shoreline structures damaged in natural disasters.

It has been requested by <Manley, Scott> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-1871/2 Topic: Ordinance re rebuilding of nonconforming shoreline structures damaged in natural disasters.