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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Transportation, Tourism,
Forestry, and Natural Resources (SC-TTFNR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (June/2012)

Senate

Record of Committee Proceedings

Committee on Transportation, Tourism, Forestry, and Natural Resources

Senate Bill 301

Relating to: the application of shoreland zoning ordinances to certain unincorporated areas.

By Senators Holperin, Jauch, Taylor and Olsen; cosponsored by Representatives Meyer, Gunderson, Ballweg, Molepske Jr. and Townsend.

September 23, 2009 Referred to Committee on Transportation, Tourism, Forestry, and Natural Resources.

January 14, 2010 **PUBLIC HEARING HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Absent: (0) None.

Appearances For

- Jim Holperin, Eagle River — 12th Senate District

Appearances Against

- Lori Grant, Madison — River Alliance of Wisconsin

Appearances for Information Only

- Liesa Lehmann — DNR
- Gregg Breese — DNR

Registrations For

- Rick Stadelman — WI Towns Association
- Tom Larson — WI Realtors Association

Registrations Against

- Amber Meyer-Smith, Madison — Clean Wisconsin

Registrations for Information Only

- None.

January 20, 2010 **EXECUTIVE SESSION HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Absent: (0) None.

February 11, 2010

EXECUTIVE SESSION HELD

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Absent: (0) None.

Moved by Senator Hansen, seconded by Senator Holperin that **Senate Bill 301** be recommended for passage.

Ayes: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

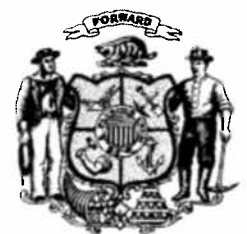
Noes: (0) None.

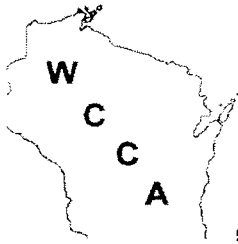
PASSAGE RECOMMENDED, Ayes 7, Noes 0

Elizabeth Novak
Committee Clerk



WISCONSIN STATE LEGISLATURE





**Wisconsin
County Code
Administrators**

January 6, 2010

Senator Holperin
C/O-Committee on Transportation, Tourism, Forestry, and Natural Resources
409 South State Capitol
PO Box 7882
Madison, WI 53707-7882

Re: Opposition to SB 301

Dear Senator Holperin:

I am writing on behalf of the Wisconsin County Code Administrators (WCCA). WCCA is an association of county planning, zoning and sanitary code officials throughout the State of Wisconsin who administer land use and environmental health regulations.

WCCA is **strongly opposed** to Senate Bill 301.

This proposed bill undermines the ability for zoning and land-use officials to be able to enforce the standards in NR 115 and respective shoreland zoning ordinances in a uniform manner. It would allow for significant regulatory deficiencies when working with businesses as opposed to working with residences, even though the impact on the resource would be paralleled. Water quality measures have been addressed in NR 115, which require limiting the amount of impervious surfaces on a shoreland lot. These standards directly minimize the level of pollutants, chemicals, etc. from running off and entering the waters of the state. The exemption would not hold the business sector in question to these standards and would have severe implications for runoff in those areas.

The proposed bill would also create "non-regulated" islands throughout the state. Situations would undoubtedly arise where a residence would be restricted to expansion and/or increasing the amount of impervious surface while the adjacent business could blacktop the majority of its lot and construct additions closer to the ordinary high-water mark of the waterway.

As a regulatory entity, members of WCCA strive to carry out the statutes, administrative codes and ordinances legislated by the federal, state and local governing legislative bodies. This bill would directly impair executive ability to carry out these duties in a

uniform manner. It would ultimately create animosity amongst neighboring property owners because of the unequal treatment.

The bill provides exemptions to shoreland zoning administration if:

- 1) The majority of the buildings and structures in the area have been used since January 1, 1990 to conduct the affairs of small business,
- 2) All of the roads in the area are paved,
- 3) If the area receives public water and sewer service, and
- 4) If the area meets all other requirements specified by DNR by rule.

The first requirement is ambiguous in that area is not defined. The current bill would allow for residences between businesses to also be exempt because they would be in an area where "the majority" of the buildings and structures have been used to conduct the affairs of small businesses. If this were the case, it would provide for preferential treatment of residences based on their location in or out of an "area".

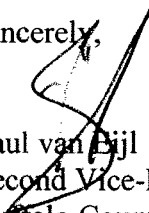
The first requirement does not define affairs of small businesses. This requirement could be interpreted to include home-based businesses such as hairstylists or internet-based businesses. These scenarios would become open to interpretation.

The second requirement of the roads in the area being paved would actually have a more severe impact on the runoff measures to the adjacent water body. Although desirable to residents, drivers, etc, paved roadways actually would increase the level of runoff into the adjacent water body due to it being an impervious surface.

The third requirement of the area receiving public water and sewer service is an erroneous method of determining which areas/lots should be exempt from shoreland zoning ordinances. Erosion, pollutant runoff and other measures addressed through county ordinances, are significant issues irrespective of the availability of these services.

For these and other reasons, this bill promotes a patchwork discriminatory regulation, which is the very antithesis of sound, uniform legislation.

Sincerely,



Paul van Bijl
Second Vice-President, Wisconsin County Code Administrators
Buffalo County Zoning Administrator
PO Box 492
Alma, WI 54610
608-685-6218

Cc: WCCA Executive Board
Rep Spencer Black
Gregg Breese/Shoreland team Leader



Testimony on Senate Bill 301
Thursday, January 14, 2010

Recently the Department of Natural Resources, with legislative approval and after seven years of work, enacted a comprehensive revision of the agency's shoreland zoning rules...NR 115. The re-write was the first significant overhaul since shoreland zoning rules were first authorized by the legislature back in the mid-1960s.

From the start, shoreland zoning in Wisconsin only applied to townships. Cities and villages have always been completely exempted and that policy is continued in the new NR 115. But that policy is wrong.

I don't know for sure, but I suspect the city and village shoreland rule exemption was enacted in the 1960s because it was assumed that all new shoreland development would occur in townships. Cities and villages were already developed, right? It would not help to apply, for example, a 75 foot setback requirement to new shoreland construction in cities because those shorelands had already been built on and built up.

For whatever reason, the exemption was enacted and, over the succeeding 45 years, rarely questioned and never challenged.

But NR 115 is a game-changer because one of the new provisions of the rule prohibits the construction or expansion of structures on lots within 300 feet

of a lake or river shore if the square footage of those structures along with other so-called “impervious surfaces” exceeds a certain proportion of the total square footage of the building lot.

Now, this is complicated stuff and I’m not going to try to explain it all to you today. That’s why it took 7 years to finalize the rule.

But the effect of the new rule is to put small unincorporated communities near lakes and streams...places you’ve all visited like Three Lakes and Woodruff and Elcho and Wabeno and dozens of others...at a competitive disadvantage because they will not be able to expand their small downtowns or improve the buildings on many downtown lots.

Meantime, small and large communities which happen to be incorporated as cities and villages...places you’ve also visited like Eagle River and Crandon and Rhinelander and Tomahawk... will be able to expand their downtowns however and wherever they want, because they are completely exempt from NR 115.

Senate Bill 301, the “Small Downtown Shoreland Equity Act” says if you’ve got a cluster of businesses bisected by paved streets and served by sewer and water, then the county can choose to exempt that small downtown from the potentially costly and restrictive shoreland rules in NR 115...just as cities and villages are now exempt.

The bill does provide that, as an added environmental protection, the DNR can adopt rules to minimize storm water runoff or other potential environmental damage in small downtowns. The bill is not requiring that of cities and villages, although perhaps it should.

Bottom line, this bill says what's good for the goose is good for the gander. If the legislature continues to allow big and small shoreland cities and villages around the state like Madison, Green Bay, Eau Claire and even Milwaukee...which all have lots of water frontage...to be exempted from shoreland protection rules, then there's absolutely no reason why small downtowns like Minocqua, Three Lakes and Elcho can't enjoy the same privilege.

I look forward to a spirited discussion over this bill which promotes fundamental fairness...and to its eventual adoption.





RIVER ALLIANCE OF WISCONSIN

January 14, 2010

Senator Jim Holperin, Chair,
Senate Transportation, Tourism, Forestry and Natural Resources Committee
Members of the Transportation, Tourism, Forestry and Natural Resources Committee
330 Southwest
State Capitol

RE: SB 301, Shoreland Zoning

Dear Senator Holperin and Members of the Senate Transportation, Tourism, Forestry and Natural Resources Committee:

The River Alliance of Wisconsin is a non-profit, non-partisan organization representing over 3500 members and supporting over 150 watershed groups around the state. We advocate for the protection and restoration of the state's flowing waters.

The River Alliance was represented on the Citizen Advisory Committee appointed to assist DNR in the multi-year effort to update Shoreland Zoning, NR 115, and was intimately involved from the very beginning to the final hour. We were also at the table specifically to discuss issues raised by rural towns at the Senate Committee on the Environment and Assembly Natural Resource Committee hearings on NR 115, and ultimately supported revisions to the proposed rule to address their concerns. With the finalization of NR 115, SB 301 is unnecessary, dangerously broad and removes the few water quality safeguards required of property owners in unincorporated towns.

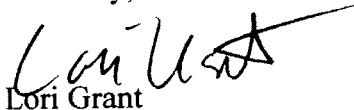
Two very significant changes were made to NR 115 specifically to address developed rural towns. First, the area to which impervious surface limits are applied was reduced from the land area within 1000 feet from the water to the land area within 300 feet from the water. Second, existing impervious surface within that 300 feet area, even if exceeding the impervious surface standard, can be maintained, relocated on the property as long as no more is added, and even modified from ground level (for example, a parking lot) to a building of the same area. These changes provide significant flexibility for property owners in rural towns, but as NR 115 is a statewide rule, also result in far less protection for waterways in less developed areas than originally proposed. A painful tradeoff was made to address the needs of rural towns. This bill is not only unnecessary, but it ignores the tradeoffs made at the expense of the environment and the purpose of Shoreland Zoning.

Further, SB 301's criteria for exemption from Shoreland Zoning are overly broad, potentially allowing for exemption of multiple communities and cross-road business areas in sensitive landscapes. The bill also places the burden on counties to apply the criteria and decide by ordinance which areas are to be exempt, a form of inequitable "spot-zoning" with no defensible purpose. And determining how and where to define the area to be exempt is sure to be an extremely controversial, burdensome exercise as property owners clamor to be within the exempt area.

Assuming SB 301 is aimed to provide flexibility to larger towns with urban development, it unfairly grants privileges to such towns over incorporated cities. Cities are exempt from state Shoreland Zoning, but are subject to federal and state requirements to control erosion and polluted runoff while towns are not. Other than state standards to control runoff from large construction projects, towns, even those larger than and with higher densities than some smaller incorporated cities, are not held to the same public service responsibilities. One of the few ways to attempt to control runoff and erosion in towns is through Shoreland Zoning; exempting them absolves them of the few tools available.

After years of work, NR 115 was revised in the final hour primarily to address the concerns raised by the towns. This bill negates that work, opens the door for nearly every remote business area to argue for exemption from statewide rules intended to protect the state's waters, and unfairly lets towns off the hook for control of stormwater runoff. We urge you to set this bill aside, and allow the newly revised NR 115 to work.

Sincerely,



Lori Grant

Water Policy Program Manager





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

Testimony of the Department of Natural Resources regarding SB 301

Senate Committee on Transportation, Tourism, Forestry and Natural Resources January 14, 2009

The Department has several concerns regarding SB 301. To understand the implications of this proposed bill, it's important to know the history of shoreland protection in Wisconsin. Forty years ago, our legislature recognized the need to protect our 25,000 lakes and 54,000 miles of rivers and streams as economic development progressed along Wisconsin waterways. So statutory requirements for counties to regulate land use in unincorporated shoreland areas were adopted, with a strong purpose:

“...to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.”
excerpt from s. 281.31(1), Stats.

State rules soon followed in the form of NR 115, Admin. Code, which established key shoreland management standards like minimum lot sizes, a 75-foot building setback, and protections for wetlands. Counties adopted and have been administering their shoreland zoning ordinances, updating them over the years to incorporate new science and innovative approaches to balance property rights with environmental protections. Recently, after more than 7 years of rulemaking and extensive participation from counties, citizens, interest groups and legislators, updates to NR 115 were completed, and go into effect next month.

When these statutes were originally adopted, their applicability was limited to unincorporated areas, acknowledging the extensive historic waterfront development already in place in Wisconsin's cities and villages. In the 1980's, when individuals tried to avoid shoreland zoning by annexing unincorporated lands into a city or village, the loophole was closed with additional statutory requirements that the applicable shoreland zoning stay with a property even if it's annexed.

Now, after more than four decades of strong regulatory protection, we have revised shoreland rules that counties are ready to put into place, and this bill concerns us because:

- The proposed bill diminishes protections for public waters, by lifting land use requirements that have applied to all unincorporated areas for 40 years. Some have said that it's unfair that cities and villages are not subject to shoreland zoning. If that's the concern, then we suggest increasing protections for cities and villages, rather than eliminating all shoreland protections in select unincorporated areas.
- The proposed bill is overly broad in creating exemptions from shoreland zoning. By our estimates, over 100 “urban towns” all over the state could qualify for this exemption. Of even further concern is that almost any sewered commercial property with a paved road - or even a residential property with a home-based business - could meet the proposed statutory criteria in this bill, essentially giving a free pass to just about anyone who doesn't want to be subject to the same shoreland zoning standards as everyone else.

- The proposed bill will be burdensome for counties to implement. The work to assess whether properties or areas meet the criteria, and the resulting need to track and administer different zoning districts, will add to the already complex and heavy workload of county zoning offices. If this bill becomes law, county staff and elected officials will be pressured to lift shoreland regulations, and will be hard-pressed to turn down any request that qualifies, essentially eliminating any local control over land use development on their waterways.
- Finally, the proposed bill will harm waterfront communities. Many of Wisconsin's rural communities have grown up along rivers or lakes. Experience has shown that strong consistent regulatory protections maintain high quality water resources and sustain property values. Lifting long-standing shoreland protections in these areas will diminish the habitat, water quality and natural scenic beauty of the state's waterways, and lead to decreasing property values.

Wisconsin residents and visitors alike have a strong emotional tie to Wisconsin's lakes and rivers. It shows in how we enjoy the lakes and rivers, how we manage them, and how we protect them. The Department urges you to reconsider this legislation, and allow the new rules and county ordinances to move Wisconsin forward in a positive direction of sustained property values, economic growth and high quality lake and river resources for all to enjoy.