

State of Wisconsin



2013 Senate Bill 183

Date of enactment: **December 12, 2013**
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2013 WISCONSIN ACT 80

AN ACT *to repeal* 59.692 (2m) (c), 59.692 (7), 66.0203 (10), 66.0213 (2) (b), 66.0215 (7) (b) and 66.0216 (8) (b); *to renumber* 66.0213 (2) (a), 66.0215 (7) (a) and 66.0216 (8) (a); *to amend* 20.370 (3) (ma), 30.2022 (1), 41.41 (8), 59.692 (6m), 66.0217 (8) (a), 66.0219 (6), 66.0223 (1), 66.1001 (3) (q), 70.32 (1g), 93.90 (3) (a) 3., 281.31 (2) (e), 281.31 (8), 281.36 (10), 281.36 (13m), 289.33 (3) (d), 289.35, 289.43 (7) (c) and 295.607 (1) (a) 2.; and *to create* 61.353 and 62.233 of the statutes; **relating to:** shoreland zoning ordinances that apply to shorelands that are annexed by a city or village or that are part of a town incorporated as a city or village and making an appropriation.

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

SECTION 1. 20.370 (3) (ma) of the statutes is amended to read:

20.370 (3) (ma) *General program operations — state funds.* From the general fund, the amounts in the schedule for regulatory and enforcement operations under chs. 30, 31 and 280 to 299 and ss. 44.47, 59.692, 59.693, 61.351, 61.353, 61.354, 62.231, 62.233, 62.234 and 87.30, for reimbursement of the conservation fund for expenses incurred for actions taken under s. 323.12 (2) (c); for review of environmental impact requirements under ss. 1.11 and 23.40; and for enforcement of the treaty-based, off-reservation rights to fish, hunt and gather held by members of federally recognized American Indian tribes or bands.

SECTION 2. 30.2022 (1) of the statutes is amended to read:

30.2022 (1) Activities affecting waters of the state, as defined in s. 281.01 (18), that are carried out under the direction and supervision of the department of transportation in connection with highway, bridge, or other transportation project design, location, construction,

reconstruction, maintenance, and repair are not subject to the prohibitions or permit or approval requirements specified under s. 29.601, 30.11, 30.12, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 61.353, 62.231, 62.233, or 87.30 or chs. 281 to 285 or 289 to 299. However, at the earliest practical time prior to the commencement of these activities, the department of transportation shall notify the department of the location, nature, and extent of the proposed work that may affect the waters of the state.

SECTION 3. 41.41 (8) of the statutes is amended to read:

41.41 (8) ZONING. Notwithstanding ss. 13.48 (13) (a), 59.69 (4), 60.61 (2), 60.62 (1), 61.35 and 62.23 (7), the Kickapoo valley reserve is not subject to the zoning ordinance of any county or municipality, except that any ordinance enacted under s. 59.692, 61.351, 61.353, 62.231, 62.233, or 87.30 governing the zoning of floodplains, shorelands or wetlands in shorelands and any ordinance that is required by law under s. 59.693, 61.354 or 62.234 governing construction site erosion control or storm water management applies in the reserve.

SECTION 4. 59.692 (2m) (c) of the statutes is repealed.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

SECTION 5. 59.692 (6m) of the statutes is amended to read:

59.692 (6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not proceed under sub. (6) ~~or (7) (b) or (c)~~, or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

SECTION 6. 59.692 (7) of the statutes is repealed.

SECTION 7. 61.353 of the statutes is created to read:

61.353 Zoning of annexed or incorporated shorelands. (1) In this section:

(a) "Principal building" means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.

(b) "Shorelands" has the meaning given in s. 59.692 (1) (b).

(c) "Shoreland setback area" has the meaning given in s. 59.692 (1) (bn).

(2) Every village shall, on or before the first day of the 7th month beginning after the effective date of this subsection [LRB inserts date], enact an ordinance that applies to all of the following shorelands:

(a) A shoreland that was annexed by the village after May 7, 1982, and that prior to annexation was subject to a county shoreland zoning ordinance under s. 59.692.

(b) For a village that incorporated after April 30, 1994, under s. 66.0203, 66.0211, or 66.0213, a shoreland that before incorporation by the village was part of a town that was subject to a county shoreland zoning ordinance under s. 59.692.

(3) A village ordinance enacted under this section shall include at least all of the following provisions:

(a) A provision establishing a shoreland setback area of at least 50 feet from the ordinary high-water mark, except as provided in par. (b).

(b) A provision authorizing construction or placement of a principal building within the shoreland setback area established under par. (a) if all of the following apply:

1. The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building.

2. The principal building is constructed or placed within a distance equal to the average setback of the principal building on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

(c) 1. A provision requiring a person who owns shoreland property that contains vegetation to maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in subd. 2.

2. If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

(d) A provision allowing a person who is required to maintain or establish a vegetative buffer zone under par. (c) to remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage and that extends no more than 35 feet inland from the ordinary high-water mark.

(5) Provisions of a county shoreland zoning ordinance under s. 59.692 that were applicable, prior to annexation, to any shoreland annexed by a village after May 7, 1982, shall continue in effect and shall be enforced after annexation by the annexing village until the effective date of an ordinance enacted by the village under sub. (2).

(6) Provisions of a county shoreland zoning ordinance under s. 59.692 that were applicable prior to incorporation to any shoreland that is part of a town that incorporates as a village under s. 66.0203, 66.0211, or 66.0213 after April 30, 1994, shall continue in effect and shall be enforced after incorporation by the incorporated village until the effective date of an ordinance enacted by the village under sub. (2).

(7) An ordinance enacted under sub. (2) does not apply to lands adjacent to an artificially constructed drainage ditch, pond, or stormwater retention basin if the drainage ditch, pond, or retention basin is not hydrologically connected to a natural navigable water body.

SECTION 8. 62.233 of the statutes is created to read:

62.233 Zoning of annexed or incorporated shorelands. (1) In this section:

(a) "Principal building" means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.

(b) "Shorelands" has the meaning given in s. 59.692 (1) (b).

(c) "Shoreland setback area" has the meaning given in s. 59.692 (1) (bn).

(2) Every city shall, on or before the first day of the 7th month beginning after the effective date of this subsection [LRB inserts date], enact an ordinance that applies to all of the following shorelands:

(a) A shoreland that was annexed by the city after May 7, 1982, and that prior to annexation was subject to a county shoreland zoning ordinance under s. 59.692.

(b) For a city that incorporated after April 30, 1994, under s. 66.0203, 66.0211, 66.0213, or 66.025, a shoreland that before incorporation as a city was part of a town that was subject to a county shoreland zoning ordinance under s. 59.692.

(3) A city ordinance enacted under this section shall include at least all of the following provisions:

(a) A provision establishing a shoreland setback area of at least 50 feet from the ordinary high-water mark, except as provided in par. (b).

(b) A provision authorizing construction or placement of a principal building within the shoreland setback area established under par. (a) if all of the following apply:

1. The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building.

2. The principal building is constructed or placed within a distance equal to the average setback of the principal building on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

(c) 1. A provision requiring a person who owns shoreland property that contains vegetation to maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in subd. 2.

2. If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

(d) A provision allowing a person who is required to maintain or establish a vegetative buffer zone under par. (c) to remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage and that extends no more than 35 feet inland from the ordinary high-water mark.

(5) Provisions of a county shoreland zoning ordinance under s. 59.692 that were applicable, prior to annexation, to any shoreland annexed by a city after May 7, 1982, shall continue in effect and shall be enforced after annexation by the annexing city until the effective date of an ordinance enacted by the city under sub. (2).

(6) Provisions of a county shoreland zoning ordinance under s. 59.692 that were applicable prior to incorporation to any shoreland that is part of a town that incorporates as a city under s. 66.0203, 66.0211, 66.0213, or 66.0215 after April 30, 1994, shall continue in effect and shall be enforced after incorporation by the incorporated city until the effective date of an ordinance enacted by the city under sub. (2).

(7) An ordinance enacted under sub. (2) does not apply to lands adjacent to an artificially constructed drainage ditch, pond, or stormwater retention basin if the drainage ditch, pond, or retention basin is not hydrologically connected to a natural navigable water body.

SECTION 9. 66.0203 (10) of the statutes is repealed.

SECTION 10. 66.0213 (2) (a) of the statutes is renumbered 66.0213 (2).

SECTION 11. 66.0213 (2) (b) of the statutes is repealed.

SECTION 12. 66.0215 (7) (a) of the statutes is renumbered 66.0215 (7).

SECTION 13. 66.0215 (7) (b) of the statutes is repealed.

SECTION 14. 66.0216 (8) (a) of the statutes is renumbered 66.0216 (8).

SECTION 15. 66.0216 (8) (b) of the statutes is repealed.

SECTION 16. 66.0217 (8) (a) of the statutes is amended to read:

66.0217 (8) (a) An ordinance for the annexation of the territory described in the annexation petition under sub. (3) may be enacted by a two-thirds vote of the elected members of the governing body not less than 20 days after the publication of the notice of intention to circulate the petition and not later than 120 days after the date of filing with the city or village clerk of the petition for annexation or of the referendum election if favorable to the annexation. If the annexation is subject to sub. (6) the governing body shall first review the reasons given by the department that the proposed annexation is against the public interest. ~~Subject to s. 59.692 (7), an An~~ ordinance under this subsection may temporarily designate the classification of the annexed area for zoning purposes until the zoning ordinance is amended as prescribed in s. 62.23 (7) (d). Before introduction of an ordinance containing a temporary classification, the proposed classification shall be referred to and recommended by the plan commission. The authority to make a temporary classification is not effective when the county ordinance prevails during litigation as provided in s. 59.69 (7).

SECTION 17. 66.0219 (6) of the statutes is amended to read:

66.0219 (6) TEMPORARY ZONING OF AREA PROPOSED TO BE ANNEXED. An interim zoning ordinance to become effective only upon approval of the annexation at the referendum election may be enacted by the governing body of the city or village. ~~Subject to s. 59.692 (7), the The~~ ordinance may temporarily designate the classification of the annexed area for zoning purposes until the zoning ordinance is amended as prescribed in s. 62.23 (7) (d). The proposed interim zoning ordinance shall be referred to and recommended by the plan commission prior to introduction. Authority to make a temporary classification is not effective when the county zoning ordinance prevails during litigation as provided in s. 59.69 (7).

SECTION 18. 66.0223 (1) of the statutes is amended to read:

66.0223 (1) In addition to other methods provided by law and subject to sub. (2) and ss. ~~59.692 (7)~~, 66.0301 (6) (d), and 66.0307 (7), territory owned by and lying near but not necessarily contiguous to a village or city may be

annexed to a village or city by ordinance enacted by the board of trustees of the village or the common council of the city, provided that in the case of noncontiguous territory the use of the territory by the city or village is not contrary to any town or county zoning regulation. The ordinance shall contain the exact description of the territory annexed and the names of the towns from which detached, and attaches the territory to the village or city upon the filing of 7 certified copies of the ordinance in the office of the secretary of state, together with 7 copies of a plat showing the boundaries of the territory attached. Two copies of the ordinance and plat shall be forwarded by the secretary of state to the department of transportation, one copy to the department of administration, one copy to the department of natural resources, one copy to the department of revenue and one copy to the department of public instruction. Within 10 days of filing the certified copies, a copy of the ordinance and plat shall be mailed or delivered to the clerk of the county in which the annexed territory is located. Sections 66.0203 (8) (c) and 66.0217 (11) apply to annexations under this section.

SECTION 19. 66.1001 (3) (q) of the statutes is amended to read:

66.1001 (3) (q) Shorelands or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351 ~~or 61.353, 62.231, or 62.233.~~

SECTION 20. 70.32 (1g) of the statutes is amended to read:

70.32 (1g) In addition to the factors set out in sub. (1), the assessor shall consider the effect on the value of the property of any zoning ordinance under s. 59.692, 61.351 ~~or 61.353, 62.231, or 62.233,~~ any conservation easement under s. 700.40, any conservation restriction under an agreement with the federal government and any restrictions under ch. 91. Beginning with the property tax assessments as of January 1, 2000, the assessor may not consider the effect on the value of the property of any federal income tax credit that is extended to the property owner under section 42 of the Internal Revenue Code.

SECTION 21. 93.90 (3) (a) 3. of the statutes is amended to read:

93.90 (3) (a) 3. The proposed new or expanded live-stock facility violates an ordinance adopted under s. 59.692, 59.693, 60.627, 61.351, 61.353, 61.354, 62.231, 62.233, 62.234, or 87.30.

SECTION 22. 281.31 (2) (e) of the statutes is amended to read:

281.31 (2) (e) "Regulation" means ordinances enacted under ss. 59.692, 61.351, 61.353, 62.23 (7) ~~and 62.231, and 62.233~~ and refers to subdivision and zoning regulations which include control of uses of lands under, abutting, or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages, and counties.

SECTION 23. 281.31 (8) of the statutes is amended to read:

281.31 (8) This section and ss. 59.692, 61.351 ~~and 61.353, 62.231, and 62.233~~ shall be construed together to accomplish the purposes and objective of this section.

SECTION 24. 281.36 (10) of the statutes is amended to read:

281.36 (10) **ADDITIONAL REQUIREMENTS.** The requirement of being issued a wetland individual permit or proceeding under the authority of a wetland general permit under this section is in addition to any permit or other approval required by the department for a project or activity that involves a discharge into a wetland. This section governs the determination of whether a discharge is in compliance with water quality standards but does not affect the authority of the department to otherwise regulate the discharge of dredged or fill material in a wetland under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

SECTION 25. 281.36 (13m) of the statutes is amended to read:

281.36 (13m) **REPORT TO LEGISLATURE.** No later than January 31, 2003, and no later than January 31 of each subsequent odd-numbered year, the department shall submit to the legislature under s. 13.172 (2) a report that provides an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

SECTION 26. 289.33 (3) (d) of the statutes, as affected by [2013 Wisconsin Act 14](#), is amended to read:

289.33 (3) (d) "Local approval" includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 91.73, 2007 stats., s. 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9), (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27), 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23), 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25) and (26), 59.55 (3), (4), (5) and (6), 59.56 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58 (1) and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8), (9), (10), (11),

(21), (22) and (23), 59.79 (1), (2), (3), (5), (7), (8), and (10), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.353, 61.354, 62.11, 62.23, 62.231, 62.233, 62.234, 66.0101, 66.0415, 87.30, 196.58, 200.11 (8), 236.45, 281.43 or 349.16, subch. VIII of ch. 60, or subch. III of ch. 91.

SECTION 27. 289.35 of the statutes, as affected by [2013 Wisconsin Act 1](#), is amended to read:

289.35 Shoreland and floodplain zoning. Solid waste facilities are prohibited within areas under the jurisdiction of shoreland and floodplain zoning regulations adopted under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30, and 281.31, except that the department may issue permits authorizing facilities in such areas. If the department issues a permit under this section, the permit shall specify the location, height, and size of the solid waste facility authorized under the permit.

SECTION 28. 289.43 (7) (c) of the statutes is amended to read:

289.43 (7) (c) The department shall approve the requester’s exemption proposal if the department finds that the proposal, as approved, will comply with this chapter and chs. 30, 31, 160 and 280 to 299 and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.353, 61.354, 62.231, 62.233, 62.234 and 87.30. If the proposal does not comply with one or more of the requirements specified in this paragraph, the department shall provide a written statement describing how the proposal fails to comply with those requirements. The department shall respond to an application for an exemption under this subsection within 90 days.

SECTION 29. 295.607 (1) (a) 2. of the statutes, as affected by [2013 Wisconsin Act 1](#), is amended to read:

295.607 (1) (a) 2. “Shoreland zoning ordinance” means a shoreland zoning ordinance or regulation adopted under s. 59.692, 61.351, 61.353, 62.231, 62.233, or 281.31.
