

2015 DRAFTING REQUEST

Bill

Received:	11/24/2015	Received By:	eshea
For:	Frank Lasee (608) 266-3512	Same as LRB:	-3974
May Contact:		By/Representing:	Rob
Subject:	Nat. Res. - nav. waters	Drafter:	eshea
		Addl. Drafters:	emueller jkreye mshovers phurley pkahler zwyatt

Extra Copies:

Submit via email:	YES
Requester's email:	Sen.Lasee@legis.wisconsin.gov
Carbon copy (CC) to:	Anna.henning@legis.wisconsin.gov larry.konopacki@legis.wisconsin.gov Rep.Jarchow@legis.wisconsin.gov eric.mueller@legis.wisconsin.gov joseph.kreye@legis.wisconsin.gov marc.shovers@legis.wisconsin.gov peggy.hurley@legis.wisconsin.gov pam.kahler@legis.wisconsin.gov elisabeth.shea@legis.wisconsin.gov zachary.wyatt@legis.wisconsin.gov Adam.Jarchow@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Property rights, shoreland zoning, and contested case hearings

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	eshea 11/25/2015	kmochal 11/25/2015	_____			
/P1	eshea 11/30/2015		_____	srose 11/25/2015		State S&L
/1		kfollett 11/30/2015	_____	mbarman 11/30/2015	lparisi 12/3/2015	State S&L

FE Sent For:

<END>

*at intro
12/18/15*

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Addl. Drafters: emueller
jkreye
mshovers
phurley
pkahler
zwyatt

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Pre Topic:

No specific pre topic given

Topic:

Property rights, shoreland zoning, and contested case hearings

see LRB-3588

Instructions:

See attached

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/?	eshea 11/25/2015	kmochal 11/25/2015	_____			
/P1	eshea 11/30/2015		_____	srose 11/25/2015		State S&L
/1		kfollett 11/30/2015	_____	mbarman 11/30/2015		State S&L

FE Sent For:

<END>

Shea, Elisabeth

From: Jarchow, Adam
Sent: Tuesday, November 24, 2015 2:39 PM
To: Shea, Elisabeth
Cc: Kovach, Robert; Henning, Anna; Konopacki, Larry; Gibbs, Adam; Sands, Mitch
Subject: Re: Our marching orders are to split the bills--property rights in one, and water regs in the other.

That is my thought yes.

Kind Regards,

Adam

Sent from my iPhone

On Nov 24, 2015, at 2:15 PM, Shea, Elisabeth <Elisabeth.Shea@legis.wisconsin.gov> wrote:

Just to clarify, that would place all of the shoreland zoning items in the property rights bill (sections 40-46), as well as the substitution of a hearing examiner in ch. 227 (section 66). Is that right?

Lis

Elisabeth H. Shea
Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266 - 5446
elisabeth.shea@legis.wisconsin.gov

The information contained in this communication may be confidential and protected by the attorney-client privilege.

From: Jarchow, Adam
Sent: Tuesday, November 24, 2015 2:02 PM
To: Kovach, Robert <Robert.Kovach@legis.wisconsin.gov>
Cc: Shea, Elisabeth <Elisabeth.Shea@legis.wisconsin.gov>; Henning, Anna <Anna.Henning@legis.wisconsin.gov>; Konopacki, Larry <Larry.Konopacki@legis.wisconsin.gov>; Gibbs, Adam <Adam.Gibbs@legis.wisconsin.gov>; Sands, Mitch <Mitch.Sands@legis.wisconsin.gov>
Subject: Re: Our marching orders are to split the bills--property rights in one, and water regs in the other.

If it's ok from the P/3 let's do the following

Sections 1-36 and 69-74 and the new language sent yesterday in one bill

In the the bill let's do 37-68 & 75-89.

Thanks.

Kind Regards,

Adam

Sent from my iPhone

On Nov 24, 2015, at 12:28 PM, Kovach, Robert <Robert.Kovach@legis.wisconsin.gov> wrote:

Dear Lis,

Could you please split these bills to have water regs in one bill, and property rights in the other?

We got our marching orders from the speaker's office to do it in 2 bills, and it looks like the plan is sound.

Could you split them and send the new p drafts to the team—new LRB numbers for both please.

Thanks!

Rob Kovach

Policy Advisor/Committee Clerk
Office of Senator Frank Lasee
(608) 266-3512



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-3588/P3 3936/P1
EHS/MES/EVM:all
ES/MSTEM/PK/11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In 11/25
Done 11/25

S.A.J
Kren

Regen.

1 **AN ACT to repeal** 30.025 (5) and 30.12 (3) (a) 6. a., b. and c.; **to renumber** 706.22
2 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; **to renumber and amend** 30.12
3 (3) (a) 6. (intro.), 30.121 (3w) (c), 70.32 (2) (c) 4., 70.32 (4), 281.36 (3n) (a), 706.22
4 (2) (b) and 706.22 (3); **to amend** 30.01 (1am) (c), 30.01 (1d), 30.12 (1k) (f), 30.12
5 (3) (a) 3c., 30.12 (3) (a) 3g., 30.12 (3) (a) 3r., 30.12 (3) (a) 13., 30.12 (3) (c), 30.121
6 (1), 30.121 (3c), 30.133 (1), 30.19 (1b) (a), 30.19 (1g) (a), 30.19 (1g) (am), 30.206
7 (1) (a), 31.02 (1), 31.185 (5), 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692
8 (1k) (a) 2., 59.692 (1k) (a) 4., 59.692 (1k) (b), 60.23 (33), 60.61 (2) (a) 6., 60.61 (4)
9 (f), 62.23 (7) (am), 62.23 (7) (d) 4., 66.1001 (4) (f), 66.10015 (title), 66.10015 (1)
10 (a), 66.10015 (1) (b), 66.10015 (1) (d), 66.10015 (2) (b), 66.10015 (2) (d), 236.15
11 (1) (ag), 236.45 (2) (am) (intro.), 281.36 (4) (d), 706.22 (title), 706.22 (2) (title)
12 and 706.22 (2) (a) (intro.); and **to create** 23.24 (4) (b) 4., 30.025 (6), 30.053,
13 30.106, 30.115, 30.12 (1g) (am), 30.12 (3m) (cr), 30.121 (3b), 30.121 (3w) (c) 3.,
14 30.125, 30.19 (1m) (dm), 30.20 (1g) (b) 3., 30.20 (1t) (b), 30.20 (1t) (c), 30.20 (2)
15 (cn), 59.692 (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.10015 (1) (as),

1 66.10015 (1) (bs), 66.10015 (3), 70.32 (2) (c) 4. b., 70.32 (4) (b), 227.445, 281.16
 2 (2) (c), 281.31 (2) (b), 281.36 (3n) (a) 4., 281.36 (4) (f), 700.28, 706.22 (2) (a) 2m.,
 3 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the statutes;
 4 **relating to:** the regulation of navigable waters, shoreland zoning, and
 5 wetlands; government actions affecting rights to real property; the substitution
 6 of hearing examiners in contested cases; and the property tax treatment of
 7 unoccupied property.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes to the regulation of navigable waters, artificial water bodies, wetlands, nonpoint source pollution, and property rights and allows for the substitution of hearing examiners in contested case hearings.

NATURAL RESOURCES

NAVIGABLE WATERS

Title to the bed of certain filled navigable waters

Under current statutory and common law, this state holds title to navigable waters in trust for public purposes. This body of law, commonly referred to as the public trust doctrine, is encompassed in article IX, section 1, of the Wisconsin Constitution. Under the public trust doctrine, the state has traditionally been the owner of lake beds up to the ordinary high-water mark (OHWM).

This bill provides that any area of a navigable water that was filled before January 1, 1975, and that has remained continuously filled since January 1, 1975, is owned by the riparian owner in whose riparian zone the filled area is located. The bill defines the riparian zone as the area that extends from the riparian land waterward to the line of navigation, the depth which is generally needed to operate a boat on the water, as determined by a method that establishes riparian zone lines between adjacent riparian owners in a manner that equitably apports access to the line of navigation. The bill prohibits the Department of Natural Resources (DNR) from requiring the riparian owner of the filled area to remove the fill and requires DNR to furnish a quitclaim deed to the riparian owner of the filled area upon request.

Applicability of navigable water law to artificial water bodies

Under this bill, unless specifically provided otherwise, the statutes that regulate navigable waters, harbors, and boating do not apply to an artificial water body that is not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm

events. An artificial water body is a body of water that does not have a history of being a lake or stream or of being part of a lake or stream.

The level and flow of water

Under the bill, DNR may regulate and control the level and flow of water in all navigable waters in the interest of public rights in navigable waters; to promote safety; and to protect life, health, property, property values, and economic values.

Navigable water permits

Under current law, a person must obtain one or more permits from DNR in order to conduct certain activities that occur in or near navigable waterways, including placement of structures or deposits in navigable waters; construction or maintenance of bridges and culverts; enlarging or connecting waterways; altering the courses of streams and rivers; removing material from the bed of a navigable waterway; and constructing, dredging, or enlarging an artificial water body that connects with a navigable waterway or that is located within 500 feet of the OHWM of an existing navigable waterway. The bed of a navigable water includes the area between the water's edge and the OHWM (shoreline area).

Under current law, some activities are exempt from these permitting requirements, some activities require that the person be issued an individual permit for the activity, and some activities are authorized under statewide general permits. If a general permit covers an activity, the person proposing to conduct the activity must notify DNR that the person wishes to proceed with the activity. If DNR does not request additional information or notify the person that an individual permit will be required within 30 days after receipt of the notification, the person may proceed with the activity.

This bill does the following with respect to general permits and individual permits to conduct activities in navigable waters:

1. Requires DNR to issue a general permit that authorizes a riparian owner to remove 30 cubic yards of material from the bed of an inland lake adjacent to the riparian owner's property and 100 cubic yards of material from the bed of outlying waters adjacent to the riparian owner's property once each calendar year.
2. Prohibits DNR from requiring a person to collect a sediment sample as part of an application for an individual permit or prior to proceeding under a general permit, unless DNR has specific information that indicates the potential that contaminants may be present in the material proposed to be dredged.
3. Exempts from the permit requirements certain shoreline maintenance activities that are conducted in certain shoreline areas.
4. Exempts from the permit requirements the dredging of an artificial water body that does not connect with a navigable waterway.
5. Establishes that a permit is required to construct or enlarge an artificial water body that is within 500 feet of the OHWM of an existing navigable waterway but that does not or will not connect with the existing navigable waterway.
6. Limits the types of areas that DNR may identify as possessing significant scientific value, which under current law are considered areas of special natural resource interest (ASNRI), and requires the Joint Committee on Finance to approve this identification. Under current law, a riparian owner is exempt from the permit

requirement for depositing material or placing a structure on the bed of certain navigable waters if the structure or material is located in an area other than an ASNRI, does not interfere with riparian rights of other riparian owners, and is a certain type of structure or material.

7. Provides that, in issuing general permits for the replacement or repair of existing riprap or the replacement of seawalls, DNR may not impose conditions that prohibit the replacement or repair of riprap or the replacement of seawalls located in areas designated as ASNRI.

Structures in navigable waters

Piers

Under this bill, a DNR decision that a riparian owner does not fall under an exemption to the prohibition against placing a pier or wharf on the bed of a navigable water may only be challenged through a declaratory judgment proceeding in the circuit court for the county in which the riparian property is located and is not subject to a contested case hearing or judicial review under the statutory administrative review procedures. Under current law, a DNR decision against the riparian owner is subject to a new trial.

Under this bill, an owner of riparian land abutting a navigable water who owns a boat docking facility that is lawfully placed in that water is not prohibited from entering into an agreement with another owner of riparian land abutting the same navigable water for the shared use of that boat docking facility.

Boathouses

This bill changes the definition of a boathouse to specify that a boathouse is a structure used for one or more years for the storage of watercraft and associated materials regardless of its current use. The bill also makes various changes to the regulation of boathouses, including:

1. Allows a boathouse located beyond the OHWM of a navigable waterway to be expanded, and provides that the expansion does not require a permit, if the boathouse is listed in the national register of historic places in Wisconsin or the state register of historic places, the boathouse is not expanded beyond its listed historical boundaries, and the expansion does not involve the placement of any new structure on the bed of a navigable water.

2. Adds foundations to the list of structural elements of a boathouse that may be replaced within the current cost limit on repairing and maintaining a boathouse.

3. Allows the repair or maintenance of a boathouse in existence on December 16, 1979, to affect the configuration of the boathouse and still fall under the exception to the cost limit on repairing and maintaining such a boathouse.

4. Prohibits DNR and a county shoreland zoning ordinance from prohibiting the owner of a boathouse with a flat roof from using the roof as a deck if the roof has no side walls or screens or from having or installing a railing around the roof that is consistent with Department of Safety and Professional Services standards.

Boat shelters

Under current law, a boat shelter is a structure used for the storage of watercraft and associated materials that has no walls or sides. This bill eliminates the conditions that DNR may place on a general permit authorizing a riparian owner

to place a boat shelter relating to the location of the shelter and other existing structures. Under the bill, DNR may impose conditions on the general permit governing the architectural features of boat shelters and the number of boat shelters that may be placed adjacent to a parcel of land, but those conditions may not govern the distance that a boat shelter will extend from the shore and may not be based on the degree to which adjacent land is developed. Also under the bill, in determining whether to issue an individual permit to the owner of a proposed permanent boat shelter, DNR may not deny the permit on the basis of the distance at which a boat shelter will extend from the shore or the degree to which adjacent land is developed.

Seawalls

This bill requires DNR, in the general permit authorizing a riparian owner to replace an existing seawall for which DNR has issued a permit, to authorize a seawall for which DNR granted an exemption from a permit requirement or for which no permit was required when the seawall was built.

Riprap

This bill requires DNR, in the general permit authorizing a riparian owner to place riprap on the bed or bank of a navigable water adjacent to the owner's property in certain amounts, to authorize the riprap to extend to the top of the bank of the navigable water or four feet above the OHWM, whichever is lower.

WETLANDS

Wetland permits

Current law requires DNR to issue certain wetland general permits for discharges to wetlands that are necessary for the treatment or disposal of hazardous waste or toxic pollutants if not more than two acres of wetlands are affected, and discharges for commercial, residential, or agricultural purposes if not more than 10,000 square feet of wetland are affected. Current law allows DNR to establish different requirements, conditions, and exceptions in general permits to ensure that the discharges will cause only minimal adverse environmental effects. Current law establishes a procedure for obtaining authorization to proceed under a wetland general permit that is similar to the procedure for obtaining authorization under general permits that authorize structures and other activities in or near navigable waters. Current law also authorizes DNR to require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

This bill exempts from the permitting requirement any discharge that is the result of maintaining a roadside ditch or sedimentation or storm water detention basin and associated conveyance features.

Practicable alternatives review

Under current law, DNR reviews the practicable alternatives presented in an application for a individual permit, and must find that the project complies with wetland quality standards if it determines that the proposed project represents the least environmentally damaging practicable alternative, all practicable measures to minimize the adverse impact to wetland functional values will be taken, and the

discharge will not result in significant adverse impacts to wetland functional values or to water quality or result in any other significant adverse environmental consequences. Upon making such a finding, DNR is authorized, but is not required, to issue a wetland individual permit. Current law requires DNR to limit its review of practicable alternatives to those that are located at the site of the discharge or adjacent to that site if the applicant has demonstrated that the proposed project causing the discharge will result in a demonstrable economic public benefit, that the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, or that the proposed project will occur in an industrial park that is in existence at the time the application is submitted. Under this bill, for wetlands that are not subject to federal jurisdiction, DNR is required to limit its review to those practicable alternatives that are both consistent with the overall purpose and scope of the project and are either located at the site of discharge or located adjacent to that site if both sites are owned by the same owner. The limitation to the discharge site or adjacent site does not apply if the proposed discharge affects more than 20 percent of the area of the site or more than five acres.

SHORELAND ZONING

change to "head"

Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area and the ordinance must meet shoreland zoning standards established by DNR by rule. Current law defines shorelands to be the area within a certain distance from the OHWM of a navigable water. Current law requires a county to establish a shoreland setback area, which is an area within a certain distance of the OHWM in which the construction or placement of structures is limited or prohibited. Under this bill, if a professional land surveyor, in measuring a setback from an OHWM of a navigable water, relies on a map, plat, or survey that incorporates or approximates the OHWM, the setback measured is the setback with respect to a structure constructed on that property if the map, plat, or survey relied upon is prepared by a professional land surveyor and DNR has not identified the OHWM on its Internet site at the time the setback is measured.

Current law generally prohibits the enactment of a county shoreland zoning ordinance that prohibits or regulates the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of a nonconforming structure if that activity does not expand the structure's footprint, and a county shoreland zoning ordinance that requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the vertical expansion of a nonconforming structure. This bill expands these prohibitions to a structure of which any part is legally located in the shoreland setback area only by operation of a variance.

This bill provides that a shoreland zoning standard or ordinance may not prohibit placement of a device or system that retains runoff in a shoreland setback area.

The bill also provides that the construction or maintenance of the necessary infrastructure for transmitting electricity, water, gas, sewer, drainage, hazardous materials, data, or communications is considered to satisfy shoreland zoning laws

and a county's shoreland zoning ordinance if DNR has issued all required navigable water, water and sewage, and pollution discharge permits or approvals authorizing the construction or maintenance or, if no such permits or approvals are required, if the construction and maintenance is conducted in a manner that employs best management practices to infiltrate or otherwise control storm water runoff from that infrastructure.

UTILITY PERMIT PROCEDURE

Under current law, with certain exceptions, a public utility may not begin construction on a utility project, and no person, including a public utility, may construct a large electric generating facility or a high-voltage transmission line, unless the Public Service Commission (PSC) has issued a certificate for the project. A public utility is a company or municipality that produces or delivers heat, light, water, or power to or for the public.

Generally, under current law, a person must submit an application to DNR for each required permit, including an individual permit to conduct an activity in a navigable water or a discharge in a wetland. If the applicant is a utility that is required to obtain a certificate from the PSC, however, the utility must submit a single application to DNR requesting all of the DNR permits that the utility is required to obtain for a given project affecting navigable waters and wetlands and must follow a different procedure for obtaining these DNR permits (utility application procedure).

This bill removes the exemption in current law that provides that the permit application procedures that would normally apply to an application for an individual permit do not apply to an application for an individual permit submitted under the utility application procedure. This bill also removes the exemption in current law that provides that the procedures that would normally apply to administrative and judicial review of a DNR decision on an individual permit do not apply to decisions on an individual permit submitted under the utility application procedure. Also, under the bill, the only method of review of a DNR decision with respect to any permit applied for under the utility application procedure is direct judicial review, not a contested case hearing.

Also under this bill, there is no opportunity to object to, and request a stay of, a DNR decision related to a wetland individual permit applied for under the utility application procedure.

NONPOINT WATER POLLUTION

This bill provides that DNR may not prohibit the construction of storm water management ponds in navigable or nonnavigable artificial waterways as a method for achieving compliance with DNR's prescribed performance standards for sources of nonpoint water pollution, which is water pollution from diffuse sources. DNR's rules provide that, for the purpose of determining compliance with performance standards, DNR may give credit for the use of practices, measures, or techniques (best management practices) that minimize pollutants carried in runoff. The rules prohibit DNR from giving credit for a best management practice that is located in a navigable water. The bill provides that DNR must give credit for any pollutant

reduction achieved by the pond in determining compliance with performance standards specified in a storm water discharge permit.

CONTESTED CASE HEARINGS

change to "head"

Under this bill, a person who has applied for a contract, permit, or other approval that is the subject of a contested case hearing for which the Division of Hearings and Appeals in the Department of Administration has assigned a hearing examiner may file one written request per hearing for a substitution of a new hearing examiner. If the request is timely and in proper form, the matter must be transferred to a new hearing examiner.

PROPERTY RIGHTS

PROCEDURAL PROTECTIONS

Restrictions on sale, purchase, development, or occupancy of real property

This bill does all of the following:

1. Prohibits a local governmental unit from requiring a person to take certain actions with respect to real property, or pay a related fee, before purchasing, taking title to, or occupying the property.
2. Provides that a local governmental unit may require a real property owner to take certain actions with respect to property that are not related to purchasing or occupying the property.
3. Invalidates any ordinance, resolution, or policy currently in effect that is inconsistent with the prohibitions in the bill.
4. Provides that the prohibitions in the bill, and related prohibitions under current law, do not affect the ability of a local governmental unit to enforce any state or federal requirement.
5. Specifically prohibits a county from enacting a development moratorium.
6. Prohibits a city, village, town, or county (political subdivision) from prohibiting or unreasonably restricting a real property owner from selling or transferring title to any interest in the real property.

Individual notice requirements

This bill requires a political subdivision to provide written notice to a landowner that potential action by the political subdivision may affect the allowable use of the landowner's property. The bill also requires counties and towns to provide such notice if a proposed zoning ordinance will affect the size or density requirements of a landowner's property. In addition, the bill eliminates a political subdivision's authority under current law to impose a fee for providing notice.

VESTED RIGHTS

This bill requires a political subdivision to deny or approve a permit for activity related to a specific and identifiable land development based on regulations and ordinances in effect at the time that the permit application was submitted for approval. Also, if a project requires an approval from a state agency and a political subdivision, the existing requirements applicable at the time of filing the first application, whether filed with the state agency or political subdivision, are applicable to all subsequent approvals required for the project. The bill also provides that any deadline set by the political subdivision for approving a permit application

must be extended so that it coincides with the period in which other related applications are being decided on, including the duration of any proceedings contesting the approval of such applications.

RESOLUTION OF CHALLENGE TO ZONING RESTRICTIONS

This bill requires a court to resolve any ambiguity in a matter involving a zoning ordinance or shoreland zoning ordinance in favor of the free use of private property.

SUPERMAJORITY VOTE TO DOWN ZONE A PROPERTY

The bill allows a political subdivision to enact a down zoning ordinance only if the ordinance is approved by at least two-thirds of the members of its governing body. The bill defines a down zoning ordinance as an ordinance that affects an area of land by rezoning it to a usage that is less dense than its previous usage.

PROPERTY TAX TREATMENT OF UNDEVELOPED LAND

This bill defines, for property tax purposes, “undeveloped land” to include land that is platted and zoned for residential, commercial, or manufacturing use until such time that a permit is issued for constructing a building or other structure on the land. The bill provides that such land be assessed at its unimproved value. Other undeveloped land under current law is assessed at 50 percent of its full value.

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.** 23.24 (4) (b) 4. of the statutes is created to read:
- 2 23.24 (4) (b) 4. A person who engages in an activity listed under sub. (3) (a) in
- 3 the course of performing shoreline maintenance as authorized under s. 30.125.
- 4 **SECTION 2.** 30.01 (1am) (c) of the statutes is amended to read:
- 5 30.01 (**1am**) (c) An area that possesses significant scientific value, as identified
- 6 by the department under s. 30.106.
- 7 **SECTION 3.** 30.01 (1d) of the statutes is amended to read:
- 8 30.01 (**1d**) “Boathouse” means a structure with one or more walls or sides that
- 9 has been used for one or more years for the storage of watercraft and associated

1 ~~materials which has one or more walls or sides, regardless of the current use of the~~
2 ~~structure.~~

3 **SECTION 4.** 30.025 (5) of the statutes is repealed.

4 **SECTION 5.** 30.025 (6) of the statutes is created to read:

5 30.025 (6) REVIEW. Notwithstanding s. 227.42, the sole option for review of a
6 decision of the department with respect to a permit under this section or an
7 authorization to proceed under this section is to commence an action in circuit court
8 to review that decision under ss. 227.52 and 227.53.

9 **SECTION 6.** 30.053 of the statutes is created to read:

10 **30.053 Applicability of chapter to artificial water bodies.** Except as
11 specifically provided otherwise in this chapter, nothing in this chapter applies to an
12 artificial water body, as defined in s. 30.19 (1b) (a), that is not hydrologically
13 connected to a natural navigable waterway and that does not discharge into a
14 natural navigable waterway except as a result of storm events.

***NOTE: This mirrors language in ss. 30.19 (1g) (am) and 281.31 (2m) (bg).

15 **SECTION 7.** 30.106 of the statutes is created to read:

16 **30.106 Areas that possess significant scientific value.** (1) Areas that the
17 department may identify as possessing significant scientific value are limited to the
18 following:

19 (a) The portion of a body of water that contains critical habitat for endangered
20 or threatened species.

21 (b) The portion of a body of water that is immediately adjacent to an area that
22 contains critical habitat for endangered or threatened species and that directly
23 affects that habitat.

1 (c) A body of water designated as a wild rice water under a written agreement
2 between the department and the Great Lakes Indian Fish and Wildlife Commission.

3 (d) A body of water in a wetland along Lake Michigan or Lake Superior that
4 the department has identified as an ecologically significant coastal wetland.

5 (e) A river that is included in the national wild and scenic rivers system.

6 (f) A river that is designated as a wild river under s. 30.26.

7 (2) The department may not identify an area as possessing significant
8 scientific value unless it first notifies the joint committee for review of administrative
9 rules in writing of the proposal and obtains the approval of the committee. Any area
10 the department has identified as possessing significant scientific value on the
11 effective date of this subsection [LRB inserts date], that is not identified again as
12 possessing significant scientific value using the process under this subsection on or
13 before December 31, 2017, loses this identification.

14 **SECTION 8.** 30.115 of the statutes is created to read:

15 **30.115 Ownership of certain filled navigable waters.** (1) In this section:

16 (a) "Line of navigation" means the depth of a navigable water that is the greater
17 of the following:

18 1. Three feet.

19 2. The depth required to operate a boat on the navigable water based on normal
20 summertime low levels on the navigable water or summer minimum levels if
21 summer minimum levels are established by the department.

22 (b) "Riparian zone" means the area that extends from riparian land waterward
23 to the line of navigation as determined by a method that establishes riparian zone
24 lines between adjacent riparian owners in a manner that equitably apportions access
25 to the line of navigation.

1 (2) If a person placed fill on the bed of a navigable water before January 1, 1975,
2 the filled area above the ordinary high-water mark is owned by the riparian owner
3 in whose riparian zone the fill is located on the effective date of this subsection
4 [LRB inserts date], if the filled area has continuously remained above the ordinary
5 high-water mark since January 1, 1975.

6 (3) The department may not require the riparian owner of a filled area
7 described under sub. (2) to remove the fill, whether above or below the ordinary
8 high-water mark, from that area.

9 (4) Upon request, the department shall furnish a quitclaim deed to the riparian
10 owner described under sub. (2).

11 (5) This section does not apply to a lake bed area conveyed by the legislature
12 as provided under s. 13.097.

13 **SECTION 9.** 30.12 (1g) (am) of the statutes is created to read:

14 30.12 (1g) (am) A deposit of sand, gravel, or stone that is necessary to perform
15 an activity authorized under s. 30.125 (2) (a).

16 **SECTION 10.** 30.12 (1k) (f) of the statutes is amended to read:

17 30.12 (1k) (f) ~~A decision of~~ If the department against determines that the
18 owner of a structure for which is not entitled to an exemption is claimed under this
19 subsection is subject to a trial de novo, the owner may bring an action for declaratory
20 judgment under s. 806.04 in the circuit court for the county in which the riparian
21 property is located. The owner is not entitled to a contested case hearing or judicial
22 review under ch. 227.

23 **SECTION 11.** 30.12 (3) (a) 3c. of the statutes is amended to read:

24 30.12 (3) (a) 3c. Place riprap in order to replace or repair existing riprap, other
25 than riprap that is exempt under sub. (1g) (i) or (j). Under the permit, the

department shall allow riprap to extend to the top of the bank of the navigable water or 4 feet above the ordinary high-water mark, whichever is lower. In issuing the permit, the department may not impose conditions that prohibit the replacement or repair of riprap located in an area of special natural resource interest.

SECTION 12. 30.12 (3) (a) 3g. of the statutes is amended to read:

30.12 (3) (a) 3g. Place riprap on the bed or bank of a navigable water adjacent to an owner's property in an amount up to and including 100 continuous feet in an inland lake of 300 acres or more. Under the permit the department shall allow riprap to extend to the top of the bank of the navigable water or 4 feet above the ordinary high-water mark, whichever is lower.

SECTION 13. 30.12 (3) (a) 3r. of the statutes is amended to read:

30.12 (3) (a) 3r. Place riprap on the bed or bank of a navigable water adjacent to an owner's property in an amount up to and including 300 continuous feet in a Great Lakes water body. Under the permit the department shall allow riprap to extend to the top of the bank of the navigable water or 4 feet above the ordinary high-water mark, whichever is lower.

SECTION 14. 30.12 (3) (a) 6. (intro.) of the statutes is renumbered 30.12 (3) (a) 6. and amended to read:

30.12 (3) (a) 6. Place a permanent boat shelter adjacent to the owner's property for the purpose of storing or protecting watercraft and associated materials, ~~except that no general or individual permit may be issued for a permanent boat shelter that is constructed after May 3, 1988, if any of the following apply.~~

SECTION 15. 30.12 (3) (a) 6. a., b. and c. of the statutes are repealed.

SECTION 16. 30.12 (3) (a) 13. of the statutes is amended to read:

1 30.12 (3) (a) 13. Place a seawall to replace an existing seawall for which a
2 permit has been issued or an exemption granted under this chapter, or for which no
3 permit was required at the time the seawall was built. The replacement may not
4 exceed 100 continuous feet in an inland lake of 300 or more acres and may not exceed
5 300 continuous feet in a Great Lakes water body. In issuing the permit, the
6 department may not impose conditions that prohibit the replacement of a seawall
7 located in an area of special natural resource interest.

8 **SECTION 17.** 30.12 (3) (c) of the statutes is amended to read:

9 30.12 (3) (c) The department may impose conditions on general permits issued
10 under par. (a) 6. to govern the architectural features of boat shelters and the number
11 of boat shelters that may be constructed adjacent to a parcel of land. The conditions
12 may not govern the aesthetic features or color of boat shelters or the distance at
13 which a boat shelter may extend from the shore and may not be based on the degree
14 to which adjacent land is developed. The conditions shall be designed to ensure the
15 structural soundness and durability of boat shelters. A municipality may enact
16 ordinances that are consistent with this paragraph and with any conditions imposed
17 on general permits issued to regulate the architectural features of boat shelters that
18 are under the jurisdiction of the municipality.

19 **SECTION 18.** 30.12 (3m) (cr) of the statutes is created to read:

20 30.12 (3m) (cr) In determining whether to issue an individual permit to the
21 owner of a proposed permanent boat shelter, the department may not deny the
22 permit on the basis of the distance at which the shelter will extend from the shore
23 or the degree to which adjacent land is developed.

24 **SECTION 19.** 30.121 (1) of the statutes is amended to read:

1 **30.121 (1) DEFINITION.** In this section, the terms “maintain” and “repair”
2 include replacing structural elements, including roofs, doors, walls, windows,
3 beams, porches, and floors, and foundations.

4 **SECTION 20.** 30.121 (3b) of the statutes is created to read:

5 **30.121 (3b) EXPANSION OF HISTORIC BOATHOUSES.** The riparian owner of any
6 boathouse or fixed houseboat extending beyond the ordinary high-water mark of any
7 navigable waterway may expand the boathouse without a permit under s. 30.12 if
8 the boathouse is listed in the national register of historic places in Wisconsin or the
9 state register of historic places, the boathouse is not expanded beyond its listed
10 historical boundaries, and the expansion does not involve the placement of any new
11 structure on the bed of a navigable water.

12 **SECTION 21.** 30.121 (3c) of the statutes is amended to read:

13 **30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES.** Subsection (3) does not apply to
14 repairing or maintaining a boathouse if the boathouse was in existence on December
15 16, 1979, and the repairing or maintaining does not affect the size, or location, or
16 configuration of the boathouse and does not result in the boathouse being converted
17 into living quarters.

18 **SECTION 22.** 30.121 (3w) (c) of the statutes is renumbered 30.121 (3w) (c) (intro.)
19 and amended to read:

20 **30.121 (3w) (c) (intro.)** The boathouse is ~~located within~~ in any of the following
21 locations:

22 1. Within a harbor that is being operated as a commercial enterprise ~~or is~~
23 ~~located on.~~

24 2. On a river that is a tributary of Lake Michigan or Lake Superior.

25 **SECTION 23.** 30.121 (3w) (c) 3. of the statutes is created to read:

1 30.121 (3w) (c) 3. On an outlying water and the work is limited to the
2 expansion, repair, or maintenance of an existing boathouse.

3 **SECTION 24.** 30.125 of the statutes is created to read:

4 **30.125 Shoreline maintenance in outlying waters.** (1) In this section:

5 (a) "Outlying waters" has the meaning given in s. 29.001 (63).

6 (b) "Shoreline area" means the area that is located between the ordinary
7 high-water mark and water's edge.

8 (2) The permitting requirements under ss. 23.24 (3) and 30.12 and the contract
9 and permitting requirements under s. 30.20 do not apply to any of the following
10 maintenance activities conducted in a shoreline area of an outlying water:

11 (a) The leveling of sand or the grooming of soil if the leveling or grooming will
12 occur in an area of unconsolidated material predominately composed of sand, rock,
13 and pebble that is authorized by the owner of the riparian land that abuts the
14 shoreline area.

15 (b) The removal of debris or the mowing of vegetation that is authorized by the
16 owner of the riparian land that abuts the shoreline area.

17 **SECTION 25.** 30.133 (1) of the statutes is amended to read:

18 30.133 (1) Beginning on April 9, 1994, and except as provided in s. 30.1335, no
19 owner of riparian land that abuts a navigable water may grant by an easement or
20 by a similar conveyance any riparian right in the land to another person, except for
21 the right to cross the land in order to have access to the navigable water. This right
22 to cross the land may not include the right to place any structure or material,
23 including a boat docking facility, as defined in s. 30.1335 (1) (a), in the navigable
24 water. This subsection does not prohibit an owner of riparian land that abuts a
25 navigable water who owns a boat docking facility that is lawfully placed on that

1 water from entering into an agreement with another owner of riparian land that
2 abuts the same navigable water for the shared use of that boat docking facility.

3 **SECTION 26.** 30.19 (1b) (a) of the statutes is amended to read:

4 30.19 (1b) (a) “Artificial water body” means a ~~proposed or existing~~ body of
5 water that does not have a history of being a lake or stream or of being part of a lake
6 or stream.

7 **SECTION 27.** 30.19 (1g) (a) of the statutes is amended to read:

8 30.19 (1g) (a) Construct, dredge, or enlarge any artificial water body that
9 connects with ~~a~~ an existing navigable waterway.

10 **SECTION 28.** 30.19 (1g) (am) of the statutes is amended to read:

11 30.19 (1g) (am) Construct, ~~dredge,~~ or enlarge any part of an artificial water
12 body that is or will be located within 500 feet of the ordinary high-water mark of, but
13 that does not or will not connect with, an existing navigable waterway, ~~including.~~
14 An artificial water body that meets the requirements of this paragraph includes a
15 stormwater management pond that does not discharge into a navigable waterway
16 except as a result of storm events.

17 **SECTION 29.** 30.19 (1m) (dm) of the statutes is created to read:

18 30.19 (1m) (dm) The dredging of any part of an artificial water that does not
19 connect with a navigable waterway. An artificial water body that meets the
20 requirements of this paragraph includes a stormwater management pond that does
21 not discharge into a navigable waterway except as a result of storm events.

22 **SECTION 30.** 30.20 (1g) (b) 3. of the statutes is created to read:

23 30.20 (1g) (b) 3. The removal is necessary to perform an activity authorized
24 under s. 30.125 (2).

25 **SECTION 31.** 30.20 (1t) (b) of the statutes is created to read:

1 30.20 (1t) (b) 1. In this paragraph:

2 a. "Inland lake" means an inland water that is a lake.

3 b. "Inland water" has the meaning given in s. 29.001 (45).

4 2. The department shall issue a statewide general permit under s. 30.206 that
5 authorizes any riparian owner to remove material in the following amounts once in
6 a calendar year from a lake bed adjacent to the riparian owner's riparian property:

7 a. From an inland lake, 30 cubic yards.

8 b. From an outlying water, 100 cubic yards.

9 3. The department may not limit to non-mechanized equipment the types of
10 equipment that may be used to conduct the activity under the general permit under
11 this paragraph.

12 **SECTION 32.** 30.20 (1t) (c) of the statutes is created to read:

13 30.20 (1t) (c) The department may not require a person to collect a sediment
14 sample prior to proceeding under a general permit issued under par. (a) unless the
15 department has specific information that indicates the potential that contaminants
16 may be present in the material proposed to be dredged.

17 **SECTION 33.** 30.20 (2) (cn) of the statutes is created to read:

18 30.20 (2) (cn) The department may not require an applicant for a permit under
19 par. (bn) to collect a sediment sample unless the department has specific information
20 that indicates the potential that contaminants may be present in the material
21 proposed to be dredged.

22 **SECTION 34.** 30.206 (1) (a) of the statutes is amended to read:

23 30.206 (1) (a) The department shall issue the statewide general permits
24 required under ss. 30.12 (3) (a) and (b), 30.123 (7), 30.19 (3r), and 30.20 (1t) (a) and
25 (b).

1 **SECTION 35.** 31.02 (1) of the statutes is amended to read:

2 31.02 (1) The department, in the interest of public rights in navigable waters
3 ~~or, to promote safety, and to protect life, health and, property, property values, and~~
4 ~~economic values may regulate and control the level and flow of water in all navigable~~
5 ~~waters and may erect, or may order and require bench marks to be erected, upon~~
6 ~~which shall be designated the maximum level of water that may be impounded and~~
7 ~~the lowest level of water that may be maintained by any dam heretofore or hereafter~~
8 ~~constructed and maintained and which will affect the level and flow of navigable~~
9 ~~waters; and may by order fix a level for any body of navigable water below which the~~
10 ~~same shall not be lowered except as provided in this chapter; and shall establish and~~
11 ~~maintain gauging stations upon the various navigable waters of the state and shall~~
12 ~~take other steps necessary to determine and record the characteristics of such~~
13 ~~waters.~~

14 **SECTION 36.** 31.185 (5) of the statutes is amended to read:

15 31.185 (5) As a prerequisite to the granting of a permit under this section, the
16 department may require the applicant to comply with such conditions as it deems
17 reasonably necessary in the particular case to preserve public rights in navigable
18 waters, to promote safety, and to protect life, health and, property, property values,
19 and economic values.

20 **SECTION 37.** 59.69 (4) (intro.) of the statutes is amended to read:

21 59.69 (4) **EXTENT OF POWER.** (intro.) For the purpose of promoting the public
22 health, safety and general welfare the board may by ordinance effective within the
23 areas within such county outside the limits of incorporated villages and cities
24 establish districts of such number, shape and area, and adopt such regulations for
25 each such district as the board considers best suited to carry out the purposes of this

1 section. The board may establish mixed-use districts that contain any combination
2 of uses, such as industrial, commercial, public, or residential uses, in a compact
3 urban form. The board may not enact a development moratorium, as defined in s.
4 66.1002 (1) (b), under this section or by acting under ch. 236. The powers granted
5 by this section shall be exercised through an ordinance which may, subject to sub.
6 (4e), determine, establish, regulate and restrict:

7 **SECTION 38.** 59.69 (4) (j) of the statutes is amended to read:

8 59.69 (4) (j) The Subject to s. 66.10015 (3), the density and distribution of
9 population.

10 **SECTION 39.** 59.69 (5) (f) of the statutes is amended to read:

11 59.69 (5) (f) ~~The county zoning agency shall maintain a list of persons who~~
12 ~~submit a written request to receive notice of any proposed ordinance or amendment~~
13 ~~that affects the allowable use of the property owned by the person.~~ If the county
14 zoning agency completes a draft of a proposed zoning ordinance under par. (a) or if
15 the agency receives a petition under par. (e) 2., the agency shall send a notice, which
16 contains a copy or summary of the proposed ordinance or petition, to each person ~~on~~
17 ~~the list~~ whose property, the allowable use or size or density requirements of which,
18 may be affected by the proposed ordinance or amendment. The notice shall be by
19 mail or in any reasonable form that is agreed to by the person and the agency. ~~The~~
20 ~~agency may charge each person on the list who receives a notice a fee that does not~~
21 ~~exceed the approximate cost of providing the notice to the person.~~ An ordinance or
22 amendment that is subject to this paragraph may take effect even if the agency fails
23 to send the notice that is required by this paragraph.

24 **SECTION 40.** 59.692 (1h) of the statutes is created to read:

1 59.692 (1h) If a professional land surveyor licensed under ch. 443, in
2 measuring a setback from an ordinary high-water mark of a navigable water as
3 required by an ordinance enacted under this section, relies on a map, plat, or survey
4 that incorporates or approximates the ordinary high-water mark in accordance with
5 s. 236.025, the setback measured is the setback with respect to a structure
6 constructed on that property if all of the following apply:

7 (a) The map, plat, or survey is prepared by a professional land surveyor,
8 licensed under ch. 443, after the effective date of this paragraph [LRB inserts
9 date]. The same professional land surveyor may prepare the map, plat, or survey and
10 measure the setback.

11 (b) The department has not identified the ordinary high-water mark on its
12 Internet site as is required under s. 30.102 at the time the setback is measured.

****NOTE: I did not add that the setback measured under this section is the setback
regardless of any subsequent change in the OHWM because I do not think it is necessary.
I added language to par. (b) to make it clear that whether or not DNR has identified the
OHWM is determined at the time the setback is measured. In other words, if DNR later
determines a different OHWM, the setback measured under this subsection is still the
setback.

13 **SECTION 41.** 59.692 (1k) (a) 2. of the statutes, as created by 2015 Wisconsin Act
14 55, is amended to read:

15 59.692 (1k) (a) 2. Except as provided in par. (b), requires any approval or
16 imposes any fee or mitigation requirement for, or otherwise prohibits or regulates,
17 the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all
18 or any part of a nonconforming structure or a structure of which any part is legally
19 located in the shoreland setback area only by operation of a variance if the activity
20 does not expand the footprint of the ~~nonconforming~~ structure.

21 **SECTION 42.** 59.692 (1k) (a) 4. of the statutes, as created by 2015 Wisconsin Act
22 55, is amended to read:

1 59.692 (1k) (a) 4. Requires any approval or imposes any fee or mitigation
2 requirement for, or otherwise prohibits or regulates, the vertical expansion of a
3 nonconforming structure or a structure of which any part is legally located in the
4 shoreland setback area only by operation of a variance unless the vertical expansion
5 would extend more than 35 feet above grade level.

6 **SECTION 43.** 59.692 (1k) (a) 6. of the statutes is created to read:

7 59.692 (1k) (a) 6. Prohibits placement in a shoreland setback area of a device
8 or system authorized under par. (a) 5.

9 **SECTION 44.** 59.692 (1k) (b) of the statutes, as created by 2015 Wisconsin Act
10 55, is amended to read:

11 59.692 (1k) (b) A county shoreland zoning ordinance shall allow an activity
12 specified under par. (a) 2. to expand the footprint of a nonconforming structure or a
13 structure of which any part is legally located in the shoreland setback area only by
14 operation of a variance if the expansion is necessary for the structure to comply with
15 applicable state or federal requirements.

16 **SECTION 45.** 59.692 (1p) of the statutes is created to read:

17 59.692 (1p) The department may not promulgate a standard and a county may
18 not enact an ordinance under this section that prohibits the owner of a boathouse in
19 the shoreland setback area that has a flat roof from using the roof as a deck if the roof
20 has no side walls or screens or from having or installing a railing around that roof
21 if the railing is consistent with standards promulgated by the department of safety
22 and professional services under ch. 101.

23 **SECTION 46.** 59.692 (7) of the statutes is created to read:

24 59.692 (7) (a) In this subsection, “facility” means any property or equipment
25 of a public utility, as defined in s. 196.01 (5), or a cooperative association organized

1 under ch. 185 for the purpose of producing or furnishing heat, light, or power to its
2 members only, that is used for the transmission, delivery, or furnishing of natural
3 gas, heat, light, or power.

4 (b) The construction and maintenance of a facility is considered to satisfy the
5 requirements of this section and any county ordinance enacted under this section if
6 any of the following applies:

7 1. The department has issued all required permits or approvals authorizing the
8 construction or maintenance under ch. 30, 31, 281, or 283.

9 2. No department permit or approval under subd. 1. is required for the
10 construction or maintenance and the construction or maintenance is conducted in a
11 manner that employs best management practices to infiltrate or otherwise control
12 storm water runoff from the facility.

13 **SECTION 47.** 60.23 (33) of the statutes is amended to read:

14 60.23 (33) COMPREHENSIVE PLAN. Adopt or amend a master plan under s. 62.23.
15 A master plan under this subsection may not prohibit any use specified as a
16 conditional use in a zoning ordinance enacted by the town.

17 **SECTION 48.** 60.61 (2) (a) 6. of the statutes is amended to read:

18 60.61 (2) (a) 6. The Subject to s. 66.10015 (3), the density and distribution of
19 population.

20 **SECTION 49.** 60.61 (4) (f) of the statutes is amended to read:

21 ~~60.61 (4) (f) The town board shall maintain a list of persons who submit a~~
22 ~~written request to receive notice of any proposed ordinance or amendment that~~
23 ~~affects the allowable use of the property owned by the person. If the town zoning~~
24 ~~committee completes a final report on a proposed zoning ordinance and the town~~
25 ~~board is prepared to vote on the proposed ordinance under par. (b) or if the town board~~

1 is prepared to vote on a proposed amendment under par. (c) 1., the town board shall
2 send a notice, which contains a copy or summary of the proposed ordinance or
3 amendment, to each person ~~on the list~~ whose property, the allowable use or size or
4 density requirements of which, may be affected by the proposed ordinance or
5 amendment. The notice shall be by mail or in any reasonable form that is agreed to
6 by the person and the town board. ~~The town board may charge each person on the~~
7 ~~list who receives a notice a fee that does not exceed the approximate cost of providing~~
8 ~~the notice to the person.~~ An ordinance or amendment that is subject to this
9 paragraph may take effect even if the town board fails to send the notice that is
10 required by this paragraph.

11 **SECTION 50.** 62.23 (7) (am) of the statutes is amended to read:

12 62.23 (7) (am) *Grant of power.* For the purpose of promoting health, safety,
13 morals or the general welfare of the community, the council may regulate and restrict
14 by ordinance, subject to par. (hm), the height, number of stories and size of buildings
15 and other structures, the percentage of lot that may be occupied, the size of yards,
16 courts and other open spaces, subject to s. 66.10015 (3) the density of population, and
17 the location and use of buildings, structures and land for trade, industry, mining,
18 residence or other purposes if there is no discrimination against temporary
19 structures. This subsection and any ordinance, resolution or regulation enacted or
20 adopted under this section, shall be liberally construed in favor of the city and as
21 minimum requirements adopted for the purposes stated. This subsection may not
22 be deemed a limitation of any power granted elsewhere.

23 **SECTION 51.** 62.23 (7) (d) 4. of the statutes is amended to read:

24 62.23 (7) (d) 4. ~~The city council shall maintain a list of persons who submit a~~
25 ~~written request to receive notice of any proposed zoning action that may be taken~~

1 ~~under subd. 1. a. or b. or 2. that affects the allowable use of the person's property.~~

2 If the plan commission, the board of public land commissioners, or city plan
3 committee of the city council completes action on any tentative recommendations
4 that are noticed under subd. 1. a., proposed changes to a proposed district plan and
5 regulations that are submitted under subd. 1. b., or proposed amendments that are
6 submitted under subd. 2., and the city council is prepared to vote on the tentative
7 recommendations, proposed changes to a proposed district plan, and regulations or
8 proposed amendments, the city council shall send a notice, which contains a copy or
9 summary of the tentative recommendations, proposed changes to a proposed district
10 plan, and regulations or proposed amendments, to each person ~~on the list~~ whose
11 property, the allowable use of which, may be affected by the tentative
12 recommendations or proposed changes or amendments. The notice shall be by mail
13 or in any reasonable form that is agreed to by the person and the city council. The
14 city council ~~may charge each person on the list who receives a notice a fee that does~~
15 ~~not exceed the approximate cost of providing the notice to the person.~~ An ordinance
16 or amendment that is subject to this subdivision may take effect even if the city
17 council fails to send the notice that is required by this subdivision.

18 **SECTION 52.** 66.1001 (4) (f) of the statutes is amended to read:

19 66.1001 (4) (f) ~~A political subdivision shall maintain a list of persons who~~
20 ~~submit a written request to receive notice of any proposed ordinance, described~~
21 ~~under par. (c), that affects the allowable use of the property owned by the person. At~~
22 ~~least 30 days before the hearing described in par. (d) is held a political subdivision~~
23 ~~shall provide written notice, including a copy or summary of the proposed ordinance,~~
24 ~~to all such persons whose property, the allowable use of which, may be affected by the~~
25 ~~proposed ordinance.~~ The notice shall be by mail or in any reasonable form that is

1 agreed to by the person and the political subdivision. ~~The political subdivision may~~
2 ~~charge each person on the list who receives a notice a fee that does not exceed the~~
3 ~~approximate cost of providing the notice to the person.~~

4 **SECTION 53.** 66.10015 (title) of the statutes is amended to read:

5 **66.10015 (title) Limitation on development regulation authority and**
6 **down zoning.**

7 **SECTION 54.** 66.10015 (1) (a) of the statutes is amended to read:

8 66.10015 (1) (a) “Approval” means a permit or authorization for building,
9 zoning, driveway, stormwater, or other activity related to ~~land development~~ a project.

10 **SECTION 55.** 66.10015 (1) (as) of the statutes is created to read:

11 66.10015 (1) (as) “Down zoning ordinance” means a zoning ordinance that
12 affects an area of land in one of the following ways:

13 1. By decreasing the development density of the land to be less dense than was
14 allowed under its previous usage.

15 2. By reducing the permitted uses of the land to fewer uses than were allowed
16 under its previous usage.

17 **SECTION 56.** 66.10015 (1) (b) of the statutes is amended to read:

18 66.10015 (1) (b) “Existing requirements” means regulations, ordinances, rules,
19 or other properly adopted requirements of a political subdivision that are in effect
20 at the time the application for an approval is submitted to the political subdivision
21 or to an agency, as defined in s. 227.01 (1).

22 **SECTION 57.** 66.10015 (1) (bs) of the statutes is created to read:

23 66.10015 (1) (bs) “Members–elect” means those members of the governing body
24 of a political subdivision, at a particular time, who have been duly elected or

1 appointed for a current regular or unexpired term and whose service has not
2 terminated by death, resignation, or removal from office.

3 **SECTION 58.** 66.10015 (1) (d) of the statutes is amended to read:

4 66.10015 (1) (d) “Project” means a specific and identifiable land development,
5 improvement activity, or use that occurs on defined and adjacent parcels of land,
6 which includes lands separated by roads, waterways, and easements within one or
7 more political subdivisions and is specified in one or more applications for approval.

8 **SECTION 59.** 66.10015 (2) (b) of the statutes is amended to read:

9 66.10015 (2) (b) If a project requires more than one approval or approvals from
10 more than one political subdivision or from an agency, as defined in s. 227.01 (1), and
11 a political subdivision and the applicant identifies the full scope of the project at the
12 time of filing the first application for ~~the first~~ an approval required for the project,
13 the existing requirements applicable in each political subdivision at the time of filing
14 the application ~~for the first approval required for the project~~ shall be applicable to
15 all subsequent approvals required for the project, unless the applicant and the
16 political subdivision agree otherwise.

17 **SECTION 60.** 66.10015 (2) (d) of the statutes is amended to read:

18 66.10015 (2) (d) This section does not prohibit a political subdivision from
19 establishing an expiration date on an approval. Any expiration date established by
20 a political subdivision shall be extended by a period equal to the duration of the
21 pendency of any related applications for approval from an agency, as defined in
22 227.01 (1), or from a political subdivision, including the duration of any proceedings
23 contesting an approval or conditions of an approval.

24 **SECTION 61.** 66.10015 (3) of the statutes is created to read:

SECTION 61

1 66.10015 (3) DOWN ZONING. A political subdivision may enact a down zoning
2 ordinance only if the ordinance is approved by at least three-fourths of the
3 members-elect, except that if the down zoning ordinance is requested, or agreed to,
4 by the person who owns the land affected by the proposed ordinance, the ordinance
5 may be enacted by a simple majority of the members-elect.

6 **SECTION 62.** 70.32 (2) (c) 4. of the statutes is renumbered 70.32 (2) (c) 4. (intro.)
7 and amended to read:

8 70.32 (2) (c) 4. (intro.) “Undeveloped land” means ~~hog~~ all of the following:

9 a. Bog, marsh, lowland brush, uncultivated land zoned as shoreland under s.
10 59.692 and shown as a wetland on a final map under s. 23.32, or other nonproductive
11 lands not otherwise classified under this subsection.

12 **SECTION 63.** 70.32 (2) (c) 4. b. of the statutes is created to read:

13 70.32 (2) (c) 4. b. Land that is platted and zoned for residential, commercial,
14 or manufacturing use until such time that all approvals, including post-construction
15 inspection approvals, required before the initial use of the land for a residential,
16 commercial, or manufacturing use are issued. This subd. 4. b. applies only to land
17 that was in agricultural use for 2 consecutive years prior to being converted to
18 residential, commercial, or manufacturing use.

19 **SECTION 64.** 70.32 (4) of the statutes is renumbered 70.32 (4) (a) and amended
20 to read:

21 70.32 (4) (a) Beginning with the assessments as of January 1, 2004,
22 agricultural forest land shall be assessed at ~~50%~~ 50 percent of its full value, as
23 determined under sub. (1), and undeveloped land, as defined in sub. (2) (c) 4. a., shall
24 be assessed at ~~50%~~ 50 percent of its full value, as determined under sub. (1).

25 **SECTION 65.** 70.32 (4) (b) of the statutes is created to read:

1 70.32 (4) (b) Beginning with the assessments as of January 1, 2016,
2 undeveloped land, as defined in sub. (2) (c) 4. b., shall be assessed at its unimproved
3 value until such time that a permit is issued for constructing a building or other
4 structure on the land.

5 **SECTION 66.** 227.445 of the statutes is created to read:

6 **227.445 Substitution of hearing examiner assigned by division of**
7 **hearings and appeals.** (1) A person who has applied for a contract, permit, or
8 other approval that is the subject of a contested case hearing for which the division
9 of hearings and appeals has assigned a hearing examiner may file a written request
10 with the hearing examiner, not later than 10 days after receipt of the notice under
11 s. 227.44 (1), for a substitution of a new hearing examiner.

12 (2) No person may file more than one request under sub. (1) for a single hearing.

13 (3) Upon receipt of a request under sub. (1), the hearing examiner shall have
14 no further jurisdiction in the matter except to determine if the request was made
15 timely and in proper form. If the request was made timely and in proper form, the
16 hearing examiner shall transfer the matter to another hearing examiner and shall
17 transmit to the new hearing examiner all materials relating to the matter.

18 (4) If the hearing examiner fails to make a determination as to allowing the
19 substitution within 7 days, the hearing examiner shall refer the matter to the
20 administrator of the division of hearings and appeals for the determination and, if
21 proper, the assignment of a substitute hearing examiner.

22 **SECTION 67.** 236.15 (1) (ag) of the statutes is amended to read:

23 236.15 (1) (ag) The external boundaries of a subdivision shall be monumented
24 in the field by monuments of concrete containing a ferrous rod one-fourth inch in
25 diameter or greater imbedded its full length, not less than 18 inches in length, not

1 less than 4 inches square or 5 inches in diameter, and marked on the top with a cross,
2 brass plug, iron rod, or other durable material securely embedded; or by iron rods or
3 pipes at least 18 inches long and 2 inches in diameter weighing not less than 3.65
4 pounds per lineal foot. Solid round or square iron bars of equal or greater length or
5 weight per foot may be used in lieu of pipes wherever pipes are specified in this
6 section. These monuments shall be placed at all corners, at each end of all curves,
7 at the point where a curve changes its radius, at all angle points in any line and at
8 all angle points along the meander line, said points to be not less than 20 feet back
9 from the any determined or approximated ordinary ~~high-water~~ high-water mark of
10 a lake or from the bank of a stream.

11 **SECTION 68.** 236.45 (2) (am) (intro.) of the statutes, as affected by 2015
12 Wisconsin Act 48, is amended to read:

13 236.45 (2) (am) (intro.) Ordinances under par. (ac) may include provisions
14 regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land
15 into less than 5 parcels, and, except as provided in s. 59.69 (4) (intro.) and subject to
16 s. 66.1002, may prohibit the division of land in areas where such prohibition will
17 carry out the purposes of this section. Such ordinances shall make applicable to such
18 divisions all of the provisions of this chapter, or may provide other surveying,
19 monumenting, mapping and approving requirements for such division. The
20 governing body of the municipality, town, or county shall require that a plat of such
21 division be recorded with the register of deeds and kept in a book provided for that
22 purpose or stored electronically. "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN
23 PLAT" shall be printed on the map in prominent letters with the location of the land
24 by government lot, recorded private claim, quarter-quarter section, section,
25 township, range, and county noted. When so recorded, the lots included in the plat

1 shall be described by reference to "COUNTY PLAT," "MUNICIPAL PLAT," or
2 "TOWN PLAT," the name of the plat and the lot and block in the plat, for all purposes,
3 including those of assessment, taxation, devise, descent, and conveyance as defined
4 in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5
5 parcels, shall not apply to:

6 **SECTION 69.** 281.16 (2) (c) of the statutes is created to read:

7 281.16 (2) (c) The department may not prohibit the construction of storm water
8 management ponds in navigable or nonnavigable artificial waterways as a method
9 for achieving compliance with performance standards under par. (a). The
10 department shall give credit for any pollutant reduction achieved by a storm water
11 management pond in determining compliance with performance standards specified
12 in a permit under s. 283.33.

13 **SECTION 70.** 281.31 (2) (b) of the statutes is created to read:

14 281.31 (2) (b) "Artificial water body" means a body of water that does not have
15 a history of being a lake or stream or of being part of a lake or stream.

16 **SECTION 71.** 281.36 (3n) (a) of the statutes is renumbered 281.36 (3n) (a) 1. and
17 amended to read:

18 281.36 (3n) (a) 1. For the purpose of issuing a wetland individual permit,
19 during the period between the date on which the application under sub. (3m) (a) is
20 submitted and the date on which a decision under sub. (3m) (i) is rendered, the
21 department shall conduct its review under this subsection.

22 2. The department shall review the analysis of practicable alternatives
23 presented in the application under sub. (3m) (b). The

24 3. For federal wetlands, the department shall limit its review to those
25 practicable alternatives that are located at the site of the discharge and that are

1 located adjacent to that site if the applicant has demonstrated that the proposed
2 project causing the discharge will result in a demonstrable economic public benefit,
3 that the proposed project is necessary for the expansion of an existing industrial,
4 commercial, or agricultural facility that is in existence at the time the application is
5 submitted, or that the proposed project will occur in an industrial park that is in
6 existence at the time the application is submitted.

7 **SECTION 72.** 281.36 (3n) (a) 4. of the statutes is created to read:

8 281.36 (3n) (a) 4. For nonfederal wetlands, the department shall limit its
9 review to those practicable alternatives to which all of the following apply:

10 a. The practicable alternative is consistent with the overall purpose and scope
11 of the project.

12 b. The practicable alternative is located at the site of the discharge or located
13 adjacent to that site if both sites are owned by the same person. This requirement
14 does not apply if the proposed discharge affects more than 20 percent of the area of
15 the site or more than 5 acres.

16 **SECTION 73.** 281.36 (4) (d) of the statutes is amended to read:

17 281.36 (4) (d) Maintenance of drainage or roadside ditches.

18 **SECTION 74.** 281.36 (4) (f) of the statutes is created to read:

19 281.36 (4) (f) Maintenance, operation, or abandonment of a sedimentation or
20 stormwater detention basin and associated conveyance features.

21 **SECTION 75.** 700.28 of the statutes is created to read:

22 **700.28 Prohibiting unreasonable restrictions on alienation of**
23 **property.** (1) In this section, "political subdivision" means a city, village, town, or
24 county.

1 (2) A political subdivision may not prohibit or unreasonably restrict a real
2 property owner from alienating any interest in the real property.

3 **SECTION 76.** 706.22 (title) of the statutes, as created by 2015 Wisconsin Act 55,
4 is amended to read:

5 **706.22 (title) Prohibition on imposing time-of-sale, purchase, or**
6 **occupancy requirements.**

7 **SECTION 77.** 706.22 (2) (title) of the statutes, as created by 2015 Wisconsin Act
8 55, is amended to read:

9 706.22 (2) (title) REQUIREMENTS TIED TO SALE, PURCHASE, OR TAKING OCCUPANCY
10 OF PROPERTY PROHIBITED.

11 **SECTION 78.** 706.22 (2) (a) (intro.) of the statutes, as created by 2015 Wisconsin
12 Act 55, is amended to read:

13 706.22 (2) (a) (intro.) Except as provided in par. (b), no local governmental unit
14 may by ordinance, resolution, or any other means ~~restrict~~ do any of the following:

15 1m. Restrict the ability of an owner of real property to sell or otherwise transfer
16 title to or refinance the property by requiring the owner or an agent of the owner to
17 take certain actions with respect to the property or pay a related fee, to show
18 compliance with taking certain actions with respect to the property, or to pay a fee
19 for failing to take certain actions with respect to the property, at any of the following
20 times:

21 **SECTION 79.** 706.22 (2) (a) 1. of the statutes, as created by 2015 Wisconsin Act
22 55, is renumbered 706.22 (2) (a) 1m. a.

23 **SECTION 80.** 706.22 (2) (a) 2. of the statutes, as created by 2015 Wisconsin Act
24 55, is renumbered 706.22 (2) (a) 1m. b.

25 **SECTION 81.** 706.22 (2) (a) 2m. of the statutes is created to read:

1 706.22 (2) (a) 2m. Restrict the ability of a person to purchase or take title to real
2 property by requiring the person or an agent of the person to take certain actions with
3 respect to the property or pay a related fee, to show compliance with taking certain
4 actions with respect to the property, or to pay a fee for failing to take certain actions
5 with respect to the property, at any of the following times:

6 a. Before the person may complete the purchase of or take title to the property.

7 b. At the time of completing the purchase of or taking title to the property.

8 c. Within a certain period of time after completing the purchase of or taking title
9 to the property.

10 **SECTION 82.** 706.22 (2) (a) 3. of the statutes, as created by 2015 Wisconsin Act
11 55, is renumbered 706.22 (2) (a) 1m. c.

12 **SECTION 83.** 706.22 (2) (a) 3m. of the statutes is created to read:

13 706.22 (2) (a) 3m. Restrict the ability of a purchaser of or transferee of title to
14 residential real property to take occupancy of the property by requiring the
15 purchaser or transferee or an agent of the purchaser or transferee to take certain
16 actions with respect to the property or pay a related fee, to show compliance with
17 taking certain actions with respect to the property, or to pay a fee for failing to take
18 certain actions with respect to the property, at any of the following times:

19 a. Before the purchaser or transferee may take occupancy of the property.

20 b. At the time of taking occupancy of the property.

21 c. Within a certain period of time after taking occupancy of the property.

22 **SECTION 84.** 706.22 (2) (b) of the statutes, as created by 2015 Wisconsin Act 55,
23 is renumbered 706.22 (2) (b) (intro.) and amended to read:

24 706.22 (2) (b) (intro.) Paragraph (a) does not ~~prohibit~~ do any of the following:

1 1. Prohibit a local governmental unit from requiring a real property owner or
2 the owner's agent to take certain actions with respect to the property not in
3 connection with the purchase, sale or, refinancing, or taking occupancy of, or the
4 transfer of title to, the property.

5 **SECTION 85.** 706.22 (2) (b) 2. of the statutes is created to read:

6 706.22 (2) (b) 2. Prohibit a local governmental unit from enforcing, or otherwise
7 affect the responsibility, authority, or ability of a local governmental unit to enforce,
8 a federal or state requirement that does any of the things a local governmental unit
9 is prohibited from doing under par. (a).

10 **SECTION 86.** 706.22 (3) of the statutes, as created by 2015 Wisconsin Act 55, is
11 renumbered 706.22 (3) (a) and amended to read:

12 706.22 (3) (a) If a local governmental unit has in effect on July 14, 2015, an
13 ordinance, resolution, or policy that is inconsistent with sub. (2) (a) 1m., the
14 ordinance, resolution, or policy does not apply and may not be enforced.

15 **SECTION 87.** 706.22 (3) (b) of the statutes is created to read:

16 706.22 (3) (b) If a local governmental unit has in effect on the effective date of
17 this paragraph [LRB inserts date], an ordinance, resolution, or policy that is
18 inconsistent with sub. (2) (a) 2m. or 3m., the ordinance, resolution, or policy does not
19 apply and may not be enforced.

20 **SECTION 88.** 895.463 of the statutes is created to read:

21 **895.463 Zoning ordinances.** In any matter relating to a zoning ordinance
22 or shoreland zoning ordinance enacted or enforced by a city, village, town, or county,
23 the court shall resolve an ambiguity in the meaning of a zoning word or phrase in
24 favor of the free use of private property.

25 **SECTION 89. Initial applicability.**

SECTION 89

✓ ✓

1 (1) ACTIONS AFFECTING LAND USE. The treatment of sections 59.69 (5) (f), 60.61
2 (4) (f), 62.23 (7) (d) 4., and 66.1001 (4) (f) of the statutes first applies to an action taken
3 by a city, village, town, or county that affects the allowable use of land on the effective
4 date of this subsection.

5 (2) VESTED RIGHTS AND AGENCY ACTIONS. The treatment of sections 66.10015 (1)
6 (a), (b), and (d) and (2) (b) and (d) of the statutes first applies to any project for which
7 an application for approval is pending on the effective date of this subsection.

8 (3) DOWN ZONING. The treatment of sections 59.69 (4) (j), 60.61 (2) (a) 6., 62.23
9 (7) (am), and 66.10015 (title), (1) (as) and (bs), and (3) of the statutes first applies to
10 a down zoning ordinance that is enacted on the effective date of this subsection.

11 (END)