



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3936/P1  
ES/MS/EM/PK:all

RMP

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

In 11/30  
Done 11/30

1     **AN ACT** *to renumber* 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; *to*  
2     *renumber and amend* 70.32 (2) (c) 4., 70.32 (4), 706.22 (2) (b) and 706.22 (3);  
3     *to amend* 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2., 59.692  
4     (1k) (a) 4., 59.692 (1k) (b), 60.23 (33), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am),  
5     62.23 (7) (d) 4., 66.1001 (4) (f), 66.10015 (title), 66.10015 (1) (a), 66.10015 (1) (b),  
6     66.10015 (1) (d), 66.10015 (2) (b), 66.10015 (2) (d), 236.45 (2) (am) (intro.),  
7     706.22 (title), 706.22 (2) (title) and 706.22 (2) (a) (intro.); and *to create* 59.692  
8     (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.10015 (1) (as), 66.10015 (1)  
9     (bs), 66.10015 (3), 70.32 (2) (c) 4. b., 70.32 (4) (b), 227.445, 700.28, 706.22 (2) (a)  
10    2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the  
11    statutes; **relating to:** (the regulation of shoreland zoning;) government actions

INS. RC  
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1 affecting rights to real property; <sup>INS. RC (from p. 1)</sup> the substitution of hearing examiners in  
 2 contested cases; and the property tax treatment of unoccupied property.

**Analysis by the Legislative Reference Bureau**

and shoreland zoning

**INTRODUCTION**

This bill makes various changes to the regulation of shoreland zoning and property rights and allows for the substitution of hearing examiners in contested case hearings.

INS. A1

**SHORELAND ZONING**

change to title: sub

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.

### CONTESTED CASE HEARINGS

INS. A2  
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.

INS.  
A1 →

#### 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.

INS. A2 →

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

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

- 1           **SECTION 1.** 59.69 (4) (intro.) of the statutes is amended to read:
- 2           59.69 (4) **EXTENT OF POWER.** (intro.) For the purpose of promoting the public
- 3 health, safety and general welfare the board may by ordinance effective within the
- 4 areas within such county outside the limits of incorporated villages and cities
- 5 establish districts of such number, shape and area, and adopt such regulations for
- 6 each such district as the board considers best suited to carry out the purposes of this
- 7 section. The board may establish mixed-use districts that contain any combination
- 8 of uses, such as industrial, commercial, public, or residential uses, in a compact
- 9 urban form. The board may not enact a development moratorium, as defined in s.
- 10 66.1002 (1) (b), under this section or by acting under ch. 236. The powers granted

1 by this section shall be exercised through an ordinance which may, subject to sub.  
2 (4e), determine, establish, regulate and restrict:

3 **SECTION 2.** 59.69 (4) (j) of the statutes is amended to read:

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

6 **SECTION 3.** 59.69 (5) (f) of the statutes is amended to read:

7 59.69 (5) (f) ~~The county zoning agency shall maintain a list of persons who~~  
8 ~~submit a written request to receive notice of any proposed ordinance or amendment~~  
9 ~~that affects the allowable use of the property owned by the person.~~ If the county  
10 zoning agency completes a draft of a proposed zoning ordinance under par. (a) or if  
11 the agency receives a petition under par. (e) 2., the agency shall send a notice, which  
12 contains a copy or summary of the proposed ordinance or petition, to each person ~~on~~  
13 ~~the list~~ whose property, the allowable use or size or density requirements of which,  
14 may be affected by the proposed ordinance or amendment. The notice shall be by  
15 mail or in any reasonable form that is agreed to by the person and the agency. ~~The~~  
16 ~~agency may charge each person on the list who receives a notice a fee that does not~~  
17 ~~exceed the approximate cost of providing the notice to the person.~~ An ordinance or  
18 amendment that is subject to this paragraph may take effect even if the agency fails  
19 to send the notice that is required by this paragraph.

20 **SECTION 4.** 59.692 (1h) of the statutes is created to read:

21 59.692 (1h) If a professional land surveyor licensed under ch. 443, in  
22 measuring a setback from an ordinary high-water mark of a navigable water as  
23 required by an ordinance enacted under this section, relies on a map, plat, or survey  
24 that incorporates or approximates the ordinary high-water mark in accordance with

**SECTION 4**

1 s. 236.025, the setback measured is the setback with respect to a structure  
2 constructed on that property if all of the following apply:

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

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

9 **SECTION 5.** 59.692 (1k) (a) 2. of the statutes, as created by 2015 Wisconsin Act  
10 55, is amended to read:

11 59.692 (1k) (a) 2. Except as provided in par. (b), requires any approval or  
12 imposes any fee or mitigation requirement for, or otherwise prohibits or regulates,  
13 the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all  
14 or any part of a nonconforming structure or a structure of which any part is legally  
15 located in the shoreland setback area only by operation of a variance if the activity  
16 does not expand the footprint of the ~~nonconforming~~ structure.

17 **SECTION 6.** 59.692 (1k) (a) 4. of the statutes, as created by 2015 Wisconsin Act  
18 55, is amended to read:

19 59.692 (1k) (a) 4. Requires any approval or imposes any fee or mitigation  
20 requirement for, or otherwise prohibits or regulates, the vertical expansion of a  
21 nonconforming structure or a structure of which any part is legally located in the  
22 shoreland setback area only by operation of a variance unless the vertical expansion  
23 would extend more than 35 feet above grade level.

24 **SECTION 7.** 59.692 (1k) (a) 6. of the statutes is created to read:

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

3           **SECTION 8.** 59.692 (1k) (b) of the statutes, as created by 2015 Wisconsin Act 55,  
4 is amended to read:

5           59.692 (1k) (b) A county shoreland zoning ordinance shall allow an activity  
6 specified under par. (a) 2. to expand the footprint of a nonconforming structure or a  
7 structure of which any part is legally located in the shoreland setback area only by  
8 operation of a variance if the expansion is necessary for the structure to comply with  
9 applicable state or federal requirements.

10          **SECTION 9.** 59.692 (1p) of the statutes is created to read:

11          59.692 (1p) The department may not promulgate a standard and a county may  
12 not enact an ordinance under this section that prohibits the owner of a boathouse in  
13 the shoreland setback area that has a flat roof from using the roof as a deck if the roof  
14 has no side walls or screens or from having or installing a railing around that roof  
15 if the railing is consistent with standards promulgated by the department of safety  
16 and professional services under ch. 101.

17          **SECTION 10.** 59.692 (7) of the statutes is created to read:

18          59.692 (7) (a) In this subsection, “facility” means any property or equipment  
19 of a public utility, as defined in s. 196.01 (5), or a cooperative association organized  
20 under ch. 185 for the purpose of producing or furnishing heat, light, or power to its  
21 members only, that is used for the transmission, delivery, or furnishing of natural  
22 gas, heat, light, or power.

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

**SECTION 10**

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

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

7           **SECTION 11.** 60.23 (33) of the statutes is amended to read:

8           60.23 (33) COMPREHENSIVE PLAN. Adopt or amend a master plan under s. 62.23.  
9 A master plan under this subsection may not prohibit any use specified as a  
10 conditional use in a zoning ordinance enacted by the town.

11           **SECTION 12.** 60.61 (2) (a) 6. of the statutes is amended to read:

12           60.61 (2) (a) 6. The Subject to s. 66.10015 (3), the density and distribution of  
13 population.

14           **SECTION 13.** 60.61 (4) (f) of the statutes is amended to read:

15           60.61 (4) (f) ~~The town board shall maintain a list of persons who submit a~~  
16 ~~written request to receive notice of any proposed ordinance or amendment that~~  
17 ~~affects the allowable use of the property owned by the person.~~ If the town zoning  
18 committee completes a final report on a proposed zoning ordinance and the town  
19 board is prepared to vote on the proposed ordinance under par. (b) or if the town board  
20 is prepared to vote on a proposed amendment under par. (c) 1., the town board shall  
21 send a notice, which contains a copy or summary of the proposed ordinance or  
22 amendment, to each person ~~on the list~~ whose property, the allowable use or size or  
23 density requirements of which, may be affected by the proposed ordinance or  
24 amendment. The notice shall be by mail or in any reasonable form that is agreed to  
25 by the person and the town board. ~~The town board may charge each person on the~~



1 ~~list who receives a notice a fee that does not exceed the approximate cost of providing~~  
2 ~~the notice to the person.~~ An ordinance or amendment that is subject to this  
3 paragraph may take effect even if the town board fails to send the notice that is  
4 required by this paragraph.

5 **SECTION 14.** 62.23 (7) (am) of the statutes is amended to read:

6 62.23 (7) (am) *Grant of power.* For the purpose of promoting health, safety,  
7 morals or the general welfare of the community, the council may regulate and restrict  
8 by ordinance, subject to par. (hm), the height, number of stories and size of buildings  
9 and other structures, the percentage of lot that may be occupied, the size of yards,  
10 courts and other open spaces, subject to s. 66.10015 (3) the density of population, and  
11 the location and use of buildings, structures and land for trade, industry, mining,  
12 residence or other purposes if there is no discrimination against temporary  
13 structures. This subsection and any ordinance, resolution or regulation enacted or  
14 adopted under this section, shall be liberally construed in favor of the city and as  
15 minimum requirements adopted for the purposes stated. This subsection may not  
16 be deemed a limitation of any power granted elsewhere.

17 **SECTION 15.** 62.23 (7) (d) 4. of the statutes is amended to read:

18 62.23 (7) (d) 4. ~~The city council shall maintain a list of persons who submit a~~  
19 ~~written request to receive notice of any proposed zoning action that may be taken~~  
20 ~~under subd. 1. a. or b. or 2. that affects the allowable use of the person's property.~~  
21 If the plan commission, the board of public land commissioners, or city plan  
22 committee of the city council completes action on any tentative recommendations  
23 that are noticed under subd. 1. a., proposed changes to a proposed district plan and  
24 regulations that are submitted under subd. 1. b., or proposed amendments that are  
25 submitted under subd. 2., and the city council is prepared to vote on the tentative

**SECTION 15**

1 recommendations, proposed changes to a proposed district plan, and regulations or  
2 proposed amendments, the city council shall send a notice, which contains a copy or  
3 summary of the tentative recommendations, proposed changes to a proposed district  
4 plan, and regulations or proposed amendments, to each person ~~on the list~~ whose  
5 property, the allowable use of which, may be affected by the tentative  
6 recommendations or proposed changes or amendments. The notice shall be by mail  
7 or in any reasonable form that is agreed to by the person and the city council. ~~The~~  
8 ~~city council may charge each person on the list who receives a notice a fee that does~~  
9 ~~not exceed the approximate cost of providing the notice to the person.~~ An ordinance  
10 or amendment that is subject to this subdivision may take effect even if the city  
11 council fails to send the notice that is required by this subdivision.

12 **SECTION 16.** 66.1001 (4) (f) of the statutes is amended to read:

13 66.1001 (4) (f) ~~A political subdivision shall maintain a list of persons who~~  
14 ~~submit a written request to receive notice of any proposed ordinance, described~~  
15 ~~under par. (c), that affects the allowable use of the property owned by the person. At~~  
16 ~~least 30 days before the hearing described in par. (d) is held a political subdivision~~  
17 ~~shall provide written notice, including a copy or summary of the proposed ordinance,~~  
18 ~~to all such persons whose property, the allowable use of which, may be affected by the~~  
19 ~~proposed ordinance. The notice shall be by mail or in any reasonable form that is~~  
20 ~~agreed to by the person and the political subdivision. ~~The political subdivision may~~~~  
21 ~~charge each person on the list who receives a notice a fee that does not exceed the~~  
22 ~~approximate cost of providing the notice to the person.~~

23 **SECTION 17.** 66.10015 (title) of the statutes is amended to read:

24 **66.10015 (title) Limitation on development regulation authority and**  
25 **down zoning.**

1           **SECTION 18.** 66.10015 (1) (a) of the statutes is amended to read:

2           66.10015 (1) (a) “Approval” means a permit or authorization for building,  
3 zoning, driveway, stormwater, or other activity related to ~~land development~~ a project.

4           **SECTION 19.** 66.10015 (1) (as) of the statutes is created to read:

5           66.10015 (1) (as) “Down zoning ordinance” means a zoning ordinance that  
6 affects an area of land in one of the following ways:

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

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

11           **SECTION 20.** 66.10015 (1) (b) of the statutes is amended to read:

12           66.10015 (1) (b) “Existing requirements” means regulations, ordinances, rules,  
13 or other properly adopted requirements of a political subdivision that are in effect  
14 at the time the application for an approval is submitted to the political subdivision  
15 or to an agency, as defined in s. 227.01 (1).

16           **SECTION 21.** 66.10015 (1) (bs) of the statutes is created to read:

17           66.10015 (1) (bs) “Members–elect” means those members of the governing body  
18 of a political subdivision, at a particular time, who have been duly elected or  
19 appointed for a current regular or unexpired term and whose service has not  
20 terminated by death, resignation, or removal from office.

21           **SECTION 22.** 66.10015 (1) (d) of the statutes is amended to read:

22           66.10015 (1) (d) “Project” means a specific and identifiable land development,  
23 improvement activity, or use that occurs on defined and adjacent parcels of land,  
24 which includes lands separated by roads, waterways, and easements within one or  
25 more political subdivisions and is specified in one or more applications for approval.

1           **SECTION 23.** 66.10015 (2) (b) of the statutes is amended to read:

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

10           **SECTION 24.** 66.10015 (2) (d) of the statutes is amended to read:

11           66.10015 (2) (d) This section does not prohibit a political subdivision from  
12 establishing an expiration date on an approval. Any expiration date established by  
13 a political subdivision shall be extended by a period equal to the duration of the  
14 pendency of any related applications for approval from an agency, as defined in  
15 227.01 (1), or from a political subdivision, including the duration of any proceedings  
16 contesting an approval or conditions of an approval.

17           **SECTION 25.** 66.10015 (3) of the statutes is created to read:

18           66.10015 (3) DOWN ZONING. A political subdivision may enact a down zoning  
19 ordinance only if the ordinance is approved by at least three-fourths of the  
20 members-elect, except that if the down zoning ordinance is requested, or agreed to,  
21 by the person who owns the land affected by the proposed ordinance, the ordinance  
22 may be enacted by a simple majority of the members-elect.

23           **SECTION 26.** 70.32 (2) (c) 4. of the statutes is renumbered 70.32 (2) (c) 4. (intro.)  
24 and amended to read:

25           70.32 (2) (c) 4. (intro.) “Undeveloped land” means beg all of the following:

1           a. Bog, marsh, lowland brush, uncultivated land zoned as shoreland under s.  
2           59.692 and shown as a wetland on a final map under s. 23.32, or other nonproductive  
3           lands not otherwise classified under this subsection.

4           **SECTION 27.** 70.32 (2) (c) 4. b. of the statutes is created to read:

5           70.32 (2) (c) 4. b. Land that is platted and zoned for residential, commercial,  
6           or manufacturing use until such time that all approvals, including post-construction  
7           inspection approvals, required before the initial use of the land for a residential,  
8           commercial, or manufacturing use are issued. This subd. 4. b. applies only to land  
9           that was in agricultural use for 2 consecutive years prior to being converted to  
10          residential, commercial, or manufacturing use.

11          **SECTION 28.** 70.32 (4) of the statutes is renumbered 70.32 (4) (a) and amended  
12          to read:

13          70.32 (4) (a) Beginning with the assessments as of January 1, 2004,  
14          agricultural forest land shall be assessed at ~~50%~~ 50 percent of its full value, as  
15          determined under sub. (1), and undeveloped land, as defined in sub. (2) (c) 4. a., shall  
16          be assessed at ~~50%~~ 50 percent of its full value, as determined under sub. (1).

17          **SECTION 29.** 70.32 (4) (b) of the statutes is created to read:

18          70.32 (4) (b) Beginning with the assessments as of January 1, 2016,  
19          undeveloped land, as defined in sub. (2) (c) 4. b., shall be assessed at its unimproved  
20          value until such time that a permit is issued for constructing a building or other  
21          structure on the land.

22          **SECTION 30.** 227.445 of the statutes is created to read:

23          **227.445 Substitution of hearing examiner assigned by division of**  
24          **hearings and appeals.** (1) A person who has applied for a contract, permit, or  
25          other approval that is the subject of a contested case hearing for which the division

1 of hearings and appeals has assigned a hearing examiner may file a written request  
2 with the hearing examiner, not later than 10 days after receipt of the notice under  
3 s. 227.44 (1), for a substitution of a new hearing examiner.

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

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

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

14 **SECTION 31.** 236.45 (2) (am) (intro.) of the statutes, as affected by 2015  
15 Wisconsin Act 48, is amended to read:

16 236.45 (2) (am) (intro.) Ordinances under par. (ac) may include provisions  
17 regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land  
18 into less than 5 parcels, and, except as provided in s. 59.69 (4) (intro.) and subject to  
19 s. 66.1002, may prohibit the division of land in areas where such prohibition will  
20 carry out the purposes of this section. Such ordinances shall make applicable to such  
21 divisions all of the provisions of this chapter, or may provide other surveying,  
22 monumenting, mapping and approving requirements for such division. The  
23 governing body of the municipality, town, or county shall require that a plat of such  
24 division be recorded with the register of deeds and kept in a book provided for that  
25 purpose or stored electronically. “COUNTY PLAT,” “MUNICIPAL PLAT,” or “TOWN

1 PLAT” shall be printed on the map in prominent letters with the location of the land  
2 by government lot, recorded private claim, quarter-quarter section, section,  
3 township, range, and county noted. When so recorded, the lots included in the plat  
4 shall be described by reference to “COUNTY PLAT,” “MUNICIPAL PLAT,” or  
5 “TOWN PLAT,” the name of the plat and the lot and block in the plat, for all purposes,  
6 including those of assessment, taxation, devise, descent, and conveyance as defined  
7 in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5  
8 parcels, shall not apply to:

9 **SECTION 32.** 700.28 of the statutes is created to read:

10 **700.28 Prohibiting unreasonable restrictions on alienation of**  
11 **property.** (1) In this section, “political subdivision” means a city, village, town, or  
12 county.

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

15 **SECTION 33.** 706.22 (title) of the statutes, as created by 2015 Wisconsin Act 55,  
16 is amended to read:

17 **706.22 (title) Prohibition on imposing time-of-sale, purchase, or**  
18 **occupancy requirements.**

19 **SECTION 34.** 706.22 (2) (title) of the statutes, as created by 2015 Wisconsin Act  
20 55, is amended to read:

21 **706.22 (2) (title) REQUIREMENTS TIED TO SALE, PURCHASE, OR TAKING OCCUPANCY**  
22 **OF PROPERTY PROHIBITED.**

23 **SECTION 35.** 706.22 (2) (a) (intro.) of the statutes, as created by 2015 Wisconsin  
24 Act 55, is amended to read:

1           706.22 (2) (a) (intro.) Except as provided in par. (b), no local governmental unit  
2 may by ordinance, resolution, or any other means ~~restrict~~ do any of the following:

3           1m. Restrict the ability of an owner of real property to sell or otherwise transfer  
4 title to or refinance the property by requiring the owner or an agent of the owner to  
5 take certain actions with respect to the property or pay a related fee, to show  
6 compliance with taking certain actions with respect to the property, or to pay a fee  
7 for failing to take certain actions with respect to the property, at any of the following  
8 times:

9           **SECTION 36.** 706.22 (2) (a) 1. of the statutes, as created by 2015 Wisconsin Act  
10 55, is renumbered 706.22 (2) (a) 1m. a.

11           **SECTION 37.** 706.22 (2) (a) 2. of the statutes, as created by 2015 Wisconsin Act  
12 55, is renumbered 706.22 (2) (a) 1m. b.

13           **SECTION 38.** 706.22 (2) (a) 2m. of the statutes is created to read:

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

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

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

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

23           **SECTION 39.** 706.22 (2) (a) 3. of the statutes, as created by 2015 Wisconsin Act  
24 55, is renumbered 706.22 (2) (a) 1m. c.

25           **SECTION 40.** 706.22 (2) (a) 3m. of the statutes is created to read:



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

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

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

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

10          **SECTION 41.** 706.22 (2) (b) of the statutes, as created by 2015 Wisconsin Act 55,  
11 is renumbered 706.22 (2) (b) (intro.) and amended to read:

12          706.22 (2) (b) (intro.) Paragraph (a) does not prohibit do any of the following:

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

17          **SECTION 42.** 706.22 (2) (b) 2. of the statutes is created to read:

18          706.22 (2) (b) 2. Prohibit a local governmental unit from enforcing, or otherwise  
19 affect the responsibility, authority, or ability of a local governmental unit to enforce,  
20 a federal or state requirement that does any of the things a local governmental unit  
21 is prohibited from doing under par. (a).

22          **SECTION 43.** 706.22 (3) of the statutes, as created by 2015 Wisconsin Act 55, is  
23 renumbered 706.22 (3) (a) and amended to read:

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

4           **SECTION 44.** 706.22 (3) (b) of the statutes is created to read:

5           706.22 (3) (b) If a local governmental unit has in effect on the effective date of  
6 this paragraph .... [LRB inserts date], an ordinance, resolution, or policy that is  
7 inconsistent with sub. (2) (a) 2m. or 3m., the ordinance, resolution, or policy does not  
8 apply and may not be enforced.

9           **SECTION 45.** 895.463 of the statutes is created to read:

10           **895.463 Zoning ordinances.** In any matter relating to a zoning ordinance  
11 or shoreland zoning ordinance enacted or enforced by a city, village, town, or county,  
12 the court shall resolve an ambiguity in the meaning of a zoning word or phrase in  
13 favor of the free use of private property.

14           **SECTION 46. Initial applicability.**

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

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

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

25           **(END)**

**Parisi, Lori**

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**From:** Kovach, Robert  
**Sent:** Thursday, December 03, 2015 10:52 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3936/1

Please Jacket LRB -3936/1 for the SENATE.



State of Wisconsin  
2015 - 2016 LEGISLATURE

Corrected Copy → See analysis p. 3  
LRB-3936/1  
ES/MS/EM/PK:all

Corrected copy needed see analysis, p. 3

Handwritten signatures and notes on the right side of the page.

1. AN ACT to renumber 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; to  
2. renumber and amend 70.32 (2) (c) 4., 70.32 (4), 706.22 (2) (b) and 706.22 (3);  
3. to amend 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2., 59.692  
4. (1k) (a) 4., 59.692 (1k) (b), 60.23 (33), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am),  
5. 62.23 (7) (d) 4., 66.1001 (4) (f), 66.10015 (title), 66.10015 (1) (a), 66.10015 (1) (b),  
6. 66.10015 (1) (d), 66.10015 (2) (b), 66.10015 (2) (d), 236.45 (2) (am) (intro.),  
7. 706.22 (title), 706.22 (2) (title) and 706.22 (2) (a) (intro.); and to create 59.692  
8. (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.10015 (1) (as), 66.10015 (1)  
9. (bs), 66.10015 (3), 70.32 (2) (c) 4. b., 70.32 (4) (b), 227.445, 700.28, 706.22 (2) (a)  
10. 2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the  
11. statutes; relating to: government actions affecting rights to real property; the

**BILL**

1 regulation of shoreland zoning; the substitution of hearing examiners in  
2 contested cases; and the property tax treatment of unoccupied property.

---

***Analysis by the Legislative Reference Bureau*****INTRODUCTION**

This bill makes various changes to the regulation of property rights and shoreland zoning and allows for the substitution of hearing examiners in contested case hearings.

**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

**BILL**

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.

**SHORELAND ZONING**

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.

**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.

*property or equipment used for the transmission, delivery, or furnishing of natural gas, heat, light, or power and owned by a public utility or cooperative association organized for the purpose of producing or furnishing heat, light, or power*

**BILL****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.

**CONTESTED CASE HEARINGS**

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.

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

---

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

1           **SECTION 1.** 59.69 (4) (intro.) of the statutes is amended to read:

2           **59.69 (4) EXTENT OF POWER.** (intro.) For the purpose of promoting the public  
3 health, safety and general welfare the board may by ordinance effective within the  
4 areas within such county outside the limits of incorporated villages and cities  
5 establish districts of such number, shape and area, and adopt such regulations for  
6 each such district as the board considers best suited to carry out the purposes of this  
7 section. The board may establish mixed-use districts that contain any combination  
8 of uses, such as industrial, commercial, public, or residential uses, in a compact  
9 urban form. The board may not enact a development moratorium, as defined in s.  
10 66.1002 (1) (b), under this section or by acting under ch. 236. The powers granted







State of Wisconsin  
2015 - 2016 LEGISLATURE

CORRECTED  
COPY

LRB-3936/1  
ES/MS/EM/PK:all

Corrected Copies  
Completed  
12/18/15 by  
KJF

**2015 SENATE BILL 464**

December 18, 2015 - Introduced by Senators LASEE, NASS and LEMAHIEU, cosponsored by Representatives JARCHOW, KNODL, NYGREN, TAUCHEN, CRAIG, ALLEN, CZAJA and PETERSEN. Referred to Committee on Insurance, Housing, and Trade.

1     **AN ACT** *to renumber* 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; *to*  
2     *renumber and amend* 70.32 (2) (c) 4., 70.32 (4), 706.22 (2) (b) and 706.22 (3);  
3     *to amend* 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2., 59.692  
4     (1k) (a) 4., 59.692 (1k) (b), 60.23 (33), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am),  
5     62.23 (7) (d) 4., 66.1001 (4) (f), 66.10015 (title), 66.10015 (1) (a), 66.10015 (1) (b),  
6     66.10015 (1) (d), 66.10015 (2) (b), 66.10015 (2) (d), 236.45 (2) (am) (intro.),  
7     706.22 (title), 706.22 (2) (title) and 706.22 (2) (a) (intro.); and *to create* 59.692  
8     (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.10015 (1) (as), 66.10015 (1)  
9     (bs), 66.10015 (3), 70.32 (2) (c) 4. b., 70.32 (4) (b), 227.445, 700.28, 706.22 (2) (a)  
10    2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the  
11    statutes; **relating to:** government actions affecting rights to real property; the

**SENATE BILL 464**

1 regulation of shoreland zoning; the substitution of hearing examiners in  
2 contested cases; and the property tax treatment of unoccupied property.

---

*Analysis by the Legislative Reference Bureau*

**INTRODUCTION**

This bill makes various changes to the regulation of property rights and shoreland zoning and allows for the substitution of hearing examiners in contested case hearings.

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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.

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**SENATE BILL 464**

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.

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**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.

**SENATE BILL 464****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.

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

---

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1           **SECTION 1.** 59.69 (4) (intro.) of the statutes is amended to read:  
2           59.69 (4) **EXTENT OF POWER.** (intro.) For the purpose of promoting the public  
3 health, safety and general welfare the board may by ordinance effective within the  
4 areas within such county outside the limits of incorporated villages and cities  
5 establish districts of such number, shape and area, and adopt such regulations for  
6 each such district as the board considers best suited to carry out the purposes of this  
7 section. The board may establish mixed-use districts that contain any combination  
8 of uses, such as industrial, commercial, public, or residential uses, in a compact  
9 urban form. The board may not enact a development moratorium, as defined in s.  
10 66.1002 (1) (b), under this section or by acting under ch. 236. The powers granted

**SENATE BILL 464****SECTION 43**

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

4           **SECTION 44.** 706.22 (3) (b) of the statutes is created to read:

5           706.22 (3) (b) If a local governmental unit has in effect on the effective date of  
6 this paragraph .... [LRB inserts date], an ordinance, resolution, or policy that is  
7 inconsistent with sub. (2) (a) 2m. or 3m., the ordinance, resolution, or policy does not  
8 apply and may not be enforced.

9           **SECTION 45.** 895.463 of the statutes is created to read:

10           **895.463 Zoning ordinances.** In any matter relating to a zoning ordinance  
11 or shoreland zoning ordinance enacted or enforced by a city, village, town, or county,  
12 the court shall resolve an ambiguity in the meaning of a zoning word or phrase in  
13 favor of the free use of private property.

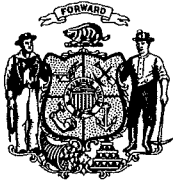
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15           (1) **ACTIONS AFFECTING LAND USE.** The treatment of sections 59.69 (5) (f), 60.61  
16 (4) (f), 62.23 (7) (d) 4., and 66.1001 (4) (f) of the statutes first applies to an action taken  
17 by a city, village, town, or county that affects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

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

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

25           **(END)**



State of Wisconsin  
2015 - 2016 LEGISLATURE

CORRECTED  
COPY

LRB-3936/1  
ES/MS/EM/PK:all

## 2015 SENATE BILL 464

December 18, 2015 - Introduced by Senators LASEE, NASS and LEMAHIEU, cosponsored by Representatives JARCHOW, KNODL, NYGREN, TAUCHEN, CRAIG, ALLEN, CZAJA and PETERSEN. Referred to Committee on Insurance, Housing, and Trade.

1     **AN ACT** *to renumber* 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; *to*  
2     *renumber and amend* 70.32 (2) (c) 4., 70.32 (4), 706.22 (2) (b) and 706.22 (3);  
3     *to amend* 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2., 59.692  
4     (1k) (a) 4., 59.692 (1k) (b), 60.23 (33), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am),  
5     62.23 (7) (d) 4., 66.1001 (4) (f), 66.10015 (title), 66.10015 (1) (a), 66.10015 (1) (b),  
6     66.10015 (1) (d), 66.10015 (2) (b), 66.10015 (2) (d), 236.45 (2) (am) (intro.),  
7     706.22 (title), 706.22 (2) (title) and 706.22 (2) (a) (intro.); and *to create* 59.692  
8     (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.10015 (1) (as), 66.10015 (1)  
9     (bs), 66.10015 (3), 70.32 (2) (c) 4. b., 70.32 (4) (b), 227.445, 700.28, 706.22 (2) (a)  
10    2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the  
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**SENATE BILL 464**

1 regulation of shoreland zoning; the substitution of hearing examiners in  
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---

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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.

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**SENATE BILL 464**

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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.

*MS A3* → 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.

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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.

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

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4 areas within such county outside the limits of incorporated villages and cities  
5 establish districts of such number, shape and area, and adopt such regulations for  
6 each such district as the board considers best suited to carry out the purposes of this  
7 section. The board may establish mixed-use districts that contain any combination  
8 of uses, such as industrial, commercial, public, or residential uses, in a compact  
9 urban form. The board may not enact a development moratorium, as defined in s.  
10 66.1002 (1) (b), under this section or by acting under ch. 236. The powers granted

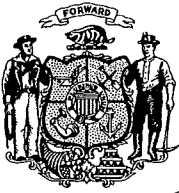
**2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB  
.....

1

**INSERT A3**

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State of Wisconsin  
2015 - 2016 LEGISLATURE

CORRECTED  
COPY 2

LRB-3936/1  
ES/MS/EM/PK:all

After changes  
01-05-2016  
WLJ

**2015 SENATE BILL 464**

December 18, 2015 - Introduced by Senators LASEE, NASS and LEMAHIEU, cosponsored by Representatives JARCHOW, KNODL, NYGREN, TAUCHEN, CRAIG, ALLEN, CZAJA and PETERSEN. Referred to Committee on Insurance, Housing, and Trade.

1     **AN ACT** *to renumber* 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; *to*  
2     *renumber and amend* 70.32 (2) (c) 4., 70.32 (4), 706.22 (2) (b) and 706.22 (3);  
3     *to amend* 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2., 59.692  
4     (1k) (a) 4., 59.692 (1k) (b), 60.23 (33), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am),  
5     62.23 (7) (d) 4., 66.1001 (4) (f), 66.10015 (title), 66.10015 (1) (a), 66.10015 (1) (b),  
6     66.10015 (1) (d), 66.10015 (2) (b), 66.10015 (2) (d), 236.45 (2) (am) (intro.),  
7     706.22 (title), 706.22 (2) (title) and 706.22 (2) (a) (intro.); and *to create* 59.692  
8     (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.10015 (1) (as), 66.10015 (1)  
9     (bs), 66.10015 (3), 70.32 (2) (c) 4. b., 70.32 (4) (b), 227.445, 700.28, 706.22 (2) (a)  
10    2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the  
11    statutes; **relating to:** government actions affecting rights to real property; the

**SENATE BILL 464**

1 regulation of shoreland zoning; the substitution of hearing examiners in  
2 contested cases; and the property tax treatment of unoccupied property.

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- 8 of uses, such as industrial, commercial, public, or residential uses, in a compact

**SENATE BILL 464****SECTION 43**

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

4           **SECTION 44.** 706.22 (3) (b) of the statutes is created to read:

5           706.22 (3) (b) If a local governmental unit has in effect on the effective date of  
6 this paragraph .... [LRB inserts date], an ordinance, resolution, or policy that is  
7 inconsistent with sub. (2) (a) 2m. or 3m., the ordinance, resolution, or policy does not  
8 apply and may not be enforced.

9           **SECTION 45.** 895.463 of the statutes is created to read:

10           **895.463 Zoning ordinances.** In any matter relating to a zoning ordinance  
11 or shoreland zoning ordinance enacted or enforced by a city, village, town, or county,  
12 the court shall resolve an ambiguity in the meaning of a zoning word or phrase in  
13 favor of the free use of private property.

14           **SECTION 46. Initial applicability.**

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

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

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

25           **(END)**