



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4034/1
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2015 SENATE BILL 477

December 29, 2015 – Introduced by Senators LEMAHIEU and KAPENGA, cosponsored by Representatives JARCHOW, DUCHOW, BALLWEG, R. BROOKS, CZAJA, HUTTON, KNODL and A. OTT. Referred to Committee on Natural Resources and Energy.

1 **AN ACT** *to renumber and amend* 59.692 (1k) (a) 5.; *to amend* 59.692 (1k) (b);
2 and *to create* 59.692 (1k) (a) 2m., 59.692 (1k) (a) 5. b. and c., 59.692 (1k) (bm)
3 and 59.692 (1n) of the statutes; **relating to:** restrictions in a county shoreland
4 zoning ordinance on activities within the shoreland setback area.

Analysis by the Legislative Reference Bureau

This bill codifies and makes changes to certain Department of Natural Resources (DNR) shoreland zoning standards.

Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area, and the ordinance may not regulate a matter more restrictively than the matter is regulated by shoreland zoning standards established by DNR by rule. Current law generally defines “shorelands” to be an area within a specified distance from the ordinary high-water mark (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.

This bill codifies into law current DNR shoreland zoning standards that require a setback of 75 feet from the OHWM to the nearest part of a building or structure. The bill also codifies into law current DNR shoreland zoning standards that provide that, if principal structures exist on adjacent lots and within 250 feet of a proposed principal structure in both directions along the shoreline, the setback distance may be reduced to the average of the setbacks on each adjacent lot, but no less than 35 feet. The bill also provides that if principal structures exist on adjacent lots and

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within 200 feet of a proposed principal structure in both directions along the shoreline and both are set back more than 75 feet from the OHWM at the setback that was required at the time each was built, the county shoreland zoning ordinance may establish a setback equal to the average of the distance the neighboring principal structures are set back from the OHWM.

This bill codifies into law current DNR shoreland zoning standards that exempt from the general setback requirements the construction of boathouses located entirely above the OHWM, open-sided and screened structures, fishing rafts, broadcast signal receivers, utility facilities, water towers, pumping facilities, private wastewater treatment systems, and walkways, stairways, and rail systems necessary to provide pedestrian access to the shoreline.

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. For purposes of this restriction, nonconforming structures are those that existed lawfully before enactment of the county shoreland zoning ordinance but that no longer conform with one or more parts of the ordinance that apply to elements including setback, height, lot coverage, and side yard. The bill expands this prohibition to any of the structures that are exempt from the general setback requirements and that were constructed legally, but allows an ordinance to restrict those activities from expanding such a structure beyond the three-dimensional building envelope of the existing structure.

Under this bill, if DNR shoreland zoning standards regulate impervious surface area and if those standards allow a greater amount of impervious surface on areas for highly developed shorelines than areas with shorelines that are not highly developed, the standards must require an area with highly developed shorelines to include at least 500 feet of shoreline and must require that the area either be composed of a majority of lots with more than 30 percent impervious surface area, as calculated by DNR; be composed of a majority of lots that are less than 20,000 square feet in area; or be located on a lake and served by a sewerage system. This bill also requires DNR shoreland zoning standards to prohibit a roadway or sidewalk from being considered an impervious surface.

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

1 **SECTION 1.** 59.692 (1k) (a) 2m. of the statutes is created to read:
2 59.692 (1k) (a) 2m. Except as provided in pars. (b) and (bm), requires any
3 approval or imposes any fee or mitigation requirement for, or otherwise prohibits or
4 regulates, the maintenance, repair, replacement, restoration, rebuilding, or

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1 remodeling of all or any part of a structure listed under sub. (1n) (d) that was legally
2 constructed if the activity does not expand the footprint of the existing structure.

3 **SECTION 2.** 59.692 (1k) (a) 5. of the statutes, as created by 2015 Wisconsin Act
4 55, is renumbered 59.692 (1k) (a) 5. (intro.) and amended to read:

5 59.692 (1k) (a) 5. (intro.) Establishes standards for impervious surfaces unless
6 the all of the following apply:

7 a. The standards provide that a surface is considered pervious if the runoff from
8 the surface is treated by a device or system, or is discharged to an internally drained
9 pervious area, that retains the runoff on or off the parcel to allow infiltration into the
10 soil.

11 **SECTION 3.** 59.692 (1k) (a) 5. b. and c. of the statutes are created to read:

12 59.692 (1k) (a) 5. b. If the standards allow a greater amount of impervious
13 surface on areas with highly developed shorelines than areas with shorelines that
14 are not highly developed, as determined by the department, the standards also
15 require an area with highly developed shorelines to include at least 500 feet of
16 shoreline and require that the area either be composed of a majority of lots with more
17 than 30 percent impervious surface area, as calculated by the department; be
18 composed of a majority of lots that are less than 20,000 square feet in area; or be
19 located on a lake and served by a sewerage system, as defined in s. 281.01 (14).

20 c. The standards prohibit considering a roadway, as defined in s. 340.01 (54),
21 or a sidewalk, as defined in s. 340.01 (58), as impervious surfaces.

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

24 59.692 (1k) (b) A county shoreland zoning ordinance shall allow an activity
25 specified under par. (a) 2. and 2m. to expand the footprint of a nonconforming

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1 structure or a structure listed under sub. (1n) (d) if the expansion is necessary for the
2 structure to comply with applicable state or federal requirements.

3 **SECTION 5.** 59.692 (1k) (bm) of the statutes is created to read:

4 59.692 (1k) (bm) A county shoreland zoning ordinance may prohibit an activity
5 specified under par. (a) 2m. from expanding a structure listed under sub. (1n) (d)
6 beyond the 3-dimensional building envelope of the existing structure.

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

8 59.692 (1n) (a) In this subsection, “setback” means the distance that a
9 shoreland setback area extends from the ordinary high-water mark.

10 (am) Except as provided under pars. (b), (c), and (d), a county shoreland zoning
11 ordinance shall establish a setback of 75 feet.

12 (b) Except as provided in par. (c), if a principal structure exists on an adjacent
13 lot and within 250 feet of a proposed principal structure in both directions along the
14 shoreline, a county shoreland zoning ordinance shall allow a setback equal to the
15 average of the distance that each principal structure on an adjacent lot and within
16 250 feet of the proposed principal structure is set back from the ordinary high-water
17 mark but no less than 35 feet.

18 (c) If a principal structure exists within 200 feet of a proposed principal
19 structure in both directions along the shoreline, and both of the existing principal
20 structures are set back more than 75 feet from the ordinary high-water mark at the
21 setback that was required at the time each structure was built, a county shoreland
22 zoning ordinance may allow a setback equal to the average of the distance each
23 principal structure within 200 feet of the proposed principal structure is set back
24 from the ordinary high-water mark.

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1 (d) A county shoreland zoning ordinance may not prohibit the construction of
2 any of the following structures within the 75-foot setback requirement under par.

3 (am):

4 1. A boathouse, as defined in s. 30.01 (1d), that is located entirely above the
5 ordinary high-water mark.

6 2. A structure that satisfies the requirements in sub. (1v).

7 3. A fishing raft for which the department has issued a permit under s. 30.126.

8 4. A broadcast signal receiver, including a satellite dish, or an antenna that is
9 no more than one meter in diameter and a satellite earth station antenna that is no
10 more than 2 meters in diameter.

11 5. A utility transmission line, utility distribution line, pole, tower, water tower,
12 pumping station, well pumphouse cover, private on-site wastewater treatment
13 system that complies with ch. 145, and any other utility structure for which no
14 feasible alternative location outside of the setback exists and which is constructed
15 and placed using best management practices to infiltrate or otherwise control storm
16 water runoff from the structure.

17 6. A walkway, stairway, or rail system that is necessary to provide pedestrian
18 access to the shoreline and is no more than 60 inches in width.

19 (END)