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# Wisconsin Legislative Council

## ACT MEMO

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April 10, 2020

**2019 Wisconsin Act 175**  
[2019 Senate Bill 637]

**Regulation on Nonconforming  
Buildings in a Floodplain**

### BACKGROUND

The National Flood Insurance Program (NFIP) provides access to federally subsidized flood insurance for property owners in areas susceptible to flooding (i.e., floodplains). Although community participation in NFIP is technically voluntary under federal law, participation by a community is required in order for residents of the community to purchase federally subsidized flood insurance under the program. Federal law, and regulations issued under federal law, establish certain minimum requirements for buildings in a floodplain.

State law and regulations also establish certain minimum requirements for buildings in a floodplain, some of which exceed federal requirements. For example, under rules of the Department of Natural Resources (DNR), the finished surface of the lowest floor of a residential building, excluding a basement or crawlspace, must be two feet or more above the regional flood elevation. The minimum federal requirement is generally the regional flood elevation.

DNR rules also prohibit the modification or addition to a nonconforming building<sup>1</sup> if the modification or addition would exceed 50 percent of the building's present equalized assessed value, unless the entire building is permanently changed to comply with DNR rules.

### 2019 WISCONSIN ACT 175

**2019 Wisconsin Act 175** provides that if, as a result of locally authorized repair, reconstruction, or improvement: (1) a nonconforming building is or will be permanently changed to comply with federal requirements; and (2) any living quarters in the nonconforming building are or will be at or above the DNR's flood protection elevation, then DNR may not prohibit the repair, reconstruction, or improvement of the building based on cost.

**Effective date:** March 5, 2020

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<sup>1</sup> For purposes of floodplain zoning, a "nonconforming building" is "an existing lawful building which is not in conformity with the dimensional or structural requirements of the floodplain zoning ordinance for the area of the floodplain which it occupies." [s. NR 116.03 (33), Wis. Adm. Code.]