



## 2011 ASSEMBLY BILL 597

February 20, 2012 - Introduced by Representatives TIFFANY, MURTHA, LITJENS, RIVARD, JACQUE and STEINEKE. Referred to Committee on Natural Resources.

1     **AN ACT** *to create* 59.69 (10e), 59.692 (1p), 59.692 (2m), 60.61 (5e) and 62.23 (7)  
2           (hb) of the statutes; **relating to:** certain shoreland zoning standards and  
3           ordinances that regulate the repair and expansion of nonconforming  
4           structures.

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### *Analysis by the Legislative Reference Bureau*

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 the Department of Natural Resources (DNR) by rule. Current law defines a shoreland to be an area within a certain distance from the edge of a navigable water. Current law also specifies that, if a shoreland area is annexed by a city or village (annexing municipality) or is part of a town that incorporates as a city or village (incorporated municipality), then, with certain exceptions, the county shoreland zoning ordinance continues in effect and must be enforced by the annexing or incorporated municipality. The exceptions in current law allow the annexing or incorporated municipality to enforce its own zoning ordinance with respect to shorelands if the ordinance complies with shoreland zoning standards that are at least as restrictive as the county shoreland zoning ordinance.

This bill prohibits a county from enacting, and prohibits a county, city, or village from enforcing, any provision in a county shoreland zoning ordinance that regulates the use, location, maintenance, expansion, replacement, or relocation of a nonconforming structure if that provision is more restrictive than the shoreland

**ASSEMBLY BILL 597**

zoning standards for nonconforming structures promulgated by DNR. The prohibition under the bill also applies to a shoreland zoning ordinance enacted by an annexing or incorporated municipality. The bill defines a nonconforming structure as a dwelling or building that does not conform with a county shoreland zoning ordinance, other than an ordinance regulating a nonconforming use, but that lawfully existed before the county shoreland zoning ordinance was enacted.

The bill also provides that DNR may not establish a shoreland zoning standard, and a county may not enact or enforce a shoreland zoning ordinance, that prohibits the construction of a structure or building on certain lots, parcels, or tracts (lots). Under the bill, a shoreland zoning standard or ordinance may not prohibit the construction of a structure or a building on a lot that does not meet minimum area and width requirements if the lot met those requirements when the lot was originally created or if there was no shoreland zoning standard or ordinance in effect that established minimum area and width requirements when the lot was originally created.

Generally under current law, zoning restrictions that would otherwise apply to a damaged or destroyed nonconforming structure may not prohibit, subject to a number of conditions, the restoration of the structure if it will be restored to the size, location, and use it had before the damage or destruction occurred, unless the size must be larger to comply with state or federal requirements. In addition, and subject to the same conditions, the restrictions in the zoning ordinance may not impose limits on the costs of the repair, reconstruction, or improvement of the structure. The conditions that apply to the restrictions in the zoning ordinance are as follows:

1. The structure must have been damaged or destroyed after March 1, 2006.
2. The structure must have been damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

Under this bill, a zoning ordinance may not prohibit, or limit based on cost, the repair, maintenance, reconstruction, renovation, or remodeling of a nonconforming structure in existence on the effective date of a zoning ordinance that relates to that structure.

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

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

- 1           **SECTION 1.** 59.69 (10e) of the statutes is created to read:
- 2           **59.69 (10e)** REPAIR AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.
- 3           (a) In this subsection:

**ASSEMBLY BILL 597**

1           1. “Dimensional requirements” means the part of a zoning ordinance enacted  
2 under this section that applies to elements including setback, height, lot coverage,  
3 and side yard.

4           2. “Nonconforming structure” means a dwelling or other building that existed  
5 lawfully before the current zoning ordinance was enacted, but that does not conform  
6 with one or more of the dimensional requirements in the current zoning ordinance  
7 enacted under this section that is applicable to a dwelling or other building that is  
8 constructed on or after the effective date of that zoning ordinance.

9           (b) An ordinance enacted under this section may not prohibit, or limit based on  
10 cost, the repair, maintenance, reconstruction, renovation, or remodeling of a  
11 nonconforming structure in existence on the effective date of an ordinance enacted  
12 under this section related to that structure.

13           **SECTION 2.** 59.692 (1p) of the statutes is created to read:

14           59.692 (1p) The department may not establish or enforce a shoreland zoning  
15 standard, and a county may not enact or enforce an ordinance under this section, that  
16 prohibits the construction of a structure or building on a lot, parcel, or tract that does  
17 not meet minimum area or width requirements under that standard or ordinance,  
18 if any of the following applies:

19           (a) The lot, parcel, or tract met the minimum area and width requirements for  
20 the construction of a structure or building when the lot, parcel, or tract was originally  
21 created.

22           (b) There was no shoreland zoning standard or ordinance in effect under this  
23 section that established a minimum area or width requirement for the construction  
24 of a structure or building on the lot, parcel, or tract when the lot, parcel, or tract was  
25 originally created.

**ASSEMBLY BILL 597**

1           **SECTION 3.** 59.692 (2m) of the statutes is created to read:

2           59.692 **(2m)** (a) In this subsection, “nonconforming structure” means a  
3 dwelling or building that does not conform with a county shoreland zoning  
4 ordinance, other than a county shoreland ordinance regulating a nonconforming use,  
5 enacted under this section but that existed lawfully before the county shoreland  
6 zoning ordinance was enacted.

7           (b) A county may not enact, and a county, city, or village may not enforce, a  
8 provision in a county shoreland zoning ordinance that regulates the use, location,  
9 maintenance, expansion, replacement, repair, or relocation of a nonconforming  
10 structure if that provision is more restrictive than the shoreland zoning standards  
11 for nonconforming structures promulgated by the department under this section.

12           (c) A city or village annexed as provided under sub. (7) (a) or incorporated as  
13 provided under sub. (7) (ad) may not enact or enforce a provision in a city or village  
14 shoreland zoning ordinance that regulates the use, location, maintenance,  
15 expansion, replacement, repair, or relocation of a nonconforming structure if that  
16 provision is more restrictive than the shoreland zoning standards for nonconforming  
17 structures promulgated by the department under this section.

18           **SECTION 4.** 60.61 (5e) of the statutes is created to read:

19           60.61 **(5e)** REPAIR AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES. (a)  
20 In this subsection:

21           1. “Dimensional requirements” means the part of a zoning ordinance enacted  
22 under this section that applies to elements including setback, height, lot coverage,  
23 and side yard.

24           2. “Nonconforming structure” means a dwelling or other building that existed  
25 lawfully before the current zoning ordinance was enacted, but that does not conform

**ASSEMBLY BILL 597**

1 with one or more of the dimensional requirements in the current zoning ordinance  
2 enacted under this section that is applicable to a dwelling or other building that is  
3 constructed on or after the effective date of that zoning ordinance.

4 (b) An ordinance enacted under this section may not prohibit, or limit based on  
5 cost, the repair, maintenance, reconstruction, renovation, or remodeling of a  
6 nonconforming structure in existence on the effective date of an ordinance enacted  
7 under this section related to that structure.

8 **SECTION 5.** 62.23 (7) (hb) of the statutes is created to read:

9 62.23 (7) (hb) *Repair and maintenance of certain nonconforming structures.*

10 1. In this paragraph:

11 a. "Dimensional requirements" means the part of a zoning ordinance enacted  
12 under this subsection that applies to elements including setback, height, lot  
13 coverage, and side yard.

14 b. "Nonconforming structure" means a dwelling or other building that existed  
15 lawfully before the current zoning ordinance was enacted, but that does not conform  
16 with one or more of the dimensional requirements in the current zoning ordinance  
17 enacted under this subsection that is applicable to a dwelling or other building that  
18 is constructed on or after the effective date of that zoning ordinance.

19 2. An ordinance enacted under this subsection may not prohibit, or limit based  
20 on cost, the repair, maintenance, reconstruction, renovation, or remodeling of a  
21 nonconforming structure in existence on the effective date of an ordinance enacted  
22 under this subsection related to that structure.

23 (END)