

# State of Wisconsin



2015 Assembly Bill 582

Date of enactment: April 26, 2016  
Date of publication\*: April 27, 2016

## 2015 WISCONSIN ACT 391

AN ACT *to renumber* 66.1001 (2m), 706.22 (2) (a) 1., 706.22 (2) (a) 2. and 706.22 (2) (a) 3.; *to renumber and amend* 706.22 (2) (b) and 706.22 (3); *to amend* 59.69 (4) (intro.), 59.69 (4) (j), 59.69 (5) (f), 59.692 (1k) (a) 2., 59.692 (1k) (a) 4., 59.692 (1k) (b), 60.61 (2) (a) 6., 60.61 (4) (f), 62.23 (7) (am), 62.23 (7) (d) 4., 66.1001 (2m) (title), 66.1001 (4) (f), 66.10015 (title), 66.10015 (1) (a), 227.57 (10), 236.45 (2) (am) (intro.), 706.22 (title), 706.22 (2) (title) and 706.22 (2) (a) (intro.); and *to create* 59.692 (1h), 59.692 (1k) (a) 6., 59.692 (1p), 59.692 (7), 66.1001 (2m) (b), 66.10015 (1) (as), 66.10015 (1) (bs), 66.10015 (3), 66.1036, 227.137 (3) (g), 227.445, 227.57 (11), 700.28, 706.22 (2) (a) 2m., 706.22 (2) (a) 3m., 706.22 (2) (b) 2., 706.22 (3) (b) and 895.463 of the statutes; **relating to:** government actions affecting rights to real property; the regulation of shoreland zoning; the contents of an economic impact analysis of a proposed administrative rule; the substitution of hearing examiners in Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection contested cases; the standard for judicial review of a state agency action or decision affecting a property owner's use of the owner's property; and the property tax treatment of unoccupied property.

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

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

59.69 (4) EXTENT OF POWER. (intro.) For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for each such district as the board considers best suited to carry out the purposes of this section. The board may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The board may not enact a development moratorium, as defined in s. 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236,

or by acting under any other law, except that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium. The powers granted by this section shall be exercised through an ordinance which may, subject to sub. (4e), determine, establish, regulate and restrict:

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

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

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

59.69 (5) (f) The county zoning agency shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. Annually, the agency shall inform residents of the county that they may add their names to

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

the list. The agency may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the county's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the county zoning agency completes a draft of a proposed zoning ordinance under par. (a) or if the agency receives a petition under par. (e) 2., the agency shall send a notice, which contains a copy or summary of the proposed ordinance or petition, to each person on the list whose property, the allowable use or size or density requirements of which, may be affected by the proposed ordinance or amendment. The notice shall be by mail or in any reasonable form that is agreed to by the person and the agency, including electronic mail, voice mail, or text message. The agency may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this paragraph may take effect even if the agency fails to send the notice that is required by this paragraph.

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

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

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

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

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

59.692 (1k) (a) 2. Except as provided in par. (b), requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the maintenance, repair, replacement, restoration, rebuilding, or remodeling of all or any part of a nonconforming structure or a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015, if the activity does not expand the footprint of the ~~nonconforming~~ structure.

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

59.692 (1k) (a) 4. Requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the vertical expansion of a noncon-

forming structure or a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015, unless the vertical expansion would extend more than 35 feet above grade level.

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

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

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

59.692 (1k) (b) A county shoreland zoning ordinance shall allow an activity specified under par. (a) 2. to expand the footprint of a nonconforming structure or a structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015, if the expansion is necessary for the structure to comply with applicable state or federal requirements.

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

59.692 (1p) The department may not promulgate a standard and a county may not enact an ordinance under this section that prohibits the owner of a boathouse in the shoreland setback area that has 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 that roof if the railing is not inconsistent with standards promulgated by the department of safety and professional services under ch. 101.

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

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

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

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

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

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

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

**SECTION 12.** 60.61 (4) (f) of the statutes is amended to read:

60.61 (4) (f) The town board shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed ordinance or amendment that affects the allowable use of the property owned by the person. Annually, the town board shall inform residents of the town that they may add their names to the list. The town board may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the town's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the town zoning committee completes a final report on a proposed zoning ordinance and the town board is prepared to vote on the proposed ordinance under par. (b) or if the town board is prepared to vote on a proposed amendment under par. (c) 1., the town board shall send a notice, which contains a copy or summary of the proposed ordinance or amendment, to each person on the list whose property, the allowable use or size or density requirements of which, may be affected by the proposed ordinance or amendment. The notice shall be by mail or in any reasonable form that is agreed to by the person and the town board, including electronic mail, voice mail, or text message. The town board may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this paragraph may take effect even if the town board fails to send the notice that is required by this paragraph.

**SECTION 13.** 62.23 (7) (am) of the statutes is amended to read:

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

**SECTION 14.** 62.23 (7) (d) 4. of the statutes is amended to read:

62.23 (7) (d) 4. The city council shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed zoning action that may be taken under subd. 1. a. or b. or 2. that affects the allowable

use of the person's property. Annually, the city council shall inform residents of the city that they may add their names to the list. The city council may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the city's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. If the plan commission, the board of public land commissioners, or city plan committee of the city council completes action on any tentative recommendations that are noticed under subd. 1. a., proposed changes to a proposed district plan and regulations that are submitted under subd. 1. b., or proposed amendments that are submitted under subd. 2., and the city council is prepared to vote on the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, the city council shall send a notice, which contains a copy or summary of the tentative recommendations, proposed changes to a proposed district plan, and regulations or proposed amendments, to each person on the list whose property, the allowable use of which, may be affected by the tentative recommendations or proposed changes or amendments. The notice shall be by mail or in any reasonable form that is agreed to by the person and the city council, including electronic mail, voice mail, or text message. The city council may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this subdivision may take effect even if the city council fails to send the notice that is required by this subdivision.

**SECTION 15.** 66.1001 (2m) (title) of the statutes is amended to read:

66.1001 (2m) (title) EFFECT OF ENACTMENT OF A COMPREHENSIVE PLAN, CONSISTENCY REQUIREMENTS.

**SECTION 16.** 66.1001 (2m) of the statutes is renumbered 66.1001 (2m) (a).

**SECTION 17.** 66.1001 (2m) (b) of the statutes is created to read:

66.1001 (2m) (b) A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision's comprehensive plan.

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

66.1001 (4) (f) A political subdivision shall maintain a list of persons who submit a written or electronic request to receive notice of any proposed ordinance, described under par. (c), that affects the allowable use of the property owned by the person. Annually, the political subdivision shall inform residents of the political subdivision that they may add their names to the list. The political subdivision may satisfy this requirement to provide such information by any of the following means: publishing a 1st class notice under ch. 985; publishing on the

political subdivision's Internet site; 1st class mail; or including the information in a mailing that is sent to all property owners. At least 30 days before the hearing described in par. (d) is held a political subdivision shall provide written notice, including a copy or summary of the proposed ordinance, to all such persons whose property, the allowable use of which, may be affected by the proposed ordinance. The notice shall be by mail or in any reasonable form that is agreed to by the person and the political subdivision, including electronic mail, voice mail, or text message. The political subdivision may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person.

**SECTION 19.** 66.10015 (title) of the statutes is amended to read:

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

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

66.10015 (1) (a) "Approval" means a permit or authorization for building, zoning, driveway, storm-water, or other activity related to ~~land development a~~ project.

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

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

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

2. By reducing the permitted uses of the land, that are specified in a zoning ordinance or other land use regulation, to fewer uses than were allowed under its previous usage.

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

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

**SECTION 23.** 66.10015 (3) of the statutes is created to read:

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

**SECTION 24.** 66.1036 of the statutes is created to read:

**66.1036 Building permit for a shoreland structure.** If an activity in a shoreland setback area to which s. 59.692 (1k) (a) or (b) applies requires a building permit, the city, village, or town that issues the building permit for that activity shall provide a copy of the building permit to the county clerk.

**SECTION 28.** 227.137 (3) (g) of the statutes is created to read:

227.137 (3) (g) An analysis of the ways in which and the extent to which the proposed rule would place any limitations on the free use of private property, including a discussion of alternatives to the proposed rule that would minimize any such limitations.

**SECTION 29.** 227.445 of the statutes is created to read:

**227.445 Substitution of hearing examiner assigned by division of hearings and appeals.** (1) A person who has applied for a contract, permit, or other approval from the department of natural resources or the department of agriculture, trade and consumer protection that is the subject of a contested case hearing for which the division of hearings and appeals has assigned a hearing examiner may file a written request with the administrator of the division of hearings and appeals in the department of administration, not later than 10 days after receipt of the notice under s. 227.44 (1), for a substitution of a new hearing examiner.

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

(3) Upon receipt of a request under sub. (1), the administrator of the division of hearings and appeals shall determine if the request was made timely and in proper form. If the request was made timely and in proper form, the administrator of the division of hearings and appeals shall transfer the matter to another hearing examiner and shall transmit to the new hearing examiner all materials relating to the matter.

**SECTION 30.** 227.57 (10) of the statutes is amended to read:

227.57 (10) ~~Upon~~ Subject to sub. (11), upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it.

(12) The right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit, or privilege under such act.

**SECTION 31.** 227.57 (11) of the statutes is created to read:

227.57 (11) (a) Upon review of an agency action or decision affecting a property owner's use of the property owner's property, the court shall accord no deference to the agency's interpretation of law if the agency action or

decision restricts the property owner's free use of the property owner's property.

**SECTION 32.** 236.45 (2) (am) (intro.) of the statutes, as affected by [2015 Wisconsin Act 48](#), is amended to read:

236.45 (2) (am) (intro.) Ordinances under par. (ac) may include provisions regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land into less than 5 parcels, and, except as provided in s. 59.69 (4) (intro.) and subject to s. 66.1002, may prohibit the division of land in areas where such prohibition will carry out the purposes of this section. Such ordinances shall make applicable to such divisions all of the provisions of this chapter, or may provide other surveying, monumenting, mapping and approving requirements for such division. The governing body of the municipality, town, or county shall require that a plat of such division be recorded with the register of deeds and kept in a book provided for that purpose or stored electronically. "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter-quarter section, section, township, range, and county noted. When so recorded, the lots included in the plat shall be described by reference to "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT," the name of the plat and the lot and block in the plat, for all purposes, including those of assessment, taxation, devise, descent, and conveyance as defined in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5 parcels, shall not apply to:

**SECTION 33.** 700.28 of the statutes is created to read:

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

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

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

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

**SECTION 35.** 706.22 (2) (title) of the statutes, as created by [2015 Wisconsin Act 55](#), is amended to read:

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

**SECTION 36.** 706.22 (2) (a) (intro.) of the statutes, as created by [2015 Wisconsin Act 55](#), is amended to read:

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

1m. Restrict the ability of an owner of real property to sell or otherwise transfer title to or refinance the property by requiring the owner or an agent of the owner to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain

actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property, at any of the following times:

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

**SECTION 38.** 706.22 (2) (a) 2. of the statutes, as created by [2015 Wisconsin Act 55](#), is renumbered 706.22 (2) (a) 1m. b.

**SECTION 39.** 706.22 (2) (a) 2m. of the statutes is created to read:

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

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

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

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

**SECTION 40.** 706.22 (2) (a) 3. of the statutes, as created by [2015 Wisconsin Act 55](#), is renumbered 706.22 (2) (a) 1m. c.

**SECTION 41.** 706.22 (2) (a) 3m. of the statutes is created to read:

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

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

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

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

**SECTION 42.** 706.22 (2) (b) of the statutes, as created by [2015 Wisconsin Act 55](#), is renumbered 706.22 (2) (b) (intro.) and amended to read:

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

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

**SECTION 43.** 706.22 (2) (b) 2. of the statutes is created to read:

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

**SECTION 44.** 706.22 (3) of the statutes, as created by 2015 Wisconsin Act 55, is renumbered 706.22 (3) (a) and amended to read:

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

**SECTION 45.** 706.22 (3) (b) of the statutes is created to read:

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

**SECTION 46.** 895.463 of the statutes is created to read:

**895.463 Zoning ordinances.** In any matter relating to a zoning ordinance or shoreland zoning ordinance

enacted or enforced by a city, village, town, or county, the court shall resolve an ambiguity in the meaning of a word or phrase in a zoning ordinance or shoreland zoning ordinance in favor of the free use of private property.

**SECTION 47. Initial applicability.**

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

(2) DEVELOPMENT REGULATION AUTHORITY. The treatment of section 66.10015 (1) (a) of the statutes first applies to a project for which the first request for approval is submitted on the effective date of this subsection.

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

(4) CONDITIONAL USE PERMITS. The treatment of section 66.1001 (2m) (b) of the statutes first applies to a conditional use permit that is in effect on the effective date of this subsection.