



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 80
[2013 Senate Bill 183]

**Shoreland Zoning in
Incorporated Areas**

Act 80 modifies the law relating to shoreland zoning ordinances applicable to shoreland that is annexed or that is part of land incorporated as a city or village.

BACKGROUND

The Wisconsin Statutes direct counties to zone by ordinance all shorelands¹ in unincorporated areas in order “to effect the purposes of s. 281.31 and to promote the public health, safety and general welfare.” [s. 59.692 (1m), Stats.] Section 281.31 (1), Stats., the state’s “navigable waters protection law,” provides as follows:

To aid in the fulfillment of the state’s role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state’s water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

A county’s shoreland zoning ordinance must meet statewide shoreland zoning standards promulgated by rule by the Department of Natural Resources (DNR).² [s. 59.692 (1) (c) and (6), Stats.] The DNR’s shoreland zoning standards are contained in ch. NR 115, Wis. Adm. Code.

¹“Shoreland” is the land up to 1,000 feet from a navigable lake, pond, or flowage, or up to 300 feet from a navigable river or stream (or to the landward side of the floodplain of a river or stream, whichever distance is greater). Measurement is from the ordinary high-water mark.

²The statutes also provide for exemptions from shoreland zoning ordinances or specific treatment under the ordinances for certain activities and land uses. [See, s. 59.692 (1r), (1s), (1t) and (1v), Stats.]

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

PRIOR LAW - APPLICATION OF COUNTY SHORELAND ZONING TO INCORPORATED AREAS

Under prior law, shoreland zoning requirements also applied to certain incorporated areas, including any shoreland area annexed by a city or village after May 7, 1982, and any shoreland area that was part of a town that incorporated as a city or village after April 30, 1994. [s. 59.692 (7) (a) and (ad), 2013 Stats.] The county shoreland zoning ordinance applicable to the shoreland area at the time of annexation or incorporation remained in effect and was required to be enforced by the city or village unless the city or village exercised one of the following options:

1. The city or village enacted, administered, and enforced an ordinance for the annexed or incorporated area that complied with ch. NR 115, Wis. Adm. Code, and was at least as restrictive as the county's shoreland zoning ordinance.³
2. After annexation or incorporation, the city or village requested the county to amend the county shoreland zoning ordinance to delete or modify provisions that established specified land uses or requirements that were not necessary to effect the purposes of the shoreland zoning ordinances. The changes made to the shoreland zoning ordinance would only have applied to the annexed or incorporated area. Then, the city or village administered the county's ordinance as it applied to the annexed or incorporated area.⁴
3. After annexation or incorporation, the city or village asked that the county shoreland zoning ordinance, as it applied to the annexed or incorporated area, would continue to be in effect and enforced by the county. The county was required to agree to enforce the ordinance for this option to take effect.

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2013 Wisconsin Act 80 repeals the requirements in prior law that specify that a county shoreland zoning ordinance continues to apply to shoreland that was annexed by a city or village or that was incorporated as part of a city or village. Instead, the Act requires cities and villages to enact shoreland zoning ordinances, by July 1, 2014, that apply to any shoreland area annexed by a city or village after May 7, 1982, and any shoreland area that was subject to a county shoreland zoning ordinance prior to being incorporated as a city or village. At a minimum, such an ordinance must contain all of the following provisions:

- A provision establishing a shoreland setback area of at least 50 feet from the ordinary high-water mark. The provision must include an exception that authorizes construction of a principal building⁵ within this setback area if the land immediately adjacent on each side of the land on which the principal building will be constructed also has a principal building. In that case, the setback is the same distance as the average setback of the adjacent principal buildings or 35 feet from the ordinary high-water mark, whichever is greater.

³ The DNR reviews shoreland zoning ordinances for annexed or incorporated areas to ensure that they are at least as restrictive as the county shoreland zoning ordinance and that the amended ordinance complies with the standards in ch. NR 115.

⁴ The DNR reviews amendments enacted by counties to determine if they comply with the standards in ch. NR 115.

⁵ "Principal building" means the main building or structure on a single lot or a parcel of land and includes any attached garage or attached porch. [ss. 61.353 (1) (a) and 62.233 (1) (a), Stats.]

- A provision requiring a person who owns shoreland property that contains vegetation to maintain the vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water. The provision must have an exception that provides that if the vegetation in the vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner may remove it. If the owner removes all of the vegetation, the owner must establish a vegetative buffer zone with new vegetation.
- A provision allowing a person who is required to maintain a vegetative buffer zone to remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage and that extends no more than 35 feet inland from the ordinary high-water mark.

The Act provides that provisions of a shoreland zoning ordinance that were applicable to shorelands prior to annexation or incorporation continue in effect until the city or village enacts its own shoreland zoning ordinance with the minimum requirements described above. The Act also provides that a city or village shoreland zoning ordinance does not apply to lands adjacent to an artificially constructed drainage ditch, pond, or stormwater retention basin if the ditch, pond, or basin is not hydrologically connected to a natural navigable water body.

Effective date: The Act took effect on December 14, 2013.

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