
Wisconsin Legislative Council

ACT MEMO



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2019 Wisconsin Act 145
[2019 Assembly Bill 736]

Town and County Zoning

BACKGROUND

As set forth in the statutes, the purpose of Wisconsin's shoreland zoning law is to limit the direct and cumulative impacts of shoreland development on water quality; 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 structures, and land uses; preserve shore cover and natural beauty; and promote the public health, safety, and general welfare.¹ [ss. 59.692 (1c) and 281.31 (1), Stats.]

Counties in Wisconsin must enact ordinances to zone all shorelands in unincorporated areas. Prior to 2015, the statutes did not expressly address whether towns may enact zoning ordinances that are not specific to shoreland areas and apply such ordinances in shoreland areas.

In a 2013 Wisconsin Court of Appeals decision, *Hegwood v. Town of Eagle Zoning Board of Appeals*, a landowner challenged a town's authority to enforce a general zoning ordinance with respect to shoreland property that was also subject to a county shoreland zoning ordinance. The Wisconsin Court of Appeals held that, except with respect to certain prior-adopted ordinances, towns lack zoning authority in shoreland areas. [2013 WI App 118.] Following the *Hegwood* decision, there were differing interpretations with respect to the impact of the decision on town zoning authority.

The Legislature enacted 2015 Wisconsin Act 41 to clarify that towns may enact zoning ordinances that apply in shorelands, except that a town may not impose restrictions or requirements with respect to matters regulated by a county shoreland zoning ordinance that affect the same shorelands. [ss. 60.61 (3r) and 60.62 (5), Stats.]

An attorney general's opinion issued in January 2019 appeared to disregard the clarification made under 2015 Wisconsin Act 41. The opinion characterized the shoreland zoning law as "grant[ing] counties the authority to zone shorelands to the exclusion of towns." [OAG 01-19.]

2019 WISCONSIN ACT 145

2019 Wisconsin Act 145 clarifies three aspects of the law relating to town and county zoning. Specifically, the act does all of the following:

- Clarifies that a county board may enact a general zoning ordinance that applies in all **or part** of a town.

¹ For more detailed information regarding shoreland zoning in Wisconsin, see Legislative Council, *Wisconsin Shoreland Zoning Laws*, Information Memorandum (November 2018).

- Clarifies within the shoreland zoning law that towns may enact zoning ordinances that apply in shoreland areas, subject to the restrictions established under 2015 Wisconsin Act 41, described above.
- Expressly requires that requirements in a county shoreland zoning ordinance must “relate to” certain statutory purposes (listed above and unmodified by the act).

Effective date: March 5, 2020

AH:mca;jal