



State Senator
Rick Gudex

District 18

April 28, 2015

To: The Assembly Committee on State Affairs and Government Operations
From: Sen. Rick Gudex
RE: AB 165

Mr. Chairman, members of the committee, thank you for holding this hearing today.

In 2013, the court of appeals issued a ruling now known as the Hegwood decision. I won't try to summarize the whole case or the ruling. The important thing for us today is that Hegwood cast doubt on a town's authority to enforce zoning inside a county's shoreland zoning area.

This, in turn, cast doubt on the farmland preservation program in those areas. In a memo dated August 25, 2014, the Department of Agriculture, Trade, and Consumer Protection (DATCP) wrote:

“As a result of Hegwood, towns cannot currently zone for farmland preservation inside the county shoreland district.”

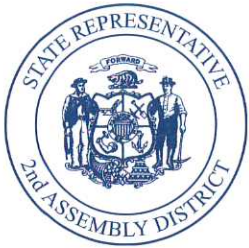
Not everyone agrees with that interpretation, and in order to keep disruption for landowners to a minimum, DATCP decided to continue the program for at least the remainder of 2014. They also noted that legislative work on the problem may be necessary to clear this up, and given the potential impact on landowners in those areas, I agree.

So here it is. This bill has been crafted with a great deal of discussion and input from DATCP, the Towns Association, the Counties Association, the Realtors Association, and local zoning officials, and with the support of several environmental and conservation groups.

The bill makes it clear that towns can, with certain limitations that already exist in the law, enforce zoning inside shoreland areas. This will not only protect the Farmland Preservation Program, but will preserve the rights of local town boards.

Representatives of DATCP are here today to answer any questions the committee might have for them. Representatives from the other groups I mentioned earlier are also here to support this bill and will be able to answer your questions, particularly any highly technical legal questions.

This bill is both bipartisan and widely supported. I urge your support as well.



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TO: Members of the Assembly Committee on State Affairs & Government Operations

FROM: Representative André Jacque

DATE: April 28, 2015

RE: Assembly Bill 165

Chairman Swearingen and Committee Members,

Thank you for holding this hearing on Assembly Bill 165. This very bi-partisan legislation is supported by broad coalition of groups across the political spectrum, which reflects the inclusive nature of the drafting process in responding to the consequences of the 2013 Wisconsin Court of Appeals *Hegwood* decision.

Proper zoning authority is critical to economic development in this state, and that includes town zoning. In fact, it was while discussing legislation with the Towns and Counties Associations to allow towns to opt in to town zoning after the end of last session, that I became aware of the harmful effects of the *Hegwood* decision. I soon began to hear from officials from several of my affected towns as well, as Brown County is one of a handful in the state to have all of its towns under town zoning, and I can report that they unanimously back this legislation as well.

The *Hegwood* decision has created considerable confusion over a town's authority to enforce unrelated general zoning in areas subject to a county shoreland zoning ordinance. Prior to the *Hegwood* decision, it was generally understood that a town zoning ordinance may apply in shorelands, except with respect to matters regulated by a county shoreland ordinance affecting the same shorelands. In *Hegwood*, the court held that a town had no authority to enforce a zoning regulation that overlapped with an applicable county shoreland zoning ordinance. This left some confusion over whether a town can enforce **any** town zoning regulations in shorelands, and creates doubt as to whether towns can administer the Farmland Preservation Program in affected areas- potentially significantly affecting payments to farmers unless the clarification within this bill is given. Confusion over the applicability of farmland preservation zoning ordinances in shorelands is detrimental to the state, towns, and landowners who have taken steps to preserve farmland in shoreland areas.

This bill provides certainty that town zoning ordinances may continue to apply in shorelands, as long as the ordinance does not impose regulations with respect to matters regulated by a county shoreland zoning ordinance affecting the same area. DATCP, the WI Towns Association, the WI Counties Association, the REALTORS Association, and local zoning officials are among the stakeholders who provided assistance to ensure that this bill clarifies the statutes to match the law, as it was understood, prior to the *Hegwood* decision.

Thank you for your consideration, and I am happy to answer any questions you may have for me at this time.

Assembly Public Hearing

Committee on State Affairs and Government Operations

Assembly Bill 165

April 28, 2015

My name is Glen Schwalbach. I reside at 1090 Moonriver Dr., De Pere, WI 54115. I am a former town supervisor and, currently, on the Planning Commission for the Town of Rockland in Brown County.

The towns who make up the Brown County Unit of the Wisconsin Towns Association asked me to appear here in favor of AB 165.

Until the Appellate Court decision, the towns in Brown County had general zoning and farmland preservation zoning in shoreland areas. The county does not have these ordinances but administers their shoreland ordinance in our towns. County shoreland ordinances only address such issues as setbacks, permeable surfaces and soil erosion.

So far, in our town, we have not had anyone try to take advantage of this current lack of land use restrictions. But, as an example, someone could build an adult entertainment establishment next to homes on the shore of the Fox River until this bill is passed.

It is my understanding that farmers in shoreland areas in our county will lose their farmland tax credits if the law is not changed.

We urge this committee and the legislature to get this bill to the governor as soon as possible. We do have an emergency-type of situation right now. There are many other residents and farmers in Wisconsin towns and counties at risk as well.

Testimony on Assembly Bill 165: Shoreland Zoning for Annexed/Incorporated Areas
by the Wisconsin Department of Natural Resources

before the

Assembly Committee on State Affairs and Government Operations

April 28, 2015

Thank you for the opportunity to testify today regarding Assembly Bill 165 relating to the application of town zoning authority as it relates to shorelands. My name is Pamela Biersach. I am the director of the Watershed Management Bureau at the Wisconsin Department of Natural Resources.

The Shoreland Management Program is a partnership between state and local government that requires development near navigable lakes and streams to meet statewide minimum standards. The shoreland zoning standards balance private property rights with the protection of water resource values: water quality, recreation and navigation, fish and wildlife habitat, and natural scenic beauty along navigable lakes and rivers by establishing statewide minimum standards including lot sizes, building setbacks from the water's edge, and limits on tree removal.

Section 59.692(1m), Wis. Stats., requires county zoning of shorelands on navigable waters in unincorporated areas. County shoreland zoning ordinances must meet the shoreland zoning standards established by the Department of Natural Resources (DNR) in NR 115, Wis. Adm. Code. Current law also provides that if an existing town ordinance relating to shorelands is more restrictive than a later enacted county shoreland zoning ordinance, the town ordinance remains in effect to the extent of the greater restrictions, but not otherwise.

In *Hegwood v. Town of Eagle Zoning Board of Appeals*, 2013 WI App 118, N.W. 2d 111, the Wisconsin Appellate Court held that a town has no authority to regulate shorelands unless the town enacted an ordinance before a county shoreland zoning ordinance was enacted regulating the same shorelands. The court held that in that case, the town ordinance continues in effect only to the extent that it is more restrictive than the later enacted county shoreland zoning ordinance.

This ruling created uncertainty and inconsistent interpretation as to what zoning authority towns may exercise in shoreland areas.

The proposed legislation would allow towns, with certain exceptions, to enact a zoning ordinance, consistent with its existing zoning authority that would apply in shorelands.

The proposed legislation specifies that a town zoning ordinance may not impose restrictions or requirements in shorelands with respect to matters regulated by a county shoreland ordinance affecting the same shorelands. The bill does not affect the implementation and administration of shoreland zoning by counties nor does it change current law which provides that a town ordinance that is in effect before a county shoreland zoning ordinance takes effect and that is more restrictive than the county shoreland zoning ordinance, continues to apply to the extent of the greater restrictions. The proposed legislation would allow towns to adopt and enforce zoning regulations for standards not covered by shoreland zoning which includes farmland preservation, road setbacks, side yard setbacks, etc.

I'm happy to answer your questions.