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# HOWARD MARKLEIN

STATE SENATOR • 17<sup>TH</sup> SENATE DISTRICT

**January 23, 2020**

## **Senate Committee on Utilities and Housing Testimony on Senate Bill 637**

Good morning! Thank you Chair LeMahieu and committee members for hearing Senate Bill 637 (SB 637), which makes changes to the state law regulating nonconforming buildings in a floodplain.

The Department of Natural Resources (DNR) has general responsibilities to oversee city, village, town, and county floodplain zoning programs. These statutes require that the program should result in “reasonable and effective floodplain zoning ordinances.” Many of the state standards in administrative code are more restrictive than federal floodplain requirements.

These DNR rules prohibit certain homeowners from following federal guidelines to flood-proof their homes. Local governments are also prohibited from allowing a homeowner to spend more than 50% of the assessed value of the home, over the lifetime of the building, before the home is brought into full compliance with DNR’s rules (the “50% rule”).

For many properties, full compliance is impossible because DNR rules do not allow the necessary modifications to the property to satisfy the requirements (this is an example of where the DNR rules are more stringent than federal law). For some homeowners, this means that the DNR prohibits local governments from allowing them to spend the money needed to modify their structures to achieve federal floodplain regulation compliance and to effectively flood-proof their property.

Ironically, unlimited maintenance and repair of damage to these homes is allowed. The result for some homeowners is that the 50% rule means that they cannot flood-proof their homes but are allowed to continuously repair flooding damage that has occurred more and more frequently in recent years. The 50% rule is not required by state statutes or Wisconsin court cases; it is solely created by DNR’s administrative rules.

This bill would prohibit the DNR from requiring local governments to apply the 50% rule on buildings that are in full compliance with federal floodplain requirements. However, the bill would not change any of the other substantive requirements in the DNR’s floodplain zoning rules, including those provisions that are more stringent than federal law.

Thank you again for hearing SB 637, and your timely action on the bill.



## Senate Committee on Utilities and Housing

### *2019 Senate Bill 637*

#### *Regulation of Nonconforming Buildings in a Floodplain*

*January 23, 2020*

Good morning Chairman LeMahieu and members of the Committee. My name is Mike Thompson, and I am the Waterways Bureau Director with the Wisconsin Department of Natural Resources. Thank you for the opportunity to provide testimony and express the department's opposition to Senate Bill 637 (SB 637).

Flooding is Wisconsin's most common natural hazard. Floodplain zoning protects human life, health, and property, and is particularly important since the frequency and severity of flood events has increased over the past decade. There was an estimated \$209 million of flood-related damage in Wisconsin in 2018. Currently, there are approximately 60,000 structures in the regulatory 100-year floodplain across the state. An estimated 7,700 of these structures are in floodways where dangerous flood currents may erode embankments, collapse structures, and pose additional risks.

The Department of Natural Resources strives to partner, problem solve, and provide support to property owners and communities while also delivering the department's public safety and floodplain management roles. In fact, in floodplain areas outside of the floodway, new conforming development is allowed and existing structures can be modified to achieve conforming status.

Wisconsin's model floodplain ordinance balances state public safety requirements and federal National Flood Insurance Program property protection in accordance with Section 44 Code of Federal Regulations (CFR) 60.1(d) and is a tool for local zoning administrators.

The proposed elimination of state safety requirements and reliance on federal National Flood Insurance Program standards in Wisconsin would result in:

1. Larger structures with more occupants and greater property risks in the dangerous currents of floodways.
2. A lower state base flood elevation at a time when we are experiencing frequent flooding events that are damaging structures built two feet above the elevation mandated by this bill.
3. Risks to human life, health, and property protection for an estimated 60,000 structures in the floodplain statewide, but especially for those 7,700 structures that are in the highest risk floodway.
4. Overall increased human safety risks and higher long-term flood mitigation costs statewide.

Wisconsin's current floodplain management program continues the state's longstanding public safety goal of achieving conforming status for those structures located within the floodplain, but not in the floodway; and eventually eliminating and removing non-conforming structures within the floodway. Since 1990, 633 residential and commercial structures have been removed from flood-prone areas, 32 structures have been elevated, and 42 structures have been floodproofed, which has lowered risks to human life and property. The state's current floodplain management structure creates lower risks which are reflected in lower National Flood Insurance Program rates and premiums for Wisconsin property owners.

On behalf of the Waterways Bureau, I would like to thank you for your time today. My colleagues, Rob Davis, DNR Dam Safety and Floodplain Zoning Section Chief, Michelle Staff, DNR National Flood Insurance Program Coordinator, and I would be happy to answer any questions you may have.



# STATE OF WISCONSIN

*DEPARTMENT OF MILITARY AFFAIRS*

*DIVISION OF EMERGENCY MANAGEMENT*

Darrell L. Williams, Ph.D.  
Administrator

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Governor

## **Senate Committee on Utilities and Housing Public Hearing**

*2019 Senate Bill 637*

*Regulation of Nonconforming Buildings in a Floodplain*

January 23, 2020

Good morning Chairman LeMahieu and members of the Committee. My name is Katie Sommers and I am the Supervisor for the Hazard Mitigation Section of Wisconsin Emergency Management. Thank you for the opportunity to comment in opposition of Senate Bill 637.

Wisconsin Emergency Management concurs with the DNR's comments and would like to add our perspective.

In 2018, Wisconsin saw record flooding in the west-central, southwest, and south-central parts of the state. The State Emergency Operations Center was open for four weeks coordinating state and federal assets for the response. Over 1,300 residents of the state received direct financial assistance from FEMA for damages they suffered during this flood event.

This bill would allow at-risk structures to remain in the most dangerous part of the floodplain and continue to be repetitively damaged. After the 2008 flooding, several damaged structures in the flood fringe in Gays Mills were legally elevated to two feet above the base flood elevation. In the 2018 floods, these structures flooded again. This bill would eliminate the requirement for two additional feet of elevation which would allow even worse damages to continue impacting many of the small communities in our state that are already struggling.

More worryingly, however, this bill allows people to continue living in the most dangerous part of the floodplain, putting their lives and the lives of first responders at risk.

In the 2018 flooding, there were over 60 calls for service for swiftwater rescues. That doesn't include the many, many additional structures in the floodplain that were checked by swiftwater rescue teams to ensure nobody was left behind. In Black Earth and Mazomanie alone 30 swiftwater rescue team members and over 100 firefighters assisted in the response. In Crawford and Vernon counties, 54 swiftwater rescue team members responded over the course of four days. Working in the dark with the water rising around them, this was a terrible situation for them. Why would we weaken the state's floodplain regulations when it would increase the risk to our state's brave first responders?

On behalf of Wisconsin Emergency Management, I would like to thank you for your time today. My colleague, Paul Cooke, Director of the Bureau of Response and Recovery, and I would be happy to answer any questions you have.