

**Door County Resource Planning Committee
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May 3, 2018**

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Note: Not included in these materials are a variety of codes, statutes, and more affecting the activities of the county's Land Use Services Department programs, including but not limited to:

- *Chapter 91, farmland preservation planning and zoning statutes*
- *Chapter 236, state platting statutes*
- *Statutes regarding city, village, and town-level zoning*
- *Statutes regarding telecommunication towers and wind energy system facilities*
- *NR116, Wisconsin's Floodplain Management Program*
- *Codes/statutes regarding transportation/roads and wetlands/water quality*
- *Relevant case law and Attorney General opinions*

WISCONSIN STATUTES
CHAPTER 66
GENERAL MUNICIPALITY LAW

SUBCHAPTER X
PLANNING, HOUSING AND TRANSPORTATION

66.1001 Comprehensive planning.

(1) DEFINITIONS. In this section:

(a) "Comprehensive plan" means a guide to the physical, social, and economic development of a local governmental unit that is one of the following:

1. For a county, a development plan that is prepared or amended under s. 59.69 (2) or (3).
2. For a city, village, or town, a master plan that is adopted or amended under s. 62.23 (2) or (3).
3. For a regional planning commission, a master plan that is adopted or amended under s.

66.0309 (8), (9) or (10).

(am) "Consistent with" means furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.

(b) "Local governmental unit" means a city, village, town, county or regional planning commission that may adopt, prepare or amend a comprehensive plan.

(c) "Political subdivision" means a city, village, town, or county that may adopt, prepare, or amend a comprehensive plan.

(2) CONTENTS OF A COMPREHENSIVE PLAN. A comprehensive plan shall contain all of the following elements:

(a) *Issues and opportunities element.* Background information on the local governmental unit and a statement of overall objectives, policies, goals and programs of the local governmental unit to guide the future development and redevelopment of the local governmental unit over a 20-year planning period. Background information shall include population, household and employment forecasts that the local governmental unit uses in developing its comprehensive plan, and demographic trends, age distribution, educational levels, income levels and employment characteristics that exist within the local governmental unit.

(b) *Housing element.* A compilation of objectives, policies, goals, maps and programs of the local governmental unit to provide an adequate housing supply that meets existing and forecasted housing demand in the local governmental unit. The element shall assess the age, structural, value and occupancy characteristics of the local governmental unit's housing stock. The element shall also identify specific policies and programs that promote the development of housing for residents of the local governmental unit and provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and policies and programs to maintain or rehabilitate the local governmental unit's existing housing stock.

(c) *Transportation element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of the various modes of transportation, including highways, transit, transportation systems for persons with disabilities, bicycles, electric personal assistive mobility devices, walking, railroads, air transportation, trucking and water transportation. The element shall compare the local governmental unit's objectives, policies, goals and programs to state and regional transportation plans. The element shall also identify highways within the local governmental unit by function and incorporate state, regional and other applicable transportation plans, including transportation corridor plans, county highway functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit.

(d) *Utilities and community facilities element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of utilities and community facilities in the local governmental unit such as sanitary sewer service, storm water management, water supply, solid waste disposal, on-site wastewater treatment technologies, recycling facilities, parks, telecommunications facilities, power-generating plants and transmission lines, cemeteries, health care facilities, child care facilities and other

public facilities, such as police, fire and rescue facilities, libraries, schools and other governmental facilities. The element shall describe the location, use and capacity of existing public utilities and community facilities that serve the local governmental unit, shall include an approximate timetable that forecasts the need in the local governmental unit to expand or rehabilitate existing utilities and facilities or to create new utilities and facilities and shall assess future needs for government services in the local governmental unit that are related to such utilities and facilities.

(e) Agricultural, natural and cultural resources element. A compilation of objectives, policies, goals, maps and programs for the conservation, and promotion of the effective management, of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources consistent with zoning limitations under s. 295.20 (2), parks, open spaces, historical and cultural resources, community design, recreational resources and other natural resources.

(f) Economic development element. A compilation of objectives, policies, goals, maps and programs to promote the stabilization, retention or expansion, of the economic base and quality employment opportunities in the local governmental unit, including an analysis of the labor force and economic base of the local governmental unit. The element shall assess categories or particular types of new businesses and industries that are desired by the local governmental unit. The element shall assess the local governmental unit's strengths and weaknesses with respect to attracting and retaining businesses and industries, and shall designate an adequate number of sites for such businesses and industries. The element shall also evaluate and promote the use of environmentally contaminated sites for commercial or industrial uses. The element shall also identify county, regional and state economic development programs that apply to the local governmental unit.

(g) Intergovernmental cooperation element. A compilation of objectives, policies, goals, maps, and programs for joint planning and decision making with other jurisdictions, including school districts, drainage districts, and adjacent local governmental units, for siting and building public facilities and sharing public services. The element shall analyze the relationship of the local governmental unit to school districts, drainage districts, and adjacent local governmental units, and to the region, the state and other governmental units. The element shall consider, to the greatest extent possible, the maps and plans of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, with which the local governmental unit shares common territory. The element shall incorporate any plans or agreements to which the local governmental unit is a party under s. 66.0301, 66.0307 or 66.0309. The element shall identify existing or potential conflicts between the local governmental unit and other governmental units that are specified in this paragraph and describe processes to resolve such conflicts.

(h) Land-use element. A compilation of objectives, policies, goals, maps and programs to guide the future development and redevelopment of public and private property. The element shall contain a listing of the amount, type, intensity and net density of existing uses of land in the local governmental unit, such as agricultural, residential, commercial, industrial and other public and private uses. The element shall analyze trends in the supply, demand and price of land, opportunities for redevelopment and existing and potential land-use conflicts. The element shall contain projections, based on the background information specified in par. (a), for 20 years, in 5-year increments, of future residential, agricultural, commercial and industrial land uses including the assumptions of net densities or other spatial assumptions upon which the projections are based. The element shall also include a series of maps that shows current land uses and future land uses that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities, as those terms are used in par. (d), will be provided in the future, consistent with the timetable described in par. (d), and the general location of future land uses by net density or other classifications.

(i) Implementation element. A compilation of programs and specific actions to be completed in a stated sequence, including proposed changes to any applicable zoning ordinances, official maps, or subdivision ordinances, to implement the objectives, policies, plans and programs contained in pars. (a) to (h). The element shall describe how each of the elements of the comprehensive plan will be integrated and made consistent with the other elements of the comprehensive plan, and shall include a

mechanism to measure the local governmental unit's progress toward achieving all aspects of the comprehensive plan. The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.

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

(a) The enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation.

(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.

(3) ORDINANCES THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS. Except as provided in sub. (3m), beginning on January 1, 2010, if a local governmental unit enacts or amends any of the following ordinances, the ordinance shall be consistent with that local governmental unit's comprehensive plan:

(g) Official mapping ordinances enacted or amended under s. 62.23 (6).

(h) Local subdivision ordinances enacted or amended under s. 236.45 or 236.46.

(j) County zoning ordinances enacted or amended under s. 59.69.

(k) City or village zoning ordinances enacted or amended under s. 62.23 (7).

(L) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.

(q) Shorelands or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351, 61.353, 62.231, or 62.233.

(3m) DELAY OF CONSISTENCY REQUIREMENT.

(a) If a local governmental unit has not adopted a comprehensive plan before January 1, 2010, the local governmental unit is exempt from the requirement under sub. (3) if any of the following applies:

1. The local governmental unit has applied for but has not received a comprehensive planning grant under s. 16.965 (2), and the local governmental unit adopts a resolution stating that the local governmental unit will adopt a comprehensive plan that will take effect no later than January 1, 2012.

2. The local governmental unit has received a comprehensive planning grant under s. 16.965 (2) and has been granted an extension of time under s. 16.965 (5) to complete comprehensive planning.

(b) The exemption under par. (a) shall continue until the following dates:

1. For a local governmental unit exempt under par. (a) 1., January 1, 2012.

2. For a local governmental unit exempt under par. (a) 2., the date on which the extension of time granted under s. 16.965 (5) expires.

(4) PROCEDURES FOR ADOPTING COMPREHENSIVE PLANS. A local governmental unit shall comply with all of the following before its comprehensive plan may take effect:

(a) The governing body of a local governmental unit shall adopt written procedures that are designed to foster public participation, including open discussion, communication programs, information services, and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distribution of proposed, alternative, or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments. The written procedures shall describe the methods the governing body of a local governmental unit will use to distribute proposed, alternative, or amended elements of a comprehensive plan to owners of property, or to persons who have a leasehold interest in property pursuant to which the persons may extract nonmetallic mineral resources in or on property, in which the allowable use or intensity of use of the property is changed by the comprehensive plan.

(b) The plan commission or other body of a local governmental unit that is authorized to prepare or amend a comprehensive plan may recommend the adoption or amendment of a comprehensive plan only by adopting a resolution by a majority vote of the entire commission. The vote shall be recorded in the official minutes of the plan commission or other body. The resolution shall refer to maps and other descriptive materials that relate to one or more elements of a comprehensive plan. One copy of an adopted comprehensive plan, or of an amendment to such a plan, shall be sent to all of the following:

1. Every governmental body that is located in whole or in part within the boundaries of the local governmental unit.

2. The clerk of every local governmental unit that is adjacent to the local governmental unit that is the subject of the plan that is adopted or amended as described in par. (b) (intro.).

4. After September 1, 2005, the department of administration.
5. The regional planning commission in which the local governmental unit is located.
6. The public library that serves the area in which the local governmental unit is located.

(c) No comprehensive plan that is recommended for adoption or amendment under par. (b) may take effect until the political subdivision enacts an ordinance or the regional planning commission adopts a resolution that adopts the plan or amendment. The political subdivision may not enact an ordinance or the regional planning commission may not adopt a resolution under this paragraph unless the comprehensive plan contains all of the elements specified in sub. (2). An ordinance may be enacted or a resolution may be adopted under this paragraph only by a majority vote of the members-elect, as defined in s. 59.001 (2m), of the governing body. One copy of a comprehensive plan enacted or adopted under this paragraph shall be sent to all of the entities specified under par. (b).

(d) No political subdivision may enact an ordinance or no regional planning commission may adopt a resolution under par. (c) unless the political subdivision or regional planning commission holds at least one public hearing at which the proposed ordinance or resolution is discussed. That hearing must be preceded by a class 1 notice under ch. 985 that is published at least 30 days before the hearing is held. The political subdivision or regional planning commission may also provide notice of the hearing by any other means it considers appropriate. The class 1 notice shall contain at least the following information:

1. The date, time and place of the hearing.
2. A summary, which may include a map, of the proposed comprehensive plan or amendment to such a plan.
3. The name of an individual employed by the local governmental unit who may provide additional information regarding the proposed ordinance.
4. Information relating to where and when the proposed comprehensive plan or amendment to such a plan may be inspected before the hearing, and how a copy of the plan or amendment may be obtained.

(e) At least 30 days before the hearing described in par. (d) is held, a local governmental unit shall provide written notice to all of the following:

1. An operator who has obtained, or made application for, a permit that is described under s. 295.12 (3) (d).
2. A person who has registered a marketable nonmetallic mineral deposit under s. 295.20.
3. Any other property owner or leaseholder who has an interest in property pursuant to which the person may extract nonmetallic mineral resources, if the property owner or leaseholder requests in writing that the local governmental unit provide the property owner or leaseholder notice of the hearing described in par. (d).

(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.

(5) APPLICABILITY OF A REGIONAL PLANNING COMMISSION'S PLAN. A regional planning commission's comprehensive plan is only advisory in its applicability to a political subdivision and a political subdivision's comprehensive plan.

(6) COMPREHENSIVE PLAN MAY TAKE EFFECT. Notwithstanding sub. (4), a comprehensive plan, or an amendment of a comprehensive plan, may take effect even if a local governmental unit fails to provide

the notice that is required under sub. (4) (e) or (f), unless the local governmental unit intentionally fails to provide the notice.

History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 66.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; 2001 a. 30, 90; 2003 a. 33, 93, 233, 307, 327; 2005 a. 26, 208; 2007 a. 121; 2009 a. 372; 2011 a. 257; 2013 a. 80; 2015 a. 391.

A municipality has the authority under s. 236.45 (2) to impose a temporary town-wide prohibition on land division while developing a comprehensive plan under this section. *Wisconsin Realtors Association v. Town of West Point*, 2008 WI App 40, 309 Wis. 2d 199, 747 N.W.2d 681, 06-2761.

The use of the word "coordination" in various statutes dealing with municipal planning does not by itself authorize towns to invoke a power of "coordination" that would impose affirmative duties upon certain municipalities that are in addition to any other obligations that are imposed under those statutes. With respect to the development of and amendment of comprehensive plans, s. 66.1001 is to be followed by the local governmental units and political subdivisions identified in that section. OAG 3-10.

66.10015 Limitation on development regulation authority and down zoning.

(1) DEFINITIONS. In this section:

(a) "Approval" means a permit or authorization for building, zoning, driveway, stormwater, or other activity related to a project.

(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.

(b) "Existing requirements" means regulations, ordinances, rules, or other properly adopted requirements of a political subdivision that are in effect at the time the application for an approval is submitted to the political subdivision.

(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.

(c) "Political subdivision" means a city, village, town, or county.

(d) "Project" means a specific and identifiable land development that occurs on defined and adjacent parcels of land, which includes lands separated by roads, waterways, and easements.

(e) "Substandard lot" means a legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

(f) "Zoning ordinance" means an ordinance enacted by a political subdivision under s. 59.69, 60.61, 60.62, 61.35, or 62.23.

(2) USE OF EXISTING REQUIREMENTS.

(a) Except as provided under par. (b) or s. 66.0401, if a person has submitted an application for an approval, the political subdivision shall approve, deny, or conditionally approve the application solely based on existing requirements, unless the applicant and the political subdivision agree otherwise. An application is filed under this section on the date that the political subdivision receives the application.

(b) If a project requires more than one approval or approvals from one or more political subdivisions and the applicant identifies the full scope of the project at the time of filing the application for the first approval required for the project, the existing requirements applicable in each political subdivision at the time of filing the application for the first approval required for the project shall be applicable to all subsequent approvals required for the project, unless the applicant and the political subdivision agree otherwise.

(c) An application for an approval shall expire not less than 60 days after filing if all of the following apply:

1. The application does not comply with form and content requirements.

2. Not more than 10 working days after filing, the political subdivision provides the applicant with written notice of the noncompliance. The notice shall specify the nature of the noncompliance and the date on which the application will expire if the noncompliance is not remedied.

3. The applicant fails to remedy the noncompliance before the date provided in the notice.

(e) Notwithstanding any other law or rule, or any action or proceeding under the common law, no political subdivision may enact or enforce an ordinance or take any other action that prohibits a property owner from doing any of the following:

1. Conveying an ownership interest in a substandard lot.
2. Using a substandard lot as a building site if all of the following apply:
 - a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - b. The substandard lot or parcel is developed to comply with all other ordinances of the political subdivision.

(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.

(4) Notwithstanding the authority granted under ss. 59.69, 60.61, 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

(5) **EXPIRATION DATES.** A political subdivision may not establish an expiration date for an approval related to a planned development district of less than 5 years after the date of the last approval required for completion of the project. This section does not prohibit a political subdivision from establishing timelines for completion of work related to an approval.

(6) **ZONING LIMITATIONS, INSPECTIONS.**

(a) If a political subdivision or a utility district requires the installation of a water meter station for a political subdivision, neither the political subdivision nor the utility district may require a developer to install a water meter that is larger than a utility-type box, and may not require a developer to include heating, air conditioning, or a restroom in the water meter station. Any requirements for such a project that go beyond the limitations specified in this paragraph must be funded entirely by the political subdivision or utility district.

(b)

1. If a political subdivision employs a building inspector to enforce its zoning ordinance or other ordinances related to building, and a developer requests the building inspector to perform an inspection that is part of the inspector's duties, the inspector shall complete the inspection not later than 14 business days after the building inspector receives the request for an inspection.

2. If a building inspector does not complete a requested inspection as required under subd. 1., the developer may request a state building inspector to provide the requested inspection, provided that the state inspector has a comparable level of zoning and building inspection qualification as the local building inspector.

3. If a developer provides a political subdivision with a certificate of inspection from a state building inspector from an inspection described under subd. 2., which meets the requirements of the inspection that was supposed to be provided by the local building inspector, the political subdivision must accept the certificate provided by the state building inspector as if it had been provided by the political subdivision's building inspector.

History: 2013 a. 74; 2015 a. 391; 2017 a. 67, 68, 243.

66.1002 Development moratoria.

(1) **DEFINITIONS.** In this section:

(a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

(b) "Development moratorium" means a moratorium on rezoning or approving any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236.

(d) "Municipality" means any city, village, or town.

(e) "Public health professional" means any of the following:

1. A physician, as defined under s. 48.375 (2) (g).

2. A registered professional nurse, as defined under s. 49.498 (1) (L).

(f) "Registered engineer" means an individual who satisfies the registration requirements for a professional engineer as specified in s. 443.04

(2) MORATORIUM ALLOWED. Subject to the limitations and requirements specified in this section, a municipality may enact a development moratorium ordinance if the municipality has enacted a comprehensive plan, is in the process of preparing its comprehensive plan, is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality, or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one of the following applies:

(a) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period in which the moratorium would be in effect, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer stating that in his or her opinion the possible shortage or overburdening of public facilities justifies the need for a moratorium.

(b) The municipality's governing body adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated activity specified under sub. (4), except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer or public health professional stating that in his or her opinion the proposed or anticipated activity specified under sub. (4) presents such a significant threat to the public health or safety that the need for a moratorium is justified.

(3) ORDINANCE REQUIREMENTS.

(a) An ordinance enacted under this section shall contain at least all of the following elements:

1. A statement describing the problem giving rise to the need for the moratorium.

2. A statement of the specific action that the municipality intends to take to alleviate the need for the moratorium.

3. Subject to par. (b), the length of time during which the moratorium is to be in effect.

4. A statement describing how and why the governing body decided on the length of time described in subd. 3.

5. A description of the area in which the ordinance applies.

6. An exemption for any activity specified under sub. (4) that would have no impact, or slight impact, on the problem giving rise to the need for the moratorium.

(b)

1. A development moratorium ordinance may be in effect only for a length of time that is long enough for a municipality to address the problem giving rise to the need for the moratorium but, except as provided in subd. 2., the ordinance may not remain in effect for more than 12 months.

2. A municipality may amend the ordinance one time to extend the moratorium for not more than 6 months if the municipality's governing body determines that such an extension is necessary to address the problem giving rise to the need for the moratorium.

(c) A municipality may not enact a development moratorium ordinance unless it holds at least one public hearing at which the proposed ordinance is discussed. The public hearing must be preceded by a class 1 notice under ch. 985, the notice to be at least 30 days before the hearing. The municipality may also provide notice of the hearing by any other appropriate means. The class 1 notice shall contain at least all of the following:

1. The time, date, and place of the hearing.

2. A summary of the proposed development moratorium ordinance, including the location where the ordinance would apply, the length of time the ordinance would be in effect, and a statement describing the problem giving rise to the need for the moratorium.

3. The name and contact information of a municipal official who may be contacted to obtain additional information about the proposed ordinance.

4. Information relating to how, where, and when a copy of the proposed ordinance may be inspected or obtained before the hearing.

(4) APPLICABILITY. A development moratorium ordinance enacted under this section applies to any of the following that is submitted to the municipality on or after the effective date of the ordinance:

- (a) A request for rezoning.
- (c) A plat or certified survey map.
- (d) A subdivision plat or other land division.

History: 2011 a. 144.

66.1014 Limits on residential dwelling rental prohibited.

(1) In this section:

(a) "Political subdivision" means any city, village, town, or county.

(b) "Residential dwelling" means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(2)

(a) Subject par. (d), a political subdivision may not enact or enforce an ordinance that prohibits the rental of a residential dwelling for 7 consecutive days or longer.

(b) If a political subdivision has in effect on September 23, 2017, an ordinance that is inconsistent with par. (a) or (d), the ordinance does not apply and may not be enforced.

(c) Nothing in this subsection limits the authority of a political subdivision to enact an ordinance regulating the rental of a residential dwelling in a manner that is not inconsistent with the provisions of pars. (a) and (d).

(d)

1. If a residential dwelling is rented for periods of more than 6 but fewer than 29 consecutive days, a political subdivision may limit the total number of days within any consecutive 365-day period that the dwelling may be rented to no fewer than 180 days. The political subdivision may not specify the period of time during which the residential dwelling may be rented, but the political subdivision may require that the maximum number of allowable rental days within a 365-day period must run consecutively. A person who rents the person's residential dwelling shall notify the clerk of the political subdivision in writing when the first rental within a 365-day period begins.

2. Any person who maintains, manages, or operates a short-term rental, as defined in s. 66.0615

(1) (dk), for more than 10 nights each year, shall do all of the following:

a. Obtain from the department of agriculture, trade and consumer protection a license as a tourist rooming house, as defined in s. 97.01 (15k).

b. Obtain from a political subdivision a license for conducting such activities, if a political subdivision enacts an ordinance requiring such a person to obtain a license.

History: 2017 a. 59.

66.1015 Municipal rent control, inclusionary zoning, prohibited.

(1) No city, village, town or county may regulate the amount of rent or fees charged for the use of a residential rental dwelling unit.

(2) This section does not prohibit a city, village, town, county, or housing authority or the Wisconsin Housing and Economic Development Authority from doing any of the following:

(a) Entering into a rental agreement which regulates rent or fees charged for the use of a residential rental dwelling unit it owns or operates.

(b) Entering into an agreement with a private person who regulates rent or fees charged for a residential rental dwelling unit.

(3) INCLUSIONARY ZONING PROHIBITED.

(a) In this subsection:

1. "Inclusionary zoning" means a zoning ordinance, as defined in s. 66.10015 (1) (e), regulation, or policy that prescribes that a certain number or percentage of new or existing residential dwelling units in a land development be made available for rent or sale to an individual or family with a family income at or below a certain percentage of the median income.

2. "Median income" has the meaning given in s. 234.49 (1) (g).

(b) No city, village, town, or county may enact, impose, or enforce an inclusionary zoning requirement.

History: 1991 a. 39; 1999 a. 150 s. 377; Stats. 1999 s. 66.1015; 2001 a. 104; 2017 a. 243.

This section preempted an ordinance that required a development with 10 or more rental dwelling units to provide no less than 15 percent of its total number of dwelling units as inclusionary dwelling units when the development required a zoning map amendment, subdivision or land division, defining "inclusionary dwelling unit" as a dwelling unit for rent to a family with an annual median income at or below 60 percent of the area median income. Sub. (2) (b) plainly applies only to agreements with private persons who, on their own, choose to regulate rent and makes clear that a municipality is not imposing rent control if it contracts with those persons for some other purpose or somehow assists them. The ordinance was not an agreement to regulate rent between the city and persons who apply for zoning map amendments, subdivision or land division. *Apartment Association of South Central Wisconsin, Inc. v. City of Madison*, 2006 WI App 192, 296 Wis. 2d 173, 722 N.W. 2d 614, 05-3140.

Chapter NR 115
WISCONSIN'S SHORELAND PROTECTION PROGRAM

- NR 115.01 Purpose.
- NR 115.02 Applicability.
- NR 115.03 Definitions.
- NR 115.04 Shoreland-wetlands.
- NR 115.05 Minimum zoning standards for shorelands.
- NR 115.06 Department duties.

Note: Chapter NR 115 as it existed on July 31, 1980, was repealed and a new chapter NR 115 was created effective August 1, 1980.

NR 115.01 Purpose. Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: "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." Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats., for the purposes specified in s. 281.31 (1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty. Nothing in this rule shall be construed to limit the authority of a county to enact more restrictive shoreland zoning standards under s. 59.69 or 59.692, Stats., to effect the purposes of s. 281.31, Stats.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a nonconforming building if the provision is more restrictive than the standards for nonconforming buildings under ch. NR 115; or the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

2011 Wisconsin Act 170 also created other provisions that affect how a county regulates nonconforming uses and buildings, premises, structures, or fixtures under its general zoning ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: r. and recr. Register January 2010 No. 649, eff. 2-1-10.

NR 115.02 Applicability. The provisions of this chapter apply to county regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas except as provided in s. 59.692 (7), Stats. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1m), Stats., applies.

Note: Under section 59.692 (7), Stats., areas annexed after May 7, 1982 and areas incorporated after April 30, 1994 were generally subject to the county shoreland zoning ordinances in effect on the date of annexation or incorporation. Effective December 14, 2013, 2013 Wis. Act 80 repealed s. 59.692 (2m) (c) and (7), amended s. 59.692 (6m), and created ss. 61.353 and 62.233. 2013 WI Act 80 is retroactive as well as prospective, and applies to all shorelands areas annexed since May 7, 1982 or incorporated since April 30, 1994.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80; CR 05-058: am. Register January 2010 No. 649, eff. 2-1-10; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2010 No. 649; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.

NR 115.03 Definitions. For the purpose of this chapter:

(1d) "Access and viewing corridor" means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(1h) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(1p) "Building envelope" means the three dimensional space within which a structure is built.

(2) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.69 (2) (a), Stats., to act in all matters pertaining to county planning and zoning.

(3) "Department" means the department of natural resources.

(3m) "Existing development pattern" means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(4) "Flood plain" means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

(4g) "Impervious surface" means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

(4r) "Mitigation" means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(5) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

Note: In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In *DeGayner and Co., v. Department of Natural Resources*, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

(6) "Ordinary high-water mark" means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

(7) "Regional flood" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

Note: The regional flood is based upon a statistical analysis of streamflow records available for watershed and/or an analysis of rainfall and runoff characteristics in the general watershed region. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

(7m) "Routine maintenance of vegetation" means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(8) "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

(9) "Shoreland-wetland zoning district" means a zoning district, created as a part of a county shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(10) "Special exception (conditional use)" means a use which is permitted by a shoreland zoning ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

(11) "Unnecessary hardship" means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

(13) "Wetlands" means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (2) to (12) to be (3) to (13), cr. (2), r. and recr. (7), am. (11) and (13), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (2) (a) 1. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (intro.), renum. (1) to be (1h), cr. (1d), (1p), (3m), (4g), (4r) and (7m), r. (12) Register January 2010 No. 649, eff. 2-1-10.

NR 115.04 Shoreland-wetlands.

(1) ESTABLISHMENT OF SHORELAND-WETLAND ZONING DISTRICTS. Counties shall adopt shoreland ordinances that include zoning regulations for shoreland-wetland zoning districts.

(2) AMENDMENT OF SHORELAND-WETLAND MAPS AND ZONING DISTRICTS.

(a) County review of wetland inventory map amendments. After the department amends final Wisconsin wetland inventory maps:

1. The department shall transmit to the county zoning agency designated under s. 59.69 (2) (a), Stats., digital files or paper copies of amended wetland inventory maps for that county.

2. If the county believes that the amended maps are inaccurate, within 30 days of receiving the amended maps the county shall note discrepancies on the maps with an accompanying narrative explaining the amended problem areas and return a copy of the notated map and narrative to the department.

3. The department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare final amended Wisconsin wetland inventory maps for that county.

Note: As of 1985 all counties adopted official wetland zoning maps and amendments occur as accuracy increases.

(b) County amendment of shoreland-wetland maps and zoning districts.

1. Within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county from the department, a county shall zone all shorelands designated as wetlands on the amended Wisconsin wetland inventory maps in a shoreland-wetland zoning district. If a county fails to zone all shoreland-wetlands within this 6 month period, s. NR 115.06 (3) (b) shall apply.

2. Ordinance text and map amendments creating or amending shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.69 (5) (e) 2., Stats.

Note: Where an apparent discrepancy exists between a shoreland-wetland district shown on an amended map and actual field conditions, the county shall contact the department to determine if the amended map is in error. If the department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the department determination as to whether the area is wetland. In order to correct wetland

mapping errors on the official zoning map, an official map amendment must be initiated within a reasonable period of time, not to exceed one year following the determination.

3. At least 10 days prior to the public hearing, the county shall provide the appropriate regional office of the department with a copy of the proposed text and map amendments and with written notice of the public hearing.

(c) Amendment of shoreland-wetland zoning districts.

1. Official ordinance amendments are required for any proposed change in shoreland-wetland zoning. Such amendments shall be made in accordance with provisions of s. 59.69 (5) (e), Stats. Official amendments to the ordinance text shall be made promptly. Provided the ordinance text is promptly amended, a county may amend its official map within a reasonable period of time not to exceed one year following the change in shoreland-wetland zoning.

2. The county clerk shall submit a copy of every proposed amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such proposed amendment with the clerk.

3. All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning agency for a public notice and hearing as required by s. 59.69 (5) (e) 2., Stats. The appropriate regional office of the department shall be provided with written notice of the public hearing at least 10 days prior to such hearing.

4. In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, if the proposed rezoning may result in a significant adverse impact upon any of the following:

- a. Storm and flood water storage capacity;
- b. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- d. Shoreline protection against soil erosion;
- e. Fish spawning, breeding, nursery or feeding grounds;
- f. Wildlife habitat; or
- g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

5. If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in subd. 4., the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

6. As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. Said findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

7. The appropriate regional office of the department shall be provided with all of the following:

- a. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board;
- b. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

8. If the county board approves of the proposed amendment and the department determines, after review as required by s. NR 115.06 (2) (c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt

a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of s. NR 115.05, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(a) Hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

Note: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland and managed forest land programs.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems (such as ditching and tiling) shall be permitted. The construction and maintenance of roads shall be permitted if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(g) The construction and maintenance of nonresidential structures, not to exceed 500 square feet, used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if the structure cannot as a practical matter be located outside the wetland, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

(j) The construction and maintenance of electric, gas, telephone water and sewer transmission and distribution lines, and related facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members, which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining

necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for the construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(L) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Any use not permitted in sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (e), Stats., and the procedures outlined in sub. (2) (c).

History: CR 05-058; cr. Register January 2010 No. 649, eff. 2-1-10.

NR 115.05 Minimum zoning standards for shorelands.

(1) ESTABLISHMENT OF SHORELAND ZONING STANDARDS. The shoreland zoning ordinance adopted by each county shall control use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the construction of a structure or building on a substandard lot if the provision is more restrictive than the standards for substandard lots under ch. NR 115.

a. The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.

b. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned unit development.' A non-riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

1. 'Shoreland setback.' Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures. Where an existing development pattern exists, the shoreland

setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694 (7) (c), Stats.

1m. 'Exempt structures.' All of the following structures are exempt from the shoreland setback standards in subd. 1.:

a. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

Note: This chapter does not prohibit repair and maintenance of boathouses located above the ordinary high-water mark.

b. Open sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692 (1v), Stats.

c. Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS 383, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

2. 'Floodplain structures.' Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. 'Boathouses.' The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high-water mark of any navigable waters shall be prohibited.

(c) Vegetation. To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

Note: In developing and applying ordinances which apply to shoreland areas, local units of government must consider other applicable law and programs affecting the lands to be regulated, e.g., law and management practices that apply to state and county forests and lands entered under forest cropland and managed forest land programs, and ss. 59.692 (2) (a) and 59.69 (4) (a), Stats.

2. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

a. The county may allow routine maintenance of vegetation.

b. The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.

c. The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2) (b), and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.

d. The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.

Note: Information regarding native plants, shoreland and habitat management is available from the University of Wisconsin-Extension publications website: <http://clean-water.uwex.edu/pubs/index.htm>.

e. The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. County impervious surface standards shall require all of the following:

1. 'Application.' Impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface that is or will be located within 300 feet of the ordinary high water mark of any navigable waterway on any of the following:

a. A riparian lot or parcel.

b. A nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway

1m. 'Calculation.' Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the lot or parcel by the total surface area of that lot or parcel, and multiplying by 100. For the purposes of this subdivision counties may exclude impervious surfaces described in subd. 3m. If an outlot lies between the ordinary high water mark and the developable lot or parcel described in subd. 1. and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surfaces.

2. 'General standard.' Except as allowed in subds. 2m. to 4., a county may allow up to 15% impervious surface as calculated under subd. 1m on a lot or parcel described in subd. 1.

2m. 'Standard for highly developed shorelines.' At its discretion, a county may adopt an ordinance for highly developed shorelines that allows impervious surface as calculated under subd. 1m on lots or parcels described in subd. 1 as follows: up to 30% for residential land uses or up to 40% for commercial, industrial or business land uses.

a. A "highly developed shoreline" means a shoreline within an area identified as an Urbanized Area or Urban Cluster in the 2010 US Census or a shoreline that has a commercial, industrial or business land use as of January 31, 2013.

b. A county may establish, after conducting a hearing and receiving approval by the department, a map of additional areas of highly developed shorelines not included in subd. 2m. a.

c. An additional area of highly developed shoreline under subd. 2m. b., shall include at least 500 feet of shoreline and as of February 1, 2010, have either a majority of its lots developed with more than 30% impervious surface area as calculated under subd. 1m. or be located on a lake and served by a sewerage system as defined in s. NR 110.03 (30). To obtain approval from the department for an additional area, the county shall provide data to the department that establishes that the additional area meets the criteria under this subd. 2m. c.

3. 'Maximum impervious surface.' A county may allow a property owner to exceed the impervious surface standard under subds. 2. and 2m. provided that all of the following requirements are met:

a. For lots or parcels described under subd. 1. that exceed the impervious surface standard under subd. 2. and are not located within a highly developed shoreline as defined in subd. 2m., a county may allow more than 15% impervious surface but not more than 30% impervious surface as calculated under subd. 1m on the lot or parcel.

b. For lots or parcels described under subd. 1. and located within an area defined by county ordinance as a highly developed shoreline under subd. 2m., a county may allow more than 30% impervious surface but not more than 40% impervious surface as calculated under subd. 1m on the lot or parcel for properties that have a residential land use, or more than 40% impervious surface but not more than 60% impervious surface as calculated under subd. 1m. for properties that have a commercial, industrial or business land use.

c. For lots or parcels described under subd. 1 that exceed the impervious surface standard under subds. 2. and 2m., but do not exceed the maximum impervious surface standard under subd. 3. a. or b., the county shall issue a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the impervious surface on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the impervious surface being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

3m. 'Treated impervious surfaces.' A county may exclude from the calculation under subdivision 1m., any impervious surface where the property owner can show that runoff from the impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bioswales or other engineered systems, or that the runoff discharges to internally drained pervious area that retains the runoff on the parcel to allow infiltration into the soil.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance, for areas that exceed the maximum impervious surface standard in subd. 3. and do not meet the provisions in subd. 3m. A county board of adjustment must review the request pursuant to s. 59.694 (7) (c), Stats., and applicable case law.

Note: Nothing in this paragraph shall be construed to supersede the setback provisions in par. (b). New structures must meet all setback provisions in the county shoreland ordinance unless the property owner obtains a variance from the County Board of Adjustment.

4. 'Existing impervious surfaces.' For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the standards in subds. 2. and 3., the property owner may do any of the following as long as the property owner does not increase the percentage of impervious surface that existed on the effective date of the county shoreland ordinance:

a. Maintain and repair all impervious surfaces.

b. Replace existing impervious surfaces with similar surfaces within the existing building envelope.

c. Relocate or modify existing impervious surfaces with similar or different impervious surfaces, provided that the relocation or modification meets the applicable setback requirements in par. (b).

Note: For example this provision would allow an existing at-grade patio to be removed and replaced with a new building, if the new building meets the shoreland setback requirements.

Note: Nothing in this paragraph shall be construed to supersede other provisions in county shoreland ordinances.

(f) Height. To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

(g) Nonconforming structures and uses.

1. 'General rule for nonconforming uses.' Pursuant to ss. 59.69 (10) and 59.692 (2) (a), Stats., an ordinance enacted under those provisions may not prohibit the continuation of the lawful use of a building, structure or property, that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment.

2. 'Nonconforming use of temporary structure.' The continuance of the nonconforming use of a temporary structure may be prohibited.

3. 'Discontinued nonconforming use.' If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

4. 'Maintenance of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be maintained and repaired within its existing building envelope. Maintenance and repair also includes such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

5. 'Expansion of nonconforming principal structure within the setback.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be expanded laterally or vertically, provided that all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. Vertical expansion is limited to the height allowed in s. NR 115.05 (1) (f) and lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

e. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as impervious surface limitations.

5m. 'Expansion of nonconforming principal structure beyond setback'. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1., may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in par. (b) 1., and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required under par. (e) 3.

6. 'Replacement or relocation of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1. may be replaced or relocated on the property provided all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b) 1.

e. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the

county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the county register of deeds.

g. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as height and impervious surface limitations.

Note: Effective April 17, 2012, 2011 Wisconsin Act 170 created s. 59.692 (2m), Stats., which prohibits a county from enacting, and a county, city, or village from enforcing, any provision in a county shoreland or subdivision ordinance that regulates the location, maintenance, expansion, replacement, repair, or relocation of a nonconforming building if the provision is more restrictive than the standards for nonconforming buildings under ch. NR 115.

(2) ESTABLISHMENT OF LAND DIVISION REVIEW. Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

- (a)** Hazards to the health, safety or welfare of future residents.
- (b)** Proper relationship to adjoining areas.
- (c)** Public access to navigable waters, as required by law.
- (d)** Adequate storm drainage facilities.
- (e)** Conformity to state law and administrative code provisions.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812.

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. SPS 383, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

(4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. The shoreland ordinance adopted by each county shall require all of the following:

- (a)** The appointment of an administrator and such additional staff as the workload may require.
- (b)** The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.
- (c)** A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of all applications shall be required to be filed in the office of the county zoning administrator.
- (d)** Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.
- (e)** A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.
- (f)** A special exception (conditional use) procedure for uses presenting special problems.
- (g)** The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.
- (h)** Written notice to the appropriate regional office of the department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under sub. (2).

(hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, copies of any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

(j) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(k) The prosecution of violations of the shoreland ordinance.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. (2) (a) 3., am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (c) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (title), r. (1) and (2), renum. (3) to (6) to be (1) to (4) and am. (1), (2) (intro.), (4) (intro.) and (h), cr. (4) (hm) Register January 2010 No. 649, eff. 2-1-10; corrections in (1) (b) 1m. e., (5) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; correction in (1) (g) 1. made under s. 13.92 (4) (b) 7., Stats., Register January 2014 No. 697; CR 13-051: am. (1) (c) 2. d., r. and recr. (1) (e), am. (1) (g) 4., 5. (intro.), a., c., 6. a., r. (1) (g) 6. f., 7., am. (4) (h), (hm) Register September 2014 No. 705, eff. 10-1-14; corrections in (1) (e) made under s. 13.92 (4) (b) 7., Stats., Register September 2014 No. 705.

NR 115.06 Department duties.

(1) ASSISTANCE TO COUNTIES. To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

(2) REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES. When determining whether a shoreland zoning or subdivision ordinance or any subsequent amendment enacted by a county complies with s. 59.692, Stats., the department shall compare the ordinance and amendments with the minimum standards and requirements for shoreland regulation in this chapter.

(a) Initial ordinance. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) Amendments to ordinance. The department and each county shall assure that the county shoreland ordinance continues to comply with this chapter by doing the following:

1. 'County duties.' A county shall keep its shoreland zoning and subdivision ordinances in compliance with s. 59.692, Stats., and this chapter by doing all of the following:

a. A county shall amend its shoreland and subdivision ordinances to meet the minimum standards in this chapter within two years after October 1, 2014.

Note: On September 12, 2010, the Secretary of the Department of Natural Resources signed an executive order extending the date by which a county must adopt or amend shoreland and subdivision ordinances to meet the revised standards in ch. NR 115. The date was extended to February 1, 2014.

b. Pursuant to s. NR 115.05 (4) (h) and (hm), a county shall provide the department notice of hearing on any proposed ordinance amendment and a copy of any decision denying or enacting an amendment.

2. 'Department duties.'

a. The department may periodically reevaluate county shoreland zoning and subdivision ordinances for continuing compliance with s. 59.692, Stats., and this chapter.

b. The department shall review any ordinance amendment enacted pursuant to subd. 1. a. and shall issue a certificate of compliance when the amended ordinance, in the opinion of the department, complies with s. 59.692, Stats., and this chapter.

(c) Proposed amendments to shoreland-wetland districts. The department shall review all proposed amendments to shoreland-wetland zoning districts pursuant to s. NR 115.04 (2) to determine whether an ordinance which is amended as proposed will comply with s. 59.692, Stats., and this chapter.

(3) DETERMINATION OF NONCOMPLIANCE.

(a) Failure to enact initial ordinance or amendments. A county that does not have a shoreland zoning ordinance and subdivision ordinance in effect or that fails to amend its ordinance as required by sub. (2) (b) 1. shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. Pursuant to s. 59.692 (6), Stats., and after notice and hearing, the department shall adopt an ordinance if a county fails to do one of the following:

1. Draft and enact shoreland and subdivision ordinances or required amendments within a time period specified by the department.

2. Contract with a consultant to draft the shoreland and subdivision ordinances or required amendments and enact the ordinances within a time period specified by the department.

3. Cooperate with department staff to draft shoreland and subdivision ordinances or required amendments to be enacted by the county within a time period specified by the department not to exceed 180 days.

(b) Failure to meet minimum standards in initial ordinance or amendments. Counties which have shoreland zoning and subdivision ordinances or amendments that the department has reviewed under sub. (2) and found do not meet the minimum standards in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats., and this chapter, and the procedures in par. (a) shall apply. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county as required by s. NR 115.04 (2) (b), the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(c) Extension of time. The department may extend the time periods specified in pars. (a) and (b) if it determines an extension is in the public interest.

(d) Costs. Pursuant to ss. 59.692 (6) and 87.30 (1) (c), Stats., the costs of any actions by the department under this subsection to adopt an ordinance or amendments shall be assessed against the county concerned and collected in substantially the same manner as other taxes levied by the state.

(4) MONITORING. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning and land division ordinances. In so doing, the department:

(a) Shall review decisions granting special exceptions (conditional uses), variances and appeals to ensure compliance with the applicable shoreland zoning ordinances and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. (3) (b), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (1), (2) (a) and (c), (3) (a) (intro.) and (b), (4) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; CR 05-058: am. (2) and (3) Register January 2010 No. 649, eff. 2-1-10; CR 13-051: am. (2) (b) 1. a. Register September 2014 No. 705, eff. 10-1-14.

WISCONSIN STATUTES
CHAPTER 59
COUNTIES
SUBCHAPTER VII
LAND USE, INFORMATION AND REGULATION,
ENVIRONMENTAL PROTECTION, SURVEYS,
PLANNING AND ZONING

59.69 Planning and zoning authority.

(1) PURPOSE. It is the purpose of this section to promote the public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ensure adequate highway, utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of landscape and man-made developments; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds. To accomplish this purpose the board may plan for the physical development and zoning of territory within the county as set forth in this section and shall incorporate therein the master plan adopted under s. 62.23 (2) or (3) and the official map of any city or village in the county adopted under s. 62.23 (6).

(2) PLANNING AND ZONING AGENCY OR COMMISSION.

(a)

1. Except as provided under subd. 2., the board may create a planning and zoning committee as a county board agency or may create a planning and zoning commission consisting wholly or partially of persons who are not members of the board, designated the county zoning agency. In lieu of creating a committee or commission for this purpose, the board may designate a previously established committee or commission as the county zoning agency, authorized to act in all matters pertaining to county planning and zoning.

2. If the board in a county with a county executive authorizes the creation of a county planning and zoning commission, designated the county zoning agency, the county executive shall appoint the commission, subject to confirmation by the board.

3. If a county planning and zoning commission is created under subd. 2., the county executive may appoint, for staggered 3-year terms, 2 alternate members of the commission, who are subject to confirmation by the board. Annually, the county executive shall designate one of the alternate members as first alternate and the other as 2nd alternate. The first alternate shall act, with full power, only when a member of the commission refuses to vote because of a conflict of interest or when a member is absent. The 2nd alternate shall act only when the first alternate refuses to vote because of a conflict of interest or is absent, or if more than one member of the commission refuses to vote because of a conflict of interest or is absent.

(b) From its members, the county zoning agency shall elect a chairperson whose term shall be for 2 years, and the county zoning agency may create and fill other offices.

(bm) The head of the county zoning agency appointed under sub. (10) (b) 2. shall have the administrative powers and duties specified for the county zoning agency under this section, and the county zoning agency shall be only a policy-making body determining the broad outlines and principles governing such administrative powers and duties and shall be a quasi-judicial body with decision-making power that includes but is not limited to conditional use, planned unit development and rezoning. The building inspector shall enforce all laws, ordinances, rules and regulations under this section.

(bs) As part of its approval process for granting a conditional use permit under this section, a county may not impose on a permit applicant a requirement that is expressly preempted by federal or state law.

(c) Subject to change by the board, the county zoning agency may adopt such rules and regulations governing its procedure as it considers necessary or advisable. The county zoning agency shall keep a record of its planning and zoning studies, its resolutions, transactions, findings and determinations.

(cm) In addition to the members who serve on, or are appointed to, a planning and zoning committee, commission, or agency under par. (a), the committee, commission, or agency shall also include, as a nonvoting member, a representative from a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the county, if the base's or installation's commanding officer appoints such a representative.

(d) The county may accept, review and expend funds, grants and services and may contract with respect thereto and may provide such information and reports as may be necessary to secure such financial aid and services, and within such funds as may be made available, the county zoning agency may employ, or contract for the services of, such professional planning technicians and staff as are considered necessary for the discharge of the duties and responsibilities of the county zoning agency.

(e) Wherever a public hearing is specified under this section, the hearing shall be conducted by the county zoning agency in the county courthouse or in such other appropriate place as may be selected by the county zoning agency. The county zoning agency shall give notice of the public hearing by publication in the county as a class 2 notice under ch. 985, and shall consider any comments made, or submitted by, the commanding officer, or the officer's designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the county.

(f) Whenever a county development plan, part thereof or amendment thereto is adopted by, or a zoning ordinance or amendment thereto is enacted by, the board, a duplicate copy shall be certified by the clerk and sent to the municipal clerks of the municipalities affected thereby, and also to the commanding officer, or the officer's designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the county.

(g) Neither the board nor the county zoning agency may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

(3) THE COUNTY DEVELOPMENT PLAN.

(a) The county zoning agency may direct the preparation of a county development plan or parts of the plan for the physical development of the unincorporated territory within the county and areas within incorporated jurisdictions whose governing bodies by resolution agree to having their areas included in the county's development plan. The plan may be adopted in whole or in part and may be amended by the board and endorsed by the governing bodies of incorporated jurisdictions included in the plan. The county development plan, in whole or in part, in its original form or as amended, is hereafter referred to as the development plan. To the extent that the development plan applies to unincorporated areas of a county with the population described in s. 60.23 (34), it applies only to those unincorporated areas that are subject to county zoning. Beginning on January 1, 2010, or, if the county is exempt under s. 66.1001 (3m), the date under s. 66.1001 (3m) (b), if the county engages in any program or action described in s. 66.1001 (3), the development plan shall contain at least all of the elements specified in s. 66.1001 (2).

(b) The development plan shall include the master plan, if any, of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map, if any, of such city or village, that was adopted under s. 62.23 (6) in the county, without change. In counties with a population of at least 485,000, the development plan shall also include, and integrate, the master plan and the official map of a town that was adopted under s. 60.62 (6) (a) or (b), without change.

(c) The development plan may be in the form of descriptive material, reports, charts, diagrams or maps. Each element of the development plan shall describe its relationship to other elements of the plan and to statements of goals, objectives, principles, policies or standards.

(d) The county zoning agency shall hold a public hearing on the development plan before approving it. After approval of the plan the county zoning agency shall submit the plan to the board for its approval and adoption. The plan shall be adopted by resolution and when adopted it shall be

certified as provided in sub. (2) (f). The development plan shall serve as a guide for public and private actions and decisions to assure the development of public and private property in appropriate relationships.

(e) Except for a town that has adopted a master plan and official map as described in par. (b), a master plan adopted under s. 62.23 (2) and (3) and an official map that is established under s. 62.23 (6) shall control in unincorporated territory in a county affected thereby, whether or not such action occurs before the adoption of a development plan.

(4) EXTENT OF POWER. 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:

(a) The areas within which agriculture, forestry, industry, mining, trades, business and recreation may be conducted, except that no ordinance enacted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d).

(b) The areas in which residential uses may be regulated or prohibited.

(c) The areas in and along, or in or along, natural watercourses, channels, streams and creeks in which trades or industries, filling or dumping, erection of structures and the location of buildings may be prohibited or restricted.

(d) Trailer or tourist camps, motels, and manufactured and mobile home communities.

(e) Designate certain areas, uses or purposes which may be subjected to special regulation.

(f) The location of buildings and structures that are designed for specific uses and designation of uses for which buildings and structures may not be used or altered.

(g) The location, height, bulk, number of stories and size of buildings and other structures.

(h) The location of roads and schools.

(i) Building setback lines.

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

(k) The percentage of a lot which may be occupied, size of yards, courts and other open spaces.

(L) Places, structures or objects with a special character, historic interest, aesthetic interest or other significant value, historic landmarks and historic districts.

(m) Burial sites, as defined in s. 157.70 (1) (b).

(4c) CONSTRUCTION SITE ORDINANCE LIMITS. Except as provided in s. 101.1206 (5m), an ordinance that is enacted under sub. (4) may only include provisions that are related to construction site erosion control if those provisions are limited to sites described in s. 281.33 (3) (a) 1. a. and b.

(4d) ANTENNA FACILITIES. The board may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.

(b) The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.

(c) The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.

(4e) MIGRANT LABOR CAMPS. The board may not enact an ordinance or adopt a resolution that interferes with any of the following:

(a) Any repair or expansion of migrant labor camps, as defined in s. 103.90 (3). An ordinance or resolution of the county that is in effect on September 1, 2001, and that interferes with any construction, repair, or expansion of migrant labor camps is void.

(b) The construction of new migrant labor camps, as defined in s. 103.90 (3), that are built on or after September 1, 2001, on property that is adjacent to a food processing plant, as defined in s. 97.29 (1) (h), or on property owned by a producer of vegetables, as defined in s. 100.235 (1) (g), if the camp is located on or contiguous to property on which vegetables are produced or adjacent to land on which the producer resides.

(4f) AMATEUR RADIO ANTENNAS. The board may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

(a) The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.

(b) The ordinance or resolution reasonably accommodates amateur radio communications.

(4g) AIRPORT AREAS. In a county which has created a county zoning agency under sub. (2) (a), the county's development plan shall include the location of any part of an airport, as defined in s. 62.23 (6) (am) 1. a., that is located in the county and of any part of an airport affected area, as defined in s. 62.23 (6) (am) 1. b., that is located in the county.

(4h) PAYDAY LENDERS.

(a) Definitions. In this subsection:

1. "Licensee" has the meaning given in s. 138.14 (1) (i).
2. "Payday lender" means a business, owned by a licensee, that makes payday loans.
3. "Payday loan" has the meaning given in s. 138.14 (1) (k).

(b) Limits on locations of payday lenders. Except as provided in par. (c), no payday lender may operate in a county unless it receives a permit to do so from the county zoning agency, and the county zoning agency may not issue a permit to a payday lender if any of the following applies:

1. The payday lender would be located within 1,500 feet of another payday lender.
2. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.

(c) Exceptions.

1. Paragraph (b) only applies in the unincorporated parts of the county which have not adopted a zoning ordinance as authorized under s. 60.62 (1).

2. A county may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in par. (b).

3. If a county has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the county may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of par. (b).

4. Notwithstanding the provisions of subd. 3., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of par. (b), the payday lender may continue to operate from that location notwithstanding the provisions of par. (b).

(4m) HISTORIC PRESERVATION.

(a) Subject to par. (b), a county, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance any place, structure or object with a special character, historic interest, aesthetic interest or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to pars. (b) and (c), the county may create a landmarks commission to designate historic landmarks and establish historic districts. Subject to par. (b), the county may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

(b) Before the county designates a historic landmark or establishes a historic district, the county shall hold a public hearing. If the county proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the county shall, by

1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

(c) An owner of property that is affected by a decision of a county landmarks commission may appeal the decision to the board. The board may overturn a decision of the commission by a majority vote of the board.

(5) FORMATION OF ZONING ORDINANCE; PROCEDURE.

(a) When the county zoning agency has completed a draft of a proposed zoning ordinance, it shall hold a public hearing thereon, following publication in the county of a class 2 notice, under ch. 985. If the proposed ordinance has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the ordinance or a description of the property affected by the ordinance and a statement that a map may be obtained from the zoning agency. After such hearing the agency may make such revisions in the draft as it considers necessary, or it may submit the draft without revision to the board with recommendations for adoption. Proof of publication of the notice of the public hearing held by such agency shall be attached to its report to the board.

(b) When the draft of the ordinance, recommended for enactment by the zoning agency, is received by the board, it may enact the ordinance as submitted, or reject it, or return it to the agency with such recommendations as the board may see fit to make. In the event of such return subsequent procedure by the agency shall be as if the agency were acting under the original directions. When enacted, a copy of the ordinance shall be submitted by the clerk to each town clerk, under par. (g), for consideration by the town board.

(c) A county ordinance enacted under this section shall not be effective in any town until it has been approved by the town board. If the town board approves an ordinance enacted by the county board, under this section, a certified copy of the approving resolution attached to one of the copies of such ordinance submitted to the town board shall promptly be filed with the county clerk by the town. The ordinance shall become effective in the town as of the date of the filing, which filing shall be recorded by the county clerk in the clerk's office, reported to the town board and the county board, and printed in the proceedings of the county board. The ordinance shall supersede any prior town ordinance in conflict therewith or which is concerned with zoning, except as provided by s. 60.62. A town board may withdraw from coverage of a county zoning ordinance as provided under s. 60.23 (34).

(d) The board may by a single ordinance repeal an existing county zoning ordinance and reenact a comprehensive revision thereto in accordance with this section. "Comprehensive revision", in this paragraph, means a complete rewriting of an existing zoning ordinance which changes numerous zoning provisions and alters or adds zoning districts. The comprehensive revision may provide that the existing ordinance shall remain in effect in a town for a period of up to one year or until the comprehensive revision is approved by the town board, whichever period is shorter. If the town board fails to approve the comprehensive revision within a year neither the existing ordinance nor the comprehensive revision shall be in force in that town. Any repeal and reenactment prior to November 12, 1965, which would be valid under this paragraph is hereby validated.

(e) The board may amend an ordinance or change the district boundaries. The procedure for such amendments or changes is as follows:

1. A petition for amendment of a county zoning ordinance may be made by a property owner in the area to be affected by the amendment, by the town board of any town in which the ordinance is in effect; by any member of the board or by the agency designated by the board to consider county zoning matters as provided in sub. (2) (a). The petition shall be filed with the clerk who shall immediately refer it to the county zoning agency for its consideration, report and recommendations. Immediate notice of the petition shall be sent to the county supervisor of any affected district. A report of all petitions referred under this paragraph shall be made to the county board at its next succeeding meeting.

2. Upon receipt of the petition by the agency it shall call a public hearing on the petition. Notice of the time and place of the hearing shall be given by publication in the county of a class 2 notice, under ch. 985. If an amendment to an ordinance, as described in the petition, has the effect of changing the allowable use of any property, the notice shall include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the zoning agency. A copy of the notice shall be submitted by the clerk under par. (g) to the town clerk of each town affected by the proposed amendment at least 10 days prior to

the date of such hearing. If the petition is for any change in an airport affected area, as defined in s. 62.23 (6) (am) 1. b., the agency shall mail a copy of the notice to the owner or operator of the airport bordered by the airport affected area.

3. Except as provided under subd. 3m., if a town affected by the proposed amendment disapproves of the proposed amendment, the town board of the town may file a certified copy of the resolution adopted by the board disapproving of the petition with the agency before, at or within 10 days after the public hearing. If the town board of the town affected in the case of an ordinance relating to the location of boundaries of districts files such a resolution, or the town boards of a majority of the towns affected in the case of all other amendatory ordinances file such resolutions, the agency may not recommend approval of the petition without change, but may only recommend approval with change or recommend disapproval.

3m. A town may extend its time for disapproving any proposed amendment under subd. 3. by 20 days if the town board adopts a resolution providing for the extension and files a certified copy of the resolution with the clerk of the county in which the town is located. The 20-day extension shall remain in effect until the town board adopts a resolution rescinding the 20-day extension and files a certified copy of the resolution with the clerk of the county in which the town is located.

4. As soon as possible after the public hearing, the agency shall act, subject to subd. 3., on the petition either approving, modifying and approving, or disapproving it. If its action is favorable to granting the requested change or any modification thereof, it shall cause an ordinance to be drafted effectuating its determination and shall submit the proposed ordinance directly to the board with its recommendations. If the agency after its public hearing recommends denial of the petition it shall report its recommendation directly to the board with its reasons for the action. Proof of publication of the notice of the public hearing held by the agency and proof of the giving of notice to the town clerk of the hearing shall be attached to either report. Notification of town board resolutions filed under subd. 3. shall be attached to either such report.

5. Upon receipt of the agency report the board may enact the ordinance as drafted by the zoning agency or with amendments, or it may deny the petition for amendment, or it may refuse to deny the petition as recommended by the agency in which case it shall rerefer the petition to the agency with directions to draft an ordinance to effectuate the petition and report the ordinance back to the board which may then enact or reject the ordinance.

5g. If a protest against a proposed amendment is filed with the clerk at least 24 hours prior to the date of the meeting of the board at which the report of the zoning agency under subd. 4. is to be considered, duly signed and acknowledged by the owners of 50 percent or more of the area proposed to be altered, or by abutting owners of over 50 percent of the total perimeter of the area proposed to be altered included within 300 feet of the parcel or parcels proposed to be rezoned, action on the ordinance may be deferred until the zoning agency has had a reasonable opportunity to ascertain and report to the board as to the authenticity of the ownership statements. Each signer shall state the amount of area or frontage owned by that signer and shall include a description of the lands owned by that signer. If the statements are found to be true, the ordinance may not be enacted except by the affirmative vote of three-fourths of the members of the board present and voting. If the statements are found to be untrue to the extent that the required frontage or area ownership is not present the protest may be disregarded.

5m. If a proposed amendment under this paragraph would make any change in an airport affected area, as defined under s. 62.23 (6) (am) 1. b., and the owner or operator of the airport bordered by the airport affected area files a protest against the proposed amendment with the clerk at least 24 hours prior to the date of the meeting of the board at which the report of the zoning agency under subd. 4. is to be considered, no ordinance which makes such a change may be enacted except by the affirmative vote of two-thirds of the members of the board present and voting.

6. If an amendatory ordinance makes only the change sought in the petition and if the petition was not disapproved prior to, at or within 10 days under subd. 3. or 30 days under subd. 3m., whichever is applicable, after the public hearing by the town board of the town affected in the case of an ordinance relating to the location of district boundaries or by the town boards of a majority of the towns affected in the case of all other amendatory ordinances, it shall become effective on passage. The county clerk shall record in the clerk's office the date on which the ordinance becomes effective and notify the town

clerk of all towns affected by the ordinance of the effective date and also insert the effective date in the proceedings of the county board. The county clerk shall submit a copy of any other amendatory ordinance, under par. (g), within 7 days of its enactment, to the town clerk of each town in which lands affected by the ordinance are located. If after 40 days from the date of the enactment a majority of the towns have not filed certified copies of resolutions disapproving the amendment with the county clerk, or if, within a shorter time a majority of the towns in which the ordinance is in effect have filed certified copies of resolutions approving the amendment with the county clerk, the amendment shall be in effect in all of the towns affected by the ordinance. The county clerk shall submit under par. (g), within 7 days of its enactment, any ordinance relating to the location of boundaries of districts only to the town clerk of the town in which the lands affected by the change are located. Such an ordinance shall become effective 40 days after enactment of the ordinance by the county board unless such town board prior to such date files a certified copy of a resolution disapproving of the ordinance with the county clerk. If such town board approves the ordinance, the ordinance shall become effective upon the filing of the resolution of the town board approving the ordinance with the county clerk. The clerk shall record in the clerk's office the date on which the ordinance becomes effective and notify the town clerk of all towns affected by such ordinance of such effective date and also make such report to the county board, which report shall be printed in the proceedings of the county board.

7. When any lands previously under the jurisdiction of a county zoning ordinance have been finally removed from such jurisdiction by reason of annexation to an incorporated municipality, and after the regulations imposed by the county zoning ordinance have ceased to be effective as provided in sub. (7), the board may, on the recommendation of its zoning agency, enact amendatory ordinances that remove or delete the annexed lands from the official zoning map or written descriptions without following any of the procedures provided in subds. 1. to 6., and such amendatory ordinances shall become effective upon enactment and publication. A copy of the ordinance shall be forwarded by the clerk to the clerk of each town in which the lands affected were previously located. Nothing in this paragraph shall be construed to nullify or supersede s. 66.1031.

(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 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.

(g)

1. Except as provided in subd. 2., when a county clerk is required to submit materials to a town clerk as described in pars. (b) and (e) 2. and 6., the county clerk shall submit the materials by certified mail.

2. A county clerk may submit to a town clerk by electronic mail the materials described in subd. 1. if the county clerk includes with the electronic mail a request that the town clerk promptly confirm receipt of the materials by return electronic mail. If the county clerk does not receive such confirmation within 2 business days, the county clerk shall submit the materials to the town clerk by certified mail.

(5e) CONDITIONAL USE PERMITS.

(a) In this subsection:

1. "Conditional use" means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a county, but does not include a variance.

2. "Substantial evidence" means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

(b)

1. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.

2. The requirements and conditions described under subd. 1. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the county relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The county's decision to approve or deny the permit must be supported by substantial evidence.

(c) Upon receipt of a conditional use permit application, and following publication in the county of a class 2 notice under ch. 985, the county shall hold a public hearing on the application.

(d) Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the county zoning board.

(e) If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10).

(5m) TERMINATION OF COUNTY ZONING.

(a) Subject to par. (b), if a county clerk receives a notice from a town under s. 60.23 (34) (b) 1. before July 1 of the year before a year in which a town may withdraw from county zoning under s. 60.23 (34), a county board may enact an ordinance, before October 1 of the year in which the county clerk receives the notice, to repeal all of its zoning ordinances enacted under this section if it so notifies, in writing, all of the towns that are subject to its zoning ordinances. If a county does not repeal all of its zoning ordinances as described in this paragraph, it shall amend its zoning ordinances to specify that the ordinances do not apply in the town from which it received the notice.

(b) An ordinance enacted under par. (a) shall have a delayed effective date of one year. No county board may repeal under this subsection a county shoreland zoning or floodplain zoning ordinance.

(6) OPTIONAL ADDITIONAL PROCEDURES. Nothing in this section shall be construed to prohibit the zoning agency, the board or a town board from adopting any procedures in addition to those prescribed in this section and not in conflict therewith. Such procedures may, but are not required to, provide for public hearings before the county board. The public hearing provided by sub. (5) (a) and (e) 2. is deemed to be sufficient for the requirements of due process whether or not the county board holds a further public hearing thereafter.

(7) CONTINUED EFFECT OF ORDINANCE. Whenever an area which has been subject to a county zoning ordinance petitions to become part of a city or village, the regulations imposed by the county zoning ordinance shall continue in effect, without change, and shall be enforced by the city or village until the regulations have been changed by official action of the governing body of the city or village, except that in the event an ordinance of annexation is contested in the courts, the county zoning shall prevail and the county shall have jurisdiction over the zoning in the area affected until ultimate determination of the court action.

(8) EXCHANGE OF TAX DEEDED LANDS. When a county acquires lands by tax deeds, the board may exchange such lands for other lands in the county for the purpose of promoting the regulation and restriction of agricultural and forestry lands and may exchange such lands for other lands for the purpose of creating a park or recreational area.

(9) ZONING OF COUNTY-OWNED LANDS.

(a) The county board may by ordinance zone and rezone lands owned by the county without necessity of securing the approval of the town boards of the towns wherein the lands are situated and without following the procedure outlined in sub. (5), provided that the county board shall give written notice to the town board of the town wherein the lands are situated of its intent to so rezone and shall

hold a public hearing on the proposed rezoning ordinance and give notice of the hearing by posting in 5 public places in the town.

(b) This subsection does not apply to land that is subject to a town zoning ordinance which is purchased by the county for use as a solid or hazardous waste disposal facility or hazardous waste storage or treatment facility, as these terms are defined under s. 289.01.

(10) NONCONFORMING USES.

(ab) In this subsection "nonconforming use" means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

(am) An ordinance enacted under this section may not prohibit the continuance of the lawful use of any building, premises, structure, or fixture for any trade or industry for which such building, premises, structure, or fixture is used at the time that the ordinances take effect, but the alteration of, or addition to, or repair in excess of 50 percent of its assessed value of any existing building, premises, structure, or fixture for the purpose of carrying on any prohibited trade or new industry within the district where such buildings, premises, structures, or fixtures are located, may be prohibited. The continuance of the nonconforming use of a temporary structure may be prohibited. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

(at) Notwithstanding par. (am), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:

1. Repair or replacement of homes.
2. Repair or replacement of infrastructure.

(b)

1. Except as provided under subd. 2., the board shall designate an officer to administer the zoning ordinance, who may be the secretary of the zoning agency, a building inspector appointed under s. 59.698 or other appropriate person.

2. Notwithstanding subd. 1. and s. 59.698, in a county with a county zoning agency and a county executive or county administrator, the county executive or county administrator shall appoint and supervise the head of the county zoning agency and the county building inspector, in separate or combined positions. The appointment is subject to confirmation by the board unless the board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. The board, by resolution or ordinance, may provide that, notwithstanding s. 17.10 (6), the head of the county zoning agency and the county building inspector, whether serving in a separate or combined position, if appointed under this subdivision, may not be removed from his or her position except for cause.

3. The officer designated under subd. 1. or 2. shall cause a record to be made immediately after the enactment of an ordinance or amendment thereto, or change in district boundary, approved by the town board, of all lands, premises and buildings in the town used for purposes not conforming to the regulations applicable to the district in which they are situated. The record shall include the legal description of the lands, the nature and extent of the uses therein, and the names and addresses of the owner or occupant or both. Promptly on its completion the record shall be published in the county as a class 1 notice, under ch. 985. The record, as corrected, shall be on file with the register of deeds 60 days after the last publication and shall be prima facie evidence of the extent and number of nonconforming uses existing on the effective date of the ordinance in the town. Corrections before the filing of the record with the register of deeds may be made on the filing of sworn proof in writing, satisfactory to the officer administering the zoning ordinance.

(c) The board shall prescribe a procedure for the annual listing of nonconforming uses, discontinued or created, since the previous listing and for all other nonconforming uses. Discontinued and newly created nonconforming uses shall be recorded with the register of deeds immediately after the annual listing.

(d) Paragraphs (b) and (c) shall not apply to counties issuing building permits or occupancy permits as a means of enforcing the zoning ordinance or to counties which have provided other procedures for this purpose.

(e)

1. In this paragraph, " amortization ordinance" means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (am), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.

2. Subject to par. (am), an ordinance enacted under this section may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(10e) REPAIR, REBUILDING, AND MAINTENANCE OF CERTAIN NONCONFORMING STRUCTURES.

(a) In this subsection:

1. "Development regulations" means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.

2. "Nonconforming structure" means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

(b) An ordinance may not prohibit, limit based on cost, or require a variance for the repair, maintenance, renovation, rebuilding, or remodeling of a nonconforming structure or any part of a nonconforming structure.

(10m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.

(a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

(b) An ordinance enacted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(11) PROCEDURE FOR ENFORCEMENT OF COUNTY ZONING ORDINANCE. The board shall prescribe rules, regulations and administrative procedures, and provide such administrative personnel as it considers necessary for the enforcement of this section, and all ordinances enacted in pursuance thereof. The rules and regulations and the districts, setback building lines and regulations authorized by this section, shall be prescribed by ordinances which shall be declared to be for the purpose of promoting the public health, safety and general welfare. The ordinances shall be enforced by appropriate forfeitures. Compliance with such ordinances may also be enforced by injunctive order at the suit of the county or an owner of real estate within the district affected by the regulation.

(12) PRIOR ORDINANCES EFFECTIVE. Nothing in this section shall invalidate any county zoning ordinance enacted under statutes in effect before July 20, 1951.

(13) CONSTRUCTION OF SECTION. The powers granted in this section shall be liberally construed in favor of the county exercising them, and this section shall not be construed to limit or repeal any powers now possessed by a county.

(14) LIMITATION OF ACTIONS. A landowner, occupant or other person who is affected by a county zoning ordinance or amendment, who claims that the ordinance or amendment is invalid because procedures prescribed by the statutes or the ordinance were not followed, shall commence an action within the time provided by s. 893.73 (1), except this subsection and s. 893.73 (1) do not apply unless there has been at least one publication of a notice of a zoning hearing in a local newspaper of general circulation and unless there has been held a public hearing on the ordinance or amendment at the time and place specified in the notice.

(15) COMMUNITY AND OTHER LIVING ARRANGEMENTS. For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any municipality, shall be subject to the following criteria:

(a) No community living arrangement may be established after March 28, 1978, within 2,500 feet, or any lesser distance established by an ordinance of a municipality, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the municipality. Two community living arrangements may be adjacent if the municipality authorizes that arrangement and if both facilities comprise essential components of a single program.

(b)

1. Community living arrangements shall be permitted in each municipality without restriction as to the number of facilities, so long as the total capacity of the community living arrangements does not exceed 25 or 1 percent of the municipality's population, whichever is greater. When the capacity of the community living arrangements in the municipality reaches that total, the municipality may prohibit additional community living arrangements from locating in the municipality. In any municipality, when the capacity of community living arrangements in an aldermanic district in a city or a ward in a village or town reaches 25 or 1 percent of the population, whichever is greater, of the district or ward, the municipality may prohibit additional community living arrangements from being located within the district or ward. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the municipality.

2. No community living arrangement may be established after January 1, 1995, within 2,500 feet, or any lesser distance established by an ordinance of the municipality, of any other such facility. Agents of a facility may apply for an exception to this requirement, and exceptions may be granted at the discretion of the municipality. Two community living arrangements may be adjacent if the municipality authorizes that arrangement and if both facilities comprise essential components of a single program.

(bm) A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, religious associations, as defined in s. 157.061 (15), associations, or public agencies shall be subject to pars. (a) and (b).

(br)

1. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the municipality, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the municipality.

2. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 1. and that is licensed under s. 50.033 (1m) (b) is permitted in the municipality without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).

(c) If the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).

(d) If the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in pars. (a) and (b), and is licensed, or operated, or permitted under the authority of the department of health services or the department of children and families, the facility is entitled to locate in any residential area except areas zoned exclusively for single-family or 2-family residences, except as provided in par. (i), but is entitled to apply for special zoning permission to locate in those areas. The municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(e) If the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in pars. (a) and (b), and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The municipality may grant special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

(f) The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for adults, and the information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and the capacity of each community living arrangement for children, and the information shall be available to the public.

(g) In this subsection, "special zoning permission" includes, but is not limited to, the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.

(h) The attorney general shall take action, upon the request of the department of health services or the department of children and families, to enforce compliance with this subsection.

(i) Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council or village or town board of a municipality in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the municipality. The determination shall be made according to the procedures provided under par. (j). If the common council or village or town board determines that the existence in the municipality of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the municipality, the common council or village or town board may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the licensed adult family home or community living arrangement. The licensed adult family home or community living arrangement shall cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(im) The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under par. (i) to assert or prove that the existence of the community living arrangement in the municipality poses a threat to the health, safety or welfare of the residents of the municipality.

(j) A determination under par. (i) shall be made after a hearing before the common council or village or town board. The municipality shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council or village or town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council, town board or village board. The common council or village or town board shall take notes of the testimony and shall mark and preserve all exhibits. The common council or village or town board may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the municipality. Within 20 days after the hearing, the common council or village or town board shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

History: 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28, 209, 351, 372, 405; 2011 a. 32, 170; 2013 a. 20; 2013 a. 165 s. 115; 2015 a. 55, 176, 178, 214, 223, 391; 2017 a. 67.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

A zoning ordinance may distinguish between foster homes and therapeutic homes for the care of children. *Browndale International v. Board of Adjustment*, 60 Wis. 2d 182, 208 N.W.2d 121 (1973).

- A plaintiff is not required to exhaust administrative remedies when his or her claim is that a zoning ordinance is unconstitutional, but may ask for a declaratory judgment. An ordinance classifying land as agricultural when it is unfit for agriculture is unreasonable and amounts to a taking of the land without compensation. *Kmiec v. Town of Spider Lake*, 60 Wis. 2d 640, 211 N.W.2d 471 (1973).
- A property owner does not acquire a "vested interest" in the continuance of a nonconforming use, and such status will be denied if the specific use was casual and occasional, or if the use was merely accessory or incidental to the principal use. *Walworth County v. Hartwell*, 62 Wis. 2d 57, 214 N.W.2d 288 (1974).
- Under s. 59.97 [now s. 59.69] (5) (c), a county zoning ordinance becomes effective in a town upon approval of the text by the town board and the filing of the approving resolution with the town clerk and not when it merely adopts a zoning map. *Racine County v. Alby*, 65 Wis. 2d 574, 223 N.W.2d 438 (1974).
- Zoning ordinances, being in derogation of common law, are to be construed in favor of the free use of private property. *Cohen v. Dane County Board of Adjustment*, 74 Wis. 2d 87, 246 N.W.2d 112 (1976).
- A municipality is not required to show irreparable injury before obtaining an injunction under s. 59.97 [now s. 59.69] (11). *County of Columbia v. Bylewski*, 94 Wis. 2d 153, 288 N.W.2d 129 (1980).
- Under s. 59.97 [now s. 59.69] (9) a county may rezone county-owned land contrary to town zoning laws and without town approval. *Town of Ringle v. County of Marathon*, 104 Wis. 2d 297, 311 N.W.2d 595 (1981).
- The primary authority to enact, repeal, and amend a zoning ordinance is at the county, not town, level. The county is responsible for any liabilities that may arise from adoption. No liability arises to a town from the town's approval of a county ordinance enacted following the repeal of a prior effective ordinance. *M & I Marshall Bank v. Town of Somers*, 141 Wis. 2d 271, 414 N.W.2d 824 (1987).
- When it is claimed that zoning resulted in a taking of land without compensation, there is no compensable taking unless the regulation resulted in a diminution of value so great that it amounts to a confiscation. *M & I Marshall Bank v. Town of Somers*, 141 Wis. 2d 271, 414 N.W.2d 824 (1987).
- For purposes of determining a nonconforming use for a quarry site, all land that contains the mineral and is integral to the operation is included, although a particular portion may not be under actual excavation. *Smart v. Dane County Board of Adjustment*, 177 Wis. 2d 445, 501 N.W.2d 782 (1993).
- The power to regulate nonconforming uses includes the power to limit the extension or expansion of the use if it results in a change in the character of the use. *Waukesha County v. Pewaukee Marina, Inc.* 187 Wis. 2d 18, 522 N.W.2d 536 (Ct. App. 1994).
- When a zoning ordinance is changed, a builder may have a vested right, enforceable by mandamus, to build under the previously existing ordinance if the builder has submitted, prior to the change, an application for a permit in strict and complete conformance with the ordinance then in effect. *Lake Bluff Housing Partners v. South Milwaukee*, 197 Wis. 2d 157, 540 N.W.2d 189 (1995), 94-1155.
- Unless the zoning ordinance provides otherwise, a court should measure the sufficiency of a conditional use application at the time that notice of the final public hearing is first given. *Weber v. Town of Saukville*, 209 Wis. 2d 214, 562 N.W.2d 412 (1997), 94-2336.
- A permit issued for a use prohibited by a zoning ordinance is illegal per se. A conditional use permit only allows a property owner to put the property to a use that is expressly permitted as long as conditions have been met. A use begun under an illegal permit cannot be a prior nonconforming use. *Foresight, Inc. v. Babl*, 211 Wis. 2d 599, 565 N.W.2d 279 (Ct. App. 1997), 96-1964.
- A nonconforming use, regardless of its duration, may be prohibited or restricted if it also constitutes a public nuisance or is harmful to public health, safety, or welfare. *Town of Delafield v. Sharpley*, 212 Wis. 2d 332, 568 N.W.2d 779 (Ct. App. 1997), 96-2458.
- A county executive's power to veto ordinances and resolutions extends to rezoning petitions that are in essence proposed amendments to the county zoning ordinance. The veto is subject to limited judicial review. *Schmeling v. Phelps*, 212 Wis. 2d 898, 569 N.W.2d 784 (Ct. App. 1997), 96-2661.
- Sub. (11) does not eliminate the traditional equitable power of a circuit court. It is within the power of the court to deny a county's request for injunctive relief when a zoning ordinance violation is proven. The court should take evidence and weigh equitable considerations including that of the state's citizens. *Forest County v. Goode*, 219 Wis. 2d 654, 579 N.W.2d 715 (1998), 96-3592.
- Construction in violation of zoning regulations, even when authorized by a voluntarily issued permit, is unlawful. However, in rare cases, there may be compelling equitable reasons when a requested order of abatement should not be issued. *Lake Bluff Housing Partners v. City of South Milwaukee*, 222 Wis. 2d 222, 588 N.W.2d 45 (Ct. App. 1998), 97-1339.
- A conditional use permit did not impose a condition that the conditional use not be conducted outside the permitted area. It was improper to revoke the permit based on that use. An enforcement action in relation to the parcel where the use was not permitted was an appropriate remedy. *Bettendorf v. St. Croix County Board of Adjustment*, 224 Wis. 2d 735, 591 N.W.2d 916 (Ct. App. 1999), 98-2327.
- Once a municipality has shown an illegal change in use to a nonconforming use, the municipality is entitled to terminate the entire nonconforming use. The decision is not within the discretion of the court reviewing the order. *Village of Menomonee Falls v. Preuss*, 225 Wis. 2d 746, 593 N.W.2d 496 (Ct. App. 1999), 98-0384.
- To violate substantive due process guarantees, a zoning decision must involve more than simple errors in law or an improper exercise of discretion; it must shock the conscience. The city's violation of a purported agreement regarding zoning was not a violation. A court cannot compel a political body to adhere to an agreement regarding zoning if that body has legitimate reasons for breaching. *Eternalist Foundation, Inc. v. City of Platteville*, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999), 98-1944.

- While the DNR has the authority to regulate the operation of game farms, its authority does not negate the power to enforce zoning ordinances against game farms. Both are applicable. *Willow Creek Ranch v. Town of Shelby*, 2000 WI 56, 235 Wis. 2d 409, 611 N.W.2d 693, 97-2075.
- A change in method or quantity of production of a nonconforming use is not a new use when the original character of the use remains the same. The incorporation of modern technology into the business of the operator of a nonconforming use is allowed. *Racine County v. Cape*, 2002 WI App 19, 250 Wis. 2d 44, 639 N.W.2d 782, 01-0740.
- Financial investment is a factor to consider when determining whether a zoning violation must be abated, but it does not outweigh all other equitable factors to be considered. *Lake Bluff Housing Partners v. City of South Milwaukee*, 2001 WI App 150, 246 Wis. 2d 785, 632 N.W.2d 485, 00-1958.
- While a mere increase in the volume, intensity, or frequency of a nonconforming use is not sufficient to invalidate it, if the increase in volume, intensity, or frequency of use is coupled with some identifiable change or extension, the enlargement will invalidate a legal nonconforming use. A proposed elimination of cabins and the expansion from 21 to 44 RV sites was an identifiable change in a campground and extension of the use for which it had been licensed. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.
- To find discontinuance of a nonconforming use, proof of intent to abandon the nonconforming use is not required. *Lessard v. Burnett County Board of Adjustment*, 2002 WI App 186, 256 Wis. 2d 821, 649 N.W.2d 728, 01-2986.
- A conditional use permit (CUP) is not a contract. A CUP is issued under an ordinance. A municipality has discretion to issue a permit and the right to seek enforcement of it. Noncompliance with the terms of a CUP is tantamount to noncompliance with the ordinance. *Town of Cedarburg v. Shewczyk*, 2003 WI App 10, 259 Wis. 2d 818, 656 N.W.2d 491, 02-0902.
- Spot zoning grants privileges to a single lot or area that are not granted or extended to other land in the same use district. Spot zoning is not per se illegal but, absent any showing that a refusal to rezone will in effect confiscate the property by depriving all beneficial use thereof should only be indulged in when it is in the public interest and not solely for the benefit of the property owner who requests the rezoning. *Step Now Citizens Group v. Town of Utica*, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.
- The failure to comply with an ordinance's notice requirements, when all statutory notice requirements were met, did not defeat the purpose of the ordinance's notice provision. *Step Now Citizens Group v. Town of Utica*, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833, 02-2760.
- Under *Goode* a landowner may contest whether he or she is in violation of the zoning ordinance and, if so, can further contest on equitable grounds the enforcement of a sanction for the violation. *Town of Delafield v. Winkelman*, 2004 WI 17, 269 Wis. 2d 109, 675 N.W.2d 470, 02-0979.
- A municipality cannot be estopped from seeking to enforce a zoning ordinance, but a circuit court has authority to exercise its discretion in deciding whether to grant enforcement. Upon the determination of an ordinance violation, the proper procedure for a circuit court is to grant an injunction enforcing the ordinance, except when it is presented with compelling equitable reasons to deny it. *Village of Hobart v. Brown County*, 2005 WI 78, 281 Wis. 2d 628, 698 N.W.2d 83, 03-1907.
- An existing conditional use permit (CUP) is not a vested property right and the revocation of the permit is not an unconstitutional taking. A CUP merely represents a species of zoning designations. Because landowners have no property interest in zoning designations applicable to their properties, a CUP is not property and no taking occurs by virtue of a revocation. *Rainbow Springs Golf Company, Inc. v. Town of Mukwonago*, 2005 WI App 163, 284 Wis. 2d 519, 702 N.W.2d 40, 04-1771.
- A municipality may not effect a zoning change by simply printing a new map marked "official map." *Village of Hobart v. Brown County*, 2007 WI App 250, 306 Wis. 2d 263, 742 N.W.2d 907, 07-0891.
- Zoning that restricts land so that the landowner has no permitted use as of right must bear a substantial relation to the health, safety, morals, or general welfare of the public in order to withstand constitutional scrutiny. *Town of Rhine v. Bizzell*, 2008 WI 76, 311 Wis. 2d 1, 751 N.W.2d 780, 06-0450.
- Having a vested interest in the continuance of a use is fundamental to protection of a nonconforming use. There can be no vested interest if the use is not actually and actively occurring at the time the ordinance amendment takes effect. However, it does not follow that any use that is actually occurring on the effective date of the amendment is sufficient to give the owner a vested interest in its continued use. To have a vested interest in the continuation of a use requires that if the continuance of the use were to be prohibited, substantial rights would be adversely affected, which will ordinarily mean that there has been a substantial investment in the use. The longevity of a use and the degree of development of a use are subsumed in an analysis of what investments an owner has made, rather than separate factors to be considered. *Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.* 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.
- There must be reasonable reliance on the existing law in order to acquire a vested interest in a nonconforming use. Reasonable reliance on the existing law was not present when the owners knew the existing law was soon to change at the time the use was begun. *Town of Cross Plains v. Kitt's "Field of Dreams" Korner, Inc.* 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08-0546.
- The town board's recommendation on a form that was signed by the town board and clerk and dated but not certified as a resolution by the town clerk did not effectively satisfy the statutory elements of a certified copy of a resolution under sub. (5) (e) 3. Although the legislature intended the town board to serve as a political check on the otherwise unfettered discretion of the county board in wielding its legislative zoning power, it prescribed a specific procedure by which towns perform that function. *Johnson v. Washburn County*, 2010 WI App 50, 324 Wis. 2d 366, 781 N.W.2d 706, 09-0371.
- When a village eliminated the selling of cars as a conditional use in general business districts a previously granted conditional use permit (CUP) was voided, the property owner was left with a legal nonconforming use to sell cars, and the village could not enforce the strictures of the CUP against the property owner. Therefore, the owner could continue to sell cars in accordance with the historical use of the property, but if the use were to go beyond the historical use of the property, the village could seek to eliminate the property's status as a legal nonconforming use. *Hussein v. Village of Germantown Board of Zoning Appeals*, 2011 WI App 96, 334 Wis. 2d 764, 800 N.W.2d 551, 10-2178.

A county has the authority under both subs. (1) and (4) and s. 59.70 (22) to enact ordinances regulating billboards and other similar structures. When a town approves a county zoning ordinance under sub. (5) (c) that includes a billboard ordinance, the town's billboard ordinance adopted under s. 60.23 (29) does not preempt a county's authority to regulate billboards in that town. *Adams Outdoor Advertising, L.P. v. County of Dane*, 2012 WI App 28, 340 Wis. 2d 175, 811 N.W.2d 421, 10-0178.

A municipality has the flexibility to regulate land use through zoning up until the point when a developer obtains a building permit. Once a building permit has been obtained, a developer may make expenditures in reliance on a zoning classification.

Wisconsin follows the bright-line building permit rule that a property owner's rights do not vest until the developer has submitted an application for a building permit that conforms to the zoning or building code requirements in effect at the time of application. *McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, ___ Wis. 2d ___, ___ N.W.2d ___, 14-1914.

The fact that a county is within a regional planning commission does not affect county zoning power. 61 Atty. Gen. 220.

The authority of a county to regulate mobile homes under this section and other zoning questions are discussed. 62 Atty. Gen. 292.

Zoning ordinances utilizing definitions of "family" to restrict the number of unrelated persons who may live in a single family dwelling are of questionable constitutionality. 63 Atty. Gen. 34.

Under s. 59.97 [now s. 59.69] (5) (c), town board approval of a comprehensive county zoning ordinance must extend to the ordinance in its entirety and may not extend only to parts of the ordinance. 63 Atty. Gen. 199.

A county that has enacted a countywide comprehensive zoning ordinance under this section may not authorize the withdrawal of town approval of the ordinance or exclude any town from the ordinance. 67 Atty. Gen. 197.

The office of county planning and zoning commission member is incompatible with the position of executive director of the county housing authority. 81 Atty. Gen. 90.

An amendment to a county zoning ordinance adding a new zoning district does not necessarily constitute a comprehensive revision requiring town board approval of the entire ordinance under s. 59.97 [now s. 59.69] (5) (d). 81 Atty. Gen. 98.

A county's power under sub. (4) is broad enough to encompass regulation of the storage of junked, unused, unlicensed, or abandoned motor vehicles on private property. Because sub. (10) protects "trade or industry," a county zoning ordinance could prohibit an existing non-commercial, nonconforming use or a use that is "casual and occasional." OAG 2-00.

A county's minimum lot size zoning ordinance applies to parcels created by a court through division in a partition or probate action, even if such division would be exempted from a municipality's subdivision authority under s. 236.45 (2) (am) 1. OAG 1-14.

Architectural Appearances Ordinances and the 1st Amendment. Rice. 76 MLR 439 (1992).

59.691 Required notice on certain approvals.

(1) In this section, "wetland" has the meaning given in s. 23.32 (1).

(2)

(a) Except as provided in par. (b), a county that issues a building permit or other approval for construction activity, shall give the applicant a written notice as specified in subs. (3) and (4) at the time the building permit is issued.

(b)

1. A county is not required to give the notice under par. (a) at the time that it issues a building permit if the county issues the building permit on a standard building permit form prescribed by the department of safety and professional services.

2. A county is not required to give the notice under par. (a) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land.

(3) Each notice shall contain the following language: "YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER."

(4) The notice required in sub. (2) (a) shall contain the electronic Web site address that gives the recipient of the notice direct contact with that Web site.

(5) A county in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

59.692 Zoning of shorelands on navigable waters.

(1) In this section:

(a) "Department" means the department of natural resources.

(b) "Shorelands" means the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 281.31 (2) (d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.

(bn) "Shoreland setback area" means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under this section.

(c) "Shoreland zoning standard" means a standard for ordinances enacted under this section that is promulgated as a rule by the department.

(d) "Special zoning permission" has the meaning given in s. 59.69 (15) (g).

(e) "Structure" means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, stairway, walkway, patio, deck, retaining wall, porch, or fire pit.

(1c) To effect the purposes of s. 281.31 and to promote the public health, safety and general welfare, each county shall zone by ordinance all shorelands in its unincorporated area. This ordinance may be enacted separately from ordinances enacted under s. 59.69.

(1d)

(a) An ordinance enacted under this section may not regulate a matter more restrictively than the matter is regulated by a shoreland zoning standard.

(b) Paragraph (a) does not prohibit a county from enacting a shoreland zoning ordinance that regulates a matter that is not regulated by a shoreland zoning standard.

(1f)

(a) A county shoreland zoning ordinance may not require a person to do any of the following:

1. Establish a vegetative buffer zone on previously developed land.
2. Expand an existing vegetative buffer zone.

(b) A county shoreland zoning ordinance may require a person to maintain a vegetative buffer zone that exists on July 14, 2015, if the ordinance also does all of the following:

1. Allows the buffer zone to contain a viewing corridor that is at least 35 feet wide for every 100 feet of shoreline frontage.

2. Allows a viewing corridor to run contiguously for the entire maximum width established under subd. 1.

(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 April 28, 2016. 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.

(1k)

(a) The department may not impair the interest of a landowner in shoreland property by establishing a shoreland zoning standard, and a county may not impair the interest of a landowner in shoreland property by enacting or enforcing a shoreland zoning ordinance, that does any of the following:

1. Requires any approval to install or maintain outdoor lighting in shorelands, imposes any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibits or regulates outdoor lighting in shorelands if the lighting is designed or intended for residential use.

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 any of the following if the activity does not expand the footprint of the structure:

a. A nonconforming structure.

b. A structure of which any part is legally located in the shoreland setback area by operation of a variance granted before July 13, 2015.

c. A building or structure in violation of a county shoreland zoning ordinance that, under sub. (1t), may not be enforced.

2m. Except as provided in pars. (b) and (bm), 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 structure listed under sub. (1n) (d) that was legally constructed wholly or partially within the shoreland setback area if the activity does not expand the footprint of the existing structure.

3. Requires any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.

4. Requires any approval or imposes any fee or mitigation requirement for, or otherwise prohibits or regulates, the vertical expansion 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, unless the vertical expansion would extend more than 35 feet above grade level.

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

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

(am) The department may not impair the interest of a landowner in shoreland property by establishing a shoreland zoning standard, and a county may not impair the interest of a landowner in shoreland property by enacting or enforcing a shoreland zoning ordinance, that establishes standards for impervious surfaces unless all of the following apply:

1. The standards provide that a surface is considered pervious if the runoff from the surface is treated by a device or system, or is discharged to an internally drained pervious area, that retains the runoff on or off the parcel to allow infiltration into the soil.

2. If the standards allow a greater amount of impervious surface on areas with highly developed shorelines than areas with shorelines that are not highly developed, as determined by the department, the standards also require an area with highly developed shorelines to include at least 500 feet of shoreline and require that one of the following applies:

a. The area is composed of a majority of lots with more than 30 percent impervious surface area, as calculated by the county and approved by the department.

b. The area is composed of a majority of lots that are less than 20,000 square feet in area.

c. The area is located on a lake and served by a sewerage system, as defined in s. 281.01 (14).

3. The standards prohibit considering a roadway, as defined in s. 340.01 (54), or a sidewalk, as defined in s. 340.01 (58), as impervious surfaces.

(b) A county shoreland zoning ordinance shall allow an activity specified under par. (a) 2. and 2m. to expand the footprint of a nonconforming structure or a structure listed under sub. (1n) (d) 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.

NOTE: Par. (b) is shown as affected by 2015 Wis. Acts 167 and 391 and as merged by the legislative reference bureau under s. 13.92 (2) (i). The cross-reference to par. (a) 2. was changed from subd. 1. b. by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 59.692 (1k) (a) 1. b., as created by 2015 Wis. Act 55.

(bm) A county shoreland zoning ordinance may prohibit an activity specified under par. (a) 2m. from expanding a structure listed under sub. (1n) (d) beyond the 3-dimensional building envelope of the existing structure.

(c)

1. Nothing in this section prohibits the department from establishing a shoreland zoning standard that allows the vertical or lateral expansion of a nonconforming structure.

2. Nothing in this section prohibits a county from enacting a shoreland zoning ordinance that allows the vertical or lateral expansion of a nonconforming structure if the ordinance does not conflict with shoreland zoning standards established by the department.

NOTE: Sub. (1k) was created as sub. (1k) (a) by 2015 Wis. Act 55 and renumbered to sub. (1k) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(1n)

(a) In this subsection, "setback" means the distance that a shoreland setback area extends from the ordinary high-water mark.

(am) Except as provided under pars. (b), (bm), (c), and (d), a county shoreland zoning ordinance shall establish a setback of 75 feet.

(b) Except as provided in pars. (bm) and (c), if the closest principal structure in each direction along the shoreline to a proposed principal structure exists on an adjacent lot and within 250 feet of the proposed principal structure and both of the existing principal structures are set back less than 75 feet from the ordinary high-water mark, a county shoreland zoning ordinance shall establish a setback equal to the average of the distances that those structures are set back from the ordinary high-water mark but no less than 35 feet.

(bm) If a principal structure exists on an adjacent lot and within 250 feet of a proposed principal structure in only one direction along the shoreline, is the closest principal structure to the proposed principal structure, and is set back less than 75 feet from the ordinary high-water mark, a county shoreland zoning ordinance may establish a setback equal to the average of 75 feet and the distance that the existing structure is set back from the ordinary high-water mark but no less than 35 feet.

(c)

1. Except as provided in subd. 2., if the closest principal structure in each direction along the shoreline to a proposed principal structure exists on an adjacent lot and within 200 feet of the proposed principal structure and both of the existing principal structures are set back more than 75 feet from the ordinary high-water mark at or farther landward from the setback that was required at the time each structure was built, a county shoreland zoning ordinance may establish a setback equal to the average of the setbacks required for those structures at the time they were built.

2. Subdivision 1. does not apply if the resulting setback limits the placement of the proposed principal structure to an area on which the structure cannot be built.

(d) A county shoreland zoning ordinance may not prohibit the construction of any of the following structures within the 75-foot setback requirement under par. (am):

1. A boathouse, as defined in s. 30.01 (1d), that is located entirely above the ordinary high-water mark.

2. A structure that satisfies the requirements in sub. (1v).

3. A fishing raft for which the department has issued a permit under s. 30.126.

4. A broadcast signal receiver, including a satellite dish, or an antenna that is no more than one meter in diameter and a satellite earth station antenna that is no more than 2 meters in diameter.

5. A utility transmission line, utility distribution line, pole, tower, water tower, pumping station, well pumphouse cover, private on-site wastewater treatment system that complies with ch. 145, and any other utility structure for which no feasible alternative location outside of the setback exists and which is constructed and placed using best management practices to infiltrate or otherwise control storm water runoff from the structure.

6. A walkway, stairway, or rail system that is necessary to provide pedestrian access to the shoreline and is no more than 60 inches in width.

(1o) 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.

NOTE: Sub. (1o) was created as sub. (1p) by 2015 Wis. Act 391 and renumbered to sub. (1o) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(1p) This section does not authorize a county to impose a requirement, condition, or restriction on land that is not shoreland within the county.

(1r) An ordinance enacted under this section may not prohibit the maintenance of stairs, platforms or decks that were constructed before August 15, 1991, and that are located in any of the following shorelands:

(a) The shoreland of Lake Wissota in Chippewa County.

(b) The shorelands of Lake Holcombe in Chippewa and Rusk counties.

(1t) A county or the department may not commence an enforcement action against a person who owns a building or structure that is in violation of a shoreland zoning standard or an ordinance enacted under this section if the building or structure has been in place for more than 10 years.

(1v) A county shall grant special zoning permission for the construction or placement of a structure on property in a shoreland setback area if all of the following apply:

(a) The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary high-water mark.

(b) The total floor area of all of the structures in the shoreland setback area of the property will not exceed 200 square feet. In calculating this square footage, boathouses shall be excluded.

(c) The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.

(d) The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70 percent of the half of the shoreland setback area that is nearest to the water.

(2)

(a) Except as otherwise specified, all provisions of s. 59.69 apply to ordinances and their amendments enacted under this section whether or not enacted separately from ordinances enacted under s. 59.69, but the ordinances and amendments shall not require approval or be subject to disapproval by any town or town board.

(b) If an existing town ordinance relating to shorelands is more restrictive than an ordinance later enacted under this section affecting the same shorelands, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise.

(bm) If a town ordinance enacted by a town that is located entirely on an island in Lake Superior and authorized to exercise village powers under s. 60.22 (3) is more restrictive than an ordinance enacted under this section affecting the same shorelands, regardless of the order of enactment, the town ordinance applies in all respects to the extent of the greater restrictions, but not otherwise.

(c) Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(2m) A county shoreland zoning ordinance may not regulate the construction of a structure on a substandard lot in a manner that is more restrictive than the shoreland zoning standards for substandard lots.

(3) All powers granted to a county under s. 236.45 may be exercised by it with respect to shorelands, but the county must have or provide a planning agency as defined in s. 236.02 (3).

(4)

(a) Section 66.0301 applies to this section, except that for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance. If the municipalities as defined in s. 281.31 are served by a regional planning commission under s. 66.0309, the commission may, with its consent,

be empowered by the ordinance of agreement to administer each ordinance enacted hereunder throughout its enacting municipality, whether or not the area otherwise served by the commission includes all of that municipality.

(b) Variances and appeals regarding shorelands within a county are for the board of adjustment for that county under s. 59.694, and the procedures of that section apply. Notwithstanding s. 59.694 (4), the department may not appeal a decision of the county to grant or deny a variance under this section but may, upon the request of a county board of adjustment, issue an opinion on whether a variance should be granted or denied.

(5) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to shorelands.

(5m) If a county has in effect on or after July 14, 2015, a provision in an ordinance that is inconsistent with sub. (1d), (1f), (1k), or (2m), the provision does not apply and may not be enforced.

(6) If a county does not enact an ordinance by January 1, 1968, or if the department, after notice and hearing, determines that a county has enacted an ordinance that fails to meet the shoreland zoning standards, the department shall adopt such an ordinance for the county. As far as possible, s. 87.30 shall apply to this subsection.

(6m) For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not proceed under sub. (6), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet the shoreland zoning standards.

(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.

History: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 112; 2011 a. 6, 170; 2013 a. 80; 2015 a. 55, 146, 167, 178, 391; 2017 a. 68; s. 13.92 (1) (bm) 2., (2) (i).

Cross-reference: See also ch. NR 115, Wis. adm. code.

The DNR, as trustee of navigable waters in the state, has standing to appeal shoreline zoning decisions. *DNR v. Walworth County Board of Adjustment*, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

The private right to fill lakebeds granted under s. 30.11 does not preempt the zoning power of a county over shorelands under this section. *State v. Land Concepts, Ltd.* 177 Wis. 2d 24, 501 N.W.2d 817 (Ct. App. 1993).

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96-1235. See also *State v. Outagamie*, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98-1046.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. *State ex rel. Spinner v. Kenosha County Board of Adjustment*, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97-2094.

The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. *County of Sawyer Zoning Board v. Department of Workforce Development*, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99-0707.

In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02-2400.

The term "floor area" in sub. (1v) (b) unambiguously encompasses only the surface portion of a deck's floorboards and, therefore, does not include portions of the deck's support system that extend beyond the floorboards. If a portion of a structure is outside

the setback area, that part is not in the setback area and it is not the portion "extending into" that area for purposes of calculating the 200 square foot restriction in sub. (1v) (b). *Propp v. Sauk County Board of Adjustment*, 2010 WI App 25, 323 Wis. 2d 495, 779 N.W.2d 705, 09-0209.

Appellants appropriately relied on the county's zoning map to identify the ordinary high water mark of a nearby lake and determine that the sign's proposed location was outside the county's 1,000 foot zone of shoreland authority. It was reasonable for the appellant to rely on the map rather than conduct on-site measurements. *Oneida County v. Collins Outdoor Advertising, Inc.* 2011 WI App 60, 333 Wis. 2d 216, 798 N.W.2d 724, 10-0084.

By enactment of this section and s. 281.31, the legislature intended that towns would not have authority to regulate shorelands except where such regulation fell within the language of sub. (2) (b). That statutory scheme does not distinguish between towns with village powers and those without. *Hegwood v. Town of Eagle Zoning Board of Appeals*, 2013 WI App 118, 351 Wis. 2d 196, 839 N.W.2d 111, 12-2058.

County floodplain zoning ordinances may be adopted under s. 59.971 [now 59.692] and do not require the approval of town boards in order to become effective within the unincorporated areas of the county. 62 Atty. Gen. 264.

Counties may zone lands located within 300 feet of an artificial ditch that is navigable in fact. 63 Atty. Gen. 57.

County shoreland zoning of unincorporated areas adopted under s. 59.971 [now 59.692] is not superseded by municipal extraterritorial zoning under s. 62.23 (7a). Sections 59.971, 62.23 (7), (7a) and 144.26 [now 281.31] are discussed. Municipal extraterritorial zoning within shorelands is effective insofar as it is consistent with, or more restrictive than, the county shoreland zoning regulations. 63 Atty. Gen. 69.

A county may not enact a shoreland zoning ordinance without a provision regulating nonconforming uses that have been discontinued for 12 months or longer. A county may enact an ordinance without the 50 percent provision under s. 59.69 (10) (a) [now s. 59.69 (10) (am)], in which case common law controls. OAG 2-97.

Wisconsin's Shoreland Management Program: An Assessment With Implications for Effective Natural Resources Management and Protection. Kuczynski. 1999 WLR 273.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

On the Waterfront: New Shoreland Zoning Laws. Kent. Wis. Law. Jan. 2017.

59.693 Construction site erosion control and storm water management zoning.

(1) DEFINITION. In this section, "department" means the department of natural resources.

(2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a county may enact a zoning ordinance, that is applicable to all of its unincorporated area, except as provided in s. 60.627 (2) (b), for construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 59.69. An ordinance enacted under this subsection is subject to the strict conformity requirements under s. 281.33 (3m).

(4) APPLICABILITY OF COUNTY ZONING PROVISIONS; TOWN APPROVAL.

(a) Except as otherwise specified in this section, s. 59.69 applies to any ordinance or amendment to an ordinance enacted under this section, but an ordinance or amendment to an ordinance enacted under this section does not require approval and is not subject to disapproval by any town or town board.

(b) Variances and appeals regarding construction site erosion control and storm water management regulations under this section are to be determined by the board of adjustment for that county. Procedures under s. 59.694 apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.69 that relate to construction site erosion control or storm water management regulation.

(6) APPLICABILITY OF COMPREHENSIVE ZONING PLAN OR GENERAL ZONING ORDINANCE. Ordinances that are enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(7) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a county under s. 236.45 may be exercised by the county with respect to construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. or with respect to storm water management regulation, if the county has or provides a county planning agency as defined in s. 236.02 (3).

(8) APPLICABILITY TO LOCAL GOVERNMENTS AND AGENCIES. An ordinance that is enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance that is enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1) but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2).

(9) INTERGOVERNMENTAL COOPERATION.

(a) Except as provided in par. (c), s. 66.0301 applies to this section, but for the purposes of this section an agreement under s. 66.0301 shall be effected by ordinance.

(b) If a county is served by a regional planning commission under s. 66.0309 and if the commission consents, the county may empower the commission by ordinance to administer an ordinance that is enacted under this section throughout the county, whether or not the area otherwise served by the commission includes all of that county.

(c) If the board of commissioners of the Dane County Lakes and Watershed Commission consents, Dane County may empower the commission by ordinance to administer an ordinance that is enacted under this section whether or not the area otherwise served by the commission includes all of Dane County. Section 66.0301 does not apply to this paragraph.

(10) VALIDITY UPON ANNEXATION. An ordinance that is enacted under this section by a county that is in effect in an area immediately before the area is annexed by a city or village continues in effect in the area after annexation unless the city or village enacts, maintains and enforces a city or village ordinance which complies with minimum standards established by the department and which is at least as restrictive as the county ordinance enacted under this section. If, after providing notice and conducting a hearing on the matter, the department determines that an ordinance that is enacted by a city or village which is applicable to the annexed area does not meet these standards or is not as restrictive as the county ordinance, the department shall issue an order declaring the city or village ordinance void and reinstating the applicability of the county ordinance to the annexed area.

(11) UTILITY FACILITIES.

(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.

History: 1983 a. 416; 1983 a. 538 s. 271; 1989 a. 31, 324; 1993 a. 16, 246; 1995 a. 201 s. 478; Stats. 1995 s. 59.693.; 1995 a. 227; 1997 a. 35; 1999 a. 150 s. 672; 2013 a. 20; 2017 a. 136.

59.694 County zoning, adjustment board.

(1) APPOINTMENT, POWER. The county board may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted under s. 59.69 may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subsection precludes the granting of special exceptions by the county zoning agency designated under s. 59.69 (2) (a) or the county board in accordance with regulations and restrictions adopted under s. 59.69 which were in effect on July 7, 1973, or adopted after that date.

(2) PERSONNEL.

(a) In counties with a population of less than 750,000, the board of adjustment shall consist of not more than 5 members as determined by resolution of the county board. The chairperson of the county board shall appoint the members with the approval of the county board for terms of 3 years beginning July 1. The incumbent members shall continue to serve until their terms expire. The county board resolution increasing the size of the board of adjustment shall indicate how many members shall be appointed for 1, 2 and 3 years prior to July 1 of the year in which the change takes effect in making the first appointments. If the county board, by resolution, determines to reduce the membership of the

board of adjustment below 5 but not less than 3, one of the positions for which the term expires as determined by lot shall not be filled each year until the requisite number of positions has been reached.

(am) The chairperson of the county board to which par. (a) applies shall appoint, for staggered 3-year terms, 2 alternate members of the board of adjustment, who are subject to the approval of the county board. Annually, the chairperson of the county board shall designate one of the alternate members as the first alternate and the other as 2nd alternate. The first alternate shall act, with full power, only when a member of the board of adjustment refuses to vote because of a conflict of interest or when a member is absent. The 2nd alternate shall act only when the first alternate refuses to vote because of a conflict of interest or is absent, or if more than one member of the board of adjustment refuses to vote because of a conflict of interest or is absent.

(b) In counties with a population of 750,000 or more, the board of adjustment shall consist of 3 members who are residents of the county, elected by the county board for terms of 1, 2 and 3 years, respectively, and until their successors are elected and qualify.

(bm) The chairperson of the county board to which par. (b) applies shall appoint, for staggered 3-year terms, 2 alternate members of the board of adjustment, who are subject to the approval of the county board. Annually, the chairperson of the county board shall designate one of the alternate members as the first alternate and the other as 2nd alternate. The first alternate shall act, with full power, only when a member of the board of adjustment refuses to vote because of a conflict of interest or when a member is absent. The 2nd alternate shall act only when the first alternate refuses to vote because of a conflict of interest or is absent, or if more than one member of the board of adjustment refuses to vote because of a conflict of interest or is absent.

(c) The members of the board of adjustment, including alternate members, shall all reside within the county and outside of the limits of incorporated cities and villages; provided, however, that no 2 members shall reside in the same town. The board of adjustment shall choose its own chairperson. Office room shall be provided by the county board, and the actual and necessary expenses incurred by the board of adjustment in the performance of its duties shall be paid and allowed as in cases of other claims against the county. The county board may likewise compensate the members of the board of adjustment, including alternate members, and the assistants as may be authorized by the county board. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(3) RULES, MEETINGS, MINUTES. The county board shall adopt rules for the conduct of the business of the board of adjustment, in accordance with the provisions of any ordinance enacted under s. 59.69. The board of adjustment may adopt further rules as necessary to carry into effect the regulations of the county board. Meetings of the board of adjustment shall be held at the call of the chairperson and at such other times as the board of adjustment may determine. The chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board of adjustment shall be open to the public. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of adjustment and shall be a public record.

(3m) QUORUM REQUIREMENTS. If a quorum is present, the board of adjustment may take action under this section by a majority vote of the members present.

(4) APPEALS TO BOARD. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the building inspector or other administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(5) STAYS. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify to the board of adjustment after the notice of appeal shall have been filed with that officer that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted upon application to the board of adjustment or by petition to a court of record, with notice to the officer from whom the appeal is taken.

(6) HEARING APPEALS. The board of adjustment shall fix a reasonable time for the hearing of the appeal and publish a class 2 notice thereof under ch. 985, as well as give due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, a party may appear in person or by agent or attorney. In an action involving a historic property, as defined in s. 44.31 (3), the board of adjustment shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning and zoning committee or commission.

(7) POWERS OF BOARD. The board of adjustment shall have all of the following powers:

(a) To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of s. 59.69 or of any ordinance enacted pursuant thereto.

(b) To hear and decide special exceptions to the terms of the ordinance upon which the board is required to pass under such ordinance.

(c)

1. In this paragraph:

a. "Area variance" means a modification to a dimensional, physical, or locational requirement such as the setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of adjustment under this subsection.

b. "Use variance" means an authorization by the board of adjustment under this subsection for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

2. To authorize upon appeal in specific cases variances from the terms of the ordinance that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

3. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this paragraph, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

4. A county board may enact an ordinance specifying an expiration date for a variance granted under this paragraph if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of adjustment does not specify an expiration date for the variance, a variance granted under this paragraph does not expire unless, at the time it is granted, the board of adjustment specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

5. A variance granted under this paragraph runs with the land.

(d) To grant special exceptions and variances for renewable energy resource systems. If the board denies an application for a special exception or variance for such a system, the board shall provide a written statement of its reasons for denying the application. In this paragraph, "renewable energy resource system" means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource.

(8) ORDER ON APPEAL. In exercising the powers under this section, the board of adjustment may, in conformity with the provisions of this section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(9) MAJORITY RULE. A majority vote of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of

the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(10) CERTIORARI. A person aggrieved by any decision of the board of adjustment, or a taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board, commence an action seeking the remedy available by certiorari. The court shall not stay the decision appealed from, but may, with notice to the board, grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

(14) COSTS. Costs shall not be allowed against the board of adjustment unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

History: 1973 c. 60, 336; 1981 c. 289, 354; 1983 a. 192 ss. 132, 133, 303 (2); 1987 a. 395; 1991 a. 316; 1993 a. 171; 1995 a. 201 s. 479; Stats. 1995 s. 59.694; 1997 a. 35; 2005 a. 34; 2011 a. 135; 2017 a. 67; 2017 a. 207, s. 5.

Judicial Council Note, 1981: Subsections (11), (12) and (13) have been repealed as unnecessary because in large part they merely describe the remedy of certiorari, which is now available in an ordinary action. See s. 781.01, stats., and the note thereto. Those provisions of the repealed subsections which permit departure from ordinary certiorari procedures, such as augmentation of the record by the court, have been placed in sub. (10). No substantive change in the scope or standard of review is intended. [Bill 613-A]

There is no significant difference between "unnecessary hardship" under s. 59.99 [now s. 59.694] (7) (c) and "practical difficulties." Grounds for variances are discussed. *Snyder v. Waukesha County Zoning Board*, 74 Wis. 2d 468, 247 N.W.2d 98 (1976).

An aggrieved person has the right to appeal to the board of adjustment from a zoning committee's decision to grant conditional use permits. *League of Women Voters v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983).

Aggrieved residents had the right to appeal even though they did not appear at committee hearings. Commencement of construction, not publication of hearing notices, constituted notice to residents that a permit had been issued. The standard of review is discussed. *State ex rel. Brookside v. Jefferson County Board of Adjustment*, 131 Wis. 2d 101, 388 N.W.2d 593 (1986).

Filing of a petition for a writ of certiorari, without more, did not satisfy the requirement under s. 59.99 [now s. 59.694] (10) that an action be commenced within 30 days. *Schwochert v. Marquette County Board*, 132 Wis. 2d 196, 389 N.W.2d 841 (Ct. App. 1986).

A trial court must exercise discretion when taking additional evidence pursuant to s. 59.99 [now s. 59.694] (10). If evidence taken is substantially similar to that which the board received, review is confined to a certiorari standard. *Klinger v. Oneida County*, 149 Wis. 2d 838, 440 N.W.2d 348 (1989).

Under *Brookside*, the appeal time begins to run at the time notice is given, if the zoning ordinance has a notice provision, and if there is no notice provision, when the aggrieved parties find out about the decision. *DNR v. Walworth County Board of Adjustment*, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

The 30-day limitation period for commencing a certiorari action under s. 59.99 [now s. 59.694] (10) applies to the time allowed for filing an action that is commenced by a complaint and applies to the time allowed for service when commenced by writ. *DNR v. Walworth County Board of Adjustment*, 170 Wis. 2d 406, 489 N.W.2d 631 (Ct. App. 1992).

General, rather than explicit, standards regarding the granting of special exceptions may be adopted and applied by a governing body. The applicant has the burden of formulating conditions showing that the proposed use meets the standards. Upon approval, additional conditions may be imposed by the governing body. *Kraemer & Sons v. Sauk County Adjustment Board*, 183 Wis. 2d 1, 515 N.W.2d 256 (1994).

The 30-day period to appeal a decision under s. 59.99 [now s. 59.694] (10) runs from the entry of the original decision in a matter and is not extended by filing a motion to reconsider unless the motion raises a new issue. *Bettendorf v. St. Croix County Bd. of Adjustment*, 188 Wis. 2d 311, 525 N.W.2d 89 (Ct. App. 1994).

A variance may be granted if application of the zoning ordinance results in unnecessary hardship and the condition is unique to the parcel. Concerns over the most profitable use of a parcel are not proper grounds for granting variances. *State v. Winnebago County*, 196 Wis. 2d 836, 540 N.W.2d 6 (Ct. App. 1995), 94-3199.

The legal standard of unnecessary hardship requires that the property owner demonstrate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96-1235. See also *State v. Outagamie*, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98-1046.

Failure to join an indispensable party in a certiorari action under sub. (10) is not jurisdictional. Filing the certiorari action tolls the 30-day period of limitations. Failure to name the party within the 30-day statutory period does not require dismissal. *County of Rusk v. Rusk County Board of Adjustment*, 221 Wis. 2d 526, 585 N.W.2d 706 (Ct. App. 1998), 98-0298.

- The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. *State ex rel. Spinner v. Kenosha County Board of Adjustment*, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97-2094.
- The notice of claim provisions of s. 893.80 do not apply to certiorari actions under sub. (10). *Kapischke v. County of Walworth*, 226 Wis. 2d 320, 595 N.W.2d 42 (Ct. App. 1999), 98-0796.
- Review of a certiorari action is limited to determining: 1) whether the board kept within its jurisdiction; 2) whether the board proceeded on a correct theory of law; 3) whether the board's action was arbitrary, oppressive, or unreasonable; and 4) whether the evidence was such that the board might reasonably make its order. *Kapischke v. County of Walworth*, 226 Wis. 2d 320, 595 N.W.2d 42 (Ct. App. 1999), 98-0796.
- The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance based on characteristics unique to the landowner rather than the land. *County of Sawyer Zoning Board v. Department of Workforce Development*, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App. 1999), 99-0707.
- A variance authorizes a landowner to establish or maintain a use prohibited by zoning regulations. A special exception allows the landowner to put the property to a use expressly permitted but that conflicts with some requirement of the ordinance. The grant of a special exception does not require the showing of hardship required for a variance. *Fabyan v. Waukesha County Board of Adjustment*, 2001 WI App 162, 246 Wis. 2d 851, 632 N.W.2d 116, 00-3103.
- The public policy of promoting confidence in impartial tribunals may justify expansion of the certiorari record when evidence outside of the record demonstrates procedural unfairness. However, before a circuit court may authorize expansion, the party alleging bias must make a prima facie showing of wrongdoing. *Sills v. Walworth Cty Land*, 2002 WI App 111, 254 Wis. 2d 538, 648 N.W.2d 878, 01-0901.
- An ordinance requirement that no special use permit will be granted unless it is "necessary for the public convenience" meant that the petitioner had to present sufficient evidence that the proposed use was essential to the community as a whole. *Hearst-Argyle Stations v. Board of Zoning Appeals of the City of Milwaukee*, 2003 WI App 48, 260 Wis. 2d 494, 659 N.W.2d 424, 02-0596.
- Area variance applicants need not meet the no reasonable use of the property standard that is applicable to use variance applications. The standard for unnecessary hardship required in area variance cases is whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with those restrictions unnecessarily burdensome. *Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401, 02-1618.
- In evaluating whether to grant an area variance to a zoning ordinance, a board of adjustment should focus on the purpose of the zoning law at issue in determining whether an unnecessary hardship exists for the property owner seeking the variance. The facts of the case should be analyzed in light of that purpose, and boards of adjustment must be afforded flexibility so that they may appropriately exercise their discretion. *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514, 02-2400.
- When reviewing a decision to grant or deny a conditional use permit, a county board of adjustment has the authority to conduct a de novo review of the record and substitute its judgment for the county zoning committee's judgment. Moreover, under the applicable state statute, a board has authority to take new evidence. *Osterhues v. Board of Adjustment for Washburn County*, 2005 WI 92, 282 Wis. 2d 228, 698 N.W.2d 701, 03-2194.
- A board of appeals may not simply grant or deny an application with conclusory statements that the application does or does not satisfy the statutory criteria, but shall express, on the record, its reasoning why an application does or does not meet the statutory criteria. Even when a board's decision is dictated by a minority, these controlling members of the board ought to be able to articulate why an applicant has not satisfied its burden of proof on unnecessary hardship or why the facts of record cannot be reconciled with some requirement of the ordinance or statute. A written decision is not required as long as a board's reasoning is clear from the transcript of its proceedings. *Lamar Central Outdoor, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87, 01-3105.
- Although a county's ordinance used the term "variance" to describe an exception to the setback standard, it did not have the technical legal meaning commonly used in a zoning context. Rather, under the terms of the ordinance, a "variance" could be granted as part of the conditional use permit process, not as a separate determination based on the demonstration of a hardship. *Roberts v. Manitowoc County Board of Adjustment*, 2006 WI App 169, 295 Wis. 2d 522, 721 N.W.2d 499, 05-2111.
- The court's opinion that a deck was optimally located in its current position was not the relevant inquiry in regard to the granting of an area variance. The board of adjustment was justified in determining that the property owner's desire for the variance to retain their nonconforming deck was based on a personal inconvenience rather than an unnecessary hardship. *Block v. Waupaca County Board of Zoning Adjustment*, 2007 WI App 199, 305 Wis. 2d 325, 738 N.W.2d 132, 06-3067.
- Ziervogel* did not state that use cannot be a factor in an area variance analysis. It stated that use cannot overwhelm all other considerations in the analysis, rendering irrelevant any inquiry into the uniqueness of the property, the purpose of the ordinance, and the effect of a variance on the public interest. Here, the board properly considered the purpose of the zoning code, the effect on neighboring properties, and the hardship alleged. *Driehaus v. Walworth County*, 2009 WI App 63, 317 Wis. 2d 734, 767 N.W.2d 343, 08-0947.
- Nothing in sub. (10) prevented an applicant whose conditional use permit (CUP) was denied from filing a second CUP application rather than seeking certiorari review. A municipality may enact a rule prohibiting a party whose application to the zoning board has been denied from filing a new application absent a substantial change in circumstances, but that was not done in this case. *O'Connor v. Buffalo County Board of Adjustment*, 2014 WI App 60, 354 Wis. 2d 231, 847 N.W.2d 881, 13-2097.
- Zoning ordinances are in derogation of the common law and are to be construed in favor of the free use of private property. To operate in derogation of the common law, the provisions of a zoning ordinance must be clear and unambiguous. *HEEF Realty and Investments, LLP v. City of Cedarburg Board of Appeals*, 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797, 14-0062.

Short-term rental was a permitted use for property in a single-family residential district under the City of Cedarburg's zoning code.

A zoning board cannot arbitrarily impose time or occupancy restrictions in a residential zone where there are none adopted democratically by the city. There is nothing inherent in the concept of residence or dwelling that includes time. *HEEF Realty and Investments, LLP v. City of Cedarburg Board of Appeals*, 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797, 14-0062.

The decision to grant a conditional use permit (CUP) is discretionary. The burden is on the party seeking a CUP to establish that it has met the conditions. *Earney v. Buffalo County Board of Adjustment*, 2016 WI App 66, ___ Wis. 2d ___, ___ N.W.2d ___, 15-1762.

City or village residents are not eligible for service on a county zoning board of adjustment. 61 Atty. Gen. 262.

A self-created or self-imposed hardship does not constitute an unnecessary hardship for which a county zoning board of adjustment may grant a variance under the provisions of s. 59.99 [now s. 59.694] (7) (c). 62 Atty. Gen. 111.

The extent to which this section authorizes a county board of adjustment to grant zoning variances and review decisions of a county planning and zoning committee is discussed. 69 Atty. Gen. 146.

A county cannot exercise its home rule authority in such a way as to appoint one regular member and one alternate member who reside in the same town to a county board of adjustment. OAG 2-07.

A New Uncertainty in Local Land Use: A Comparative Institutional Analysis of *State v. Outagamie County Board of Adjustment*. Friebus. 2003 WLR 571.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

Conditional Use Permits: Strategies for Local Zoning Procedures. Peranteau. Wis. Law. Sept. 2015.

59.696 Zoning; filing fees. The board may enact ordinances establishing schedules of reasonable filing fees for the filing of petitions to amend county zoning ordinances and notices of appeal to the board of adjustment from determinations of county zoning authorities and providing for the charging and collection of such filing fees; such fees to be used to partially defray the expenses of holding hearings and giving notices of hearings prescribed in ss. 59.69 and 59.694.

History: 1995 a. 201 s. 126.

59.697 Fees for zoning appeals. The board may establish a schedule of fees to be charged for the filing of petitions for amendment and notices of appeal under ss. 59.69 and 59.694, relating to zoning ordinances.

History: 1995 a. 201 s. 182.

59.698 Zoning, building inspector. Except as provided under s. 59.69 (2) (bm), for the enforcement of all laws, ordinances, rules and regulations enacted under s. 59.69, the board may appoint a building inspector, define the building inspector's duties and fix the building inspector's term of office and compensation. This section does not apply to a county with a population of 750,000 or more.

History: 1995 a. 201 s. 125; 2013 a. 14.

59.70 Environmental protection and land use.

(1) BUILDING AND SANITARY CODES. The board may enact building and sanitary codes, make necessary rules and regulations in relation thereto and provide for enforcement of the codes, rules and regulations by forfeiture or otherwise. The codes, rules and regulations do not apply within municipalities which have enacted ordinances or codes concerning the same subject matter. "Sanitary code" does not include a private on-site wastewater treatment system ordinance enacted under sub. (5). "Building and sanitary codes" does not include well or heat exchange drillhole ordinances enacted under sub. (6).

(2) SOLID WASTE MANAGEMENT. The board of any county may establish and operate a solid waste management system or participate in such system jointly with other counties or municipalities. Except in counties having a population of 750,000 or more, the board of a county or the boards of a combination of counties establishing a solid waste management system may create a solid waste management

board to operate the system and such board, in a county that does not combine with another county, shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of solid waste management, but not more than 5 of the board members may be appointed from the county board of supervisors. In any combination of counties, the solid waste management board shall be composed of 11 members with 3 additional members for each combining county in excess of 2. Appointments shall be made by the county boards of supervisors of the combining counties in a manner acceptable to the combining counties, but each of the combining counties may appoint to the solid waste management board not more than 3 members from its county board of supervisors. The term of office of any member of the solid waste management board shall be 3 years, but of the members first appointed, at least one-third shall be appointed for one year; at least one-third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any solid waste management board member may be removed from office by a two-thirds vote of the appointing authority. The solid waste management board may employ a manager for the system. The manager shall be trained and experienced in solid waste management. For the purpose of operating the solid waste management system, the solid waste management board may exercise the following powers:

(a) Develop a plan for a solid waste management system.

(b) Within such county or joint county, collect, transport, dispose of, destroy or transform wastes, including, without limitation because of enumeration, garbage, ashes, or incinerator residue, municipal, domestic, agricultural, industrial and commercial rubbish, waste or refuse material, including explosives, pathological wastes, chemical wastes, herbicide and pesticide wastes.

(c) Acquire lands within the county by purchase, lease, donation or eminent domain, within the county, for use in the solid waste management system.

(d) Authorize employees or agents to enter lands to conduct reasonable and necessary investigations and tests to determine the suitability of sites for solid waste management activities whenever permission is obtained from the property owner.

(e) Acquire by purchase, lease, donation or eminent domain easements or other limited interests in lands that are desired or needed to assure compatible land uses in the environs of any site that is part of the solid waste disposal system.

(f) Establish operations and methods of waste management that are considered appropriate. Waste burial operations shall be in accordance with sanitary landfill methods and the sites shall, insofar as practicable, be restored and made suitable for attractive recreational or productive use upon completion of waste disposal operations.

(g) Acquire the necessary equipment, use such equipment and facilities of the county highway agency, and construct, equip and operate incinerators or other structures to be used in the solid waste management system.

(h) Enact and enforce ordinances necessary for the conduct of the solid waste management system and provide forfeitures for violations.

(i) Contract with private collectors, transporters or municipalities to receive and dispose of wastes.

(j) Engage in, sponsor or cosponsor research and demonstration projects that are intended to improve the techniques of solid waste management or to increase the extent of reuse or recycling of materials and resources included within the wastes.

(k) Accept funds that are derived from state or federal grant or assistance programs and enter into necessary contracts or agreements.

(L) Appropriate funds and levy taxes to provide funds for acquisition or lease of sites, easements, necessary facilities and equipment and for all other costs required for the solid waste management system except that no municipality which operates its own solid waste management program under s. 287.09 (2) (a) or waste collection and disposal facility, or property therein, shall be subject to any tax levied hereunder to cover the capital and operating costs of these functions. Such appropriations may be treated as a revolving capital fund to be reimbursed from proceeds of the system.

(m) Make payments to any municipality in which county disposal sites or facilities are located to cover the reasonable costs of services that are rendered to such sites or facilities.

(n) Charge or assess reasonable fees, approximately commensurate with the costs of services rendered to persons using the services of the county solid waste management system. The fees may

include a reasonable charge for depreciation which shall create a reserve for future capital outlays for waste disposal facilities or equipment. All assessments for liquid waste shall be assessed by volume.

(o) Create service districts which provide different types of solid waste collection or disposal services. Different regulations and cost allocations may be applied to each service district. Costs allocated to such service districts may be provided by general tax upon the property of the respective districts or by allocation of charges to the municipalities whose territory is included within such districts.

(p) Utilize or dispose of by sale or otherwise all products or by-products of the solid waste management system.

(q) Impose fees, in addition to the fees imposed under ch. 289, upon persons who dispose of solid waste at publicly owned solid waste disposal sites in the county for the purpose of cleaning up closed or abandoned solid waste disposal sites within the county, subject to all of the following conditions:

1. The fees are based on the amount of solid waste that is disposed of by each person.
2. The fees may not exceed 20 percent of the amount that is charged for the disposal of the solid waste.
3. The effective date of the fees and any increase in the fees is January 1 and such effective date is at least 120 days after the date on which the board adopts the fee increase.
4. The cleanup of the site is conducted under the supervision of the department of natural resources.
5. The board may prevent the implementation of, or may terminate, fees imposed by the solid waste management board.

(3) RECYCLING OR RESOURCE RECOVERY FACILITIES. The board may establish and require use of facilities for the recycling of solid waste or for the recovery of resources from solid waste as provided under s. 287.13.

(5) PRIVATE ON-SITE WASTEWATER TREATMENT SYSTEM ORDINANCE.

(a) Every governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. 145.01 (5), shall enact an ordinance governing private on-site wastewater treatment systems, as defined in s. 145.01 (12), which conforms with the state plumbing code. The ordinance shall apply to the entire area of the governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. 145.01 (5). After July 1, 1980, no municipality may enact or enforce a private on-site wastewater treatment system ordinance unless it is a governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. 145.01 (5).

(b) The governmental unit responsible for the regulation of private on-site wastewater treatment systems, as defined under s. 145.01 (5), shall administer the private on-site wastewater treatment system ordinance under s. 145.20 and the rules promulgated under s. 145.20.

(6) OPTIONAL WELL AND HEAT EXCHANGE DRILLHOLE ORDINANCES.

(a) Definitions. In this subsection:

1. "Department" means the department of natural resources.
2. "Private well" has the meaning specified by rule by the department under s. 280.21 (2).
3. "Well" has the meaning specified under s. 280.01 (6).

(b) Permits. If authorized by the department under s. 280.21 (1), a county may enact and enforce a well construction, heat exchange drillhole construction, or pump installation ordinance or both. Provisions of the ordinance shall be in strict conformity with ch. 280 and with rules of the department under ch. 280. The ordinance may require that a permit be obtained before construction, installation, reconstruction or rehabilitation of a private well or installation or substantial modification of a pump on a private well, other than replacement of a pump with a substantially similar pump. The county may establish a schedule of fees for issuance of the permits and for related inspections. The department, under s. 280.21 (4), may revoke the authority of a county to enforce its ordinance if the department finds that the ordinance or enforcement of the ordinance does not conform to ch. 280 and rules of the department under ch. 280.

(c) Existing wells. With the approval of the department under s. 280.21 (1), a county may enact and enforce an ordinance in strict conformity with ch. 280 and with department rules under ch. 280, as they relate to existing private wells. The department, under s. 280.21 (4), may revoke the authority of a

county to enforce its ordinance if the department finds that the ordinance or enforcement of the ordinance does not conform to ch. 280 and rules of the department under ch. 280.

(d) Enforcement. A county may provide for enforcement of ordinances enacted under this subsection by forfeiture or injunction or both. The district attorney or county corporation counsel may bring enforcement actions.

(e) Other municipalities. No municipality may enact or enforce an ordinance regulating matters covered by ch. 280 or by department rules under ch. 280.

(7) SOIL CONSERVATION. The board of any county with a population of less than 750,000 may contract to do soil conservation work on privately owned land either directly or through a committee designated by it.

(8) INLAND LAKE PROTECTION AND REHABILITATION. The board may establish an inland lake protection and rehabilitation program and may create, develop and implement inland lake protection and rehabilitation projects similar to projects which an inland lake protection and rehabilitation district is authorized to create, develop and implement under ch. 33. In this subsection, "lake rehabilitation", "program", "project" and "lake" have the meanings specified under s. 33.01 (4), (6), (7) and (8), respectively.

(8m) HARBOR IMPROVEMENT. The board may establish, own, operate, lease, equip, and improve harbor facilities on land owned by the county that is located in this state or in another state, subject to the laws of the state in which the land is located, and may appropriate money for the activities specified in this subsection, except that in a county with a population of 750,000 or more, the county executive shall be in charge of the operation of the harbor facilities.

(9) IMPROVEMENT OF ARTIFICIAL LAKES. The board may appropriate money for the purpose of maintaining, dredging and improving any artificial lake existing on July 1, 1955, all or a portion of which is adjacent to or within a county park, and for the acquisition of land required in connection therewith.

(10) DRAINAGE DISTRICT BONDS. The board may purchase drainage district bonds at market value or at a discount to salvage the equity of the county in the lands affected and to secure resumption of tax payments thereon and so permit the dissolution of the district.

(11) ACQUISITION OF RECYCLING OR RESOURCE RECOVERY FACILITIES WITHOUT BIDS. The board may contract for the acquisition of any element of a recycling or resource recovery facility without submitting the contract for bids as required under s. 59.52 (29) if the board invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design and the developers' experience in other similar projects.

(12) MOSQUITO CONTROL DISTRICTS.

(a) A county or 2 or more contiguous counties may establish a district to control mosquitoes, upon a majority vote of each board, except that the board of a county with a population of 750,000 or more may not take any action under this subsection or sub. (13).

(b)

1. If a county establishes a district, the board shall elect 3 county supervisors to a commission. If 2 or more contiguous counties establish a district, each board in the district shall elect 2 county supervisors to a commission. The elected county supervisors shall serve as members of the commission until the expiration of their terms as county supervisors, as provided in s. 59.10 (1) (b), (2) (b), (3) (d) or (5). Each board in the district shall elect supervisors as replacements when vacancies occur in the commission. The commission shall operate the mosquito control district.

2. The commission shall elect a chairperson, vice chairperson and secretary at its first meeting each year as provided under subd. 3. The chairperson, or vice chairperson, in the chairperson's absence, shall preside at meetings and shall sign contracts and other written instruments of the commission. The secretary shall keep a record of the minutes of each meeting that is available for public inspection at all reasonable times, and shall mail notices to all members of the time and place of meetings.

3. The commission shall meet on the first Thursday after the first Monday in January to select officers of the commission and to conduct other organizational business. The commission shall also meet if the chairperson calls a meeting, or within 48 hours if a majority of the members of the commission request a meeting in writing, specifying the time and place for the meeting. The

commission shall give adequate public notice of the time, place and purpose of each meeting. All business of the commission shall be open to the public.

4. The board of each county in the district shall reimburse commissioners representing that county in the manner provided in s. 59.13 for board committee members.

(13) COMMISSION; POWERS AND DUTIES.

(a) The commission may:

1. Adopt bylaws to regulate its proceedings.
2. Employ the persons and contract for services to carry out the mosquito control program. The commission may not employ any person who is related to a commissioner.
3. Reimburse employees for expenses that are incurred or paid in the performance of their duties, and provide a reasonable daily reimbursement.
4. Purchase the materials, supplies and equipment to carry out the mosquito control program.
5. Take measures to control mosquitoes in accordance with expert and technical plans.
6. Accept gifts of property to control mosquitoes.
7. Dispose of property of the commission or mosquito control district, if it is no longer needed to control mosquitoes, by selling the property on competitive bids after 2 weeks' published notice.
8. Obtain public liability insurance and worker's compensation insurance.
9. Enter into agreements with other political subdivisions of the state outside the mosquito control district to conduct mosquito control activities within these political subdivisions, to promote mosquito control in the district.
10. Enter into agreements with contiguous states or political subdivisions in contiguous states, as provided in s. 66.0303, to conduct mosquito control activities within those states or political subdivisions, to promote mosquito control in the mosquito control district.
11. Collect money from all counties in the district for operation of the district.
12. Require the employees of the commission who handle commission funds to furnish surety bonds, in amounts the commission may determine.
13. Perform other acts that are reasonable and necessary to carry out the functions of the commission.

(b) Members or employees of the commission may request admission onto any property within the district at reasonable times to determine if mosquito breeding is present. If the owner or occupant refuses admission, the commission member or employee shall seek a warrant to inspect the property as a potential mosquito breeding ground. Commission members or employees may enter upon property to clean up stagnant pools of water or shores of lakes or streams, and may spray mosquito breeding areas with insecticides subject to the approval of the district director and the department of natural resources. The commission shall notify the property owner of any pending action under this paragraph and shall provide the property owner with a hearing prior to acting under this paragraph if the owner objects to the commission's actions.

(c) The commission shall:

1. Submit to the board of each county that is participating in the mosquito control district, at the end of each year, a complete audit of the financial transactions concluded and a progress report indicating the actions taken to control mosquitoes.
2. Publish a notice for general circulation in each of the counties in the district for bids at least 10 days prior to purchasing materials or services costing more than \$2,500. The notice shall state the nature of the work or purchase, the terms and conditions upon which the contract will be awarded, and the time and place where bids will be received, opened and read publicly. The commission may reject all bids after the reading or shall award the contract to the lowest responsible bidder. The commission may award the contract to any unit of government without the intervention of bidding, under s. 66.0131 (2). The district business administrator shall execute all contracts in writing, and may require the contracting party to provide a bond to ensure performance of the contract. The commission may direct the business administrator to purchase materials or services costing \$5,000 or less on the open market at the lowest price available, without securing competitive bids, if the commission declares that an emergency exists by an affirmative vote of five-sixths of the commission. In this subdivision, an "emergency" is an unforeseen circumstance that jeopardizes life or property.

3. Employ and fix the duties and compensation of a full-time or part-time entomologist to act as director of the mosquito control program, who shall develop and supervise the program.

4. Employ and fix the duties and compensation of a full-time or part-time business administrator, who shall administer the business affairs of the commission and who shall keep an account of all receipts and disbursements by date, source and amount.

(14) ADVERSE INTEREST OF COMMISSIONERS. No commissioner may have any personal or financial interest in any contract made by the commission. Any violation of this subsection resulting in a conviction shall void the contract, and shall disqualify the commissioner convicted of the violation from membership on the commission.

(15) FINANCING. On or before October 1 of each year, the commission shall require each county within the mosquito control district to contribute an amount per resident of the county to carry out the purposes of subs. (12) to (16). The commission shall determine the amount to charge per resident. The commission shall certify in writing to the clerk of each county participating in the mosquito control district, the total amount of the county's contribution to the mosquito control district.

(16) DISSOLUTION OF THE DISTRICT.

(a)

1. A county may terminate its participation in the district upon a majority vote of the board and 12 months' notice to the chairperson of the commission. If a county terminates its participation in the district, a board of appraisers as established in subd. 2. shall appraise the property of the commission.

2. The board of appraisers shall consist of 3 members, one who is appointed by the terminating county, one by the commission and one by the other 2 members of the appraisal board. If the 2 appraisers cannot agree on the appointment of the 3rd appraiser within 30 days, the commission may appoint the 3rd appraiser. The commission shall pay to the treasurer of the terminating county an amount equal to that county's share in the net assets of the commission, proportionate to the county's financial contribution to the mosquito control district. The terminating county shall remain liable for its allocated share of the contractual obligations of the mosquito control district.

(b) If the district dissolves, the commission shall sell all of its property. The proceeds of the sale remaining after payment of all debts, obligations and liabilities of the district, plus any balance in the fund, shall be divided and paid to the treasurers of the member counties in proportion to each county's financial contribution to the district. Member counties shall remain liable for unpaid debts after the dissolution of the district.

(17) WORMS, INSECTS, WEEDS, ANIMAL DISEASES, APPROPRIATION.

(a) The board may appropriate money for the control of insect and worm pests, weeds, or plant or animal diseases within the county, and select from its members a committee which, upon advice from the county agent that an emergency exists because of the destruction which is being or may be wrought to farmlands, livestock or crops in the county by any such pests, may take steps necessary to suppress and control such pests. The clerk shall within 10 days notify the department of agriculture, trade and consumer protection of such appropriation and of the members of such committee. The state entomologist and said department shall cooperate with such committee in the execution of measures necessary for the suppression and control of such pests.

(b) When such an emergency exists the committee may draw on the contingent fund, if available, an amount not to exceed \$5,000 which shall be disbursed upon certification of the committee for the purposes specified in par. (a) as they relate to worm or insect pests; the treasurer shall pay the amounts so certified. No disbursement shall be made by the committee unless the owner of the premises affected has requested the committee to take steps to suppress or control the pests or when steps have been undertaken by another authority.

(18) LAND CLEARING AND WEED CONTROL. The board may purchase or accept by gift or grant tractors, bulldozers and other equipment for clearing and draining land and controlling weeds on same, and for such purposes to operate or lease the same for work on private lands. The board may charge fees for such service and for rental of such equipment on a cost basis.

(19) LAND CONSERVATION COMMITTEE. Each board shall create a land conservation committee.

(20) LAND CONSERVATION.

(a) *Soil and water conservation.* Each board is responsible for developing and implementing a soil and water conservation program, that is specified under ch. 92, through its land conservation committee.

(b) *Committee powers and duties.* The land conservation committee created by the board has the powers and duties that are specified for that committee under ch. 92.

(c) *Appropriation of funds.* The board may appropriate funds for soil and water conservation and for other purposes that relate to land conservation.

(d) *Land use and land management.* The board may enact ordinances under s. 92.11 that regulate land use and land management practices to promote soil and water conservation.

(21) CONSERVATION CONGRESS. The board may appropriate money to defray the expenses of county delegates to the annual convention and other activities of the Wisconsin conservation congress.

(22) BILLBOARD REGULATION. The board may regulate, by ordinance, the maintenance and construction of billboards and other similar structures on premises abutting on highways maintained by the county so as to promote the safety of public travel thereon. Such ordinances shall not apply within cities, villages and towns which have enacted ordinances regulating the same subject matter.

(23) COUNTY NATURAL BEAUTY COUNCILS. The board may create a county natural beauty council as a committee of the board, composed of such board members, public members and governmental personnel as the board designates. The council shall advise governmental bodies and citizens in the county on matters affecting the preservation and enhancement of the county's natural beauty, and aid and facilitate the aims and objectives of the natural beauty council described in s. 144.76 (3) (intro.), 1973 stats.

(24) LIME TO FARMERS. The board may manufacture agricultural lime and sell and distribute it at cost to farmers and may acquire lands for such purposes.

(25) INTERSTATE HAZARDOUS LIQUID PIPELINES. A county may not require an operator of an interstate hazardous liquid pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.

History: 1995 a. 201 ss. 108, 109, 133, 150, 161, 163, 172, 214 to 216, 218 to 221, 437 to 442, 438, 449 to 451, 455, 456; 1995 a. 227; 1997 a. 35; 1999 a. 150 s. 672; 2005 a. 149; 2011 a. 146, 150; 2013 a. 14, 165; 2015 a. 55; 2015 a. 197 s. 51; 2017 a. 207, s. 5.

The authority of a county to enact and enforce a minimum standards housing code is discussed. 59 Atty. Gen. 248.

Section 59.07 (49) [now s. 59.70 (22)] authorizes billboard regulations relating solely to highway safety. 61 Atty. Gen. 191.

The county board may delegate relatively broad powers to the land conservation committee in connection with the lease or purchase of real property for the purposes of soil and water conservation, but such property transactions are subject to the approval of the county board. 74 Atty. Gen. 227.

A board established under s. 59.07 (135) [now s. 59.70 (2)] is restricted to performing advisory, policy-making, or legislative functions. 77 Atty. Gen. 98.

Section 59.07 (135) (L) [now 59.70 (2) (L)] authorizes counties that are responsible units of government to levy taxes for capital and operating expenses incurred in the operation of the county's recycling program only upon local governments that are not responsible units of government. Counties may levy taxes for both operating and capital expenses incurred in connection with any other form of solid waste management activity only on local governments participating in that activity. 80 Atty. Gen. 312.

Section 59.18 (2) (b) transfers the authority to supervise the administration of county departments from boards and commissions to department heads appointed by the county administrator. Section 59.18 (2) therefore entirely negates sub. (2) insofar as it provides that the board may "employ" a system manager. In a county with a county administrator, the solid waste management board is purely an advisory body to the county administrator and to the county board and a policy-making body for the solid waste management department as a whole. OAG 1-12.

59.72 Land information.

(1) DEFINITIONS. In this section:

(a) "Land information" means any physical, legal, economic or environmental information or characteristics concerning land, water, groundwater, subsurface resources or air in this state. "Land information" includes information relating to topography, soil, soil erosion, geology, minerals, vegetation, land cover, wildlife, associated natural resources, land ownership, land use, land use controls and restriction, jurisdictional boundaries, tax assessment, land value, land survey records and

references, geodetic control networks, aerial photographs, maps, planimetric data, remote sensing data, historic and prehistoric sites and economic projections.

(b) "Land records" means maps, documents, computer files and any other storage medium in which land information is recorded.

(c) "Local governmental unit" means a municipality, regional planning commission, special purpose district or local governmental association, authority, board, commission, department, independent agency, institution or office.

(2) DUTIES.

(a) No later than June 30, 2017, the board shall post on the Internet, in a searchable format determined by the department of administration, the following information related to individual land parcels:

1. Property tax assessment data as provided to the county by municipalities, including the assessed value of land, the assessed value of improvements, the total assessed value, the class of property, as specified in s. 70.32 (2) (a), the estimated fair market value, and the total property tax.

2. Any zoning information maintained by the county.

3. Any property address information maintained by the county.

4. Any acreage information maintained by the county.

(b) No later than June 30 following the end of any year in which a county that accepts a grant under s. 16.967 (7) or retains any fees under sub. (5) (b), the county land information office shall submit to the department of administration a report describing the expenditures made with the moneys derived from those grants or retained fees.

(3) LAND INFORMATION OFFICE. The board may establish a county land information office or may direct that the functions and duties of the office be performed by an existing department, board, commission, agency, institution, authority, or office. If the board establishes a county land information office, the office shall:

(a) Coordinate land information projects within the county, between the county and local governmental units, between the state and local governmental units and among local governmental units, the federal government and the private sector.

(b) Within 2 years after the land information office is established, develop and receive approval for a countywide plan for land records modernization. For any county in which land records are not accessible on the Internet, the plan shall include a goal of providing access to public land records on the Internet. The plan shall be submitted for approval to the department of administration under s. 16.967 (3) (e). No later than January 1, 2014, and by January 1 every 3 years thereafter, the land information office shall update the plan and receive approval from the department of administration of the updated plan. A plan under this paragraph shall comply with the standards developed by the department of administration under s. 16.967 (3) (cm).

(c) Review and recommend projects from local governmental units for grants from the department of administration under s. 16.967 (7).

(3m) LAND INFORMATION COUNCIL.

(a) If the board has established a land information office under sub. (3), the board shall have a land information council consisting of not less than 8 members. The council shall consist of the register of deeds, the treasurer, and, if one has been appointed, the real property lister or their designees and the following members appointed by the board for terms prescribed by the board:

1. A member of the board.

2. A representative of the land information office.

3. A realtor or a member of the Realtors Association employed within the county.

4. A public safety or emergency communications representative employed within the county.

4m. The county surveyor or a professional land surveyor employed within the county.

5. Any other members of the board or public that the board designates.

(am) Notwithstanding par. (a), if no person is willing to serve under par. (a) 3., 4., or 4m., the board may create or maintain the council without the member designated under par. (a) 3., 4., or 4m.

(b) The land information council shall review the priorities, needs, policies, and expenditures of a land information office established by the board under sub. (3) and advise the county on matters affecting the land information office.

(4) AID TO COUNTIES.

(a) A board that has established a land information office under sub. (3) and a land information council under sub. (3m) may apply to the department of administration for a grant for a land information project under s. 16.967 (7).

(b) A board shall use any grant received by the county under s. 16.967 (7) (a) and any fees retained under sub. (5) (b) to design, develop, and implement a land information system under s. 16.967 (7) (a) 1. and to make public records in the system accessible on the Internet before using these funds for any other purpose.

(5) LAND RECORD MODERNIZATION FUNDING.

(a) Before the 16th day of each month a register of deeds shall submit to the department of administration \$15 from the fee for recording or filing each instrument that is recorded or filed under s. 59.43 (2) (ag) 1. or (e), less any amount retained by the county under par. (b).

(b) Except as provided in s. 16.967 (7m), a county may retain \$8 of the portion of each fee submitted to the department of administration under par. (a) from the fee for recording or filing each instrument that is recorded or filed under s. 59.43 (2) (ag) 1. or (e) if all of the following conditions are met:

1. The county has established a land information office under sub. (3).

1m. The county has created a land information council under sub. (3m).

2. A land information office has been established for less than 2 years or has received approval for a countywide plan for land records modernization under sub. (3) (b).

3. The county uses the fee retained under this paragraph to satisfy the requirements of sub. (2) (a), or, if the county has satisfied the requirements of sub. (2) (a), to develop, implement, and maintain the countywide plan for land records modernization on the Internet.

(6) LAND RECORDS MODERNIZATION. With regard to land records modernization as described in sub. (3) (b), if a register of deeds transfers an instrument that was filed or recorded with the register of deeds before April 1, 2006, to an electronic format, as described in s. 59.43 (4), the register of deeds shall make a reasonable effort to make social security numbers from the transferred instrument's electronic format not viewable or accessible on the Internet.

History: 1989 a. 31, 339; 1995 a. 201 s. 457; Stats. 1995 s. 59.72; 1997 a. 27 ss. 2175aj to 2175c, 9456 (3m); 2001 a. 16, 104; 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 ss. 8 to 9, 23, 24; 2005 a. 25 ss. 1236 to 1238, 2493; 2009 a. 314; 2013 a. 20, 358.

59.73 Surveys; expressing bearings, subdividing sections.

(1) HOW BEARINGS EXPRESSED IN SURVEYS. In all surveys the bearings shall be expressed with reference to a magnetic, true or other identifiable line of the public land survey, recorded and filed subdivision or to the Wisconsin coordinate system. In all cases the reference selected shall be so noted as set forth in s. 59.45 (1) (a) 2. and if magnetic must be retraceable and identifiable by reference to a monumented line.

(2) SUBDIVIDING SECTIONS. Whenever a county surveyor or professional land surveyor is required to subdivide a section or smaller subdivision of land established by the United States survey, the county surveyor or professional land surveyor shall proceed according to the statutes of the United States and the rules and regulations made by the secretary of the interior in conformity to the federal statutes. While so engaged a professional land surveyor and the professional land surveyor's assistants shall not be liable as a trespasser and shall be liable only for any actual damage done to land or property.

History: 1995 a. 201 ss. 393, 394, 421; 1999 a. 96; 2013 a. 358.

The exemption from liability for trespass in sub (2) did not prevent the DNR from issuing a citation against a surveyor for violating an administrative rule prohibiting operating vehicles on park land. *DNR v. Bowden*, 2002 WI App 129, 254 Wis. 2d 625, 647 N.W.2d 865, 01-2820.

Resurveys of public lands are discussed. *United States v. Citko*, 517 F. Supp. 233 (1981).

59.74 Perpetuation of section corners, landmarks.**(1) RELOCATION AND PERPETUATION OF SECTION CORNERS AND DIVISION LINES.**

(a) If a majority of all the resident landowners in any section of land within this state desire to establish, relocate or perpetuate any section or other corner of any section, or in the same section a division line of the section, they may make a formal application in writing to the circuit judge for the county in which the land is situated. The circuit judge shall file the application in his or her court and shall within a reasonable time give at least 10 days' notice in writing to the owners of all adjoining lands, if those owners reside in the county where the land is situated and if not, by publication of a class 3 notice, under ch. 985, stating the day and hour when the circuit judge will consider and pass upon such application. The circuit judge shall hear all interested parties and approve or reject the application at that time. If the application is approved, the clerk shall notify the county surveyor who shall within a reasonable time proceed to make the required survey and location. If a corner is to be perpetuated, the surveyor shall deposit in the proper place a stone or other equally durable material of the dimensions and in the manner and with the markings provided under s. 60.84 (3) (c), and shall also erect witness monuments as provided under sub. (2). The surveyor shall be paid the cost of the perpetuation from the general fund of the county.

(b) All expense and cost of the publication of the notice and of the survey and perpetuation shall be apportioned by the clerk among the several parcels of land in the section upon the basis of the area surveyed, shall be included by the clerk in the next tax roll and shall be collected in the same manner as other taxes are collected.

(2) PERPETUATION OF LANDMARKS.**(a)**

1. No landmark, monument, corner post of the government survey or survey made by the county surveyor or survey of public record may be destroyed, removed, or covered by any material that will make the landmark, monument, or corner post inaccessible for use, without first having erected witness or reference monuments as provided in subd. 2. for the purpose of identifying the location of the landmark and making a certified copy of the field notes of the survey setting forth all the particulars of the location of the landmark with relation to the reference or witness monuments so that its location can be determined after its destruction or removal. The certified copy of the field notes shall be filed as provided under par. (b) 2.

2. Witness monuments shall be made of durable material, including cement, natural stone, iron or other equally durable material, except wood. If iron pipe monuments are used, they shall be made of 2 inch or more galvanized iron pipe not less than 30 inches in length having an iron or brass cap fastened to the top and marked with a cross cut on the top of the cap where the point of measurement is taken. If witness monuments are made of cement, stone or similar material, they shall be not less than 30 inches in length nor less than 5 inches in diameter along the shortest diagonal marked on the top with a cross where the point of measurement is taken.

(b)

1. Whenever it becomes necessary to destroy, remove, or cover up in such a way that will make it inaccessible for use, any landmark, monument of survey, or corner post within the meaning of this subsection, the person including employees of governmental agencies who intend to commit such act shall serve written notice at least 30 days prior to the act upon the county surveyor of the county within which the landmark is located. Notice shall also be served upon the municipality's engineer if the landmark is located within the corporate limits of a municipality. The notice shall include a description of the landmark, monument of survey, or corner post and the reason for removing or covering it. In this paragraph, removal of a landmark includes the removal of railroad track by the owner of the track. In a county having a population of less than 750,000 where there is no county surveyor, notice shall be served upon the clerk. In a county with a population of 750,000 or more where there is no county surveyor, notice shall be served upon the executive director of the regional planning commission which acts in the capacity of county surveyor for the county. Notwithstanding par. (c), upon receipt of the notice the clerk shall appoint a professional land surveyor to perform the duties of a county surveyor under subd. 2.

2. The county surveyor or executive director of the regional planning commission, upon receipt of notice under subd. 1., shall within a period of not to exceed 30 working days, either personally or by a

deputy, or by the municipality's engineer make an inspection of the landmark, and, if he or she considers it necessary because of the public interest to erect witness monuments to the landmark, he or she shall erect 4 or more witness monuments or, if within a municipality, may make 2 or more offset marks at places near the landmark where they will not be disturbed. The county surveyor shall make a survey and field notes giving a description of the landmark and the witness monuments or offset marks, stating the material and size of the witness monuments and locating the offset marks, the horizontal distance and courses in terms of the references set forth in s. 59.45 (1) (a) 2. that the witness monuments bear from the landmark and, also, of each witness monument to all of the other witness monuments. The county surveyor may also make notes as to such other objects, natural or artificial, that will enable anyone to locate the position of the landmark. The county surveyor upon completing the survey shall make a certified copy of the field notes of the survey and record it as provided under s. 59.45 (1). The municipality's engineer upon completing the survey shall record the notes in his or her office, open to the inspection of the public, and shall file a true and correct copy with the county surveyor. In a county with a population of 750,000 or more, the certified copy of the field notes of the survey shall be filed in the office of the regional planning commission which acts in the capacity of county surveyor for the county.

(c) In those counties where there are no county surveyors a petition can be made to the board by any resident of this state requesting the board to appoint a professional land surveyor to act in the capacity of the county surveyor. The board, upon receipt of this petition, shall appoint a professional land surveyor to act in the capacity of the county surveyor. In counties with a population of 750,000 or more, the board may appoint a governmental agency to act in the capacity of county surveyor.

(d) The cost of the work of perpetuating the evidence of any landmark under the scope of this subsection shall be borne by the county or counties proportionally, in which said landmark is located.

(e)

1. Except as provided in subd. 2., any person who removes, destroys or makes inaccessible any landmark, monument of survey, corner post of government survey, survey made by the county surveyor or survey of public record without first complying with this subsection shall be fined not to exceed \$1,000 or imprisoned in the county jail for not more than one year.

2. Any person who removes railroad track as provided in par. (b) 1. without first complying with par. (b) 1. shall be subject to a forfeiture not to exceed \$1,000.

(f) Any person who destroys, removes or covers any landmark, monument or corner post rendering them inaccessible for use, without first complying with pars. (a) 1. and (b) 1. shall be liable in damages to the county in which the landmark is located, for the amount of any additional expense incurred by the county because of such destruction, removal or covering.

(g) Every professional land surveyor and every officer of the department of natural resources and the district attorney shall enforce this subsection.

(h) Any professional land surveyor employed by the department of transportation or by a county highway department, may, incident to employment as such, assume and perform the duties and act in the capacity of the county surveyor under this subsection with respect to preservation and perpetuation of landmarks, witness monuments, and corner posts upon and along state trunk, county trunk, and town highways. Upon completing a survey and perpetuating landmarks and witness monuments under par. (b) 2., a professional land surveyor employed by the state shall file the field notes and records in the district office or main office of the department of transportation, and a professional land surveyor employed by a county shall file the field notes and records in the office of the county highway commissioner, open to inspection by the public, and in either case a true and correct copy of the field notes and records shall be filed with the county surveyor. In a county with a population of 750,000 or more where there is no county surveyor, a copy of the field notes and records shall also be filed in the office of the regional planning commission which acts in the capacity of county surveyor for the county.

(i) The records of the corners of the public land survey may be established and perpetuated in the following manner: commencing on January 1, 1970, and in each calendar year thereafter, the county surveyor or a deputy may check and establish or reestablish and reference at least 5 percent of all corners originally established in the county by government surveyors, so that within 20 years or less all the original corners will be established or reestablished and thereafter perpetuated.

(j) The county surveyor may employ other professional land surveyors to assist in this work and may accept reference checks for these corners from any professional land surveyor.

(k) The cost of perpetuating these corners shall be paid out of the county road and bridge fund or other county fund under s. 83.11.

History: 1995 a. 201 ss. 395, 396, 423; 2013 a. 358; 2017 a. 207, s. 5.

Resurveys of the public lands under s. 59.635 (8) [now 59.74 (2) (i)] are discussed. 66 Atty. Gen. 134.

A city or village engineer acting under s. 59.635 (2) [now 59.74 (2) (b) 2.] need not be registered as a land surveyor. 68 Atty. Gen. 185.

59.75 Certificates and records as evidence. The certificate and also the official record of the county surveyor when produced by the legal custodian thereof, or any of the county surveyor's deputies, when duly signed by the county surveyor in his or her official capacity, shall be admitted as evidence in any court within the state, but the same may be explained or rebutted by other evidence. If any county surveyor or any of his or her deputies are interested in any tract of land a survey of which becomes necessary, such survey may be executed by any professional land surveyor appointed by the board.

History: 1977 c. 449; 1995 a. 201 s. 398; Stats. 1995 s. 59.75; 2013 a. 358.

WISCONSIN STATUTES
CHAPTER 70
GENERAL PROPERTY TAXES

70.09 Official real property lister; forms for officers.

(1) LISTER, COUNTY BOARDS MAY PROVIDE FOR. Any county board may appoint a county real property lister and may appropriate funds for the operation of the department of such lister.

(2) DUTIES OF LISTER. The county board may delegate any of the following duties to the lister:

(a) To prepare and maintain accurate ownership and description information for all parcels of real property in the county. That information may include the following:

1. Parcel numbers.

2. The owner's name and an accurate legal description as shown on the latest records of the office of the register of deeds.

3. The owner's mailing address.

4. The number of acres in the parcel if it contains more than one acre.

5. School district and special purpose district codes.

(b) To provide information on parcels of real property in the county for the use of taxation district assessors, city, village and town clerks and treasurers and county offices and any other persons requiring that information.

(c) To serve as the coordinator between the county and the taxation districts in the county for assessment and taxation purposes.

(d) To provide computer services related to assessment and taxation for the assessors, clerks and treasurers of the taxation districts in the county, including but not limited to data entry for the assessment roll, notice of assessments, summary reports, tax roll and tax bills.

(3) BASIC TAX FORMS.

(a) The department of revenue shall prescribe basic uniform forms of assessment rolls, tax rolls, tax bills, tax receipts, tax roll settlement sheets and all other forms required for the assessment and collection of general property taxes throughout the state, and shall furnish each county designee a sample of the uniform forms.

(c) If any county has reason to use forms for assessment and collection of taxes in addition to those prescribed under par. (a), the county real property lister and treasurer jointly may prescribe such additional forms for use in their county, upon approval of the department of revenue.

(d) Each county designee who requires the forms prescribed in pars. (a) and (c) shall procure them at county expense and shall furnish such forms to the assessors, clerks and treasurers of the taxation districts within the county, as needed in the discharge of their duties.

History: 1977 c. 142; 1983 a. 275; 1985 a. 12 ss. 2, 3, 13; 1991 a. 204; 1995 a. 225.

WISCONSIN STATUTES
CHAPTER 254
ENVIRONMENTAL HEALTH

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Cross-reference: See definitions in s. 250.01.

SUBCHAPTER I GENERAL PROVISIONS

254.01 Definitions. In this chapter:

- (1) "Environmental health" means the assessment, management, control and prevention of environmental factors that may adversely affect the health, comfort, safety or well-being of individuals.
- (2) "Human health hazard" means a substance, activity or condition that is known to have the potential to cause acute or chronic illness, to endanger life, to generate or spread infectious diseases, or otherwise injuriously to affect the health of the public.

History: 1993 a. 27; 2007 a. 130.

254.015 Departmental power; designation. The department may designate a local health department to carry out a function of the department under this chapter.

History: 1993 a. 27.

254.02 Health risk assessments.

(1) In this section:

(a) "Adverse health effect" means a condition that results in human morbidity, mortality, impaired reproductive function or toxicity or teratogenic, carcinogenic or mutagenic effects.

(b) "Health risk assessment" means the determination of the relationship between the magnitude of exposure to environmental hazards and the probability of occurrence of adverse health effects.

(2) The department is the lead state agency for health risk assessment.

(3)

(a) The department of agriculture, trade and consumer protection, the department of corrections, the department of safety and professional services, and the department of natural resources shall enter into memoranda of understanding with the department to establish protocols for the department to review proposed rules of those state agencies relating to air and water quality, occupational health and safety, institutional sanitation, toxic substances, indoor air quality, or waste handling and disposal.

(b) The department shall review proposed rules in the areas under par. (a) and make recommendations to the appropriate state agency if public health would be adversely impacted or if prevention of human health hazards or disease is not adequately addressed by the proposed rules. The department shall make recommendations for enforcement standards to address public health concerns of the proposed rules.

(4) The department and the state laboratory of hygiene shall enter into a memorandum of understanding that delineates the public health testing and consultative support that the state laboratory of hygiene shall provide to local health departments.

(5) The department shall assess the acute or chronic health effect from occupational or environmental human health hazards exposure as follows:

(a) The chief medical officer for environmental health shall establish a system for assessment, collection and surveillance of disease outcome and toxic exposure data.

(b) State agencies and local health departments shall report known incidents of environmental contamination to the department. The department shall investigate human health implications of an incident and determine the need to perform a health risk assessment. The department may require the party that is responsible for an incident to perform a health risk assessment.

(6) State agencies that require health risk assessments as part of their permit issuance or regulatory responsibilities shall enter into a memorandum of understanding with the department that permits the state health officer to establish a risk management protocol to review and make recommendations on the completeness of the health risk assessments.

History: 1993 a. 27; 1995 a. 27 ss. 6327, 9116 (5); 2011 a. 32; 2015 a. 55.

254.04 Authority of department of safety and professional services. Nothing in this chapter affects the authority of the department of safety and professional services relative to places of employment, elevators, boilers, fire escapes, fire protection, or the construction of public buildings.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.60; 1993 a. 27 s. 81; Stats. 1993 s. 254.78; 1995 a. 27 ss. 6344, 9116 (5); 2011 a. 32; 2015 a. 55 s. 4093; Stats. 2015 s. 254.04.

254.05 Joint employment. The department and the department of safety and professional services may employ experts, inspectors or other assistants jointly.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.61; 1993 a. 27 s. 82; Stats. 1993 s. 254.79; 1995 a. 27 ss. 6345, 9116 (5); 2011 a. 32; 2015 a. 55 s. 4094; Stats. 2015 s. 254.05.

SUBCHAPTER II TOXIC SUBSTANCES

254.11 Definitions. In this subchapter:

(1) "Asbestos" means chrysotile, crocidolite, amosite, fibrous tremolite, fibrous actinolite or fibrous anthophyllite.

(2) "Asbestos abatement activity" means any activity which disturbs asbestos-containing material, including but not limited to the repair, enclosure, encapsulation or removal of asbestos-containing material and the renovation or demolition of any part of a structure.

(3) "Asbestos-containing material" means asbestos or any material or product which contains more than one percent of asbestos.

(4) "Asbestos management activity" means an inspection for asbestos-containing material, the design of an asbestos response action or the development of an asbestos management plan.

(4g) "Certificate of lead-free status" means a certificate issued by a certified lead risk assessor or other person certified under s. 254.176 that documents a finding by the assessor that a premises, dwelling or unit of a dwelling is free of lead-bearing paint as of the date specified on the certificate.

(4h) "Certificate of lead-safe status" means a certificate issued by a certified lead risk assessor or other person certified under s. 254.176 that documents that the assessor detected no lead-bearing paint hazards affecting the premises, dwelling or unit of the dwelling on the date specified on the certificate.

(5) "Dwelling" means any structure, all or part of which is designed or used for human habitation.

(5m) "Elevated blood lead level" means a level of lead in blood that is any of the following:

(a) Twenty or more micrograms per 100 milliliters of blood, as confirmed by one venous blood test.

(b) Fifteen or more micrograms per 100 milliliters of blood, as confirmed by 2 venous blood tests that are performed at least 90 days apart.

(6) "Fibrous" means having parallel sides and a length which is at least 3 times the diameter and which results in an aspect ratio of 3 to one or more.

(7) "Hematofluorometer" means an instrument used in identification of minute amounts of a substance in human blood by detection and measurement of the characteristic wavelength of the light emitted by the substance during fluorescence.

(7g) "Imminent lead hazard" means a lead hazard that, if allowed to continue, will place a child under 6 years of age at risk of developing lead poisoning or lead exposure, as determined by the department or other state agency, a local health department or a federal agency.

(7r) "Interim control activity" means any set of measures designed to temporarily reduce human exposure or likely exposure to a lead hazard, including specialized cleaning, repair, maintenance, painting, temporary containment and ongoing monitoring of lead hazards or potential lead hazards.

(8) "Lead-bearing paint" means any paint or other surface coating material containing more than 0.06 percent lead by weight, calculated as lead metal, in the total nonvolatile content of liquid paint, more than 0.5 percent lead by weight in the dried film of applied paint, or more than 1 milligram of lead per square centimeter in the dried film of applied paint.

(8d) "Lead-bearing paint hazard" has the meaning specified by rule by the department.

(8g) "Lead hazard" means any substance, surface or object that contains lead and that, due to its condition, location or nature, may contribute to the lead poisoning or lead exposure of a child under 6 years of age.

(8j) "Lead hazard abatement" means any set of measures designed to permanently eliminate a lead hazard, including all of the following:

(a) The removal of lead-bearing paint and lead-contaminated dust, the permanent containment or encapsulation of lead-bearing paint, the replacement of surfaces or fixtures painted with lead-bearing paint, and the removal or covering of lead-contaminated soil.

(b) All preparation, clean-up, disposal and postabatement clearance testing activities associated with the measures under par. (a).

(8n) "Lead hazard reduction" means actions designed to reduce human exposure to lead hazards, including lead hazard abatement and interim control activities involving lead-bearing paint or lead-contaminated dust or soil or clearance activities that determine whether an environment contains a lead hazard.

(8s) "Lead investigation" means a measure or set of measures designed to identify the presence of lead or lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

(8u) "Lead management activity" means a lead investigation or the design or management of lead hazard reduction.

(9) "Lead poisoning or lead exposure" means a level of lead in the blood of 5 or more micrograms per 100 milliliters of blood.

(9g) "Lead risk assessor" has the meaning specified by rule by the department.

(9r) "Occupant" means a person who leases or lawfully resides in a dwelling or premises.

(10) "Owner" means a person who has legal title to any dwelling or premises.

(10m) "Premises" means any of the following:

(a) An educational or child care facility, including attached structures and the real property upon which the facility stands, that provides services to children under 6 years of age.

(b) Other classes of buildings and facilities, including attached structures and real property upon which the buildings or facilities stand, that the department determines by rule to pose a significant risk of contributing to the lead poisoning or lead exposure of children under 6 years of age.

(11) "Public employee" has the meaning given under s. 101.055 (2) (b).

(12) "School" means any local education agency, as defined in 20 USC 3381, the owner of any nonpublic, nonprofit elementary or secondary school building or any governing authority of any school operated under 20 USC 921 to 932.

(13) "Third-party payer" means a disability insurance policy that is required to provide coverage for a blood lead test under s. 632.895 (10) (a); a health maintenance organization or preferred provider plan under ch. 609; a health care coverage plan offered by the state under s. 40.51 (6); a self-insured health plan offered by a city or village under s. 66.0137 (4), a local governmental unit or technical college district under s. 66.0137 (4m), a town under s. 60.23 (25), a county under s. 59.52 (11) (c), or a school district under s. 120.13 (2) (b); or a health care plan operated by a cooperative association organized under s. 185.981.

History: 1993 a. 27 s. 190, 191, 192, 425, 427 to 430; 1993 a. 183; 1993 a. 450 ss. 15 to 19, 25 to 34; 1995 a. 417; 1999 a. 113; 1999 a. 150 s. 672; 2001 a. 16; 2007 a. 91; 2009 a. 165; 2015 a. 55; 2017 a. 59.

254.115 Denial, nonrenewal and revocation of certification and permit based on delinquent taxes or unemployment insurance contributions.

(1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with the applicant's social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing or renewing any of the following:

(a) Certification under s. 254.176.

(b) A certification card under s. 254.20 (3) or (4).

(1m) If an individual who applies for or to renew a certification, certification card or permit under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certification, certification card or permit, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A certification, certification card or permit issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

(3) Except as provided in sub. (1m), the department shall deny an application for the issuance or renewal of a certification, certification card or permit specified in sub. (1) if the applicant does not provide the information specified in sub. (1).

(4) The department shall deny an application for the issuance or renewal of a certification, certification card or permit specified in sub. (1), or shall revoke the certification, certification card or permit specified in sub. (1), if the department of revenue certifies under s. 73.0301 that the applicant for or holder of the certification, certification card or permit is liable for delinquent taxes.

(5) The department shall deny an application for the issuance or renewal of a certification, certification card or permit specified in sub. (1), or shall revoke the certification, certification card or

permit specified in sub. (1), if the department of workforce development certifies under s. 108.227 that the applicant for or holder of the certification, certification card or permit is liable for delinquent unemployment insurance contributions.

History: 1997 a. 237; 1999 a. 9; 2007 a. 20; 2013 a. 36; 2015 a. 55.

254.12 Use or sale of lead-bearing paints.

(1) No person may apply lead-bearing paints:

(a) To any exposed surface on the inside of a dwelling;

(b) To the exposed surface of a structure used for the care of children; or

(c) To any fixture or other object placed in or upon any exposed surface of a dwelling and ordinarily accessible to children.

(2) No person may sell or transfer any fixture or other object intended to be placed upon any surface on the inside of a dwelling, containing a lead-bearing paint and ordinarily accessible to children.

History: 1979 c. 221; 1993 a. 16; 1993 a. 27 s. 431; Stats. 1993 s. 254.12; 1993 a. 450.

254.13 Reporting requirements.

(1) Every physician who diagnoses lead poisoning or lead exposure, or any nurse, hospital administrator, director of a clinical laboratory or local health officer who has verified information of the existence of any person found or suspected to have lead poisoning or lead exposure, shall report to the department or to the local health officer of the region in which the person resides within 48 hours after verifying this information. The local health officer shall report to the department the name, address, laboratory results, date of birth and any other information about the person that the department considers essential. Any physician, nurse, hospital administrator, director of a clinical laboratory, local health officer or allied health professional making such a report in good faith shall be immune from any civil or criminal liability that otherwise might be incurred from making the report.

(2) A person who screens a child under 6 years of age for lead poisoning or lead exposure under this subchapter, or any rule promulgated under this subchapter, shall report the results of the screening to the department within the time period for reporting by rule. The department shall promulgate rules specifying the form of the reports required under this subsection. A person making a report under this subsection in good faith is immune from civil or criminal liability that might otherwise be incurred from making the report.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 432; Stats. 1993 s. 254.13; 1993 a. 450.

Cross-reference: See also ch. DHS 181, Wis. adm. code.

254.15 Departmental duties. The department shall:

(1) Develop and implement a comprehensive statewide lead poisoning or lead exposure prevention and treatment program that includes lead poisoning or lead exposure prevention grants under s. 254.151; any childhood lead poisoning screening requirement under rules promulgated under ss. 254.158 and 254.162; any requirements regarding care coordination and follow-up for children with lead poisoning or lead exposure required under rules promulgated under s. 254.164; responses to reports of lead poisoning or lead exposure under s. 254.166; any lead investigation requirements under rules promulgated under ss. 254.167 and 254.168; any lead hazard reduction requirements under rules promulgated under s. 254.172; certification, accreditation and approval requirements under ss. 254.176 and 254.178; any certification requirements and procedures under rules promulgated under s. 254.179; and any fees imposed under s. 254.181.

(2) Provide laboratory testing of biological and environmental lead specimens for lead content to any physician, hospital, clinic, municipality or private organization that cannot secure or provide testing through other sources. The department may not assume responsibility for blood lead analysis required in programs in operation on April 30, 1980.

(3) Develop or encourage the development of appropriate programs and studies to identify sources of lead poisoning or lead exposure, and assist other entities in the identification of lead in children's blood and of the sources of the lead poisoning or lead exposure.

(4) Provide technical assistance and consultation to local, county or regional governmental or private agencies to promote and develop lead poisoning or lead exposure prevention programs that afford opportunities for employing residents of communities and neighborhoods affected by lead poisoning or lead exposure from lead-bearing paint, and that provide appropriate training, education and information to inform these residents of the opportunities for employment.

(5) Provide recommendations for the identification and treatment of lead poisoning or lead exposure.

(6) Develop educational programs to communicate to parents, educators and officials of local boards of health the health danger of lead poisoning or lead exposure from lead-bearing paint among children.

History: 1979 c. 221; 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1993 a. 27 ss. 434, 435; Stats. 1993 s. 254.15; 1993 a. 183; 1993 a. 450 ss. 21, 43; 1999 a. 113, 186; 2005 a. 25; 2007 a. 91.

254.151 Lead poisoning or lead exposure prevention grants. From the appropriation account under s. 20.435 (1) (ef), the department shall award the following grants under criteria that the department shall establish in rules promulgated under this section:

(1) To fund educational programs about the dangers of lead poisoning or lead exposure.

(2) To fund lead poisoning or lead exposure screening, care coordination and follow-up services, including lead investigations, to children under age 6 who are not covered by a 3rd-party payer.

(3) To fund administration or enforcement of responsibilities delegated under s. 254.152.

(4) To fund other activities related to lead poisoning or lead exposure.

(5) To fund any combination of the purposes under subs. (1) to (4).

(6) To develop and implement outreach and education programs for health care providers to inform them of the need for lead poisoning or lead exposure screening and of the requirements of this subchapter relating to lead poisoning or lead exposure.

(7) In each fiscal year, \$125,000 to fund lead screening and outreach activities at a community-based human service agency that provides primary health care, health education and social services to low-income individuals in 1st class cities.

History: 1993 a. 450; 1995 a. 27; 1997 a. 27; 2007 a. 91; 2009 a. 28.

Cross-reference: See also ch. DHS 182, Wis. adm. code.

254.152 Delegation to local health departments. Except with respect to the department's authority to promulgate rules under this chapter, the department may designate local health departments as its agents in administering and enforcing ss. 254.11 to 254.178 and any rules promulgated under those sections. The department may not designate a local health department as its agent unless the department provides a grant that the department determines to be sufficient for the local health department to carry out any responsibilities as an agent designated under this section.

History: 1993 a. 450.

254.154 Local authority. This subchapter does not prohibit any city, village, town or other political subdivision from enacting and enforcing ordinances establishing a system of lead poisoning or lead exposure control that provides the same or higher standards than those set forth in this subchapter. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of any person, entity, municipality or other political subdivision to sue for damages or equitable relief. Nothing in this subchapter may be interpreted or applied in any manner to impair the right of a municipality or other political subdivision to impose a penalty for or restrain the violation of an ordinance specified in this section.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 436; Stats. 1993 s. 254.16; 1993 a. 450 s. 48; Stats. 1993 s. 254.154; 1999 a. 113.

254.156 Definition of lead poisoning or lead exposure. Notwithstanding s. 254.11 (intro.) and (9), whenever the centers for disease control and prevention of the federal department of health and human

services specifies a standard for the determination of lead poisoning or lead exposure that differs from that specified in s. 254.11 (9), the department shall promulgate a rule defining "lead poisoning or lead exposure" to correspond to the specification of the centers for disease control and prevention. Rules promulgated under this section supersede s. 254.11 (9) with respect to the requirements of this subchapter.

History: 1993 a. 450; 2015 a. 55.

254.158 Screening recommendations. The department may promulgate rules specifying recommended lead poisoning or lead exposure screening methods and intervals for children under 6 years of age. Any rules promulgated under this section:

(1) Shall meet any federal requirements for the screening of children under 6 years of age.

(1m) May include an appropriate questionnaire regarding potential exposure to lead and products containing lead.

(2) Shall permit at least the following persons to provide screening services:

(a) A person licensed to practice medicine or osteopathy under ch. 448.

(b) A nurse registered, permitted or licensed under ch. 441.

(c) A public health nurse under s. 250.06 (1).

(3) Shall exempt a child from the lead screening recommendations if the child's parent, guardian or legal custodian signs a written waiver objecting to the lead poisoning screening for reasons of health, religion or personal conviction.

(4) Shall exempt a child from the lead poisoning screening recommendations if the child's parent, guardian or legal custodian presents written evidence of a lead screening that was conducted within the previous 6 months, or other time period specified by the department by rule, and that was conducted in accordance with the laws or rules of another state whose laws or rules the department determines to be at least as stringent as the screening methods and intervals recommended under this section.

History: 1993 a. 450.

254.162 Screening requirements.

(1) INSTITUTIONS AND PROGRAMS PROVIDING SERVICES TO CHILDREN UNDER 6 YEARS OF AGE. The department may promulgate rules requiring the following institutions and programs to obtain written evidence that each child under 6 years of age participating in the institution or program has obtained a lead screening, or is exempt from obtaining one, under the recommended lead screening levels and intervals contained in the rules promulgated by the department under s. 254.158, within the time periods specified by the department:

(a) Multidisciplinary evaluations for early intervention under s. 51.44.

(b) Head start programs administered by a head start agency under 42 USC 9836.

(c) Child care providers certified under s. 48.651 and child care centers licensed under s. 48.65, provisionally licensed under s. 48.69, or established or contracted for under s. 120.13 (14).

(d) School-based programs serving children under 6 years of age, including kindergartens, special education and related services for children with disabilities, as defined in s. 115.76 (5), and other early childhood programs.

(e) Health care programs that provide services to children under 6 years of age and that receive state funding.

(f) Other institutions or programs that provide services to children under 6 years of age.

(2) INFORMATION REQUIREMENT. If a program or institution is required to request written evidence of a lead screening under rules promulgated under sub. (1), the institution or program shall, at the time that it makes the request, inform the parent, guardian or legal custodian of the child in writing, in a manner that is prescribed by the department by rule, of the importance of lead screening, of how and where the lead screening may be obtained, and of the conditions under which a child is exempt from the recommended lead screening requirements under the department's rules.

History: 1993 a. 450; 1997 a. 164; 2009 a. 185.

254.164 Care for children with lead poisoning or lead exposure. The department may promulgate rules establishing standards for the care coordination and follow-up of children under 6 years of age with lead poisoning or lead exposure. Any rules promulgated under this section shall meet any federal requirements for the care coordination and follow-up of children under 6 years of age with elevated blood lead levels. Rules promulgated under this subsection may specify different care coordination and follow-up requirements based on different blood lead levels and may, where appropriate, require that the care coordination and follow-up include any of the following:

- (1) Physical, developmental and nutritional assessment.
- (2) Parent education.
- (3) Medical evaluation.
- (4) A lead investigation of all or part of the child's dwelling or other dwellings or premises that may have contributed to the child's lead poisoning or lead exposure.
- (5) Assistance in developing a plan for lead hazard reduction or other actions needed to reduce exposure to lead and the consequences of such exposure.
- (6) Where necessary, assistance in obtaining permanent or temporary lead-safe housing.
- (7) Nutritional supplements.
- (8) Follow-up services, including monitoring the provision of services to the child.

History: 1993 a. 450; 2007 a. 91.

254.166 Response to reports of lead poisoning or lead exposure.

(1) The department may, after being notified that an occupant of a dwelling or premises who is under 6 years of age has blood lead poisoning or lead exposure, present official credentials to the owner or occupant of the dwelling or premises, or to a representative of the owner, and request admission to conduct a lead investigation of the dwelling or premises. If the department is notified that an occupant of a dwelling or premises who is a child under 6 years of age has an elevated blood lead level, the department shall conduct a lead investigation of the dwelling or premises or ensure that a lead investigation of the dwelling or premises is conducted. The lead investigation shall be conducted during business hours, unless the owner or occupant of the dwelling or premises consents to an investigation during nonbusiness hours or unless the department determines that the dwelling or premises presents an imminent lead hazard. The department shall use reasonable efforts to provide prior notice of the lead investigation to the owner of the dwelling or premises. The department may remove samples or objects necessary for laboratory analysis to determine the presence of a lead hazard in the dwelling or premises. The department shall prepare and file written reports of all lead investigations conducted under this section and shall make the contents of these reports available for inspection by the public, except for medical information, which may be disclosed only to the extent that patient health care records may be disclosed under ss. 146.82 to 146.835. If the owner or occupant refuses admission, the department may seek a warrant to investigate the dwelling or premises. The warrant shall advise the owner or occupant of the scope of the lead investigation.

(2) If the department determines that a lead hazard is present in any dwelling or premises, the department may do any of the following:

(a) Cause to be posted in a conspicuous place upon the dwelling or premises a notice of the presence of a lead hazard.

(b) Inform the local health officer of the results of the lead investigation and provide recommendations to reduce or eliminate the lead hazard.

(c) Notify the occupant of the dwelling or premises or the occupant's representative of all of the following:

1. That a lead hazard is present on or in the dwelling or premises.
2. The results of any lead investigations conducted on or in the dwelling or premises.
3. Any actions taken to reduce or eliminate the lead hazard.

(d) Notify the owner of the dwelling or premises of the presence of a lead hazard.

(2m) If the department determines that a lead hazard is present in any dwelling or premises, the local health department shall and the department may issue an order that requires reduction or elimination of an imminent lead hazard within 5 days after the order's issuance and reduction or

elimination of other lead hazards within 30 days after the order's issuance, except that, for orders that are issued between October 1 and May 1 and that relate only to exterior lead hazards that are not imminent lead hazards, the order may require elimination or reduction of the lead hazard no earlier than the June 1 immediately following the order's issuance. If the agency that issued the order determines that the owner has good cause for not complying with the order within the 5-day or 30-day time period, the agency may extend the time period within which the owner is required to comply with the order. The failure to comply with an order within the time prescribed or as extended shall be prima facie evidence of negligence in any action brought to recover damages for injuries incurred after the time period expires. If an order to conduct lead hazard reduction is issued by the department or by a local health department and if the owner of the dwelling or premises complies with that order, there is a rebuttable presumption that the owner of the dwelling or premises has exercised reasonable care with respect to lead poisoning or lead exposure caused, after the order has been complied with, by lead hazards covered by the order, except that with respect to interim control activities the rebuttable presumption continues only for the period for which the interim control activity is reasonably expected to reduce or eliminate the lead hazard.

(2r) The department may conduct or require a certified lead risk assessor or other person certified under s. 254.176 to conduct a lead investigation, a check of work completed, and dust tests for the presence of hazardous levels of lead to ensure compliance with an order issued under sub. (2m).

(4) The department shall give priority to eliminating lead hazards from dwellings in which children under 6 years of age with diagnosed lead poisoning or lead exposure reside.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 433; Stats. 1993 s. 254.14; 1993 a. 450 ss. 39 to 41; Stats. 1993 s. 254.166; 1999 a. 113; 2005 a. 25; 2007 a. 91.

254.167 Conduct of lead investigation. Subject to the limitation under s. 254.174, the department may promulgate rules establishing procedures for conducting lead investigations of dwellings and premises. The rules promulgated under this section may include the following:

(1) Specific procedures for investigating, testing or sampling painted, varnished or other finished surfaces, drinking water, household dust, soil and other materials that may contain lead.

(2) Specific procedures for the notification of owners, operators, occupants or prospective occupants, mortgagees and lienholders of lead levels identified during a lead investigation and of any health risks that are associated with the lead level and condition of the lead found during the lead investigation.

(3) The form of lead investigation reports, the requirements for filing the reports with the department and the procedures by which members of the public may obtain copies of lead investigation reports.

(4) Requirements for the posting of warnings, where appropriate, of the presence of a lead hazard.

History: 1993 a. 450; 1999 a. 113.

Cross-reference: See also ch. DHS 163, Wis. adm. code.

254.168 Lead investigations of facilities serving children under 6 years of age. Subject to the limitation under s. 254.174, the department may promulgate rules that require any of the following facilities to have periodic lead investigations at intervals determined by the department or to otherwise demonstrate that the facility does not contain a lead hazard, if any part of the facility was constructed before January 1, 1978:

(1) A foster home licensed under s. 48.62.

(2) A group home licensed under s. 48.625.

(3) A shelter care facility under s. 48.66.

(4) A child care provider certified under s. 48.651.

(5) A child care center licensed under s. 48.65, provisionally licensed under s. 48.69, or established or contracted for under s. 120.13 (14).

(6) A private or public nursery school or kindergarten.

(7) Any other facility serving children under 6 years of age that presents a risk for causing lead poisoning or lead exposure in children.

History: 1993 a. 450; 2007 a. 91; 2009 a. 185.

254.172 Prevention and control of lead-bearing paint hazards in dwellings and premises.

(1) Subject to the limitation under s. 254.174, the department may promulgate rules governing lead hazard reduction that the department determines are consistent with federal law.

(2) If a certified lead risk assessor or other person certified under s. 254.176 conducts a lead investigation of a dwelling or premises, he or she shall conduct the lead investigation and issue a report in accordance with any rules promulgated under s. 254.167. If the report indicates that the dwelling or premises meets criteria under s. 254.179 (1) (a) for issuance of a certificate of lead-free or of a certificate of lead-safe status, the lead risk assessor or other person shall issue the appropriate certificate, subject to s. 254.181.

History: 1993 a. 450; 1999 a. 113, 186.

Cross-reference: See also ch. DHS 163, Wis. adm. code.

254.174 Technical advisory committees. Before the department may promulgate rules under s. 254.167, 254.168, 254.172 or 254.179, the department shall appoint a technical advisory committee under s. 227.13 and shall consult with the technical advisory committee on the proposed rules. Any technical advisory committee required under this section shall include representatives from local health departments that administer local lead programs, representatives from the housing industry, persons certified under s. 254.176, representatives from the medical or public health professions, advocates for persons at risk of lead poisoning and a resident of a 1st class city. Any technical advisory committee required under this section before promulgating rules under s. 254.168 shall also include representatives of facilities serving children under 6 years of age.

History: 1993 a. 450; 1999 a. 113.

254.176 Certification requirements.

(1) Except as provided in sub. (2) and s. 250.041, and subject to sub. (3m) and s. 254.115, the department may establish by rule certification requirements for any person who performs lead hazard reduction or a lead management activity or who supervises the performance of any lead hazard reduction or lead management activity.

(2) No certification is required under this section for lead hazard reduction conducted by any of the following persons, unless the lead hazard reduction is being done to comply with an order by the department or another state or local agency that requires the use of persons certified under this section:

(a) A person whose activities are limited to interim control activities, unless the activities are directly funded by a grant from the federal department of housing and urban development.

(b) A person whose activities do not involve lead-bearing paint or lead-contaminated soil or dust.

(c) A homeowner who engages in lead hazard reduction only in or on his or her own nonrental residential dwelling or real property.

(d) A person licensed, certified or registered under ch. 145 who engages in activities that constitute lead hazard reduction, only to the extent that these activities are within the scope of his or her license, certification or registration.

(e) A person who engages in the business of installing or servicing heating, ventilating or air conditioning equipment if the person is registered with the department of safety and professional services and if the person engages in activities that constitute lead hazard reduction, only to the extent that the activities are within the scope of his or her registration.

(3) Except as provided in s. 250.041 and subject to sub. (3m) and s. 254.115, the department may promulgate rules establishing certification requirements for persons required to be certified under this section. Any rules promulgated under this section:

(a) Shall include requirements and procedures for issuing, renewing, revoking and suspending under this section certifications issued under this section.

(c) Shall require completion of an appropriate training course accredited under s. 254.178 or of a training course determined by the department to be comparable to the appropriate training course under s. 254.178.

(d) May provide for requirements other than training as a condition for full certification.

(e) Shall specify fees for certifying persons under this section, except that no fee may be imposed on any person employed by the state or by any political subdivision of the state for a certification required to perform duties within the scope of the employment or on an individual who is eligible for the veterans fee waiver program under s. 45.44.

(f) Shall require the issuance of a photo identification card to each person certified under this section.

(3m) Any relevant education, training, instruction, or other experience that an applicant has obtained in connection with military service, as defined in s. 111.32 (12g), counts toward satisfying the requirements for education, training, instruction, or other experience for certification under this section if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training, instruction, or other experience that is required to be certified under this section.

(4) The department shall maintain lists of all persons who are certified under this section and shall make the lists available to the public. The department may charge a fee for lists provided under this subsection to cover the department's costs in providing the lists.

(5) After notice and opportunity for hearing, the department may revoke, suspend, deny or refuse to renew any certification issued under this section in accordance with the procedures set forth in ch. 227, except that if a revocation, denial, or nonrenewal is based on tax delinquency under s. 73.0301 or unemployment insurance contribution delinquency under s. 108.227, the only hearing rights available are those set forth in s. 73.0301 (5) or 108.227 (5), whichever is applicable.

History: 1993 a. 450; 1995 a. 27 ss. 6330, 9116 (5); 1997 a. 191, 237; 1999 a. 113; 2011 a. 32, 120, 209; 2013 a. 36.

Cross-reference: See also ch. DHS 163, Wis. adm. code.

254.178 Accreditation of lead training courses and approval of lead instructors.

(1)

(a) No person may advertise or conduct a training course in lead hazard reduction, or in a lead management activity, that is represented as qualifying persons for certification under s. 254.176 unless the course is accredited by the department under this section.

(b) Except as provided in s. 250.041, no person may function as an instructor of a lead training course accredited under this section unless the person is approved by the department under this section.

(2) The department shall promulgate rules establishing requirements, except as provided in sub. (2m) and s. 250.041, for accreditation of lead training courses and approval of lead instructors. These rules:

(a) Except as provided in s. 250.041, shall include requirements and procedures for granting, renewing, revoking and suspending under this section lead training course accreditations and lead instructor approvals.

(c) May provide for full or contingent accreditation or approval.

(d) Shall specify fees for accrediting lead training courses and approving lead instructors, except that no fee may be imposed on an individual who is eligible for the veterans fee waiver program under s. 45.44.

(2m) Any relevant education, training, instruction, or other experience that an applicant has obtained in connection with military service, as defined in s. 111.32 (12g), counts toward satisfying the requirements for education, training, instruction, or other experience to function as an instructor of a lead training course accredited under this section if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training,

instruction, or other experience that is required to function as an instructor of a lead training course accredited under this section.

(3) The department shall maintain lists of all lead training courses accredited, and all lead instructors approved, under this section and shall make the lists available to the public. The department may charge a fee for lists provided under this subsection to cover the department's costs in providing the lists.

(4) After notice and opportunity for hearing, the department may revoke, suspend, deny or refuse to renew under this section any accreditation or approval issued under this section in accordance with the procedures set forth in ch. 227.

History: 1993 a. 450; 1997 a. 191; 1999 a. 113; 2011 a. 120, 209.

Cross-reference: See also ch. DHS 163, Wis. adm. code.

254.179 Rules for dwellings and premises.

(1) Subject to s. 254.174 and after review of ordinances of cities, towns and villages in this state, the department shall, by use of a research-based methodology, promulgate as rules all of the following:

(a) Except as provided in s. 254.18, the standards for a premises, dwelling or unit of a dwelling that must be met for issuance of a certificate of lead-free status or a certificate of lead-safe status to the owner of the premises, dwelling or unit of a dwelling, with the goal of long-term lead hazard reduction.

(b) The procedures by which a certificate of lead-free status or a certificate of lead-safe status may be issued or revoked.

(c) The period of validity of a certificate of lead-free status or a certificate of lead-safe status, including all of the following:

1. Authorization for the certificate of lead-free status to remain in effect unless revoked because of erroneous issuance or because the premises, dwelling or unit of the dwelling is not free of lead-bearing paint. The rules shall specify that the face of the certificate shall indicate that the certificate is valid unless revoked.

2. The standards limiting the length of validity of a certificate of lead-safe status, including the condition of a premises, dwelling, or unit of a dwelling, the type of lead hazard reduction activity that was performed, if any, and any other requirements that must be met to maintain certification, unless the certificate is earlier revoked because of erroneous issuance or because the premises, dwelling, or unit of the dwelling is not safe from lead-bearing paint hazards. The rules shall specify that the face of the certificate shall indicate the certificate's length of validity.

(d) A mechanism for creating a registry of all premises, dwellings or units of dwellings for which a certificate of lead-free status or a certificate of lead-safe status is issued.

(e) The requirements for a course of up to 16 hours that a property owner or his or her employee or agent may complete in order to receive certification of completion and the scope of the lead investigation and lead hazard reduction activities that the owner, employee or agent may perform following certification, to the extent consistent with federal law.

(2) By January 1, 2003, and every 2 years thereafter, the department shall review the rules under sub. (1) and shall promulgate changes to the rules if necessary in order to maintain consistency with federal law.

(3) Subject to s. 254.174, the department may promulgate rules that set forth safe work practices that shall be followed in the demolition of a building constructed before January 1, 1978, to avoid exposure by persons to lead hazards in the area of the demolition.

History: 1999 a. 113; 2005 a. 25, 254.

254.18 Lead hazard reduction in dwellings and premises; renovations.

(1) Sampling or testing of dwellings, units of dwellings or premises for the presence of lead-bearing paint or a lead hazard is not required before lead hazard reduction activities are conducted if the presence of lead-bearing paint or a lead hazard is assumed and the lead hazard reduction activities are performed in a lead-safe manner.

(2)

(a) In this subsection, "partial lead inspection" means an on-site investigation of one or more painted, varnished, or otherwise coated building components to determine the presence of lead, but not a surface-by-surface investigation.

(b) If the presence of lead-bearing paint or a lead hazard is assumed and a renovation of a dwelling, unit of a dwelling, or premises is performed in a lead-safe manner, any person who performs a partial lead inspection relating to that renovation is not required to comply with any requirements established by the department for a lead inspection.

(c) The person who performs a partial lead inspection under this subsection shall disclose, in writing, to the owner or lessor of the dwelling or premises that the person performed a partial lead inspection.

History: 1999 a. 113; 2015 a. 122.

254.181 Certificate of lead-free status and certificate of lead-safe status; fees and notification.

(1) The department may impose a fee of \$50 for issuance of a certificate of lead-free status and a fee of \$25 for issuance of a certificate of lead-safe status. Fees under this section may not exceed actual costs of issuance and of s. 254.179. The department shall review the fees every 2 years and adjust the fees to reflect the actual costs.

(2) The department shall, at least quarterly, notify a local health department concerning issuance of certificates of lead-free status and certificates of lead-safe status in the area of jurisdiction of the local health department.

History: 1999 a. 113.

254.182 Repayment to general fund. The secretary of administration shall transfer from the appropriation account under s. 20.435 (1) (gm) to the general fund the amount of \$735,000 when the secretary of administration determines that program revenues from fees imposed under ss. 254.176 (3) (e) and (4), 254.178 (2) (d) and 254.181 are sufficient to make the transfer.

History: 1999 a. 113.

254.19 Asbestos testing fees. Notwithstanding s. 36.25 (11) (f), the state laboratory of hygiene board shall impose a fee sufficient to pay for any asbestos testing services which it provides.

History: 1987 a. 396; 1993 a. 27 s. 317; Stats. 1993 s. 254.19.

254.20 Asbestos abatement certification.

(2) CERTIFICATION REQUIREMENTS.

(a) No person serving on the governing body of a school, employed by a school or acting under a contract with a school may perform any asbestos abatement activity or asbestos management activity unless he or she has a valid certification card issued to him or her under sub. (3).

(b) No public employee may perform any asbestos abatement activity unless he or she has a valid certification card issued to him or her under sub. (3).

(c) No public employee may supervise the performance of any asbestos abatement activity unless he or she has a valid supervisor's certification card issued to him or her under sub. (3).

(d) Except as provided in s. 250.041 and subject to s. 254.115, the department may establish by rule certification requirements for any person not certified under pars. (a) to (c) who performs any asbestos abatement activity or asbestos management activity or who supervises the performance of any asbestos abatement activity or asbestos management activity.

(3) CERTIFICATION PROCEDURE.

(a) Except as provided in s. 250.041 and subject to sub. (4m), the department may establish by rule eligibility requirements for persons applying for a certification card required under sub. (2). Any training required by the department under this paragraph may be approved by the department or provided by the department under sub. (8).

(b) Except as provided in s. 250.041, the department shall establish the procedure for issuing certification cards under this subsection. In establishing that procedure, the department shall prescribe an application form and establish an examination procedure and may require applicants to provide photographic identification.

(4) RENEWAL. A certification card issued under sub. (3) is valid for one year. Except as provided in s. 250.041 and subject to s. 254.115, the department may establish requirements for renewing such a card, including but not limited to additional training.

(4m) MILITARY SERVICE. Any relevant education, training, instruction, or other experience that an applicant has obtained in connection with military service, as defined in s. 111.32 (12g), counts toward satisfying the requirements for education, training, instruction, or other experience to obtain a certification card under this section if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training, instruction, or other experience that is required to obtain a certification card under this section.

(5) FEES.

(a) Except as provided under pars. (b) and (c), the department shall charge the following fees for certification cards issued under sub. (3) or renewed under sub. (4):

1. For a certification card issued or renewed for the performance of any asbestos abatement activity, as required under sub. (2) (a), (b) or (d), \$50.

2. For a certification card issued or renewed for performance of an inspection for asbestos-containing material or the design of an asbestos response action, as required under sub. (2) (a) or (d), \$150.

3. For a certification card issued or renewed for supervising the performance of any asbestos abatement activity, as required under sub. (2) (c), \$100.

4. For a certification card issued or renewed for performance of the development of an asbestos management plan, as required under sub. (2) (a) or (d), \$100.

(b) The department may change by rule the fee amounts specified under par. (a). The fees received under this subsection shall be credited to the appropriation under s. 20.435 (1) (gm).

(c) The department may not charge a fee for a certification card issued under this section to an individual who is eligible for the veterans fee waiver program under s. 45.44.

(6) SUSPENSION OR REVOCATION. The department may, under this section, suspend or revoke a certification card issued under sub. (3) if it determines that the holder of the card is not qualified to be certified.

(7) APPEALS. Any suspension, revocation or nonrenewal of a certification card required under sub. (2) or any denial of an application for such a certification card is subject to judicial review under ch. 227, except as provided in s. 250.041 and except that the only hearing rights available for a denial, revocation, or nonrenewal of a certification card required under sub. (2) based on tax delinquency under s. 73.0301 or unemployment insurance contribution delinquency under s. 108.227 are those set forth in s. 73.0301 (5) or 108.227 (5), whichever is applicable.

(8) TRAINING COURSES. The department may conduct or contract for any training course necessary to prepare persons for a certification card required under sub. (2). The department may establish a fee for any course offered under this subsection. The fee may not exceed the actual cost of the course. The fees received under this subsection shall be credited to the appropriation under s. 20.435 (1) (gm).

(9) RULES. The department may promulgate any rule it deems necessary to administer this section.

(10) ENFORCEMENT.

(a) The department may enter, at any reasonable time, any property, premises or place in which any person required to have a certification card under sub. (2) is engaged in any asbestos abatement activity to determine if the department has issued that person a valid certification card. No person may refuse entry or access to any representative of the department authorized by the department to act under this paragraph if that representative requests entry for purposes of determining compliance with this section, if that representative presents a valid identification issued to the representative by the department and if that representative is complying with par. (b). No person may obstruct, hamper or interfere with the actions of that representative under this paragraph.

(b) Any representative of the department acting under par. (a) shall comply with any health and safety procedure established by law for persons engaged in asbestos abatement activities.

(c) If the department determines that any person required to have a certification card under sub. (2) has violated this section, the department may order that person to cease the violation. The order may require all asbestos abatement activities on the premises where the violation occurs to cease until the violation is corrected if there is no person on the premises with a valid certification card issued to him or her under sub. (3). The department shall give the order in writing to that person or that person's representative.

(d) Any other state agency, in the course of the performance of its duties, may determine compliance with the certification requirements of this section. If that agency determines that there is a violation of this section, it shall notify the department of that violation.

(e) The department may initiate an action in the name of this state against any person to require compliance with this section.

(11) PENALTY. Any person who violates this section or any rule promulgated or order issued under this section shall forfeit not less than \$25 nor more than \$100 for each violation. Each day of violation and each violation constitutes a separate offense.

History: 1987 a. 27, 1989 a 173; 1993 a. 27 ss. 188, 193; 1997 a. 191, 237; 2011 a. 120, 209; 2013 a. 36.

Cross-reference: See also ch. DHS 159, Wis. adm. code.

254.21 Asbestos management.

(2) The department shall promulgate rules to do all of the following:

(a) Establish building inspection requirements and procedures to protect students and employees from asbestos hazards in schools.

(b) Regulate asbestos abatement activities in schools.

(c) Establish requirements for the maintenance of asbestos-containing material in schools which contain asbestos-containing material.

(d) Establish priorities for asbestos abatement activities in schools which contain asbestos-containing materials.

(e) Require a management plan for asbestos-containing material in every school which contains asbestos-containing material.

(2m) No requirement under sub. (2) may be stricter than any requirement under 15 USC 2641 to 2654.

(3) A school district and any school which is not a public school may apply to the department for a variance to any standard adopted under this section under the provisions of s. 101.055 (4) (a) to (c).

(4) Any person who intentionally violates any rule promulgated under this section shall forfeit not less than \$100 nor more than \$1,000 for each violation. Each violation constitutes a separate offense and each day of continued violation is a separate offense.

History: 1987 a. 396; 1993 a. 27 s. 364, 366; Stats. 1993 s. 254.21.

254.22 Indoor air quality. The department shall do all of the following:

(1) Investigate illness or disease outbreaks suspected of being caused by poor indoor air quality. The department shall promote or require control measures if indoor air quality is established to be the cause of illness or disease outbreaks.

(2) Assist local health departments in the adoption of regulations that establish standards for indoor air quality in public buildings to protect the occupants from adverse health effects due to exposure to chemical or biological contaminants.

(3) Provide training and technical support to local health departments for conducting indoor air quality testing and investigations.

(4) Assist the department of safety and professional services with the enforcement of s. 101.123.

History: 1993 a. 27; 1995 a. 27 ss. 6331, 9116 (5); 2011 a. 32.

254.30 Enforcement; penalties.**(1) ENFORCEMENT.**

(a) The department may enter, at any reasonable time, a dwelling or premises undergoing any lead hazard reduction to determine if all persons engaged in lead hazard reduction have been appropriately certified if required under s. 254.176.

(b) The department may report any violation of ss. 254.11 to 254.178 or rules promulgated, or orders issued, under those sections to the district attorney of the county in which the dwelling is located. The district attorney shall enforce ss. 254.11 to 254.178 and rules promulgated, and orders issued, under those sections. If a circuit court determines that an owner of a rented or leased dwelling or premises has failed to comply with an order issued under ss. 254.11 to 254.178, the circuit court may order the occupants of the affected dwelling or premises to withhold rent in escrow until the owner of the dwelling or premises complies with the order.

(c) Sections 254.11 to 254.178 do not limit the ability of the department to require abatement of human health hazards involving lead under s. 254.59.

(2) PENALTIES.

(a) Civil penalty. Any person who violates ss. 254.11 to 254.178 or rules promulgated, or orders issued, under those sections may be required to forfeit not less than \$100 nor more than \$5,000 per violation. Each day of continued violation constitutes a separate offense.

(b) Criminal penalty. Any person who knowingly violates any provision of ss. 254.11 to 254.178 or any rule promulgated, or order issued, under those sections shall be fined not less than \$100 nor more than \$5,000 per violation. The court may place the person on probation under s. 973.09 for a period not to exceed 2 years.

History: 1979 c. 221; 1987 a. 332; 1993 a. 27 s. 439; Stats. 1993 s. 254.30; 1993 a. 450; 2015 a. 55.

SUBCHAPTER III RADIATION PROTECTION

254.31 Definitions. In this subchapter:

(1) "By-product material" means any of the following:

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Decommissioning" means conducting final operational activities at a nuclear facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities necessary to prepare the site for postoperational care.

(2m) "General license" means a license, under requirements prescribed by the department by rule, to possess, use, transfer or acquire by-product material or devices or equipment utilizing by-product material without the filing of a license application by a person or issuance of licensing confirmation by the department.

(3g) "Ionizing radiation" means all radiations capable of producing ions directly or indirectly in their passage through matter, including all of the following:

(a) Electromagnetic radiations, including X-rays and gamma rays.

(b) Particulate radiations, including electrons, beta particles, protons, neutrons, alpha particles and other nuclear particles.

(3p) "Nonionizing radiation" means electromagnetic radiation, other than ionizing radiation, and any sonic, ultrasonic or infrasonic wave.

(4) "Nuclear facility" means any reactor plant, any equipment or device used for the separation of the isotopes of uranium or plutonium, the processing or utilizing of radioactive material or handling, processing or packaging waste; any premises, structure, excavation or place of storage or disposition of waste or by-product material; or any equipment used for or in connection with the transportation of such material.

(4p) "Radiation" means both ionizing and nonionizing radiation.

(5) "Radiation generating equipment" means a system, manufactured product or device or component part of such a product or device that, during operation, is capable of generating or emitting ionizing radiation without the use of radioactive material. "Radiation generating equipment" does not include a device that emits nonionizing radiation.

(6) "Radiation installation" is any location or facility where radiation generating equipment is used or where radioactive material is produced, transported, stored, disposed of or used for any purpose.

(9) "Radiation source" means radiation generating equipment or radioactive material.

(9m) "Radioactive material" includes any solid, liquid or gaseous substance which emits ionizing radiation spontaneously, including accelerator-produced material, by-product material, naturally occurring material, source material and special nuclear material.

(10) "Source material" means uranium, thorium, any combination thereof in any physical or chemical form, or ores that contain by weight 0.05 percent or more of uranium, thorium, or any combination thereof. "Source material" does not include special nuclear material.

(11) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the nuclear regulatory commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

(11g) "Specific license" means a license, under requirements prescribed by the department by rule, to possess, use, manufacture, produce, transfer or acquire radioactive material or devices or equipment utilizing radioactive material.

(11m) "Transuranic" means a radioactive material having an atomic number that is greater than 92.

(12) "X-ray tube" means any electron tube that is contained in a device and that is specifically designed for the conversion of electrical energy into X-ray energy.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491; 1999 a. 9; 2001 a. 16.

254.33 Public policy. Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy for the department to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5); 1999 a. 9.

Cross-reference: See also ch. DHS 157, Wis. adm. code.

254.335 Agreements with the U.S. nuclear regulatory commission transition.

(1) The governor may, on behalf of the state, enter into agreements with the U.S. nuclear regulatory commission, as provided in 42 USC 2021 (b), to discontinue certain federal licensing and related regulatory authority with respect to by-product material, source material and special nuclear material and to assume state regulatory authority.

(2) Any person who, on the effective date of an agreement specified under sub. (1), possesses a license issued by the U.S. nuclear regulatory commission that is subject to the agreement is considered to possess a specific license issued under s. 254.365 (1) (a) or to fulfill requirements specified for a general license under s. 254.365 (1) (b). The specific license expires 90 days after the date of receipt by the person from the department of a notice of expiration of the license or on the date of expiration that was specified in the license issued by the U.S. nuclear regulatory commission, whichever is earlier.

History: 1999 a. 9.

254.34 Powers and duties.

(1) The department is the state radiation control agency and shall do all of the following:

(a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by-product material, source material and special nuclear material shall be in accordance with the requirements of 42 USC 2021 (o) and shall otherwise be compatible with the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

(am) A rule identical to a rule specified under par. (a) may be promulgated by a state agency other than the department and an ordinance identical to a rule specified under par. (a) may be enacted by a local governmental unit, but no rule may be promulgated or ordinance may be enacted that differs from a rule under par. (a) and relates to the same subject area except as provided under ss. 293.15 (8), 293.25, and 323.13 (2) (f).

(b) Administer this subchapter and the rules promulgated under this subchapter.

(c) Develop comprehensive policies and programs for the evaluation, determination and reduction of hazards associated with the use of radiation that are compatible with requirements of the U.S. nuclear regulatory commission for the regulation of by-product material, source material and special nuclear material. The department shall maintain all of the following records:

1. Files of all license applications, issuances, denials, transfers, renewals, modifications, suspensions and revocations under s. 254.365.

2. Files of all registrants under s. 254.35 and any related administrative or judicial action.

(d) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries.

(e) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it deems necessary or advisable for the discharge of its duties under this subchapter.

(f) Collect and disseminate health education information relating to radiation protection as it deems proper.

(g) Review and approve plans and specifications for radiation sources submitted pursuant to rules promulgated under this subchapter; and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

(h) With respect to radon and with the department serving as the lead agency, do all of the following:

1. Develop and disseminate current radon information to the news media, builders, realtors and the general public.

2. Coordinate a program of measuring radon gas accumulation, including use of the radon canister counting system, in educational institutions, nursing homes, low-income housing, public buildings, homes, private industries and public service organizations.

3. Work with staff of local health departments to perform home surveys and diagnostic measurements and develop mitigation strategies for homes with elevated radon gas levels.

4. Develop training materials and conduct training of staff of local health departments, building contractors and others in radon diagnosis and mitigation methods.

5. Develop standards of performance for the regional radon centers and, from the appropriation account under s. 20.435 (1) (ed), distribute funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.

(2) The department may:

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control.

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under this subchapter. The studies, investigations, training and demonstration may be conducted independently, by contract, or in

cooperation with any person or any public or private agency, including any political subdivision of the state.

(c) Develop requirements for qualification, certification, training, and experience of an individual who does any of the following:

1. Operates radiation generating equipment.
2. Utilizes, stores, transfers, transports, or possesses radioactive materials.
3. Acts as a radiation safety consultant to any person who possesses a license or registration issued by the department under this subchapter.

(d) Recognize certification by another state or by a nationally recognized certifying organization of an individual to perform acts under par. (c) 1. to 3. if the standards for the other state's certification or the organization's certification are substantially equivalent to the standards of the department for certification of individuals under par. (c).

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27; 1999 a. 9 ss. 2456 to 2462, 2475; 2001 a. 16; 2009 a. 28, 42.

Cross-reference: See also ch. DHS 157, Wis. adm. code.

254.35 Registration of ionizing radiation installations.

(1) APPLICATION. For every site in this state that has an ionizing radiation installation that is not exempted by this section or the rules of the department, the person in control of the installation, including installations in sites that are administered by a state agency or in an institution under the jurisdiction of a state agency, shall, prior to operation, register the ionizing radiation installation with the department. No ionizing radiation installation may be operated thereafter unless the site has been duly registered by January 1 of each year and a notice of the registration is possessed by the person in control. The application for registration shall be made on forms provided by the department which shall be devised to obtain any information that is considered necessary for evaluation of hazards. Multiple radiation sources at a single radiation installation and under the control of one person shall be listed on a single registration form. Registration fees shall be levied in accordance with sub. (3). Registration alone does not imply approval of manufacture, storage, use, handling, operation or disposal of the radiation installation or radioactive materials, but serves merely to inform the department of the location and character of radiation sources. Persons engaged in manufacturing, demonstration, sale, testing or repair of radiation sources are not required to list such sources on the registration form.

(2) AMENDED REGISTRATION. If the person in control increases the number of sources, source strength, rated output or energy of radiation produced in any installation, he or she shall notify the department of the increase prior to operation on the revised basis. The department shall record the change in the registration. No registration is transferable from one premises to another or from one person to another. If the person in control intends to transfer control of ownership of the radiation installation to another person, at least 15 days before the final transfer the registrant shall notify the department of the transfer and the intended transferee shall file under sub. (1) an application for registration. If any installation is discontinued, the person in control shall notify the department within 30 days of the discontinuance.

(3) REGISTRATION FEES.

(a) An annual registration fee under pars. (b) to (fm) shall be levied for each site registration under this section. An additional penalty fee of \$25, regardless of the number of X-ray tubes or generally licensed devices, shall be required for each registration whenever the annual fee for renewal is not paid prior to expiration of the registration. No additional fee may be required for recording changes in the registration information.

(b) For a site having an ionizing radiation installation serving physicians and clinics, osteopaths and clinics, chiropractors or hospitals that possesses radioactive materials in any quantity, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(c) For a podiatric or veterinary site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(d) For a dental site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$30 for each X-ray tube.

(f) For an industrial, school, research project or other site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(fm) For any site that has generally licensed devices that are not exempted by the department, the fee shall be at least \$100 for each site and at least \$50 for each device that contains at least 370 MBq or 10 mCi of cesium-137; 37 MBq or 1.0 mCi of cobalt-60; 3.7 MBq or 0.1 mCi of strontium-90; or 37 MBq or 1.0 mCi of a transuranic.

(g) The fees under this subsection shall be as stated unless the department promulgates rules to increase the annual registration fee for a site having an ionizing radiation installation, for an X-ray tube or for generally licensed devices that are not exempted by the department.

(4) EXEMPTIONS. After initial registration under sub. (1), the department may exempt from annual registration any source of radiation that the department finds to be without undue radiation hazard.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5); 1999 a. 9.

254.365 Licensing of radioactive material.

(1) LICENSE REQUIRED. No person may possess, use, manufacture, transport, store, transfer or dispose of radioactive material or a device or item of equipment that uses radioactive material or may operate a site that uses radioactive material that is not under the authority of the U.S. nuclear regulatory commission unless one of the following applies:

(a) The person has a specific license issued by the department.

(b) The person meets general license requirements.

(c) The person possesses a license issued by another state or by the U.S. nuclear regulatory commission that is reciprocally recognized by the department.

(d) The person is exempted from licensure under sub. (7).

(2) APPLICATION. Application for a license under sub. (1) (a) or for reciprocal recognition under sub. (1) (c) shall be made on forms provided by the department.

(3) MODIFICATION OR TERMINATION OF LICENSE. Within 30 days after any change to the information on a license issued under this section, the licensee shall inform the department of the change and the department shall record the changed information. Within 30 days after termination of an activity licensed under this section, the person in control of the activity shall notify the department. The department may require that the person in control submit to the department for approval a plan for decommissioning the activity.

(4) RULES. The department shall promulgate rules for all of the following:

(a) The issuance, modification, suspension, termination and revocation of specific licenses under sub. (1) (a) under the standards specified in s. 254.34 (1) (a).

(b) The requirements for a general license under sub. (1) (b).

(5) FEES AND CHARGES.

(a) The department may assess fees, the amounts of which are prescribed by the department by rule, for any of the following:

1. Issuance of an initial or renewal specific license under sub. (1) (a).

2. Annual license maintenance.

3. Issuance of a license amendment.

4. Termination of a license.

5. Issuance of reciprocal recognition of a license for radioactive materials of another state or the U.S. nuclear regulatory commission.

(b) The department may assess a late payment charge of 25 percent of the specific license renewal fee, in addition to the fee under par. (a) for renewal of a specific license, if payment for renewal of a specific license is not made within 30 days after the license expiration date.

(6) DENIAL, SUSPENSION OR REVOCATION OF LICENSURE. The department may, after a hearing under ch. 227, refuse to issue a license or suspend or revoke a license for failure by the licensee to comply with this subchapter, rules promulgated by the department under this subchapter or any condition of the license.

(7) EXEMPTION. The department may exempt from licensing requirements of this section radioactive material that the department finds is without undue radiation hazard.

History: 1999 a. 9.

254.37 Enforcement.

(1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. Whenever the department finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of this subchapter or of any rules promulgated under this subchapter, the department shall do all of the following:

(a) Notify the person in control that is causing, allowing or permitting the violation as to the nature of the violation.

(b) Order that, prior to a specified time, the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with this subchapter and rules promulgated under this subchapter.

(2) ORDERS. The department shall issue and enforce such orders or modifications of previously issued orders as may be required in connection with proceedings under this subchapter. The orders shall be subject to review by the department upon petition of the persons affected. Whenever the department finds that a condition exists that constitutes an immediate threat to health due to violation of this subchapter or any rule or order promulgated under this subchapter, it may issue an order reciting the existence of the threat and the findings pertaining to the threat. The department may summarily cause the abatement of the violation.

(3) RULES. The department shall promulgate and enforce the rules pertaining to ionizing radiation.

(4) JURISDICTION. The circuit court of Dane county shall have jurisdiction to enforce the orders by injunctive and other appropriate relief.

History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27; 1999 a. 9.

254.38 Emergency authority.

(1) IMPOUNDING MATERIALS. The department may impound or order the sequestration of sources of radiation in the possession of any person who is not equipped to observe or who fails to observe safety standards to protect health that are established in rules promulgated by the department.

(2) EMERGENCY ORDERS. If the department finds that an emergency exists concerning a matter subject to regulation under this subchapter that requires immediate action to protect the public health or safety, the department may issue an emergency order without notice or hearing that recites the existence of the emergency and requires such action as is necessary to mitigate the emergency. Any person to whom the order is issued shall immediately comply with the order. A person to whom an emergency order is issued shall be afforded a hearing within 30 days after receipt by the department of a written request for the hearing. An emergency order is effective upon issuance and remains in effect for up to 90 days after issuance, except that the order may be revoked or modified based on the results of the hearing.

History: 1985 a. 29; 1993 a. 27 s. 232; Stats. 1993 s. 254.38; 1995 a. 27 ss. 6339, 9116 (5); 1999 a. 9.

254.39 Exceptions.

(1) Nothing in this subchapter may be interpreted as limiting intentional exposure of persons to radiation for the purpose of analysis, diagnosis, therapy, and medical, chiropractic or dental research as authorized by law.

(2) This subchapter does not apply to on-site activities of any nuclear reactor plant licensed by the U.S. nuclear regulatory commission.

History: 1977 c. 29; 1991 a. 178; 1993 a. 27 s. 233; Stats. 1993 s. 254.39; 1999 a. 9.

254.41 Radiation monitoring of nuclear power plants. The department shall take environmental samples to test for radiation emission in any area of the state within 20 miles of a nuclear power plant. The department shall charge the owners of each nuclear power plant in the state an annual fee of \$30,000 per plant, commencing in fiscal year 1983-84, to finance radiation monitoring under this section. The department may change this annual fee by rule.

History: 1979 c. 221; 1983 a. 27; 1993 a. 27 s. 235; Stats. 1993 s. 254.41.
Cross-reference: See also ch. DHS 158, Wis. adm. code.

254.45 Penalties.

(1) GENERAL.

(a) Any person who violates this subchapter or a rule promulgated under this subchapter or a condition of a license or registration issued by the department under this subchapter may be required to forfeit not less than \$100 nor more than \$100,000. Each day of continued violation constitutes a separate offense.

(b) The amount of the forfeiture assessed under par. (a) shall be determined by considering all of the following:

1. The willfulness of the violation.
2. The person's previous violations, if any, of this subchapter, rules promulgated under this subchapter or conditions of a license or registration issued by the department under this subchapter.
3. The potential danger or actual or potential injury to the environment or to public health caused by the violation.
4. The actual or potential costs of the damage or injury caused by the violation.

(2) ASSESSMENT OF FORFEITURES; NOTICE. The department may directly assess forfeitures provided for in sub. (1). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the person. The notice shall specify the amount of the forfeiture assessed and the violation and the statute or rule alleged to have been violated and shall inform the person of the right to hearing under sub. (3).

(3) HEARING. A person upon whom a forfeiture is imposed may contest the action by sending, within 10 days after receipt of notice of a contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227.

(4) FORFEITURE PAYMENT AND DISPOSITION.

(a) A person against whom the department has assessed a forfeiture shall pay the forfeiture to the department within 10 days after receipt of the notice under sub. (2) or, if the person contests the assessment, within 10 days after receipt of the final decision after exhaustion of administrative review. If the person petitions for judicial review under ch. 227, the person shall pay the forfeiture within 10 days after receipt of the final judicial decision.

(b) The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(5) ENFORCEMENT. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid as required under sub. (4). The only issue to be contested in an action under this subsection is whether the forfeiture has been paid.

History: 1993 a. 27 s. 234; Stats. 1993 s. 254.45; 1995 a. 27 ss. 6340, 9116 (5); 1999 a. 9; 2003 a. 33.

**SUBCHAPTER IV
RECREATIONAL SANITATION**

254.46 Beaches. The department or a local health department shall close or restrict swimming, diving and recreational bathing if a human health hazard exists in any area used for those purposes on a body of water and on associated land and shall require the posting of the area.

History: 1993 a. 27.

**SUBCHAPTER V
ANIMAL-BORNE AND VECTOR-BORNE
DISEASE CONTROL**

254.50 Definition. In this subchapter, "vector" means a carrier, including an arthropod or an insect, that transfers an infective agent from one host to another.

History: 1993 a. 27.

254.51 Powers and duties.

(1) The state epidemiologist for communicable disease shall take those measures that are necessary for the prevention, surveillance and control of human disease outbreaks associated with animal-borne and vector-borne transmission.

(2) The department shall enter into memoranda of understanding with the department of agriculture, trade and consumer protection, the department of safety and professional services, and the department of natural resources regarding the investigation and control of animal-borne and vector-borne disease.

(3) The department shall promulgate rules that establish measures for prevention, surveillance and control of human disease that is associated with animal-borne and vector-borne disease transmission.

(4) The local health department shall enforce rules that are promulgated under sub. (3).

(5) The local board of health may adopt regulations and recommend enactment of ordinances that set forth requirements for animal-borne and vector-borne disease control to assure a safe level of sanitation, human health hazard control or health protection for the community, including the following:

(a) The control of rats, stray animals, noise and rabies and other diseases.

(b) The control of wildlife, including the keeping of dangerous wild animals, disease transmission and human health hazard control and eradication.

(c) Pest control, including community sanitation, rodent and vector control, resident responsibilities and the health impact of pesticide use.

History: 1993 a. 27; 1995 a. 27 ss. 6341, 9116 (5); 2011 a. 32.

Cross-reference: See also ch. DHS 145, Wis. adm. code.

254.52 Lyme disease; treatment, information and research.

(1) The department shall perform research relating to Lyme disease in humans.

(2) The department, in consultation with the department of public instruction, the department of natural resources and the department of agriculture, trade and consumer protection, shall do all of the following:

(a) Monitor the spread and incidence of Lyme disease.

(b) Investigate suspected and confirmed cases of Lyme disease.

(c) Review materials, activities and epidemiologic investigations prepared or conducted in other states in which Lyme disease is endemic and recommend a statewide strategy for dealing with Lyme disease.

(d) Develop, update and disseminate information for use by clinicians, laboratory technicians and local health departments that diagnose or treat Lyme disease or investigate cases or suspected cases of Lyme disease.

(e) Develop and distribute information through offices of physicians and local health departments and by newsletters, public presentations or other releases of information. That information shall include all of the following:

1. A description of Lyme disease.
2. Means of identifying whether or not individuals may be at risk of contracting Lyme disease.
3. Measures that individuals may take to protect themselves from contracting Lyme disease.
4. Locations for procuring additional information or obtaining testing services.

(f) Conduct research on the serological prevalence of Lyme disease.

History: 1989 a. 31; 1993 a. 27 s. 49; Stats. 1993 s. 254.52; 1995 a. 27 s. 9145 (1); 1997 a. 27.

SUBCHAPTER VI HUMAN HEALTH HAZARDS

254.55 Definitions. In this subchapter:

(1) "Dwelling" means any structure, all or part of which is designed or used for human habitation.

(2) "Owner" means any of the following:

(a) A person who has legal title to a dwelling.

(b) A person who has charge, care, or control of a dwelling or unit of a dwelling as an agent of or as personal representative, trustee, or guardian of the estate of a person under par. (a).

History: 1993 a. 27; 2001 a. 102.

254.56 Public places. The owner and occupant and everyone in charge of a public building, as defined in s. 101.01 (12), shall keep the building clean and sanitary.

History: 1971 c. 185 s. 7; 1993 a. 27 s. 352; Stats. 1993 s. 254.56; 1995 a. 27.

254.57 Smoke. The common council of any city or the board of any village may regulate or prohibit the emission of dense smoke into the open air within its limits and one mile from its limits.

History: 1993 a. 27 s. 357; Stats. 1993 s. 254.57.

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

254.58 Powers of villages, cities and towns. Section 95.72 may not be construed as depriving any city or village from enacting any ordinance prohibiting the rendering of dead animals within the boundaries specified in s. 66.0415, as nullifying any existing law or ordinance prohibiting the rendering of dead animals within the area or as prohibiting any city or village from licensing, revoking the license, and regulating the business of rendering and transporting dead animals under sanitary conditions no less stringent than provided under s. 95.72 and the rules of the department of agriculture, trade and consumer protection. Any licensing and regulation by a city or village is supplementary to the provisions of this section and the rules of the department and may not be construed as excusing or justifying any failure or neglect to comply with this section and the rules of the department. Section 95.72 shall be expressly construed as modifying the powers granted to towns and any city, village or town may take any action permitted under s. 254.59, may institute and maintain court proceedings to prevent, abate or remove any human health hazards under s. 254.59 and may institute and maintain any action under ss. 823.01, 823.02 and 823.07.

History: 1973 c. 206; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1977 c. 29 s. 1650m (4); 1993 a. 27 s. 358; Stats. 1993 s. 254.58; 1999 a. 150 s. 672.

254.59 Human health hazards.

(1) If a local health officer finds a human health hazard, he or she shall order the abatement or removal of the human health hazard on private premises, within a reasonable time period, and if the owner or occupant fails to comply, the local health officer may enter upon the premises and abate or remove the human health hazard.

(2) If a human health hazard is found on private property, the local health officer shall notify the owner and the occupant of the property, by registered mail with return receipt requested, of the presence of the human health hazard and order its abatement or removal within 30 days of receipt of the notice. If the human health hazard is not abated or removed by that date, the local health officer shall immediately enter upon the property and abate or remove the human health hazard or may contract to have the work performed. The human health hazard shall be abated in a manner which is approved by the local health officer. The cost of the abatement or removal may be recovered from the person permitting the violation or may be paid by the municipal treasurer and the account, after being paid by the treasurer, shall be filed with the municipal clerk, who shall enter the amount chargeable to the property in the next tax roll in a column headed "For Abatement of a Nuisance" as a special tax on the lands upon which the human health hazard was abated, and the tax shall be collected as are other taxes. In case of railroads or other lands not taxed in the usual way, the amount chargeable shall be certified by the clerk to the secretary of administration who shall add the amount designated in the certificate to the sum due from the company owning, occupying, or controlling the land specified, and the secretary of administration shall collect the amount as prescribed in subch. 1 of ch. 76 and return the amount collected to the town, city, or village from which the certificate was received. Anyone maintaining such a human health hazard may also be fined not more than \$300 or imprisoned for not more than 90 days or both. The only defenses an owner may have against the collection of a tax under this subsection are that no human health hazard existed on the owner's property, that no human health hazard was corrected on the owner's property, that the procedure outlined in this subsection was not followed or any applicable defense under s. 74.33.

(4) In cities under general charter, the local health officer may enter into and examine any place at any time to ascertain health conditions, and anyone refusing to allow entrance at reasonable hours shall be fined not less than \$10 nor more than \$100. If the local health officer deems it necessary to abate or remove a human health hazard found on private property, the local health officer shall serve notice on the owner or occupant to abate or remove within a reasonable time that is not less than 24 hours; and if he or she fails to comply, or if the human health hazard is on property whose owner is a nonresident, or cannot be found, the local health officer shall cause abatement or removal.

(5) The cost of abatement or removal of a human health hazard under this section may be at the expense of the municipality and may be collected from the owner or occupant, or person causing, permitting, or maintaining the human health hazard, or may be charged against the premises and, upon certification of the local health officer, assessed as are other special taxes. In cases of railroads or other lands not taxed in the usual way, the amount chargeable shall be certified by the clerk to the secretary of administration who shall add the amount designated in the certificate to the sum due from the company owning, occupying, or controlling the land specified, and the secretary of administration shall collect the amount as prescribed in subch. 1 of ch. 76 and return the amount collected to the town, city, or village from which the certificate was received. Anyone maintaining such a human health hazard may also be fined not more than \$300 or imprisoned for not more than 90 days or both. The only defenses an owner may have against the collection of a tax under this subsection are that no human health hazard existed on the owner's property, that no human health hazard was corrected on the owner's property, that the procedure outlined in this subsection was not followed, or any applicable defense under s. 74.33.

(6) A 1st class city may, but is not required to, follow the provisions of this section. A 1st class city may follow the provisions of its charter.

(7)

(a) A county, city, village, or town with a local health department may enact an ordinance concerning abatement or removal of a human health hazard that is at least as restrictive as this section.

(b) An ordinance enacted under par. (a) may be enforced in the county, city, village, or town that enacted it.

(c) This subsection may not be construed to prohibit any agreement under s. 66.0301 between a county and a city, town, or village that has a local health department, concerning enforcement under this section.

History: 1979 c. 102 s. 237, 176; 1981 c. 20 s. 2200; 1987 a. 378; 1993 a. 27 ss. 361, 363, 477; Stats. 1993 s. 254.59; 2003 a. 33; 2007 a. 130; 2009 a. 180.

254.593 Authority of the department and local health departments. The department or a local health department may declare housing that is dilapidated, unsafe or unsanitary to be a human health hazard.

History: 1993 a. 27.

254.595 Property violating codes or health orders.

(1) If real property is in violation of those provisions of a municipal building code that concern health or safety, the city, village, or town in which the property is located may commence an action to declare the property a nuisance. If real property is in violation of an order or a regulation of the local board of health, the city, village, or town in which the property is located may commence an action to declare the property a human health hazard. A tenant or class of tenants of property that is in violation of the municipal building code or of an order or regulation of the local board of health or any other person or class of persons whose health, safety or property interests are or would be adversely affected by property that is in violation of the municipal building code or of an order or regulation of the local board of health may file a petition with the clerk of the city, village, or town requesting the governing body to commence an action to declare the property a nuisance or human health hazard. If the governing body refuses or fails to commence an action within 20 days after the filing of the petition, a tenant, class of tenants, other person or other class of persons may commence the action directly upon the filing of security for court costs. The court before which the action of the case is commenced shall exercise jurisdiction in rem or quasi in rem over the property and the owner of record of the property, if known, and all other persons of record holding or claiming any interest in the property shall be made parties defendant and service of process may be had upon them as provided by law. Any change of ownership after the commencement of the action shall not affect the jurisdiction of the court over the property. At the time that the action is commenced, the municipality or other parties plaintiff shall file a lis pendens. If the court finds that a violation exists, it shall adjudge the property a nuisance or human health hazard and the entry of judgment shall be a lien upon the premises.

(2) A property owner or any person of record holding or claiming any interest in the property shall have 60 days after entry of judgment to eliminate the violation. If, within 60 days after entry of judgment under sub. (1), an owner of the property presents evidence satisfactory to the court, upon hearing, that the violation has been eliminated, the court shall set aside the judgment. It may not be a defense to this action that the owner of record of the property is a different person, partnership or corporate entity than the owner of record of the property on the date that the action was commenced or thereafter if a lis pendens has been filed prior to the change of ownership. No hearing under this subsection may be held until notice has been given to the municipality and all the plaintiffs advising them of their right to appear. If the judgment is not so set aside within 60 days after entry of judgment, the court shall appoint a disinterested person to act as receiver of the property for the purpose of abating the nuisance or human health hazard.

(3)

(a) Any receiver appointed under sub. (2) shall collect all rents and profits accruing from the property, pay all costs of management, including all general and special real estate taxes or assessments and interest payments on first mortgages on the property, and make any repairs necessary to meet the standards required by the building code or the order or regulation of the local board of health. The receiver may, with the approval of the circuit court, borrow money against and encumber the property as security for the money, in the amounts necessary to meet the standards.

(b) At the request of and with the approval of the owner, the receiver may sell the property at a price equal to at least the appraisal value plus the cost of any repairs made under this section for which the selling owner is or will become liable. The receiver shall apply moneys received from the sale of the property to pay all debts due on the property in the order set by law, and shall pay over any balance with the approval of the court, to the selling owner.

(4) The receiver appointed under this section shall have a lien, for the expenses necessarily incurred to abate the nuisance or in the execution of the order, upon the premises upon or in respect of which the work required by the order has been done or expenses incurred. The municipality that sought the order declaring the property to be a nuisance or human health hazard may also recover its expenses and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the expenses are not reimbursed under s. 632.103 (2) from funds withheld from an insurance settlement, by maintaining an action against the property owner under s. 74.53.

(5) The court shall set the fees and bond of the receiver, and may discharge the receiver when the court deems appropriate.

(6) Nothing in this section relieves the owner of any property for which a receiver has been appointed from any civil or criminal responsibility or liability otherwise imposed by law, except that the receiver shall be civilly and criminally responsible and liable for all matters and acts directly under his or her authority or performed by him or her or at his or her direction.

(7) This section shall not apply to owner-occupied one or 2-family dwellings.

(8) The commencement of an action by a tenant under this section is not just cause for eviction.

History: 1973 c. 306; Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.22; 1983 a. 476; 1987 a. 378; 1989 a. 347; 1993 a. 27 s. 493; Stats. 1993 s. 254.595; 2001 a. 86.

In an action alleging a public nuisance, it was sufficient to allege that the defendants knowingly caused the lowering of the ground water table from which the area residents drew water from private wells, which caused numerous citizens great hardship. *State v. Michels Pipeline Construction, Inc.* 63 Wis. 2d 278, 217 N.W.2d 339, 219 N.W.2d 308 (1974).

SUBCHAPTER IX SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS

254.911 Definitions. In this subchapter:

(1) "Cigarette" has the meaning given in s. 139.30 (1m).

(2) "Governmental regulatory authority" means the department, a local health department, a state agency or a state or local law enforcement agency; or a person with whom the local health department, state agency, or state or local law enforcement agency contracts to conduct investigations authorized under s. 254.916 (1) (a).

(3) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(3m) "Nicotine product" has the meaning given in s. 134.66 (1) (f).

(4) "Retailer" has the meaning given in s. 134.66 (1) (g).

(5) "Retail outlet" means a place of business from which cigarettes, nicotine products, or tobacco products are sold at retail to consumers.

(6) "State agency" has the meaning given in s. 1.12 (1) (b).

(7) "Tobacco products" has the meaning given in s. 139.75 (12).

(8) "Tobacco vending machine" is any mechanical device that automatically dispenses cigarettes or tobacco products when money or tokens are deposited in the device in payment for the cigarettes or tobacco products.

(9) "Tobacco vending machine operator" means a person who acquires tobacco products or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e), or permittees, stores them and sells them through the medium of tobacco vending machines that he or she owns, operates or services and that are located on premises that are owned or under the control of other persons.

(10) "Tobacco vending machine premises" means any area in which a tobacco vending machine is located.

History: 1999 a. 9; 2001 a. 75; 2005 a. 25; 2011 a. 249.

254.916 Investigations.

(1)

(a) A governmental regulatory authority may conduct unannounced investigations at retail outlets, including tobacco vending machine premises, to enforce compliance with s. 134.66 (2) (a) and (am) or a local ordinance adopted under s. 134.66 (5). The department may contract with a local health

department, a state agency, or a state or local law enforcement agency to conduct investigations authorized under this section, and a local health department, state agency, or state or local law enforcement agency may contract with any other person to conduct those investigations. A person who contracts to conduct investigations authorized under this section shall agree in the contract to train all individuals conducting investigations under the contract in accordance with the standards established under par. (b) and to suspend from conducting any further investigations for not less than 6 months any individual who fails to meet the requirements of sub. (3) (a) to (f) and the standards established by the department.

(b) The department, in consultation with other governmental regulatory authorities and with retailers, shall establish standards for procedures and training for conducting investigations under this section.

(c) No retailer may be subjected to an unannounced investigation more than twice annually unless the retailer is found to have violated s. 134.66 (2) (a) or (am), or a local ordinance adopted under s. 134.66 (5), during the most recent investigation.

(2) With the permission of his or her parent or guardian, a person under 18 years of age, but not under 15 years of age, may buy, attempt to buy or possess any cigarette, nicotine product, or tobacco product if all of the following are true:

(a) The person commits the act for the purpose of conducting an investigation under this section.

(b) The person is directly supervised during the conducting of the investigation by an adult employee of a governmental regulatory authority.

(c) The person has prior written authorization to commit the act from a governmental regulatory authority or a district attorney or from an authorized agent of a governmental regulatory authority or a district attorney.

(3) All of the following, unless otherwise specified, apply in conducting investigations under this section:

(a) If questioned about his or her age during the course of an investigation, the minor shall state his or her true age.

(b) A minor may not be used for the purposes of an investigation at a retail outlet at which the minor is a regular customer.

(c) The appearance of a minor may not be materially altered so as to indicate greater age.

(d) A photograph or videotape of the minor shall be made before or after the investigation or series of investigations on the day of the investigation or series of investigations. If a prosecution results from an investigation, the photograph or videotape shall be retained until the final disposition of the case.

(e) A governmental regulatory authority shall make a good faith effort to make known to the retailer or the retailer's employee or agent, within 72 hours after the occurrence of the violation, the results of an investigation, including the issuance of any citation by a governmental regulatory authority for a violation that occurs during the conduct of the investigation. This paragraph does not apply to investigations conducted under a grant received under 42 USC 300x-21.

(f) Except with respect to investigations conducted under a grant received under 42 USC 300x-21, all of the following information shall be reported to the retailer within 10 days after the conduct of an investigation under this section:

1. The name and position of the governmental regulatory authority employee who directly supervised the investigation.

2. The age of the minor.

3. The date and time of the investigation.

4. A reasonably detailed description of the circumstances giving rise to a violation, if any, or, if there is no violation, written notice to that effect.

(5) No evidence obtained during or otherwise arising from the course of an investigation under this section that is used to prosecute a person for a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5) may be used in the prosecution of an alleged violation of s. 125.07 (3).

(6) The department shall compile the results of investigations performed under this section and shall prepare an annual report that reflects the results for submission with the state's application for federal funds under 42 USC 300x-21. The report shall be published for public comment at least 60 days before the beginning of negotiations under sub. (7).

(7) The department shall strive annually to negotiate with the federal department of health and human services realistic and attainable interim performance targets for compliance with 42 USC 300x-26.

(8) A governmental regulatory agency that conducts an investigation under this section shall meet the requirements of sub. (3) (a) to (f) and the standards established by the department.

(9) The department shall provide education and training to governmental regulatory authorities to ensure uniformity in the enforcement of this subchapter.

(10) This section does not limit the authority of the department to investigate establishments in jurisdictional areas of governmental regulatory authorities if the department investigates in response to an emergency, for the purpose of monitoring and evaluating the governmental regulatory authority's investigation and enforcement program or at the request of the governmental regulatory authority.

(11) A person conducting an investigation under this section may not have a financial interest in a regulated cigarette and tobacco product retailer, a tobacco vending machine operator, a tobacco vending machine premises, or a tobacco vending machine that may interfere with his or her ability to properly conduct that investigation. A person who is investigated under this section may request the local health department or local law enforcement agency that contracted for the investigation to conduct a review under ch. 68 to determine whether the person conducting the investigation is in compliance with this subsection or, if applicable, may request the state agency or state law enforcement agency that contracted for the investigation to conduct a contested case hearing under ch. 227 to make that determination. The results of an investigation that is conducted by a person who is not in compliance with this subsection may not be used to prosecute a violation of s. 134.66 (2) (a) or (am) or a local ordinance adopted under s. 134.66 (5).

History: 1999 a. 9, 84, 185; 2001 a. 75; 2011 a. 249.

254.92 Purchase or possession of cigarettes or tobacco products by person under 18 prohibited.

(1) No person under 18 years of age may falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product.

(2) No person under 18 years of age may purchase, attempt to purchase, or possess any cigarette, nicotine product, or tobacco product except as follows:

(a) A person under 18 years of age may purchase or possess cigarettes, nicotine products, or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.

(b) A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in an investigation under s. 254.916 that is conducted in accordance with s. 254.916 (3).

(2m) No person may purchase cigarettes, tobacco products, or nicotine products on behalf of, or to provide to, any person who is under 18 years of age. Any person who violates this subsection may be:

(a) Required to forfeit not more than \$500 if the person has not committed a previous violation within 30 months of the violation.

(b) Fined not more than \$500 or imprisoned for not more than 30 days or both if the person has committed a previous violation within 30 months of the violation.

(c) Fined not more than \$1,000 or imprisoned for not more than 90 days or both if the person has committed 2 previous violations within 30 months of the violation.

(d) Fined not more than \$10,000 or imprisoned for not more than 9 months or both if the person has committed 3 or more previous violations within 30 months of the violation.

(3) A law enforcement officer shall seize any cigarette, nicotine product, or tobacco product that has been sold to and is in the possession of a person under 18 years of age.

254.92(4) (4) A county, town, village, or city may enact an ordinance regulating the conduct regulated by this section only if the ordinance strictly conforms to this section. A county ordinance enacted under this subsection does not apply within a town, village, or city that has enacted or enacts an ordinance under this subsection.

History: 1987 a. 336; 1991 a. 32, 95, 315; 1995 a. 352, s. 20; Stats. 1995 s. 938.983; 1999 a. 9 ss. 2485L, 3176m, 3176p to 3176s; 2001 a. 75; 2005 a. 25; 2011 a. 249.

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations that are not in strict conformity with those of the state. *U.S. Oil, Inc. v. City of Fond du Lac*, 199 Wis. 2d 333, 544 N.W.2d 589 (Ct. App. 1995), 95-0213.