



2015 ASSEMBLY BILL 861

February 4, 2016 – Introduced by Representatives HEBL and BARCA. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT to repeal** 59.692 (1) (e), 59.692 (1d), 59.692 (1f), 59.692 (1k) and 59.692
2 (5m); **to renumber** 59.692 (1c); **to amend** 49.45 (23) (a), 49.471 (4) (a) 4. b.,
3 59.692 (1) (bn), 59.692 (4) (b), 61.353 (3) (intro.) and 62.233 (3) (intro.); **to**
4 **repeal and recreate** 59.692 (2m) and 281.31 (2m); and **to create** 49.471 (1)
5 (cr), 49.471 (4g), 59.692 (1t), 61.353 (3) (cm), 61.353 (3) (dm), 62.233 (3) (cm) and
6 62.233 (3) (dm) of the statutes; **relating to:** standards and ordinances
7 regulating shoreland zoning, Medicaid expansion, and eligibility for
8 BadgerCare Plus and BadgerCare Plus Core.

Analysis by the Legislative Reference Bureau

This bill eliminates the changes to the laws regulating shoreland zoning that were made under the 2015–17 biennial budget act, 2015 Wisconsin Act 55 (Act 55).

Current law requires a county to enact shoreland zoning ordinances for all shorelands in its unincorporated area and requires those ordinances to meet shoreland zoning standards established by the Department of Natural Resources (DNR) by rule. Current law generally defines a shoreland to be an area within a specified distance from the edge of a navigable water.

Act 55 made various changes to the laws regulating shoreland zoning including the following:

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1. Prohibiting a county shoreland zoning ordinance from regulating a matter more restrictively than the matter is regulated by a shoreland zoning standard promulgated by DNR.

2. Prohibiting a shoreland zoning ordinance from requiring a person to establish a vegetative buffer zone on previously developed land or expand an existing buffer zone.

3. Requiring a shoreland zoning ordinance to allow a vegetative buffer zone to contain a viewing corridor of at least 35 feet wide for every 100 feet of shoreline frontage and to allow the corridor to run contiguously for the entire maximum allowable width.

4. Prohibiting DNR from establishing shoreland zoning standards and prohibiting counties from enacting shoreland zoning ordinances that regulate certain outdoor lighting, that regulate certain construction activities with respect to nonconforming structures, and that impose certain standards for impervious surfaces.

5. Allowing certain maintenance and repair of nonconforming structures in shorelands that are accessory structures such as garages, sheds, sidewalks, and patios.

6. Generally requiring city and village shoreland zoning ordinances that apply to certain shorelands that were annexed or incorporated by the city or village to be consistent with the requirements and limitations applicable to county shoreland zoning ordinances.

7. Prohibits DNR from appealing a decision of a county to grant or deny a variance to a law regulating county shoreland zoning.

This bill eliminates the changes to the law made by Act 55 so that the law is consistent with pre-Act 55 law.

This bill changes the family income eligibility level to up to 133 percent of the federal poverty line (FPL) for parents and caretaker relatives under BadgerCare Plus (BC+) and for childless adults under BadgerCare Plus Core (BC+ Core). Currently, the Department of Health Services (DHS) administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health services to individuals who have limited financial resources. Some services are provided through programs that operate under a waiver of federal Medicaid laws, including services provided through the BC+ and BC+ Core programs.

Under current law, certain parents and caretaker relatives with incomes of not more than 100 percent of the FPL, before a 5 percent income disregard is applied, are eligible for BC+ benefits. Under current law, adults who are under age 65, who have family incomes that do not exceed 100 percent of the FPL, before a 5 percent income disregard is applied, and who are not otherwise eligible for MA, including BC+ (childless adults), are eligible for benefits under BC+ Core.

The federal Patient Protection and Affordable Care Act allows a state to receive an enhanced federal medical assistance percentage (FMAP) payment for providing benefits to certain individuals through a state's MA program. The bill expands the income eligibility level for parents and caretaker relatives under BC+ and for childless adults under BC+ Core. The bill requires DHS to comply with all federal

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requirements and to request any amendment to the state MA plan, waiver of Medicaid law, or other federal approval necessary to qualify for the highest available enhanced FMAP for parents and caretaker relatives and childless adults eligible for BC+ Core (collectively nonpregnant, nonelderly adults). If DHS does not qualify for the enhanced FMAP or if the FMAP is reduced, DHS is required to submit to the Joint Committee on Finance (JCF) a fiscal analysis comparing the cost of covering nonpregnant, nonelderly adults under the MA program at up to 133 percent of the FPL to the cost of limiting income eligibility to those adults to up to 100 percent of the FPL. DHS may reduce income eligibility levels for nonpregnant, nonelderly adults to up to 100 percent of the FPL only if JCF approves.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.45 (23) (a) of the statutes is amended to read:

2 49.45 **(23)** (a) The department shall request a waiver from the secretary of the
3 federal department of health and human services to permit the department to
4 conduct a demonstration project to provide health care coverage to adults who are
5 under the age of 65, who have family incomes not to exceed ~~100~~ 133 percent of the
6 poverty line ~~before application of the 5 percent income disregard under 42 CFR~~
7 ~~435.603 (d)~~, except as provided in s. 49.471 (4g), and who are not otherwise eligible
8 for medical assistance under this subchapter, the Badger Care health care program
9 under s. 49.665, or Medicare under 42 USC 1395 et seq.

10 **SECTION 2.** 49.471 (1) (cr) of the statutes is created to read:

11 49.471 **(1)** (cr) “Enhanced federal medical assistance percentage” means a
12 federal medical assistance percentage described under 42 USC 1396d (y) or (z).

13 **SECTION 3.** 49.471 (4) (a) 4. b. of the statutes is amended to read:

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1 49.471 (4) (a) 4. b. ~~The~~ Except as provided in sub. (4g), the individual's family
2 income does not exceed ~~100~~ 133 percent of the poverty line ~~before application of the~~
3 ~~5 percent income disregard under 42 CFR 435.603 (d).~~

4 **SECTION 4.** 49.471 (4g) of the statutes is created to read:

5 49.471 (4g) MEDICAID EXPANSION; FEDERAL MEDICAL ASSISTANCE PERCENTAGE. (a)
6 For services provided to individuals described under sub. (4) (a) 4. and s. 49.45 (23),
7 the department shall comply with all federal requirements to qualify for the highest
8 available enhanced federal medical assistance percentage. The department shall
9 submit any amendment to the state medical assistance plan, request for a waiver of
10 federal Medicaid law, or other approval required by the federal government to
11 provide services to the individuals described under sub. (4) (a) 4. and s. 49.45 (23) and
12 qualify for the highest available enhanced federal medical assistance percentage.

13 (b) If the department does not qualify for an enhanced federal medical
14 assistance percentage, or if the enhanced federal medical assistance percentage
15 obtained by the department is lower than printed in federal law as of July 1, 2013,
16 for individuals eligible under sub. (4) (a) 4. or s. 49.45 (23), the department shall
17 submit to the joint committee on finance a fiscal analysis comparing the cost to
18 maintain coverage for adults who are not pregnant and not elderly at up to 133
19 percent of the poverty line to the cost of limiting eligibility to those adults with family
20 incomes up to 100 percent of the poverty line. The department may reduce income
21 eligibility for adults who are not pregnant and not elderly from up to 133 percent of
22 the poverty line to up to 100 percent of the poverty line only if this reduction in income
23 eligibility levels is approved by the joint committee on finance.

24 **SECTION 5.** 59.692 (1) (bn) of the statutes, as affected by 2015 Wisconsin Act
25 55, is amended to read:

ASSEMBLY BILL 861**SECTION 5**

1 59.692 (1) (bn) “Shoreland setback area” means an area in a shoreland that is
2 within a certain distance of the ordinary high-water mark in which the construction
3 or placement of buildings or structures has been limited or prohibited under an
4 ordinance enacted under this section.

5 **SECTION 6.** 59.692 (1) (e) of the statutes, as created by 2015 Wisconsin Act 55,
6 is repealed.

7 **SECTION 7.** 59.692 (1c) of the statutes, as affected by 2015 Wisconsin Act 55, is
8 renumbered 59.692 (1m).

9 **SECTION 8.** 59.692 (1d) of the statutes, as created by 2015 Wisconsin Act 55, is
10 repealed.

11 **SECTION 9.** 59.692 (1f) of the statutes, as created by 2015 Wisconsin Act 55, is
12 repealed.

13 **SECTION 10.** 59.692 (1k) of the statutes, as created by 2015 Wisconsin Act 55,
14 is repealed.

15 **SECTION 11.** 59.692 (1t) of the statutes is created to read:

16 59.692 (1t) (a) Restrictions that are applicable to damaged or destroyed
17 nonconforming structures and that are contained in an ordinance enacted under this
18 section may not prohibit the restoration of a nonconforming structure if the structure
19 will be restored to the size, subject to par. (b), location and use that it had
20 immediately before the damage or destruction occurred or impose any limits on the
21 costs of the repair, reconstruction or improvement if all of the following apply:

22 1. The nonconforming structure was damaged or destroyed after October 14,
23 1997.

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

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

5 **SECTION 12.** 59.692 (2m) of the statutes, as affected by 2015 Wisconsin Act 55,
6 is repealed and recreated to read:

7 59.692 (2m) (a) In this subsection:

8 1. "Development regulations" means the part of a shoreland zoning ordinance
9 enacted under this section that applies to elements including setback, height, lot
10 coverage, and side yard.

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

15 (b) A county may not enact, and a county, city, or village may not enforce, a
16 provision in a county shoreland zoning ordinance that does any of the following:

17 1. Regulates the location, maintenance, expansion, replacement, repair, or
18 relocation of a nonconforming structure if that provision is more restrictive than the
19 shoreland zoning standards for nonconforming structures promulgated by the
20 department under this section.

21 2. Regulates the construction of a structure or building on a substandard lot
22 if that provision is more restrictive than the shoreland zoning standards for
23 substandard lots promulgated by the department under this section.

24 **SECTION 13.** 59.692 (4) (b) of the statutes, as affected by 2015 Wisconsin Act 55,
25 is amended to read:

ASSEMBLY BILL 861**SECTION 13**

1 59.692 (4) (b) Variances and appeals regarding shorelands within a county are
2 for the board of adjustment for that county under s. 59.694, and the procedures of
3 that section apply. ~~Notwithstanding s. 59.694 (4), the department may not appeal~~
4 ~~a decision of the county to grant or deny a variance under this section but may, upon~~
5 ~~the request of a county board of adjustment, issue an opinion on whether a variance~~
6 ~~should be granted or denied.~~

7 **SECTION 14.** 59.692 (5m) of the statutes, as created by 2015 Wisconsin Act 55,
8 is repealed.

9 **SECTION 15.** 61.353 (3) (intro.) of the statutes, as affected by 2015 Wisconsin
10 Act 55, is amended to read:

11 61.353 (3) (intro.) A village ordinance enacted under this section shall ~~accord~~
12 ~~and be consistent with the requirements and limitations under s. 59.692 (1d), (1f),~~
13 ~~and (1k) and shall include at least all of the following provisions:~~

14 **SECTION 16.** 61.353 (3) (cm) of the statutes is created to read:

15 61.353 (3) (cm) 1. A provision requiring a person who owns shoreland property
16 that contains vegetation to maintain that vegetation in a vegetative buffer zone
17 along the entire shoreline of the property and extending 35 feet inland from the
18 ordinary high-water mark of the navigable water, except as provided in subd. 2.

19 2. If the vegetation in a vegetative buffer zone contains invasive species or dead
20 or diseased vegetation, the owner of the shoreland property may remove the
21 vegetation, except that if the owner removes all of the vegetation in the vegetative
22 buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

23 **SECTION 17.** 61.353 (3) (dm) of the statutes is created to read:

24 61.353 (3) (dm) A provision allowing a person who is required to maintain or
25 establish a vegetative buffer zone under par. (cm) to remove all of the vegetation in

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1 a part of that zone in order to establish a viewing or access corridor that is no greater
2 than 30 feet wide for every 100 feet of shoreline frontage and that extends no more
3 than 35 feet inland from the ordinary high-water mark.

4 **SECTION 18.** 62.233 (3) (intro.) of the statutes, as affected by 2015 Wisconsin
5 Act 55, is amended to read:

6 62.233 (3) (intro.) A city ordinance enacted under this section shall ~~accord and~~
7 ~~be consistent with the requirements and limitations under s. 59.692 (1d), (1f), and~~
8 ~~(1k) and shall~~ include at least all of the following provisions:

9 **SECTION 19.** 62.233 (3) (cm) of the statutes is created to read:

10 62.233 (3) (cm) 1. A provision requiring a person who owns shoreland property
11 that contains vegetation to maintain that vegetation in a vegetative buffer zone
12 along the entire shoreline of the property and extending 35 feet inland from the
13 ordinary high-water mark of the navigable water, except as provided in subd. 2.

14 2. If the vegetation in a vegetative buffer zone contains invasive species or dead
15 or diseased vegetation, the owner of the shoreland property may remove the
16 vegetation, except that if the owner removes all of the vegetation in the vegetative
17 buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.

18 **SECTION 20.** 62.233 (3) (dm) of the statutes is created to read:

19 62.233 (3) (dm) A provision allowing a person who is required to maintain or
20 establish a vegetative buffer zone under par. (cm) to remove all of the vegetation in
21 a part of that zone in order to establish a viewing or access corridor that is no greater
22 than 30 feet wide for every 100 feet of shoreline frontage and that extends no more
23 than 35 feet inland from the ordinary high-water mark.

24 **SECTION 21.** 281.31 (2m) of the statutes, as affected by 2015 Wisconsin Act 55,
25 is repealed and recreated to read:

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1 281.31 **(2m)** Notwithstanding any other provision of law or administrative
2 rule, a shoreland zoning ordinance required under s. 59.692, a construction site
3 erosion control and storm water management zoning ordinance authorized under s.
4 59.693, 60.627, 61.354 or 62.234 or a wetland zoning ordinance required under s.
5 61.351 or 62.231 does not apply to lands adjacent to farm drainage ditches if all of
6 the following apply:

7 (a) The lands are not adjacent to a natural navigable stream or river.

8 (b) Those parts of the drainage ditches adjacent to these lands were
9 nonnavigable streams before ditching.

10 (c) The lands are maintained in nonstructural agricultural use.

11 **SECTION 22. Fiscal changes.**

12 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
13 to the department of health services under section 20.435 (4) (b) of the statutes, as
14 affected by the acts of 2015, the dollar amount for fiscal year 2015-16 is decreased
15 by \$102,900,000 to provide Medical Assistance to certain adults with incomes up to
16 133 percent of the federal poverty line. In the schedule under section 20.005 (3) of
17 the statutes for the appropriation to the department of health services under section
18 20.435 (4) (b) of the statutes, as affected by the acts of 2015, the dollar amount for
19 fiscal year 2016-17 is decreased by \$220,600,000 to provide Medical Assistance to
20 certain adults with incomes up to 133 percent of the federal poverty line.

21 **SECTION 23. Effective date.**

22 (1) The treatment of sections 49.45 (23) (a) and 49.471 (1) (cr), (4) (a) 4. b., and
23 (4g) takes effect on January 1, 2016, or on the day after publication, whichever is
24 later.

25

(END)