

WAPA LEGISLATIVE UPDATE

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A. **2005-07 Biennial Budget is Approved by Governor Doyle: *SMART GROWTH IS RESTORED – Budget Veto Controversy Is Brewing***

On July 25, 2005, Governor Doyle signed the 2005-07 biennial budget bill with numerous partial vetoes. Most importantly for WAPA is that the Governor's vetoes **restored Wisconsin's comprehensive planning law and comprehensive planning grant program.**

First, by vetoing the repeal of Wis. Stat. § 66.1001, Governor Doyle restored Wisconsin's comprehensive planning statute. Similarly, by vetoing the repeal of § 16.965, the Governor restored the comprehensive planning grant program.

Next, by partially vetoing several other sections in the bill, the Governor was able to direct that all deed recording fee revenue received by the state is deposited into a continuing appropriation, which allows the Department of Administration to allot available revenues to fund grants under the restored comprehensive planning grant program.

Although it was effective for the restoration of these "smart growth" statutes, the Governor's use of the veto is not without controversy. Senator Sheila Harsdorf (R-River Falls), Senator Scott Fitzgerald (R-Juneau), Representative Don Friske (R-Merrill) and Representative Jeff Stone (R-Greendale) are circulating **legislation for co-sponsorship that would limit a governor's authority to veto appropriation bills.**

LRB 3432/1 is identical to 1991 AJR-78, which was offered by former Representative Jeannette Bell and Senator Fred Risser. The proposal would amend Article V, Section 10 (1) (c) of the Wisconsin Constitution to prohibit vetoes that create a new sentence by combining parts of two or more sentences of the enrolled bill. (Note: This section already prohibits creating a new word by deleting individual letters in the words contained in the enrolled bill.) The earliest that this proposed Constitutional amendment could be put on a statewide ballot is April 2007. In order to get this amendment on the April 2007 ballot, it would have to be approved by the current Legislature *and* the 2007 Legislature.

B. **New Stand-Alone Legislation**

1. *Authorizing the Restoration of a Nonconforming Structure that is Destroyed by Vandalism or Certain Natural Forces – Senate Bill 253*

Senator Cathy Stepp (R-Sturtevant) has introduced Senate Bill 253, which makes changes to Wisconsin's law protecting the reconstruction of a nonconforming structure.

Under current law, with regard to county zoning of shorelands on navigable waters, restrictions that are contained in shoreland zoning ordinances that would apply to a damaged or destroyed nonconforming structures may not prohibit the restoration of a structure that was (1) damaged or destroyed after October 14, 1997 and (2) damaged or destroyed by violent wind, vandalism, fire, or flood, *if* the structure will be restored to the same size, location, and use it had before the damage or destruction occurred. In addition, the restrictions in the zoning ordinance may not impose limits on the costs of the repair, reconstruction, or improvement of the structure.

SB 253 expands the application of this protection to other zoning ordinances. Under the bill, restrictions contained in general city, village, town, and county zoning ordinances, and city and village zoning of wetlands in shorelands ordinances, may not prohibit the restoration of a nonconforming structure subject to the same provisions and conditions that currently apply to county shoreland zoning on navigable waters. In addition, “other natural occurrences” is added to the ways in which a structure must have been damaged in order to receive protection. Under the bill, however, with regard to the conditions that apply to the restrictions in the zoning ordinances, the structure must have been damaged or destroyed on or after the effective date of the bill.

On August 9, 2005, the Senate Committee on Housing and Financial Institutions held a public hearing on this legislation. Tom Larson, of the Wisconsin Realtor’s Association, testified in favor of the bill. Jerry Deschane (Wisconsin Builders Association), Representative Tom Lothian (R-Williams Bay) and Peter Hanson (Wisconsin Restaurant Association), all registered in favor of the bill. Only one entity, Waukesha County, registered against SB 253 at the public hearing.

Based on testimony and questions at the hearing, it appears that the expansion of the protection to losses caused by “other natural occurrences” may be replaced by an itemized list that contains events such as snow, ice, mold and infestations.

To review a copy of SB 253, go to <http://www.legis.state.wi.us/2005/data/SB-253.pdf> on the Internet.

2. *Limits on Situations in which Political Subdivisions and Certain State Agencies may Revoke or Change Certain Approvals – Assembly Bill 601*

Representative Sheryl Albers (R-Reedsburg) has introduced AB 601, which makes various changes to the limits on situations in which political subdivisions and certain state agencies may revoke or change certain approvals.¹

Generally, under current law, a political subdivision (city, village, town, or county) is authorized to enact zoning ordinances. A zoning ordinance may determine, establish, regulate, and restrict land use in various ways, including specifying the following: the

¹ Note: For purposes of the *Update*, we will focus on the changes that affect political subdivisions. If you are interested in changes affecting the Department of Natural Resources, Department of Commerce or the Department of Transportation, please refer to the legislation itself.

areas within which certain activities may be conducted, the location of roads and schools, building setback lines, and the percentage of a lot which may be occupied.

Under this bill, a political subdivision may not revoke or modify a permit or approval that has been granted to a person, that relates to a zoning ordinance, unless: (1) the permit recipient consents, (2) the recipient provided inaccurate information relating to the permit, (3) the recipient violates a condition of the permit, or, (4) if the political subdivision issues the permit in error, the political subdivision compensates the recipient for the costs incurred in reliance on the permit. If the permit was issued in error, the bill also authorizes a political subdivision to grant a special exception or variance of any requirement violated by the activity for which the permit was issued instead of providing compensation.

AB 601 has been referred to the Assembly Committee on Property Rights and Land Management. To review a copy of AB 601, go to <http://www.legis.state.wi.us/2005/data/AB-601.pdf> in the Internet.

C. Update on Previously Introduced Legislation

1. Quorum Requirements for a Zoning Board of Appeals or Adjustment – Assembly Bill 24

On August 15, 2005, Governor Doyle signed AB 24 into law. This bill changes several statutory requirements for local zoning boards to ensure boards have a full quorum when making important decisions, and can act with a simple majority. The Governor thanked authors Representative Albers and Senator Olsen as well as Senator Lassa for their work on the bill.

2. Limits Reasons for Which Local Gov't May Withhold Permit Approval – Assembly Bill 558

Under Assembly Bill 558, (sponsored by Representative Albers) no zoning entity may condition or withhold approval of a permit that it may issue under its zoning authority based on the property owner entering into, discontinuing, modifying, extending, or renewing a contract with a third party under which the third party is engaging in a lawful use of the property.

A public hearing was held on AB 558 on July 12th before the Assembly Committee on Property Rights and Land Management. On August 10, 2005, the Committee voted to recommend the legislation for passage with a vote of 4-1.

(Note: There have been no other changes to the status of introduced legislation described in previous issues of the *Update*.)