

State of Wisconsin



2017 Senate Bill 177

Date of enactment: **November 30, 2017**

Date of publication*: **December 1, 2017**

2017 WISCONSIN ACT 115

AN ACT *to repeal* 88.83 (1m) and 88.83 (1r); *to renumber and amend* 87.30 (1m) and 88.83 (1); *to amend* 88.13, 88.24 (intro.), 88.62 (3) (a), 88.63 (2), 88.83 (title), 88.83 (3), 88.83 (4), 88.83 (5), 281.36 (3b) (b), 281.36 (3m) (a), 281.36 (6) (a) (intro.), 281.36 (9) (a) (intro.) and 283.33 (1) (intro.); and *to create* 30.20 (1g) (d), 70.32 (5), 87.30 (1m) (am), 88.17 (2h) (c), 88.17 (2h) (d), 88.17 (2r), 88.212 (4), 88.31 (7r), 88.74, 88.785, 88.817, 88.83 (1c), 88.83 (2m), 281.36 (4r) and 283.33 (1m) of the statutes; **relating to**: drainage districts and regulating the removal of material from certain drainage ditches.

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

SECTION 1. 30.20 (1g) (d) of the statutes is created to read:

30.20 (1g) (d) The removal of material by a drainage district from the bed of a ditch operated by the drainage district is exempt from the individual and general permit requirements under this section if all of the following apply:

1. The material is removed for the purpose of maintaining the ditch.
2. The material is not removed from an area that is listed in a database maintained by the department identifying contaminated properties and other activities related to the investigation and cleanup of contaminated soil or groundwater in this state.
3. If the removed material is spread on land, all of the following apply:
 - a. The material is graded and smoothed to blend into cultivated lands.
 - b. The surface slope of the material does not exceed a slope of 8 to 1.

c. The material is not more than 2 feet deep at the top of the bank of the ditch.

4. If the removed material is placed in a district corridor established under s. 88.74, no portion of a pile of the removed material is closer than 12 feet from the top of the bank of the ditch, is piled at any angle other than a stable angle of repose for that material, nor has a slope exceeding a slope of 2 to 1.

5. The drainage district, in maintaining the drainage ditch, does all of the following in order to prevent the spread of invasive species or the spread of viruses from one navigable water to another:

a. Removes plants, animals, and mud and other debris from all equipment it uses to maintain the drainage ditch before the equipment is placed in any other navigable water.

b. Washes all equipment that it uses to maintain the drainage ditch with high pressure water of not less than 2,000 pounds per square inch before it is placed in any other navigable water or allows the equipment to dry for not less than 5 days before it is placed in any other navigable water.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

6. The material is not discharged into a wetland that is identified by the department under s. 281.36 (3g) (d) 1. to 7.

7. Except as provided in this subdivision, the removal activity does not occur between March 15 and the immediately following June 1. A department fish biologist assigned to the area in which the removal activity is located may waive the requirement that the limitation in this subdivision apply to an exemption under this paragraph.

8. If the drainage ditch is classified by the department as a trout stream or tributary of a trout stream, the drainage district coordinates the time of its removal activities with department fisheries staff.

SECTION 2. 70.32 (5) of the statutes is created to read:

70.32 (5) Beginning with the assessments as of January 1, 2017, the assessor shall assess the land within a district corridor described under s. 88.74 in the same class under sub. (2) (a) as the land adjoining the corridor, if the adjoining land and the land within the corridor are owned by the same person.

SECTION 3m. 87.30 (1m) of the statutes is renumbered 87.30 (1m) (ag), and 87.30 (1m) (ag) (intro.), 1. and 2., as renumbered, are amended to read:

87.30 (1m) (ag) (intro.) Notwithstanding any other provision of law or administrative rule promulgated thereunder, a floodplain zoning ordinance required under sub. (1) does not apply to lands adjacent to farm drainage ditches if all of the following apply:

1. Such lands are not within the floodplain of a natural navigable stream or river;
2. Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and

SECTION 4m. 87.30 (1m) (am) of the statutes is created to read:

87.30 (1m) (am) Notwithstanding any other provision of law or administrative rule promulgated thereunder, a floodplain zoning ordinance required under sub. (1) does not apply to lands adjacent to farm drainage ditches if all of the following apply, except to the extent necessary for the municipality to which the floodplain zoning ordinance applies to maintain eligibility for participation in the National Flood Insurance Program:

1. The farm drainage ditch is subject to the jurisdiction of a drainage district under ch. 88.
2. The disposal of material in a floodplain is within the drainage district corridor under s. 88.74.
3. The lands adjacent to the corridor are maintained in nonstructural agricultural use or other nonstructural use.

SECTION 8. 88.13 of the statutes is amended to read:

88.13 Right to enter lands of drainage district. Whenever necessary for any purpose connected with the organization of a district or the construction, maintenance or repair of drains and other works, members of the

board, representatives of the department of agriculture, trade and consumer protection, and persons intending to bid on or to whom contracts have been let for the construction of the works within a district or on former district lands transferred under s. 88.83 and their respective agents and employees may go upon any lands proposed for inclusion or included within a district or on adjoining lands or on former district lands transferred under s. 88.83, and are not guilty of trespass therefor but are liable for unnecessary damage caused to crops or structures.

SECTION 9. 88.17 (2h) (c) of the statutes is created to read:

88.17 (2h) (c) Local or statewide agriculture, engineering, local government, or real estate organizations, including the Wisconsin Potato and Vegetable Growers Association, the Wisconsin State Cranberry Growers Association, the Wisconsin Farm Bureau Federation, the Wisconsin Farmers Union, the Dairy Business Association, and the Wisconsin Dairy Products Association.

SECTION 10. 88.17 (2h) (d) of the statutes is created to read:

88.17 (2h) (d) The department of agriculture, trade and consumer protection, which may recommend persons who have engineering experience related to water resources and agriculture.

SECTION 11. 88.17 (2r) of the statutes is created to read:

88.17 (2r) (a) If the board has jurisdiction of a drainage district that is located entirely or partially within the corporate limits of a city or village and a city or village the corporate limits of which contains any portion of a drainage district that is under the jurisdiction of the board notifies the court that the city or village will recommend a drainage board member, all of the following apply:

1. Notwithstanding subs. (1) and (2), the board shall consist of 5 persons. If the number of members of a board is increased under this paragraph, the board shall provide by rule for staggered terms, with all members serving terms of 5 years.

2. a. Notwithstanding subs. (1) and (2h), the court shall appoint one drainage board member from the list of persons recommended under this subd. 2. a. by cities and villages the corporate limits of which contains any portion of a drainage district that is under the jurisdiction of the board. Each city and village may recommend a member and, if the city or village recommends a member, shall recommend the chief executive of the city or village or the designee of the chief executive. In appointing a member under this subd. 2. a., the court shall attempt to assure that the member has experience in farming, familiarity with drainage, or familiarity with drainage engineering.

b. If drainage districts under the jurisdiction of the board are located entirely or partially within the corporate limits of more than one city or village, the appointment under subd. 2. a. shall rotate among the cities and villages.

c. Notwithstanding subs. (7) and (8), a member appointed under this paragraph may not be reimbursed for expenses incurred in the performance of the member's duties and may not receive a per diem.

(b) If the position under par. (a) 2. becomes vacant and no city or village the corporate limits of which contains any portion of a drainage district that is under the jurisdiction of the board recommends a drainage board member under par. (a) 2., the board may, by rule, reduce the number of members to 3, but only if the size of the board is reduced as vacancies occur on the board.

SECTION 12. 88.212 (4) of the statutes is created to read:

88.212 (4) If any portion of a drainage district that is a subject matter of a drainage board meeting is located in a city, village, or town, notify the city, village, or town of the date, time, and subject matter of the meeting. A notification under this subsection may be in an electronic format.

SECTION 13. 88.24 (intro.) of the statutes is amended to read:

88.24 Board to file annual report. (intro.) On or before December 1 of each year the board shall file with the department of agriculture, trade and consumer protection; the town board or town zoning committee; the city council, plan commission, or plan committee; and the county zoning administrator, in which district territory is located, a separate report, for the preceding fiscal year ending August 31, on each drainage district under the board's jurisdiction. Unless the board selects a different fiscal year and notifies the department of the selection, the board's fiscal year begins on September 1 and ends on the following August 31. All local units of government that receive the report shall consider it before making any zoning or planning decisions that may affect a drainage district that is located within its boundaries. The reports shall constitute part of the records of the districts reported on, shall be verified by the oath of one or more of the board members, and shall contain:

SECTION 14. 88.31 (7r) of the statutes is created to read:

88.31 (7r) A drainage district that is exempt from the individual and general permit requirements under s. 30.20 as specified under s. 30.20 (1g) (d) is exempt from the permit requirements and procedures under subs. (1) to (7) with respect to that removal.

SECTION 15. 88.62 (3) (a) of the statutes is amended to read:

88.62 (3) (a) If Except for a removal of material that is exempt from the individual and general permit requirements under s. 30.20 as specified under s. 30.20 (1g) (d) and except as provided under par. (b), if drainage work is undertaken in navigable waters, the drainage board shall obtain a permit under s. 30.20 or 88.31 or ch. 31, as

directed by the department of natural resources, ~~except as provided in par. (b).~~

SECTION 16. 88.63 (2) of the statutes is amended to read:

88.63 (2) The board shall may establish and maintain a fund for the payment of costs of maintenance and repair. ~~Whenever the amount of the fund falls below an amount equivalent to 5 percent of the confirmed benefits currently in effect in the district, the board shall levy an additional assessment under s. 88.23 for maintenance and repair. Assessments for costs of maintenance and repair shall be apportioned on the basis of the confirmed benefits then in effect in the district but may be made notwithstanding the fact that assessments of benefits in the district may have been exhausted by previous assessments for other costs. Assessments for costs of maintenance and repair, including costs incurred and per diems earned by board members under sub. (1m), are not limited by the extent of unexhausted assessments of benefits in the district and shall not be counted in determining whether there are unexhausted assessments of benefits against which assessments for costs other than those authorized by this section may be made for the payment of the costs of normal operations and maintenance and repair and for emergency expenses. Moneys in a fund under this subsection may not exceed amounts reasonably necessary for the purposes under this subsection.~~

SECTION 17. 88.74 of the statutes is created to read:

88.74 District corridors. (1) (a) Except as provided in par. (b), the board shall establish all of the following as district corridors:

1. A corridor which extends 20 feet from the top of the ditch bank on each side of a district ditch.
2. A corridor extending 20 feet from the centerline on each side of any other district drain or facility.

(b) Upon notice to affected landowners, the board may establish and maintain a wider corridor if a wider corridor is necessary to meet any of the purposes specified under sub. (3).

(2) The board shall provide notice of any corridor established under sub. (1) to the county and the city, village, or town in which the corridor is located.

(3) The board shall maintain a corridor established under sub. (1) to accomplish all of the following purposes:

- (a) To provide the board with effective access to the drain or facility, including access for vehicles or equipment.
- (b) To protect water quality in the drain or facility.
- (c) To allow for the placement of dredge materials from maintaining the drain or facility.

(4) (a) Except as provided in pars. (b) and (d), the board may, without prior notice to the landowner, enter a corridor established under sub. (1) to inspect, survey,

maintain, repair, restore, or improve a drain, facility, or corridor.

(b) Before doing any of the following in a corridor, the board shall notify the landowner of the pending action:

1. Cutting a tree that is more than 6 inches in diameter measured at breast height.

2. Excavating or depositing materials in the corridor.

(c) Notice under par. (b) may be given at any time before performance of the work and may be given in person, by telephone, by mail, or, if the landowner is not available, by posting notice at a conspicuous location at an entrance to the land.

(d) If a drainage board intends to perform general maintenance work in a corridor during the year, the board shall provide notice to the landowner not later than March 1. Notice under this paragraph shall be given in person, by telephone, by mail, or by electronic means, or, if notice cannot be provided in one of these manners, by posting notice at a conspicuous location at an entrance to the land. This paragraph does not apply to emergency maintenance work.

(5) (a) No person may do any of the following in a corridor established under sub. (1) without written permission from the board:

1. Engage in row cropping in the corridor.

2. Place any obstruction in the corridor that interferes with the board's ability to accomplish a purpose under sub. (3).

(b) A person who violates par. (a) may not recover damages with regard to any damage to crops or obstructions caused by actions taken by the board under sub. (3).

(c) Paragraph (a) does not require a landowner to remove any building or fixture constructed or installed in a corridor prior to September 1, 1999, or any structure that does not interfere with the board's maintenance of a drain and that was placed in the corridor for the purpose of providing drainage.

(6) No city, village, town, or county may by ordinance, resolution, or any other means restrict, or impose other conditions related to, the board's maintenance of district corridors or ditches unless specifically required by federal law.

SECTION 18. 88.785 of the statutes is created to read:

88.785 Certain annexations prohibited. (1) Notwithstanding ss. 88.34, 88.77, and 88.78, no lands that are within the corporate limits of a city, a village, or, if the town has a permit for storm water management under s. 283.33, a town may be included in a newly organized drainage district or annexed to a drainage district unless the governing body of the city, village, or town adopts a resolution approving the inclusion or annexation.

(2) Notwithstanding ss. 88.77 and 88.78, no lands that are located in a county in which no portion of the drainage district is located may be annexed to a drainage district.

SECTION 19. 88.817 of the statutes is created to read:
88.817 Leola drainage district. (1) Notwithstanding s. 88.815, the Leola drainage district located in Adams, Portage, and Waushara counties is reinstated.

(2) The drainage board with jurisdiction of the Leola drainage district may not levy any assessment. This subsection does not apply if the owners of land representing, as calculated on the effective date of this subsection ... [LRB inserts date], 67 percent or more of the confirmed benefits in the district, excluding benefits received by land owned by this state, file with the court having jurisdiction on the matter a petition for the reinstatement of assessment authority of the district.

SECTION 20. 88.83 (title) of the statutes is amended to read:

88.83 (title) Transfer of district to city or village municipal jurisdiction.

SECTION 21. 88.83 (1) of the statutes is renumbered 88.83 (1g) and amended to read:

88.83 (1g) The owners of a majority of the land ~~proposed to be transferred~~ in ~~any a~~ drainage district located entirely ~~or partially~~ within the corporate limits of a ~~city or village~~ municipality may petition the drainage board having jurisdiction of the district to transfer jurisdiction ~~thereof to the city or village of the part of the district proposed to be transferred that is located within the municipality.~~ thereof to the city or village of the part of the district proposed to be transferred that is located within the municipality.

SECTION 22. 88.83 (1c) of the statutes is created to read:

88.83 (1c) In this section, "municipality" means a city, village, or town.

SECTION 23. 88.83 (1m) of the statutes is repealed.

SECTION 24. 88.83 (1r) of the statutes is repealed.

SECTION 25. 88.83 (2m) of the statutes is created to read:

88.83 (2m) If the proposed transfer of jurisdiction is of less than the entire district, jurisdiction of the part of the drainage district may not be transferred to a municipality unless the municipality to which jurisdiction will be transferred and the district have entered into an agreement that includes all of the following:

(a) The municipality and district agree that the goal of the agreement is to outline the duties and responsibilities of the respective parties to maintain the drain system as provided in the plans and specification for the drain system approved by the department of agriculture, trade and consumer protection.

(b) The agreement specifies any monetary obligations of the municipality or district under the agreement and the manner by which any monetary obligation under the agreement will be calculated.

(c) The municipality agrees to ensure access to, and maintenance of, any corridor established under s. 88.74 (1) that is located on land transferred under this section consistent with the requirements of s. 88.74.

(d) The municipality agrees, upon order by the drainage district from which jurisdiction was transferred, to maintain and repair any part of a former district drain located in land transferred under this section.

(e) That if the municipality fails to complete work ordered under par. (d), the district may complete the work and assess costs on the confirmed benefits to property located in the municipality, as follows:

1. The district shall provide notice to the municipality that, based upon an inspection by the board, maintenance of a drain on land transferred under this section is necessary.

2. If the municipality does not within 30 days of receiving the notice under subd. 1. enter into an agreement with the district to perform the maintenance or does not perform the ordered maintenance within 12 months of receiving the notice under subd. 1., the district may file a declaratory judgment action in the court having jurisdiction over the district. The only issues in an action under this subdivision shall be compliance with this paragraph and whether the lands proposed to be assessed are benefited by the drain.

3. a. If the court determines that the district has complied with this paragraph and that the lands proposed to be assessed are benefited by the drain, the district may complete the work and assess costs to the municipality.

b. If the court determines that the district has not complied with this paragraph or that the lands proposed to be assessed are not benefited by the work, the district may complete the work, but may not assess costs to the municipality.

SECTION 26. 88.83 (3) of the statutes is amended to read:

88.83 (3) If the drainage board finds upon the hearing that the petition is signed by the required number of owners of a majority of the land in the district, or by a majority of the owners in that part of the district lying within the corporate limits of a city or village and that the conditions under sub. (2m) have been satisfied, it shall may issue an order transferring jurisdiction of the district or part of the district to the city or village municipality. If the order transfers jurisdiction of the entire district and the governing body of the municipality approves the transfer, the drainage district shall cease to exist as a district under this chapter and shall automatically come under the jurisdiction of the governing body of the city or village municipality in which the district is located. If the order transfers jurisdiction of only a part of the district and the governing body of the municipality approves the transfer, the section transferred shall automatically come under the jurisdiction of the governing body of the city or village municipality in which the district is located. ~~After a transfer, all proceedings with reference to the drainage district or part of the district shall be under the city or village drainage law.~~

SECTION 27. 88.83 (4) of the statutes is amended to read:

88.83 (4) As an alternative, proceedings covered by this section may be initiated by a resolution of the governing body of a ~~city or village~~ municipality. The resolution shall state that the ~~city or village~~ municipality is willing to accept the drain or part of the drain ~~and to administer it under the laws pertaining to the operation of drains by the city or village~~, and that the public interest requires that the ~~city or village~~ municipality take over the operation of the drain or part of the drain. The resolution shall be published as a class 1 notice under ch. 985. The ~~city or village~~ municipality may petition the drainage board having jurisdiction of the drain to issue an order transferring jurisdiction of the district or part of the district to the ~~city or village~~ municipality. ~~The drainage board may not hold a hearing may be held on the petition until 30 days have elapsed from after the date of publication of the notice. A copy of the petition, together with a copy of the and resolution, shall be served on the county clerk of the county in which the drain is located, and also upon the board having jurisdiction of the drain. After If the drainage board finds upon the hearing that the conditions under sub. (2m) have been met, the drainage board may issue an order transferring jurisdiction of the drain or part of the drain to the city or village municipality. If an the order is issued that transfers jurisdiction of the entire district, the drainage district shall cease to exist as a district under this chapter and shall automatically come under the jurisdiction of the governing body of the city or village municipality in which the district is located. If the order transfers jurisdiction of only a part of the district, the section transferred shall automatically come under the jurisdiction of the governing body of the city or village municipality in which the district is located. After a transfer, all proceedings with reference to the drainage district or part of the district shall be under the city or village drainage law.~~

SECTION 28. 88.83 (5) of the statutes is amended to read:

88.83 (5) Upon entry of the an order transferring jurisdiction of such an entire district to such city or village a municipality and approval of the transfer by the municipality, the county treasurer and district shall pay to the ~~city or village~~ treasurer of such city or village the municipality all moneys in the county treasurer's or district's hands which belong to such the drainage district. Upon entry of an order transferring jurisdiction of a part of a district to the city or village in which it is located a municipality and approval of the transfer by the municipality, the county treasurer and district shall pay to the ~~city or village~~ treasurer of the municipality a proportional share of the moneys in the county treasurer's or district's hands which belong to the drainage district based upon

assessed benefits transferred less a proportional share of outstanding indebtedness.

SECTION 29. 281.36 (3b) (b) of the statutes, as affected by 2017 Wisconsin Act 58, is amended to read:

281.36 (3b) (b) No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4) ~~or~~ (4m) (a), or (4r). No person may violate any condition contained in a wetland general or individual permit issued by the department under this section. The department may not issue a wetland general or individual permit under this section unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards.

SECTION 30. 281.36 (3m) (a) of the statutes, as affected by 2017 Wisconsin Act 58, is amended to read:

281.36 (3m) (a) *When permit required.* Any person wishing to proceed with a discharge into any wetland shall submit an application for a wetland individual permit under this subsection unless the discharge has been authorized under a wetland general permit as provided in sub. (3g) or is exempt under sub. (4) ~~or~~ (4m) (a), or (4r). Before submitting the application, the department shall hold a meeting with the applicant to discuss the details of the proposed discharge and the requirements for submitting the application and for delineating the wetland. An applicant may include in the application a request for a public informational hearing. The application shall be accompanied by the applicable fee specified in sub. (11) or (12) (a).

SECTION 31. 281.36 (4r) of the statutes is created to read:

281.36 (4r) DRAINAGE DISTRICT ACTIVITY EXEMPTION. (a) The permitting requirement under sub. (3b) does not apply to any discharge that is the result of activity undertaken by a drainage district to maintain drainage district drains in accordance with plans and specifications approved by the department of agriculture, trade and consumer protection.

(b) The department shall waive any water quality certification requested under 33 USC 1341 (a) for a discharge described under par. (a).

SECTION 32. 281.36 (6) (a) (intro.) of the statutes is amended to read:

281.36 (6) (a) (intro.) The department shall promulgate rules to interpret and implement the provisions under subs. (4), ~~(4r)~~, and (5). In promulgating these rules, the department shall do all of the following:

SECTION 33. 281.36 (9) (a) (intro.) of the statutes is amended to read:

281.36 (9) (a) (intro.) For purposes of determining whether to issue a wetland individual permit, whether

authorization to proceed as authorized under a wetland general permit is appropriate, or whether an exemption under sub. (4) or (4r) is appropriate, and for purposes of enforcing this section, any employee or other representative of the department, upon presenting his or her credentials, may do any of the following:

SECTION 33m. 283.33 (1) (intro.) of the statutes is amended to read:

283.33 (1) REQUIREMENT. (intro.) ~~An~~ Except as provided in sub. (1m), an owner or operator shall obtain a permit under this section for any of the following:

SECTION 33p. 283.33 (1m) of the statutes is created to read:

283.33 (1m) EXEMPTIONS; LIMITATION ON LOCAL PERMITTING. (a) An owner or operator is not required to obtain a permit under this section for any of the following:

1. A discharge of storm water associated with planting, growing, cultivating, or harvesting crops for use or consumption by humans, livestock, as defined in s. 95.80 (1) (b), or poultry, including sod farms and tree nurseries.

2. A discharge of storm water associated with pasturing or yarding livestock, as defined in s. 95.80 (1) (b), or poultry.

3. A discharge of storm water from land containing dredged material removed from a drainage district ditch, if the land is adjacent to the ditch from which the dredged material was removed.

4. Any other discharge of storm water exempted by the department by rule from obtaining a permit under this section.

(b) A political subdivision may not require an owner or operator to obtain a permit from the political subdivision for any discharge described under par. (a) 1. to 4. In this paragraph, "political subdivision" means a city, village, town, or county.

(c) The exemptions under par. (a) and the prohibition under par. (b) do not apply to the construction of barns, manure storage facilities, barnyard runoff control systems, or other similar structures.

SECTION 34. Initial applicability.

(1) The treatment of section 88.785 of the statutes first applies to the organization of a drainage district or an annexation that is pending on the effective date of this subsection.

(2) The treatment of section 88.83 (title), (1), (1c), (1m), (1r), (2m), (3), (4), and (5) of the statutes first applies to a petition for transfer of jurisdiction filed on the effective date of this subsection.

(3) The treatment of section 88.17 (2r) (a) 2. of the statutes first applies to a drainage district board that has a vacancy on the effective date of this subsection.