



2001 SENATE BILL 209

June 21, 2001 - Introduced by Senators RISSER and BURKE, cosponsored by Representatives BERCEAU, POCAN, MILLER and BOCK. Referred to Committee on Environmental Resources.

1 **AN ACT** *to amend* 20.370 (3) (ma), 30.12 (4) (a), 30.202 (3), 30.204 (5), 41.41 (8),
2 66.0217 (8) (a), 66.0219 (6), 66.0223, 66.0307 (3) (e), 66.0307 (7m), 70.32 (1g),
3 91.73 (1), 289.33 (3) (d), 289.35 and 289.43 (7) (c); and *to create* 66.1001 (3) (Lm)
4 and 66.1002 of the statutes; **relating to:** zoning of upland environmental
5 corridors, requiring the exercise of rule-making authority, and making an
6 appropriation.

Analysis by the Legislative Reference Bureau

Under current law, a county must enact specific zoning ordinances to regulate activities in any shorelands that are in unincorporated areas of the county, and a village or city must enact specific zoning ordinances to regulate activities in wetlands that are five acres or more in size and that are located in shorelands. These zoning ordinances must comply with standards established by the department of natural resources (DNR). Current law defines "shorelands" as lands within certain distances of navigable waters.

This bill creates similar requirements for upland environmental corridors. Under the bill, DNR must promulgate rules to establish criteria for determining what are to be considered upland environmental corridors. DNR must also promulgate rules to establish standards for identifying these corridors, including a minimum size requirement.

Once DNR identifies these corridors, the regional planning commission for the area in which each corridor is located must map the corridor. If a corridor is not under

SENATE BILL 209

the jurisdiction of such a planning commission, the county, city, or village (local unit of government) in which the corridor is located must either map the corridor or contract with a regional planning commission to perform the mapping.

The bill requires DNR to promulgate rules to establish objectives for protecting these corridors from land use practices that reduce the upland environmental corridors' natural values, including objectives as to the amount and type of development that may, occur in upland environmental corridors. Each local unit of government in which an upland environmental corridor is located must then enact an ordinance that meets these objectives. If a local unit of government fails to do so within one year after the mapping is completed, DNR must then enact an ordinance for the local unit of government.

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.** 20.370 (3) (ma) of the statutes is amended to read:

2 20.370 (3) (ma) *General program operations — state funds.* From the general
3 fund, the amounts in the schedule for regulatory and enforcement operations under
4 chs. 30, 31, and 280 to 299, except s. 281.48, and ss. 44.47, 59.692, 59.693, 61.351,
5 61.354, 62.231, 62.234, 66.1002, and 87.30, for reimbursement of the conservation
6 fund for expenses incurred for actions taken under s. 166.04; for review of
7 environmental impact requirements under ss. 1.11 and 23.40; and for enforcement
8 of the treaty-based, off-reservation rights to fish, hunt, and gather held by members
9 of federally recognized American Indian tribes or bands.

10 **SECTION 2.** 30.12 (4) (a) of the statutes is amended to read:

11 30.12 (4) (a) Activities affecting waters of the state as defined in s. 281.01 (18)
12 that are carried out under the direction and supervision of the department of
13 transportation in connection with highway, bridge, or other transportation project
14 design, location, construction, reconstruction, maintenance, and repair are not
15 subject to the prohibitions or permit or approval requirements specified under this

SENATE BILL 209

1 section or s. 29.601, 30.11, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231,
2 66.1002, or 87.30 or chs. 281 to 285 or 289 to 299, except s. 281.48. However, at the
3 earliest practical time prior to the commencement of these activities, the department
4 of transportation shall notify the department of the location, nature, and extent of
5 the proposed work that may affect the waters of the state.

6 **SECTION 3.** 30.202 (3) of the statutes is amended to read:

7 30.202 (3) EXEMPTION FROM STATUTES AND RULES. Dredge spoil disposal activities
8 authorized under sub. (2) are exempt from any prohibition, restriction, requirement,
9 permit, license, approval, authorization, fee, notice, hearing, procedure, or penalty
10 specified under s. 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692, 66.1002, or 87.30 or
11 chs. 281 to 285 or 289 to 299, except s. 281.48, or specified in any rule promulgated,
12 order issued, or ordinance adopted under those sections or chapters.

13 **SECTION 4.** 30.204 (5) of the statutes is amended to read:

14 30.204 (5) EXEMPTION FROM CERTAIN STATUTES AND RULES. Activities of the
15 department in conducting the lake acidification experiment are exempt from any
16 prohibition, restriction, requirement, permit, license, approval, authorization, fee,
17 notice, hearing, procedure, or penalty specified under s. 29.601 (3), 30.01 to 30.03,
18 30.06 to 30.16, 30.18 to 30.29, 30.50 to 30.99, 59.692, 66.1002, 87.30, 287.81, 299.15
19 to 299.23, 299.91, 299.95, or 299.97 or chs. 281, 283, or 289 to 292 or specified in any
20 rule promulgated, order issued, or ordinance adopted under any of those sections or
21 chapters.

22 **SECTION 5.** 41.41 (8) of the statutes is amended to read:

23 41.41 (8) ZONING. Notwithstanding ss. 13.48 (13) (a), 59.69 (4), 60.61 (2), 60.62
24 (1), 61.35, and 62.23 (7), the Kickapoo valley reserve is not subject to the zoning
25 ordinance of any county or municipality, except that any ordinance enacted under s.

SENATE BILL 209

1 59.692, 61.351, 62.231, 66.1002, or 87.30 governing the zoning of floodplains, upland
2 environmental corridors, shorelands, or wetlands in shorelands and any ordinance
3 that is required by law under s. 59.693, 61.354, or 62.234 governing construction site
4 erosion control or storm water management applies in the reserve.

5 **SECTION 6.** 66.0217 (8) (a) of the statutes is amended to read:

6 66.0217 (8) (a) An ordinance for the annexation of the territory described in the
7 annexation petition under sub. (3) may be enacted by a two-thirds vote of the elected
8 members of the governing body not less than 20 days after the publication of the
9 notice of intention to circulate the petition and not later than 120 days after the date
10 of filing with the city or village clerk of the petition for annexation or of the
11 referendum election if favorable to the annexation. If the annexation is subject to
12 sub. (6) the governing body shall first review the reasons given by the department
13 that the proposed annexation is against the public interest. Subject to s. ~~ss.~~ 59.692
14 (7) and 66.1002 (5) (a) 5., an ordinance under this subsection may temporarily
15 designate the classification of the annexed area for zoning purposes until the zoning
16 ordinance is amended as prescribed in s. 62.23 (7) (d). Before introduction of an
17 ordinance containing a temporary classification, the proposed classification shall be
18 referred to and recommended by the plan commission. The authority to make a
19 temporary classification is not effective when the county ordinance prevails during
20 litigation as provided in s. 59.69 (7).

21 **SECTION 7.** 66.0219 (6) of the statutes is amended to read:

22 66.0219 (6) TEMPORARY ZONING OF AREA PROPOSED TO BE ANNEXED. An interim
23 zoning ordinance to become effective only upon approval of the annexation at the
24 referendum election may be enacted by the governing body of the city or village.
25 Subject to s. ~~ss.~~ 59.692 (7) and 66.1002 (5) (a) 5., the ordinance may temporarily

SENATE BILL 209

1 designate the classification of the annexed area for zoning purposes until the zoning
2 ordinance is amended as prescribed in s. 62.23 (7) (d). The proposed interim zoning
3 ordinance shall be referred to and recommended by the plan commission prior to
4 introduction. Authority to make a temporary classification is not effective when the
5 county zoning ordinance prevails during litigation as provided in s. 59.69 (7).

6 **SECTION 8.** 66.0223 of the statutes is amended to read:

7 **66.0223 Annexation of territory owned by a city or village.** In addition
8 to other methods provided by law and subject to ss. 59.692 (7) and 66.0307 (7), and
9 66.1002 (5) (a) 5., territory owned by and lying near but not necessarily contiguous
10 to a village or city may be annexed to a village or city by ordinance enacted by the
11 board of trustees of the village or the common council of the city, provided that in the
12 case of noncontiguous territory the use of the territory by the city or village is not
13 contrary to any town or county zoning regulation. The ordinance shall contain the
14 exact description of the territory annexed and the names of the towns from which
15 detached, and attaches the territory to the village or city upon the filing of 7 certified
16 copies of the ordinance in the office of the secretary of state, together with 7 copies
17 of a plat showing the boundaries of the territory attached. Two copies of the
18 ordinance and plat shall be forwarded by the secretary of state to the department of
19 transportation, one copy to the department of administration, one copy to the
20 department of natural resources, one copy to the department of revenue, and one
21 copy to the department of public instruction. Within 10 days of filing the certified
22 copies, a copy of the ordinance and plat shall be mailed or delivered to the clerk of
23 the county in which the annexed territory is located. Section 66.0217 (11) applies to
24 annexations under this section.

25 **SECTION 9.** 66.0307 (3) (e) of the statutes is amended to read:

SENATE BILL 209**SECTION 9**

1 66.0307 (3) (e) *Content of plan; compatibility with existing law.* The
2 cooperative plan shall describe how the plan is consistent with current state and
3 federal laws, ~~county shoreland~~ zoning ordinances under ~~s.~~ ss. 59.692 and 66.1002,
4 municipal regulations, and administrative rules that apply to the territory affected
5 by the plan.

6 **SECTION 10.** 66.0307 (7m) of the statutes is amended to read:

7 66.0307 (7m) ZONING IN TOWN TERRITORY. If a town is a party to a cooperative
8 plan with a city or village, the town and city or village may agree, as part of the
9 cooperative plan, to authorize the town, city, or village to adopt a zoning ordinance
10 under s. 60.61, 61.35, or 62.23 for all or a portion of the town territory covered by the
11 plan. The exercise of zoning authority by a town under this subsection is not subject
12 to s. 60.61 (3) or 60.62 (3). If a county zoning ordinance applies to the town territory
13 covered by the plan, that ordinance and amendments to it continue until a zoning
14 ordinance is adopted under this subsection. If a zoning ordinance is adopted under
15 this subsection, that zoning ordinance continues in effect after the planning period
16 ceases until a different zoning ordinance for the territory is adopted under other
17 applicable law. This subsection does not affect zoning ordinances adopted that are
18 in effect under ss. 59.692, 66.1002, 87.30, or 91.71 to 91.78.

19 **SECTION 11.** 66.1001 (3) (Lm) of the statutes is created to read:

20 66.1001 (3) (Lm) City or village upland environmental corridor zoning
21 ordinances enacted or amended under s. 66.1002 (5) (b), or a county upland
22 environmental corridor zoning ordinance enacted or amended under s. 66.1002 (5)
23 (a).

24 **SECTION 12.** 66.1002 of the statutes is created to read:

SENATE BILL 209

1 **66.1002 Zoning of upland environmental corridors. (1) DEFINITIONS.** In
2 this section:

3 (a) “Department” means the department of natural resources.

4 (b) “Local unit of government” means a city, village, or county.

5 (c) “Shorelands” has the meaning given in s. 59.692 (1) (b).

6 **(2) DETERMINATION OF UPLAND ENVIRONMENTAL CORRIDORS.** (a) The department
7 shall promulgate rules that specify criteria for determining the types of areas that
8 shall be included as upland environmental corridors on the maps under sub. (3). The
9 types of areas may include:

10 1. Woodlands.

11 2. Wetlands that are not located in shorelands.

12 3. Wildlife habitat areas.

13 4. Areas consisting of prairie communities.

14 5. Areas of steep slope or rough topography.

15 (b) The department shall promulgate rules that establish standards for
16 identifying and delineating upland environmental corridors, including minimum
17 requirements for the sizes of these corridors.

18 (c) Upland environmental corridors that meet the criteria and standards
19 established by rule under this subsection shall be mapped as required under sub. (3)
20 and are subject to the ordinances required under sub. (5).

21 **(3) MAPPING.** (a) Each regional planning commission shall map the upland
22 environmental corridors within its region. If any part of a local unit of government
23 is not under the jurisdiction of a regional planning commission, the local unit of
24 government shall either map the upland environmental corridors within the
25 boundaries of the local unit of government or shall contract with a regional planning

SENATE BILL 209**SECTION 12**

1 commission to perform the mapping. The mapping required under this paragraph
2 shall be completed before January 1, 2007.

3 (b) If a regional planning commission or a local unit of government fails to
4 complete the mapping before January 1, 2007, the department shall complete the
5 mapping before January 1, 2008.

6 (c) The department shall promulgate rules to be used by the department to
7 review and certify the mapping performed by regional planning commissions and
8 local units of government under this subsection.

9 (4) OBJECTIVES FOR UPLAND ENVIRONMENTAL CORRIDORS. The department shall
10 promulgate rules that establish objectives for protecting upland environmental
11 corridors from land use practices that reduce the upland environmental corridors'
12 natural values, including objectives as to the amount and type of development that
13 may occur in upland environmental corridors.

14 (5) ORDINANCES. (a) *County ordinances*. 1. Each county that has an upland
15 environmental corridor within the county's unincorporated area shall enact an
16 ordinance that meets the objectives established by the department under sub. (4).
17 An ordinance enacted under this subsection may be enacted separately from
18 ordinances enacted under s. 59.69.

19 2. Except as otherwise provided in this section, the provisions of s. 59.69 apply
20 to an ordinance enacted under this subsection, but the ordinance is exempt from any
21 requirement that it be approved by a town or a town board.

22 3. If a town ordinance that is in effect on the effective date of this subdivision
23 [revisor inserts date], and that relates to land located in an upland environmental
24 corridor is more restrictive than an ordinance enacted under this section affecting

SENATE BILL 209

1 the same land, it continues as a town ordinance in all respects to the extent of the
2 greater restrictions, but not otherwise.

3 4. Requests for variances and appeals regarding upland environmental
4 corridors within a county shall be decided by the board of adjustment for that county
5 under s. 59.694, and the procedures of that section apply to such requests and
6 appeals.

7 5. Provisions of an upland zoning ordinance that are enacted under this
8 subsection and that were applicable, prior to annexation, to any upland
9 environmental corridor area annexed by a city or village after the county has enacted
10 the ordinance under this subsection shall continue in effect and shall be enforced
11 after annexation by the annexing city or village.

12 (b) *City and village ordinances.* 1. Each city or village that has an upland
13 environmental corridor within its borders shall enact an ordinance that meets the
14 objectives established by the department under sub. (4). An ordinance enacted under
15 this subsection may be enacted separately from ordinances enacted under s. 62.23
16 (7).

17 2. Except as otherwise provided in this section, the provisions of s. 62.23 (7)
18 apply to an ordinance enacted under this subsection.

19 3. Requests for variances and appeals regarding upland environmental
20 corridors within a city or village shall be decided by the board of appeals for that city
21 or village under s. 62.23 (7) (e), and the procedures of that paragraph apply to such
22 requests and appeals.

23 (c) *Ordinances in general.* 1. An ordinance enacted under this subsection
24 supersedes all provisions of an ordinance enacted under ss. 59.69, 61.35, and 62.23
25 (7) that relate to upland environmental corridors.

SENATE BILL 209**SECTION 12**

1 2. If a local unit of government does not enact an ordinance within one year
2 after the mapping for the local unit of government is completed under sub. (3) or if
3 the department, after notice and hearing, determines that a local unit of government
4 has enacted an ordinance that fails to meet the objectives established by the
5 department under sub. (4), the department shall enact such an ordinance for the
6 local unit of government.

7 3. Ordinances enacted under this subsection may not result in duplicate zoning
8 restrictions for areas that are subject to zoning under s. 59.692, 61.351, 62.231, or
9 87.30.

10 **(6) RULES.** In promulgating rules under this section, the department shall
11 consult with local units of government and regional planning commissions.

12 **SECTION 13.** 70.32 (1g) of the statutes, is amended to read:

13 70.32 **(1g)** In addition to the factors set out in sub. (1), the assessor shall
14 consider the effect on the value of the property of any zoning ordinance under s.
15 59.692, 61.351 ~~or~~, 62.231, or 66.1002, any conservation easement under s. 700.40,
16 any conservation restriction under an agreement with the federal government, and
17 any restrictions under ch. 91. Beginning with the property tax assessments as of
18 January 1, 2000, the assessor may not consider the effect on the value of the property
19 of any federal income tax credit that is extended to the property owner under section
20 42 of the Internal Revenue Code.

21 **SECTION 14.** 91.73 (1) of the statutes is amended to read:

22 91.73 **(1)** Except as otherwise provided, exclusive agricultural zoning
23 ordinances shall be adopted and administered in accordance with any applicable
24 provisions under ss. 59.69, 59.692, 59.693 ~~and~~, 59.694, 61.35 ~~or~~, 62.23 ~~or~~, and 66.1002
25 and under subch. VIII of ch. 60.

SENATE BILL 209

1 **SECTION 15.** 289.33 (3) (d) of the statutes is amended to read:

2 289.33 (3) (d) "Local approval" includes any requirement for a permit, license,
3 authorization, approval, variance, or exception or any restriction, condition of
4 approval, or other restriction, regulation, requirement, or prohibition imposed by a
5 charter ordinance, general ordinance, zoning ordinance, resolution, or regulation by
6 a town, city, village, county, or special purpose district, including without limitation
7 because of enumeration any ordinance, resolution, or regulation adopted under s.
8 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
9 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), and (27),
10 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20), and (23),
11 59.535 (2), (3), and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
12 (17), (18), (19), (20), (21), (22), (23), (24), (25), and (26), 59.55 (3), (4), (5), and (6), 59.56
13 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13), and (16), 59.57 (1), 59.58 (1)
14 and (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7),
15 (8), (9), (10), (11), (21), (22), and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (10), and
16 (11), 59.792 (2) and (3), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35,
17 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.0101, 66.0415, 66.1002, 87.30, 91.73,
18 196.58, 200.11 (8), 236.45, 281.43, or 349.16 or subch. VIII of ch. 60.

19 **SECTION 16.** 289.35 of the statutes is amended to read:

20 **289.35 Shoreland, upland, and floodplain zoning.** Solid waste facilities
21 are prohibited within areas under the jurisdiction of ~~shoreland and floodplain zoning~~
22 ~~regulations adopted~~ zoning ordinances that are in effect under ss. 59.692, 61.351,
23 62.231, 66.1002, and 87.30, except that the department may issue permits
24 authorizing facilities in such areas.

25 **SECTION 17.** 289.43 (7) (c) of the statutes is amended to read:

