

1991 Senate Bill 231

Date of enactment: **April 29, 1992**

Date of publication\*: **May 13, 1992**

## 1991 WISCONSIN ACT 286

**AN ACT** to repeal 91.21 (2); to amend 91.13 (1), 91.13 (2), 91.19 (2) (intro.), (a) and (b) (intro.), 91.19 (2) (b) 2 and 3, 91.19 (3), (5) and (6), 91.19 (6p), 91.19 (7), 91.19 (12), 91.21 (3), 91.37 (6) and 91.75 (4) and (5); to repeal and recreate 91.19 (2) (b) 1, 91.19 (6m) and 91.75 (2); and to create 91.01 (10), 91.07, 91.13 (8) (fm), 91.13 (13), 91.19 (2) (b) 4 and 5, 91.19 (2) (c), 91.19 (6s) and 91.75 (8) and (9) of the statutes, relating to: changes in the law governing farmland preservation agreements, agricultural preservation planning and exclusive agricultural zoning and granting rule-making authority.

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

**SECTION 1.** 91.01 (10) of the statutes is created to read:

91.01 (10) "Use consistent with agricultural use" means any activity that meets all of the following conditions:

(a) The activity will not convert land that has been devoted primarily to agricultural use.

(b) The activity will not limit the surrounding land's potential for agricultural use.

(c) The activity will not conflict with agricultural operations on the land subject to a farmland preservation agreement.

(d) The activity will not conflict with agricultural operations on other properties.

**SECTION 2.** 91.07 of the statutes is created to read:

**91.07 Rule-making authority. (1)** The department shall promulgate rules to implement this chapter, except those provisions relating to the powers and duties of the board.

(2) The board shall promulgate rules to implement its powers and duties under this chapter.

**SECTION 2m.** 91.13 (1) of the statutes is amended to read:

91.13 (1) Any owner of eligible farmlands who desires to have the lands covered by a farmland preserva-

tion agreement may apply to the county clerk by executing a form provided by the department. If an application is received by the county clerk on or after the effective date of this subsection .... [revisor inserts date], and it is not signed by all persons holding a recorded mortgage on the land to be covered by the agreement, the application is void and may not be processed by the county clerk. The application shall include a land survey or legal description of all eligible farmland to be covered under the agreement, a map showing significant natural features and all structures and physical improvements on the lands or an aerial photograph of all land which is an integral part of the owner's farming operation which is marked to indicate the farmland and structures to be covered by the agreement, the soil classification of the lands and such other data as the department deems reasonably necessary to determine the eligibility of the lands for coverage under the agreement.

**SECTION 3.** 91.13 (2) of the statutes is amended to read:

91.13 (2) Upon receipt of the application, the county clerk shall forward the application to the local governing body having jurisdiction, if not the county, and shall send written notification to the department, county planning and zoning agency, the regional planning commission and the county land conservation committee. If the county has jurisdiction, the clerk shall also notify the board of the town in which the land is situated. If the land

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is within the boundaries of an incorporated municipality or is ~~within the~~ subject to an extraterritorial zoning jurisdiction ~~of any ordinance adopted by a municipality~~ under s. 62.23 (7a), the clerk shall send written notification to the governing body of the city or village.

**SECTION 3m.** 91.13 (8) (fm) of the statutes is created to read:

91.13 (8) (fm) A statement in boldface uppercase type that contains the following language: "UPON RELINQUISHMENT (WITHDRAWAL OR EXPIRATION) OF THIS AGREEMENT, A PAYBACK OF CREDITS WITH INTEREST MAY BE REQUIRED."

**SECTION 4.** 91.13 (13) of the statutes is created to read:

91.13 (13) The department may waive its approval authority under sub. (8) (a) or (b) for structures or improvements affecting less than 5 acres of land.

**SECTION 5.** 91.19 (2) (intro.), (a) and (b) (intro.) of the statutes are amended to read:

91.19 (2) (intro.) ~~A farmland preservation agreement may be relinquished by the department~~ The department may relinquish the farmland preservation agreement or may release part of the land from a farmland preservation agreement prior to the termination date contained in the instrument as follows:

(a) The owner of the land may submit an application, on forms prescribed by the department, to the local governing body having jurisdiction requesting that the agreement be relinquished or that part of the land be released from the agreement. Upon receipt of the application, the clerk of the local governing body shall send written notification thereof to the persons specified under s. 91.13 (2), and such persons shall have 30 days from receipt of notification to review, comment and make recommendations to the local governing body having jurisdiction.

(b) (intro.) After considering the comments and recommendations of the reviewing agencies and holding a public hearing, following the publication in the county of a class 2 notice, under ch. 985, the local governing body having jurisdiction shall approve or reject the application within 120 days after it is filed, unless the time is extended by mutual agreement of the parties involved. The local governing body having jurisdiction shall not approve an application for relinquishment or release under this subsection unless it finds ~~that~~ one or more of the following ~~conditions exist~~:

**SECTION 6.** 91.19 (2) (b) 1. of the statutes is repealed and recreated to read:

91.19 (2) (b) 1. That relinquishment or release will allow the owner to resolve foreclosure or bankruptcy proceedings by a voluntary settlement with a mortgagee or a creditor.

**SECTION 7.** 91.19 (2) (b) 2. and 3. of the statutes are amended to read:

91.19 (2) (b) 2. ~~Significant~~ That significant natural physical changes in the land ~~which have occurred that~~ are generally irreversible and permanently affect the land.

3. ~~Surrounding~~ That surrounding conditions prohibit agricultural use.

**SECTION 8.** 91.19 (2) (b) 4. and 5. of the statutes are created to read:

91.19 (2) (b) 4. Subject to par. (c), that relinquishment or release will allow the owner to develop the land to assist local economic development.

5. Subject to par. (c), that relinquishment or release will allow for the transfer of the land and subsequent agriculturally related, utility, religious or institutional uses that are consistent with agricultural use and that are found to be necessary in light of the alternative locations available for such uses.

**SECTION 9.** 91.19 (2) (c) of the statutes is created to read:

91.19 (2) (c) 1. The local governing body having jurisdiction may not approve an application for relinquishment or release under par. (b) 4. or 5. unless it finds that all of the following conditions exist:

a. Adequate public facilities to serve the proposed development or use exist or will be provided as part of the development.

b. The land is suitable for the proposed development or use.

c. The proposed development or use will not cause air pollution, water pollution or soil erosion that exceeds applicable state or local standards, adversely affect rare or irreplaceable natural areas or otherwise harm the environment.

d. The proposed development or use is consistent with remaining agricultural uses in the area.

e. The proposed development or use is consistent with the county's certified agricultural preservation plan, if a plan is in effect.

f. The proposed development is not for residential use.

g. The proposed development or use is consistent with local economic development plans.

h. There is no alternative location for the proposed development or use that is suitable.

2. As part of its review of an application for relinquishment or release under par. (b) 4 or 5, the local governing body having jurisdiction shall also consider all of the following factors:

b. The agricultural productivity of the land involved.

c. Whether the proposed development or use minimizes the amount of agricultural land converted to non-agricultural uses.

d. The economic costs and benefits of the proposed development or use to the local economy compared to the costs and benefits of the land for agricultural use.

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e. The costs of providing public facilities to the proposed development or use, and the ability of affected local units of government to provide them.

**SECTION 10.** 91.19 (3), (5) and (6) of the statutes are amended to read:

91.19 (3) If the request for relinquishment of the farmland preservation agreement or release of part of the land from the agreement is approved by the local governing body having jurisdiction, a copy of the application, along with the comments and recommendations of the reviewing agencies, shall be forwarded to the board. The board shall, within 60 days, upon consideration of the factors in sub. (2) (b) and (c) 2., approve or reject the application for relinquishment or release. If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.

(5) If the application for relinquishment of the agreement or release of part of the land from the agreement is rejected by the local governing body having jurisdiction, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (2) (b) and (c) 2., approve or reject the request for relinquishment or release. If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.

(6) The department shall relinquish release from a farmland preservation agreement any ~~lands~~ land acquired for use as an electric generating facility authorized under s. 196.491 (3), or which involves acquisition of the fee by a utility or a cooperative organized under ch. 185 for purposes of generating electricity or other utility uses.

**SECTION 11.** 91.19 (6m) of the statutes is repealed and recreated to read:

91.19 (6m) The department shall release from a farmland preservation agreement any lands acquired by the state or the federal government for public improvements or structures, including highway improvements.

**SECTION 12.** 91.19 (6p) of the statutes is amended to read:

91.19 (6p) The department shall relinquish release from a farmland preservation agreement any land subject to a farmland preservation agreement if the owner of the land has, before December 31, 1988, obtained state, county, city, village and town licenses, permits or approvals, other than those required under this chapter, to develop the land as a concert park.

**SECTION 13.** 91.19 (6s) of the statutes is created to read:

91.19 (6s) (a) The department may release from a farmland preservation agreement any land acquired or to be acquired by a local unit of government, as defined in s. 16.20 (1) (e), for public improvements or structures, including highway improvements, if all of the following occur:

1. An application for release of the land, made by either the owner or the local unit of government, is approved by the local governing body having jurisdiction and the board under the procedures of subs. (2) to (5).

2. The department finds that the conditions listed in sub. (2) (c) 1. exist.

3. The department considers the factors listed in sub. (2) (c) 2.

(b) If an owner of land subject to a farmland preservation agreement opposes an application brought by a local unit of government for release of that land, the owner may appeal the approval of that application by the local governing body having jurisdiction to the board according to the procedures in par. (c).

(c) If the application for release of any land from the agreement is approved by the local governing body having jurisdiction, the application shall be returned to the applicant, and a copy of the application to the owner, with a written statement regarding the reasons for approval. Within 30 days after receipt of a copy of the approved application, the owner may appeal the approval to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (2) (b) and (c) 2., approve or reject the request to disapprove the release. If the board approves the owner's appeal it shall notify the local governing body having jurisdiction.

(d) The board may waive its approval authority under this subsection for applications affecting less than 5 acres of land.

**SECTION 14r.** 91.19 (7) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

91.19 (7) Whenever a farmland preservation agreement is relinquished under sub. (2) or (6t) or all or part of the land is released from a farmland preservation agreement under sub. (2), or (6p) or (6t) or a transition area agreement is relinquished under sub. (1) or (2), the department shall cause to be prepared and recorded a lien against the property formerly subject to the agreement for the total amount of all credits received by all owners of such lands under subch. IX of ch. 71 during the last 10 years that the land was eligible for such credit, plus interest at the rate of 9.3% per year compounded annually on the credits received from the time the credits were received until the lien is paid for farmland preservation agreements relinquished under sub. (6t) and 6% per year compounded annually on the credits received from the time the credits were received until the lien is paid for

other agreements. No interest shall be compounded for any period during which the farmland is subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

**SECTION 15.** 91.19 (12) of the statutes is amended to read:

91.19 (12) No lien may be filed under sub. (7) or (8), on the date of relinquishment, release or termination, for tax credits paid on lands or any portion of them which are zoned for exclusively agricultural use under an ordinance certified under subch. V.

**SECTION 16.** 91.21 (2) of the statutes is repealed.

**SECTION 17.** 91.21 (3) of the statutes is amended to read:

91.21 (3) If the owner or a successor in title of the land upon which a farmland preservation agreement has been recorded under this chapter fails to comply with s. 91.13 (8) (d) or (dm), such person shall be given one year to restore compliance before the remedies of sub. (1) shall be applicable.

**SECTION 18.** 91.37 (6) of the statutes is amended to read:

91.37 (6) No lien ~~shall~~ may be filed, on the date of the relinquishment or termination of an agreement or of the release of land from an agreement under this subchapter, for tax credits paid on lands or any portion thereof which are zoned for exclusively agricultural use under an ordinance certified under subch. V.

**SECTION 19.** 91.75 (2) of the statutes is repealed and recreated to read:

91.75 (2) (a) In this subsection:

1. “Gross income” has the meaning given for Wisconsin adjusted gross income in s. 71.01 (13).

2. “Owner”, as defined in s. 91.01 (9), also includes a partner in a partnership and a shareholder in a corporation.

3. “Preexisting residence” means a residence whose initial construction begins before the effective date of this subdivision .... [revisor inserts date].

(b) Except as provided in par. (c), the only residences, whether preexisting residences or not, that are allowed as permitted or conditional uses are those that have a use consistent with agricultural use and that are occupied by any of the following:

1. An owner of the parcel.

2. A person who, or a family at least one adult member of which, earns the majority of his or her gross income from conducting the farm operations on the parcel.

3. A parent or child of an owner who conducts the majority of the farm operations on the parcel.

4. A parent or child of an owner who resides on the parcel and who previously conducted the majority of the farm operations on the parcel.

(c) Preexisting residences located in areas subject to zoning under this section that do not conform to par. (b),

but that were either permitted or continued residential uses under s. 91.75, 1989 stats., may be continued in residential use and may be exempted from any limitations imposed or authorized under s. 59.97 (10).

**SECTION 20.** 91.75 (4) and (5) of the statutes are amended to read:

91.75 (4) Such ordinances shall be considered local ordinances for purposes of s. 196.491 (3) (i) and shall provide that gas and electric utility uses not requiring authorization under s. 196.491 (3) are special exceptions or permitted or conditional uses and ~~do not conflict~~ are uses that are consistent with agricultural use.

(5) Special exceptions and conditional uses are limited to those agricultural-related, religious, other utility, institutional or governmental uses ~~which do not conflict~~ that are consistent with agricultural use and are found to be necessary in light of the alternative locations available for such uses. The department shall be notified of the approval of any special exceptions and conditional uses in areas zoned for exclusive agricultural use.

**SECTION 21.** 91.75 (8) and (9) of the statutes are created to read:

91.75 (8) (a) In this subsection, “farm family business” means any lawful activity, except a farm operation, conducted primarily for any of the following:

1. The purchase, sale, lease or rental of personal or real property.

2. The manufacture, processing or marketing of products, commodities or any other personal property.

3. The sale of services.

(b) A farm family business may be permitted as a special exception or conditional use under sub. (5) if limited to existing farm residences or structures or portions of the existing farmstead that are not dedicated to agricultural uses. No more than 2 persons who are not members of the resident farm family may be employed in the farm family business.

(9) (a) In this subsection, “locally approved reclamation plan” means any of the following:

1. A reclamation plan, submitted as required by a nonmetallic mining reclamation ordinance adopted under s. 66.038, that fulfills reclamation standards established by the ordinance.

2. If no nonmetallic mining reclamation ordinance applies to a proposed nonmetallic mining site, a reclamation plan that is approved by a county planning and zoning agency or commission created under s. 59.97 (2) or a county land conservation committee created under s. 92.06, whichever is authorized to give the approval under the exclusive agricultural zoning ordinance.

(b) Nonmetallic mineral extraction, including clay and gravel extraction, may be permitted as a special exception or conditional use under sub. (5) if it is subject to a locally approved reclamation plan that is submitted by the mine operator or person proposing to perform the nonmetallic mineral extraction to the local governing

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body having jurisdiction and that provides for the restoration of the nonmetallic mineral extraction site to agricultural use.

**SECTION 21m. Nonstatutory provisions.** (1) FARM-LAND PRESERVATION REPORT. On or before July 1, 1993, the department of agriculture, trade and consumer protection shall submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees in the manner provided in section 13.172 (3) of the statutes regarding farmland preservation relinquishments and the rezoning of land from exclusive agricultural use. The report shall include recommendations on the rate at which interest shall accrue on the payback of credits under section 91.19 (7) of the statutes upon relinquishment of a farmland preservation agreement and under section 91.19 (8) of the statutes upon the rezoning of land from exclusive agricultural use and shall include, for the period between the effective date of this subsection and the date of the report, all of the following information:

(a) The number of farmland preservation agreements relinquished.

(b) The reasons given for each relinquishment under paragraph (a).

(c) The number of acres of land released from farmland preservation agreements.

(d) The number of acres of land rezoned from an exclusive agricultural use.

(e) The number of acres of land for which a special exception or special use permit was granted.

**SECTION 22. Initial applicability.** (1) FARMLAND PRESERVATION AGREEMENTS. The treatment of section 91.19 (2) (intro.), (a), (b) (intro.) and 1, 2, 3, 4 and 5 and (c), (5), (6), (6m) and (6s) of the statutes first applies to an application for the relinquishment of a farmland preservation agreement or for the release of part of the land covered by a farmland preservation agreement that is submitted under section 91.19 (2) (a) of the statutes, as affected by this act, to the local governing body having jurisdiction on the effective date of this subsection.

**SECTION 23. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 91.13 (8) (fm) of the statutes takes effect on the first day of the 3rd month beginning after publication.