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83 WisACT 416

1983 Senate Bill 548

Date of enactment: **May 8, 1984**
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1983 Wisconsin Act 416

AN ACT to renumber 144.26 (2) (d) 1 to 3; to renumber and amend 144.26 (2) (d) (intro.); to amend 20.370 (4) (cc), 92.14, 144.25 (1) (c), 144.25 (4) (f), 144.25 (6) (intro.) and (c) and 144.26 (2) (e); and to create 59.974, 61.354, 62.234, 92.04 (1) (c), 144.25 (4) (cm), 144.25 (9), 144.26 (2m) (intro.) and 144.265 of the statutes, relating to providing for optional municipal construction site erosion control and storm water management zoning, providing for a state construction site erosion control and storm water management plan, designating watersheds within the Milwaukee river basin as priority watersheds under the nonpoint source water pollution abatement grant program, revising the nonpoint source water pollution abatement grant program, granting rule-making authority, providing for a study and making an appropriation.

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

SECTION 1. 20.370 (4) (cc) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

20.370 (4) (cc) (title) *Environmental aids; nonpoint source*. From the general fund, as a continuing appropriation, the amounts in the schedule for the nonpoint source water pollution abatement program under s. 144.25 for ~~cost-sharing grants~~ for the installation of best management practices and for financial assistance to ~~designated management agencies~~ for the implementation of this program.

SECTION 2. 59.974 of the statutes is created to read:

59.974 Construction site erosion control and storm water management zoning. (1) DEFINITION. As used in this section, "department" means the department of natural resources.

(2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 144.265 and to promote the public health, safety and general welfare, a county may enact a construction site erosion control and storm water management zoning ordinance applicable to all of its unincorporated area. This ordinance may be enacted separately from ordinances enacted under s. 59.97.

(4) APPLICABILITY OF COUNTY ZONING PROVISIONS; TOWN APPROVAL. (a) Except as otherwise specified in this section, s. 59.97 applies to any ordinance or amendment to an ordinance enacted under this section, but an ordinance or amendment to an ordinance enacted under this section does not require approval and is not subject to disapproval by any town or town board.

(b) Variances and appeals regarding construction site erosion control and storm water management regulations are to be determined by the board of adjustment for that county. Procedures under s. 59.99 apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 59.97 that relate to construction site erosion control or storm water management regulation.

(5) APPLICABILITY OF PREEXISTING TOWN ORDINANCES. If an existing town ordinance relating to construction site erosion control or storm water management is more restrictive than an ordinance later enacted under this section affecting the same area, it continues as a town ordinance in all respects to the extent of the greater restrictions, but not otherwise, unless the town board repeals the town ordinance. If the town board repeals

the town ordinance, the county ordinance enacted under this section becomes applicable to the town.

(6) **APPLICABILITY OF COMPREHENSIVE ZONING PLAN OR GENERAL ZONING ORDINANCE.** Ordinances enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting counties, so far as practicable.

(7) **APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted to a county under s. 236.45 may be exercised by it with respect to construction site erosion control or storm water management regulation if the county has or provides a county planning agency as defined in s. 236.02 (1).

(8) **APPLICABILITY TO LOCAL GOVERNMENTS AND AGENCIES.** An ordinance enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1), which is subject to the state construction site erosion control and storm water management plan promulgated or a memorandum of understanding entered into under s. 144.265 (2).

(9) **INTERGOVERNMENTAL COOPERATION; REGIONAL PLANNING COMMISSION.** Section 66.30 applies to this section, except that for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance. If a county is served by a regional planning commission under s. 66.945 and if the commission consents, the county may empower the commission by ordinance to administer an ordinance enacted under this section throughout the county, whether or not the area otherwise served by the commission includes all of that county.

(10) **VALIDITY UPON ANNEXATION.** An ordinance enacted under this section by a county continues in effect in any area annexed by a city or village after the effective date of that ordinance unless the city or village adopts, maintains and enforces a city or village ordinance which complies with minimum standards established by the department and which is at least as restrictive as the county construction site erosion control and storm water management zoning ordinance. If, after providing notice and conducting a hearing on the matter, the department determines that an ordinance adopted by a city or village which is applicable to an area annexed after the effective date of the county ordinance does not meet these standards or is not as restrictive as the county ordinance, the department shall issue an order declaring the city or village ordinance void and reinstating the applicability of the county construction site erosion control and storm water management zoning ordinance to the annexed area.

SECTION 3. 61.354 of the statutes is created to read:

61.354 Construction site erosion control and storm water management zoning. (1) **DEFINITION.** As used in this section, "department" means the department of natural resources.

(2) **AUTHORITY TO ENACT ORDINANCE.** To effect the purposes of s. 144.265 and to promote the public health, safety and general welfare, a village may enact a construction site erosion control and storm water management zoning ordinance applicable to all of its incorporated area. This ordinance may be enacted separately from ordinances enacted under s. 61.35.

(4) **APPLICABILITY OF VILLAGE ZONING PROVISIONS.** (a) Except as otherwise specified in this section, s. 61.35 applies to any ordinance or amendment to an ordinance enacted under this section.

(b) Variances and appeals regarding construction site erosion control and storm water management regulations are to be determined by the board of appeals or similar agency for that village. To the extent specified under s. 61.35, procedures under s. 62.23 (7) (e) apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 61.35 that relate to construction site erosion control or storm water management regulation.

(5) **APPLICABILITY OF COMPREHENSIVE ZONING PLAN OR GENERAL ZONING ORDINANCE.** Ordinances enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting villages, so far as practicable.

(6) **APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted to a village under s. 236.45 may be exercised by it with respect to construction site erosion control or storm water management regulation if the village has or provides a planning commission or agency.

(7) **APPLICABILITY TO LOCAL GOVERNMENTS AND AGENCIES.** An ordinance enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1), which is subject to the state construction site erosion control and storm water management plan promulgated or a memorandum of understanding entered into under s. 144.265 (2).

(8) **INTERGOVERNMENTAL COOPERATION; REGIONAL PLANNING COMMISSION.** Section 66.30 applies to this section, except that for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance. If a village is served by a regional planning commission under s. 66.945 and if the commission consents, the village may empower the commission by ordinance to administer the ordinance enacted under this section throughout the village, whether or not the area otherwise served by the commission includes all of that village.

SECTION 4. 62.234 of the statutes is created to read:

62.234 Construction site erosion control and storm water management zoning. (1) **DEFINITION.** As used in this section, "department" means the department of natural resources.

(2) **AUTHORITY TO ENACT ORDINANCE.** To effect the purposes of s. 144.265 and to promote the public health, safety and general welfare, a city may enact a construction site erosion control and storm water management zoning ordinance applicable to all of its incorporated area. This ordinance may be enacted separately from ordinances enacted under s. 62.23.

(4) **APPLICABILITY OF CITY ZONING PROVISIONS.** (a) Except as otherwise specified in this section, s. 62.23 applies to any ordinance or amendment to an ordinance enacted under this section.

(b) Variances and appeals regarding construction site erosion control or storm water management regulations are to be determined by the board of appeals for that city. Procedures under s. 62.23 (7) (e) apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 62.23 that relate to construction site erosion control or storm water management regulation.

(5) **APPLICABILITY OF COMPREHENSIVE ZONING PLAN OR GENERAL ZONING ORDINANCE.** Ordinances enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting cities, so far as practicable.

(6) **APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted to a city under s. 236.45 may be exercised by it with respect to construction site erosion control or storm water management regulation if the city has or provides a planning commission or agency.

(7) **APPLICABILITY TO LOCAL GOVERNMENTS AND AGENCIES.** An ordinance enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1), which is subject to the state construction site erosion control and storm water management plan promulgated or a memorandum of understanding entered into under s. 144.265 (2).

(8) **INTERGOVERNMENTAL COOPERATION; REGIONAL PLANNING COMMISSION.** Section 66.30 applies to this section, except that for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance. If a city is served by a regional planning commission under s. 66.945 and if the commission consents, the city may empower the commission by ordinance to administer the ordinance enacted under this section throughout the city, whether or not the area otherwise served by the commission includes all of that city.

SECTION 4m. 92.04 (1) (c) of the statutes is created to read:

92.04 (1) (c) *Soil and water conservation studies and recommendations.* The board may make studies and recommendations on matters relating to soil and water conservation.

SECTION 5. 92.14 of the statutes is amended to read:

92.14 State aids for conservation projects. A land conservation committee may, on or before the date established by the department, submit to the board and department an application for state aid for one or more conservation projects. The application shall set forth the purpose, estimated cost, work to be done and any other data that the department requires. After receiving recommendations of the board on the applications, the department shall approve or disapprove each application and allocate the funds appropriated under s. 20.115 (7) (c) to the land conservation committees with approved applications. No allocation may exceed 75% of the cost of the projects proposed in an application. The state aid may be used for personnel and associated costs, for materials and associated costs necessary in the planning, application, repair or maintenance of conservation measures, for equipment ~~and~~, for educational materials and for costs associated with the coordination within the county of the erosion control program under s. 92.10, the Wisconsin farmers fund program under s. 92.15, the nonpoint source water pollution abatement program under s. 144.25 and the animal waste management program adopted under ch. 147. The land conservation committee shall keep the department informed of the status of work on funded projects.

SECTION 6. 144.25 (1) (c) of the statutes is amended to read:

144.25 (1) (c) Provide technical and financial assistance ~~to individuals and municipalities in~~ for the application of necessary nonpoint source water pollution abatement measures.

SECTION 7. 144.25 (4) (cm) of the statutes is created to read:

144.25 (4) (cm) Identify watershed areas in the Milwaukee river basin as priority watershed areas, notwithstanding par. (c), and identify the best management practices necessary to meet water quality objectives in those watershed areas. The department shall appoint an advisory committee which represents appropriate local interests to assist it in the planning and implementation of projects and best management practices in these watershed areas. The advisory committee shall include a member of the county board from each county with any area in the Milwaukee river basin.

SECTION 8. 144.25 (4) (f) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

144.25 (4) (f) Administer the distribution of grants and aids to ~~designated management agencies~~ counties, cities and villages for local administration and implementation of the nonpoint source pollution abatement grant program.

SECTION 9. 144.25 (6) (intro.) and (c) of the statutes are amended to read:

144.25 (6) (intro.) ~~The designated local management agency~~ appropriate county, city or village is responsible for local administration and implementation of priority watershed projects and shall:

(c) Contact or attempt to contact all landowners or operators within critical management areas concerning their participation in the implementation program. ~~The designated local management agency~~ appropriate county, city or village shall certify to the department that it has complied with this paragraph.

SECTION 10. 144.25 (9) of the statutes is created to read:

144.25 (9) The department may distribute grants and aids to state agencies, including itself, for administration and implementation of the nonpoint source water pollution abatement program on land under state ownership or control in priority watershed areas.

SECTION 11. 144.26 (2) (d) (intro.) of the statutes is renumbered 144.26 (2) (d) and amended to read:

144.26 (2) (d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. ~~Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.971 and this section or a wetland zoning ordinance required under s. 61.351 or 62.231 and this section does not apply to lands adjacent to farm drainage ditches if:~~

SECTION 12. 144.26 (2) (d) 1 to 3 of the statutes are renumbered 144.26 (2m) (a) to (c).

SECTION 13. 144.26 (2) (e) of the statutes is amended to read:

144.26 (2) (e) "Regulation" ~~refers to~~ means ordinances enacted under ss. 59.971 ~~and, 61.351, 62.23 (7) and 62.231~~ and ~~means shoreland~~ refers to subdivision and zoning regulations which include control of uses of lands under, abutting or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages and counties.

SECTION 14. 144.26 (2m) (intro.) of the statutes is created to read:

144.26 (2m) (intro.) Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.971, a construction site erosion control and storm water management zoning ordinance authorized under s. 59.974, 61.354 or 62.234 or a wetland zoning ordinance required under s. 61.351 or 62.231 does not apply to lands adjacent to farm drainage ditches if:

SECTION 15. 144.265 of the statutes is created to read:

144.265 Construction site erosion control and storm water management. (1) OBJECTIVES. To aid in the fulfillment of the state's role as trustee of its navigable waters, to promote public health, safety and general welfare and to protect natural resources, it is declared to be in the public interest to make studies, establish policies, make plans, authorize municipal construction site erosion control and storm water management zoning ordinances for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources and establish a state construction site erosion control and storm water management plan for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources while at the same time encouraging sound economic growth in this state. The purposes of the municipal ordinances and state plan shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; prevent and control the adverse effects of storm water; protect spawning grounds, fish and aquatic life; control building sites, placement of

structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(2) STATE CONSTRUCTION SITE EROSION CONTROL AND STORM WATER MANAGEMENT PLAN. The department shall promulgate by rule a state construction site erosion control and storm water management plan. This state plan is applicable to construction activities contracted for or conducted by any agency, as defined under s. 227.01 (1), unless that agency enters into a memorandum of understanding with the department in which that agency agrees to regulate activities related to construction site erosion control and storm water management. The department shall coordinate the activities of agencies, as defined under s. 227.01 (1), in construction site erosion control and storm water management and make recommendations to these agencies concerning activities related to construction site erosion control and storm water management.

(3) STANDARDS. (a) 1. Except as restricted under subd. 2, the department shall establish by rule minimum standards for activities related to construction site erosion control and storm water management.

2. The department, in cooperation with the department of transportation, shall establish by rule minimum standards for activities related to construction site erosion control and storm water management if those activities concern street, highway, road or bridge construction, enlargement, relocation or reconstruction.

3. Minimum standards established under this paragraph are applicable to the state construction site erosion control and storm water management plan. The department shall encourage a county, city or village to comply with these minimum standards for any construction site erosion control and storm water management zoning ordinance enacted under s. 59.974, 61.354 or 62.234.

4. The department shall identify low-cost practices which would enable a person to comply with these minimum standards.

(b) The minimum standards for construction site erosion control shall provide for the regulation of any construction activity which:

1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

2. Involves the excavation or filling or a combination of excavation and filling which affects 400 cubic yards or more of dirt, sand or other excavation or fill material.

3. Involves street, highway, road or bridge construction, enlargement, relocation or reconstruction.

4. Involves the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more.

5. Requires a subdivision plat approval or a certified survey.

(c) The minimum standards for storm water management shall provide for the regulation of any construction activity which:

1. Is a residential development with a gross aggregate area of 5 acres or more.

2. Is a residential development with a gross aggregate area of 3 acres or more with at least 1.5 acres of impervious surfaces.

3. Is a development other than a residential development with a gross aggregate area of 3 acres or more.

4. Is likely to result in storm water runoff which exceeds the safe capacity of the existing drainage facilities or receiving body of water, which causes undue channel erosion, which increases water pollution by scouring or the transportation of particulate matter or which endangers downstream property.

(4) **MODEL ORDINANCE; STATE PLAN; DISTRIBUTION.** The department shall prepare a model construction site erosion control and storm water management zoning ordinance in the form of an administrative rule. The model ordinance shall be based upon the state construction site erosion control and storm water management plan. The model ordinance is subject to s. 227.018 and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any county, city or village which submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.

(5) **COOPERATION.** The department, the municipalities and all state agencies shall cooperate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, shall prepare model construction site erosion control and storm water management zoning ordinances, shall extend assistance to municipalities under this section, shall prepare a state construction site erosion control and storm water management plan, shall encourage uniformity through the implementation of this plan and the utilization of memoranda of understanding which are substantially similar to the plan and shall extend assistance to agencies under this section.

SECTION 15m. Nonstatutory provisions; agriculture, trade and consumer protection.

(1) **LAND CONSERVATION BOARD SOIL EROSION STUDY.** The land conservation board shall conduct a study on the nature and extent of soil erosion in the state. In this study the land conservation board shall consider the effect on soil erosion of governmental programs, farming practices, changing demand for agricultural commodities, farm size and ownership, changing land use patterns and other factors the land conservation board deems relevant. The land conservation board shall hold public hearings in conducting this study and shall prepare a written report detailing its findings and recommendations. The land conservation board shall submit a copy of its report to the department of agriculture, trade and consumer protection, the governor and the presiding officer of each house of the legislature for referral to the appropriate standing committees prior to October 1, 1984.

SECTION 16. Nonstatutory provisions; natural resources. (1) **STATE CONSTRUCTION SITE EROSION CONTROL AND STORM WATER MANAGEMENT PLAN.** The department of natural resources shall prepare a proposed state construction site erosion control and storm water management plan and submit the state plan as a proposed rule under section 227.029 of the statutes on or before January 1, 1985. The state plan may not take effect until 6 months after it is published in the administrative register. Following publication of the state plan in the administrative register, the department of natural resources may enter into memoranda of understanding with other state agencies.

(2) **POSITION AUTHORIZATION.** The authorized FTE positions for the department of natural resources are increased by 2.0 GPR positions on the effective date of this subsection to be funded from the appropriation under section 20.370 (2) (ma) of the statutes, as affected by the acts of 1983, for the purpose of preparing and implementing priority watershed plans in watershed areas within the Milwaukee river basin.

SECTION 17. Appropriation changes; natural resources. The appropriation to the department of natural resources under section 20.370 (2) (ma) of the statutes, as affected by the acts of 1983, is increased by \$200,000 for fiscal year 1984-85 to provide additional funding under the nonpoint source water pollution abatement grant program for the preparation of priority watershed plans for watershed areas within the Milwaukee river basin.

SECTION 18. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

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A	B	C
Statute Sections	References Deleted	References Inserted
15.341 (intro.)	none	59.974, 61.354, 62.234
15.461 (intro.)	none	144.265 (3)(a) 2

SECTION 19. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
20.370 (3)(ma), as affected by 1983 Wis. Act 27	59.971, 61.351, 62.231	59.971, 59.974, 61.351, 61.354, 62.231, 62.234
144.445 (3)(d)	59.971, 60.18, 60.29, 60.306, 60.72, 60.74, 61.34, 61.35, 62.11, 62.23, 66.01	59.971, 59.974, 60.18, 60.29, 60.306, 60.72, 60.74, 61.34, 61.35, 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.01
144.46	59.971 and 87.30	59.971, 61.351, 62.231 and 87.30