

CHAPTER 92

SOIL AND WATER CONSERVATION AND ANIMAL WASTE MANAGEMENT

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92.02 Legislative intent. (1) The legislature finds that the soil resources of this state are being depleted by wind and water erosion and that the waters of this state are being polluted by nonpoint sources of pollution. The legislature further finds that these are statewide problems endangering the health and welfare of the state's citizens, its recreational resources, agricultural productivity and industrial base.

(2) The legislature declares it to be the policy of this state to halt and reverse the depletion of the state's soil resources and pollution of its waters.

(3) It is the intent of the legislature to implement this policy by enacting this soil and water conservation law to:

(a) Establish goals and standards for conservation of soil and water resources;

(b) Provide for cost sharing, technical assistance, educational programs and other programs to conserve soil and water resources;

(c) Encourage coordinated soil and water conservation planning and program implementation; and

(d) Enable the regulation of harmful land use and land management practices by county ordinance where necessary to achieve the purposes of this chapter.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.025 State soil erosion control goals. It is the intent of the legislature that:

(1) **STATUTORY GOAL.** The soil erosion rate on each individual cropland field in the state does not exceed the tolerable erosion level on or after January 1, 2000.

(2) **INTERIM GOALS; COUNTIES.** The soil erosion rate in each county in the state does not exceed 1.5 times the tolerable erosion level on or after July 1, 1990 and does not exceed the tolerable erosion level on or after July 1, 1993.

(3) **INTERIM GOALS; INDIVIDUAL CROPLAND FIELDS.** The soil erosion rate in each individual cropland field in the state does not exceed 3 times the tolerable erosion level on or after July 1, 1990, and does not exceed 2 times the tolerable erosion level on or after July 1, 1995.

(4) **INTERIM GOAL; STATE-RUN FARMS.** The soil erosion rate on individual cropland fields of farms owned by the university of Wisconsin system or any other department or agency of state government does not exceed the tolerable soil erosion level on or after July 1, 1990.

History: 1985 a. 29.

92.03 Definitions. In this chapter:

(1) "Agency" means any department, agency, board, commission, committee, council, officer, subdivision or instrumentality, corporate or otherwise, of this state.

(2) "Board" means the land conservation board created under s. 15.135 (4).

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Landowner" means any person over 18 years of age and any partnership, firm or corporation that holds title to land lying within a county whether or not this land is subject to easement, mortgage, lien, lease or restrictive covenant, except that this term does not include any person who is under guardianship, a person who is incompetent or a person who is mentally ill. A person, partnership, firm or corporation is deemed to hold title to land if the person, partnership, firm or corporation has any of the following:

(a) Title as sole owner.

(b) Title as a joint owner.

(c) Title as owner of an undivided interest.

(d) Title as sole or joint trustee or as sole or joint assignee.

(e) A land contract vendee's interest therein.

(5) "Land user" means any person who uses land as an operator, lessor or renter.

(6) "Secretary" means the secretary of the department.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.04 Land conservation board. (1) **POWERS.** (a) *Hearings.* The board may hold public hearings in the performance of its functions.

(b) *Delegation.* The board may delegate to its chairperson or to one or more of its members any of its powers or duties.

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

(2) **DUTIES.** (a) *Advise secretary and department.* The board shall advise the secretary and department on matters relating to exercise of the department's authority under this chapter.

(b) *Review erosion control plans and aid applications.* The board shall review soil erosion control plans prepared under s. 92.10, review aid applications submitted under s. 92.14 and make recommendations to the department on approval or disapproval of the plans or applications and on allocation of funding among the counties.

(c) *Review and approve soil and water conservation standards.* The board shall review soil and water conservation standards prepared under s. 92.105. The board shall establish guidelines for the approval of these standards.

(d) *Review annual and long-range plans.* The board shall review annual and long-range land conservation plans developed under s. 92.08 and make recommendations to the department on approval or disapproval of the plans.

(e) *Advise the university of Wisconsin system.* The board shall advise the university of Wisconsin system annually on needed research and educational programs relating to soil and water conservation.

(f) *State erosion control goals; compliance and evaluation.* The board shall review compliance with state soil erosion control goals established under s. 92.025. The board shall not notify the department and the legislature if these goals are not achieved or if it is unlikely that these goals will be achieved.

(g) *Tolerable erosion levels.* The board shall establish a tolerable erosion level based on an erosion rate which is acceptable and maintains long-term soil productivity.

(h) *Records.* The board shall keep a full and accurate record of all proceedings before it and all actions taken by it.

(3) **RULES REVIEW.** (a) *Board review.* The board shall review all rules of the department relating to implementation of this chapter prior to promulgation.

(b) *Submission for review.* Before submitting proposed rules to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board has 30 days to submit comments on the proposed rules to the department.

(c) *Emergency rules.* If the department promulgates an emergency rule under s. 227.24, it shall provide a copy of the rule to the board prior to publication of the rule in the official state paper.

(d) *Hearing.* The chairperson of the board, or his or her designee from the board, may cochair with the department any public hearing held by the department on proposed rules.

(e) *Dissenting report.* The department shall submit to the board a copy of the report required under s. 227.19 (2) on proposed rules. The board may prepare a dissenting report stating its recommendations on the proposed rules. The board shall prepare any dissenting report within 10 days from the date of receipt of the department's report. The department shall attach the dissenting report to the department's report, send them to the presiding officer of each house of the legislature and distribute copies under s. 227.19 (2). The department shall cause a statement to appear in the Wisconsin administrative register to the effect that a dissenting report of the board was submitted to the presiding officer of each house of the legislature.

(f) *No rule-making power.* The board has no rule-making authority on matters relating to soil and water conservation.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1983 a. 416; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (8).

92.05 Department. (1) **CENTRAL AGENCY.** The department is the central agency of this state responsible for setting and implementing statewide soil and water conservation policies and administering the state's soil and water conservation programs. The department shall coordinate its soil and water conservation program with the nonpoint source water pollution abatement program established under s. 144.25, the inland lake protection and rehabilitation program established under ch. 33 and other programs with objectives related to soil and water conservation administered by the department of natural resources or by other state or federal agencies.

(2) **POWERS.** (a) *Accept gifts.* The department may accept contributions of money or gifts for soil and water conservation purposes.

(b) *Require reports.* The department may require reports from the counties as needed.

(c) *Contract with university of Wisconsin system.* The department may contract with the university of Wisconsin system for soil and water conservation educational and research services.

(3) **DUTIES.** (a) *Information.* The department shall keep county land conservation committee members generally informed of activities and experience useful to them.

(b) *Development; coordination.* The department shall assist in developing and coordinating the plans and programs of each county.

(c) *Rules.* The department shall promulgate rules governing implementation of this chapter and distribution of state or federal funds by the department to the counties. The department shall comply with the procedures under s. 92.04 (3) in promulgating these rules.

(d) *Advise university of Wisconsin system.* The department shall advise the university of Wisconsin system annually on developing research and educational programs relating to soil and water conservation.

(e) *Studies.* The department may undertake studies and investigations and make and issue reports and recommendations with respect to state soil and water conservation program needs. Biennially, the department shall prepare a state soil and water conservation report. This report shall include a description of present soil and water resource uses and a projection of future trends, an assessment of soil and water conservation problems in relation to soil and water resource use practices and any actions necessary to correct or solve these problems including specific goals, action schedules, program evaluation criteria and provisions for the coordination of these actions with programs developed by other agencies for the development, management and conservation of soil, water and related natural resources. This report shall include the identification of counties and specific parcels within these counties where soil and water conservation problems are most acute and recommendations for actions necessary to correct or solve these problems.

(f) *Nonpoint source water pollution abatement.* The department shall perform the duties specified for the department in the nonpoint source water pollution abatement program under s. 144.25 (5).

(g) *Watershed protection and flood prevention act.* The department has responsibility over programs provided by 16 USC 1001 to 1008 relating to the planning and carrying out of works of improvement for soil and water conservation and other purposes.

(h) *Model ordinances.* The department shall make available model ordinances for counties and municipalities concerning regulation and control of land use and land management practices as authorized under s. 92.11.

(i) *Provide staff.* The department shall provide staff to assist the board in performing its statutory duties.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.06 Land conservation committees. (1) **CREATION; MEMBERSHIP.** (a) *Creation.* Each county board shall create a land conservation committee.

(b) *Membership.* 1. The county board shall appoint to the land conservation committee at least 2 persons who are members of the committee on agriculture and extension education created under s. 59.87 (2).

2. The county board shall appoint to the land conservation committee a person who is the chairperson of the county agricultural stabilization and conservation committee created under 16 USC 590h (b) or other county agricultural stabilization and conservation committee member designated by the chairperson of the county agricultural stabilization and conservation committee.

3. The county board may appoint to the land conservation committee any number of members who are also members of the county board.

4. The county board may appoint to the land conservation committee up to 2 members who are not members of the county board.

(c) *Terms.* Each member of the land conservation committee shall serve for a term of 2 years or until a successor is appointed, whichever is longer.

(d) *Reimbursement.* Each member of the land conservation committee shall be reimbursed for necessary expenses and shall be paid the same per diem as members of other county board committees.

(e) *Programs and responsibilities.* The county board may assign other programs and responsibilities to the land conservation committee.

(2) **DESIGNATED REPRESENTATIVES.** The county board shall designate a representative of each county committee with responsibilities related to natural resource management to serve as an adviser to the land conservation committee. The county board shall designate, at a minimum, representatives from any county zoning or land use, forestry, parks and solid waste committees. In addition, the land conservation committee may invite any state, federal or local agency with which the county or committee has a memorandum of understanding to designate a representative to advise the land conservation committee.

(4) **PUBLIC PARTICIPATION.** The committee shall actively solicit public participation in the planning and evaluation of soil and water conservation programs.

History: 1981 c. 346; 1985 a. 29.

92.07 Land conservation committee; powers. (1) POWERS GENERALLY. Each land conservation committee may carry out the powers delegated to the committee subject to the approval of the county board.

(2) **STANDARDS.** Each land conservation committee may develop and adopt standards and specifications for management practices to control erosion, sedimentation and nonpoint source water pollution.

(3) **DISTRIBUTE FUNDS.** Each land conservation committee may distribute and allocate federal, state and county funds made available to the committee for cost-sharing programs or other incentive programs for improvements and practices relating to soil and water conservation on private or public lands, and within the limits permitted under these programs, to determine the methods of allocating these funds.

(5) **EDUCATIONAL AND OTHER PROGRAMS.** Each land conservation committee may encourage research and educational, informational and public service programs, advise the university of Wisconsin system on educational needs and assist the university of Wisconsin system and the department in implementing educational programs under ss. 36.25 (7), 59.87 and 92.05.

(6) **PREVENTIVE AND CONTROL MEASURES AND WORKS OF IMPROVEMENT.** Each land conservation committee may carry out preventive and control measures and works of improvement for flood prevention and for conservation, development, utilization and control of water within the county. These preventive and control measures and works of improvement may include, but are not limited to, changes in the use of land and use of engineering operations such as terraces, terrace outlets, desilting basins, floodwater retarding structures, floodways, dikes and ponds, methods of cultivation and the growing of vegetation. These preventive and control measures and works of improvement may be carried out on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other lands within the county upon obtaining the consent of the landowner or the necessary rights or interests in the land.

(7) **ASSISTANCE.** Each land conservation committee, in the name of the county, may cooperate with, enter into agree-

ments with, or furnish financial, technical, planning or other assistance to any agency, governmental or otherwise, or any landowner or land user within the incorporated or unincorporated parts of the county, in carrying out resource conservation operations and works of improvement for flood prevention or for the conservation, development, utilization and protection of soil and water resources within the county.

(8) **OBTAIN PROPERTY.** Each land conservation committee, in the name of the county, may obtain options upon and acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property or rights or interests in property or in water. A land conservation committee may maintain, administer and improve any properties acquired. A land conservation committee may receive income from these properties on behalf of the county and may expend this income in carrying out the purposes and provisions of this chapter. A land conservation committee may sell, lease or otherwise dispose of the property or interests in property in furtherance of the purposes and the provisions of this chapter.

(9) **MACHINERY AVAILABILITY.** Each land conservation committee may make available, on terms it may prescribe, to landowners and land users within the incorporated and unincorporated parts of the county, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and other material or equipment which will assist the landowners and land users in carrying on operations upon their lands for the conservation of soil resources, for the prevention and control of soil erosion, for flood prevention, for the conservation, development and utilization of water or for the prevention of nonpoint source water pollution.

(10) **STRUCTURES.** Each land conservation committee may construct, improve, operate and maintain structures necessary or convenient for the performance of any of the operations or activities authorized in this chapter.

(11) **ADMINISTRATION OF PROJECTS OR PROGRAMS.** Each land conservation committee, in the name of the county, may acquire, by purchase, lease or otherwise, and administer, any soil conservation, flood prevention, water management or nonpoint source water pollution abatement project or combinations of these projects, and participate in programs concerned with the conservation of natural resources located within the county undertaken by the United States or any of its agencies, or by this state or any of its agencies. A land conservation committee may administer, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, flood prevention, water management, water quality improvement, nonpoint source water pollution abatement, erosion control, erosion prevention project or resource conservation program within the county. A land conservation committee may act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation or administration of any resource conservation program within the county. A land conservation committee, on behalf of the county, may accept donations, gifts and contributions in money, services, materials or otherwise from any source and use or expend these moneys, services, materials or other contributions in carrying on its operations.

(12) **CONTRACTS; RULES.** Each land conservation committee, in the name of the county, may make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(13) **CONTRIBUTIONS; AGREEMENTS.** As a condition to extending any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this

state or any of its agencies, a land conservation committee may require contributions in money, services, materials or otherwise to any operations conferring the benefits, and may require landowners and land users to enter into and perform agreements or covenants respecting the use of land as will lead to conservation of soil and water resources.

(14) ENTER UPON LANDS. Each land conservation committee may enter upon any lands within the county to examine the land and make surveys or plans for soil and water conservation without being liable for trespass in the reasonable performance of these duties. This authorization applies to the land conservation committee members and their agents.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

Cross Reference: See 59.879 (3) and 60.10 (2) (i) for authorization of county or town appropriations.

92.08 Land conservation plans. (1) PLANS GENERALLY. Each land conservation committee may develop and amend comprehensive long-range and annual plans for the development, use, conservation and management of soil, water and related resources within the county. The long-range and annual plans shall specify in as much detail as is practicable the acts, procedures, performances and avoidances which are necessary or desirable to carry out the plans. A land conservation committee may invite public participation in the development and evaluation of the plans. A land conservation committee may publish the plans and information and bring them to the attention of landowners and land users within the county.

(2) LONG-RANGE PLANS. Each land conservation committee shall prepare a long-range plan. The long-range plan shall include an inventory of natural resources in the county, a description of present natural resource uses and a projection of future trends, an assessment of resource conservation problems in relation to natural resource use practices and any actions necessary to correct or solve these problems including specific goals, action schedules, program evaluation criteria and provisions for coordination with programs developed by other agencies for the development, management and conservation of soil, water and related natural resources.

(3) ANNUAL PLANS. Each land conservation committee shall prepare an annual plan which describes the programs, services, facilities, materials, working arrangements and estimated funds needed to carry out the parts of the long-range program that are of the highest priorities.

(4) SUBMISSION OF PLANS AND REPORT. Each land conservation committee shall submit, upon completion, its long-range plan, annual plan and an annual report to the board, department and the county board. The committee shall furnish copies of these documents to appropriate counties, municipalities, regional planning commissions, local units of government, state agencies and federal agencies. The committee shall make these documents available in convenient places for examination by the public.

(5) PLAN REVIEW AND APPROVAL. After review of the long-range and annual plan by the board, the department shall either approve each plan or disapprove it and submit recommended changes to the committee. The department may not approve a plan unless the plan is approved by the county board. The land conservation committee shall review the recommendations and resubmit the plan under sub. (4) until it is approved by the department.

History: 1981 c. 346.

92.085 Tree planting program. (1) CREATION. There is created a statewide tree planting program, which shall use free trees provided from state forest nurseries by the depart-

ment of natural resources under s. 28.06 to aid in soil and water conservation. The department shall administer the program. The department shall promulgate any rules necessary to implement this program.

(2) IMPLEMENTATION; DEPARTMENT DUTIES. (a) Notification; land conservation committees. The department shall notify land conservation committees no later than May 8, 1986, of the availability of free planting stock for use by the committees as part of a tree planting proposal under this section.

(b) Program assistance. The department and the department of natural resources shall assist land conservation committees in preparing tree planting proposals.

(c) Program review. The department shall, by October 1, review and approve or disapprove tree planting proposals submitted by land conservation committees. The department may not approve any tree planting proposal which is inconsistent with the land conservation committee's soil erosion control plan under s. 92.10 or with the federal conservation reserve program under 16 USC 3831.

(d) Notification; department of natural resources. The department shall notify the department of natural resources by November 1 of which tree planting proposals have been approved and of the number and types of species of trees to be distributed. The department of natural resources shall distribute free planting stock under s. 28.06 (2m) to the appropriate land conservation committees beginning on April 1 or when weather conditions are suitable for transporting and transplanting the planting stock.

(3) IMPLEMENTATION; LAND CONSERVATION COMMITTEES. Each land conservation committee with an approved soil erosion control plan under s. 92.10, or which has approved a farmer's plan, pursuant to the terms of a contract under the federal conservation reserve program under 16 USC 3831, may prepare a tree planting proposal, to be submitted to the department for review under sub. (2) (c). Each land conservation committee shall administer local implementation of an approved tree planting proposal.

(3m) PRUNING. Any person who receives trees distributed under sub. (2) (d) shall agree not to prune such trees until the first day of the 11th year after the day the trees are distributed.

(4) SUNSET. No trees may be distributed to land conservation committees under s. 28.06 (2m) after June 30, 1989.

History: 1985 a. 153.

92.09 Land conservation committee staff. The land conservation committee may employ county soil and water conservation staff, subject to the approval of the county board. The county soil and water conservation staff is responsible for the administration of the county soil and water conservation program and may exercise the powers granted to the land conservation committee.

History: 1981 c. 346.

92.10 Erosion control program. (1) CREATION. There is created an erosion control program. The department, board and land conservation committees in identified priority counties jointly shall develop and administer this program.

(2) PURPOSES. The purposes of the erosion control program are to:

(a) Conserve long-term soil productivity and protect the quality of related natural resources;

(b) Provide the necessary administrative framework and financial assistance to meet soil erosion control needs of the state;

(c) Focus program resources on severe soil erosion problems in identified priority counties; and

(d) Assure adequate program evaluation to develop recommendations for improvements in erosion control programs.

(3) IDENTIFICATION OF PRIORITY COUNTIES. (a) *Identification.* The department shall identify priority soil erosion control counties. Identified priority counties are required to prepare soil erosion control plans.

(b) *Criteria.* In identifying priority soil erosion control counties, the department shall consider the following factors:

1. The amount of cropland in the county.
2. The magnitude and extent of cropland erosion in the county.
3. The availability of soil survey information in the county.

(c) *Plan preparation.* If a county is identified as a priority soil erosion control county under this subsection, the land conservation committee in that county shall prepare and submit a soil erosion control plan for that county as specified under sub. (6).

(4) IMPLEMENTATION; DEPARTMENT DUTIES. (a) *Data.* The department shall develop a systematic method of collecting and organizing data related to soil erosion. The department shall cooperate with the department of administration acting under s. 16.967 in developing this methodology or any related activities related to land resource data collection.

(b) *Assistance and services.* The department may utilize funds appropriated under s. 20.115 (7) (d) for program administration, technical assistance, education and information services and related costs.

(c) *Plan assistance.* The department shall assist land conservation committees in identified priority counties in preparing soil erosion control plans. The department may allocate funds appropriated under s. 20.115 (7) (d) to land conservation committees in identified priority counties to cover up to 50% of the cost of preparing soil erosion control plans.

(d) *Plan review.* The department shall review and approve or disapprove soil erosion control plans submitted by the land conservation committees in identified priority counties. The department may require land conservation committees to indicate specific projects to be funded under each plan and the related cost-sharing rates.

(e) *Implementation aids.* The department shall allocate funds appropriated under s. 20.115 (7) (d) to the land conservation committees in identified priority counties to cover up to 70% of the cost of implementing conservation practices included in soil erosion control plans. The department may not allocate any funds to a land conservation committee under this paragraph unless its soil erosion control plan is approved. The department shall give priority to those areas in which the most severe soil erosion problems are located.

(f) *Report.* The department's biennial report under s. 15.04 (1) (d) shall include a report on the progress of this program.

(5) IMPLEMENTATION; BOARD DUTIES. (a) *Plan review.* The board shall review soil erosion control plans submitted by the land conservation committees and make recommendations to the department.

(b) *Solicit comments.* The board shall solicit comments on land conservation committee plans from the agencies identified as advisers to the board under s. 15.135 (4).

(6) IMPLEMENTATION; COMMITTEE DUTIES. (a) *Plan preparation.* A land conservation committee in an identified priority county shall prepare a soil erosion control plan which does all of the following:

1. Specifies maximum acceptable rates of soil erosion.
2. Identifies the parcels and locations of the parcels where soil erosion standards are not being met.

3. Identifies the land use changes or management practices which would bring each area of land into compliance with standards adopted by the land conservation committee.

4. Specifies procedures to be used to assist landowners and land users in controlling soil erosion.

5. Establishes priorities for controlling soil erosion.

(b) *Notification.* A land conservation committee in an identified priority county shall notify landowners and land users of the results of any determinations of soil erosion rates, and provide an opportunity for landowners and land users to present information relating to the accuracy of the determinations during preparation of the soil erosion control plan.

(c) *Hearings.* A land conservation committee in an identified priority county shall hold one or more public hearings on the soil erosion control plan.

(d) *Plan submission.* A land conservation committee in an identified priority county shall submit the soil erosion control plan and any request for state funding for the implementation of conservation practices included in the plan to the board and department.

(e) *Plan adoption.* A land conservation committee in an identified priority county shall make the approved soil erosion control plan a part of the committee's long-range plan required under s. 92.08.

(f) *Local implementation.* A land conservation committee in an identified priority county shall administer local implementation of the approved plan. Local implementation includes, but is not limited to:

1. Providing technical assistance to landowners and land users;
2. Selecting practices to be cost-shared; and
3. Assuring application and maintenance of cost-shared practices in accordance with the approved plan.

(7) CONTRACTS. No cost-sharing funds may be distributed to a landowner or land user unless he or she, by contract with the land conservation committee, agrees:

(a) To maintain the cost-shared practice for its normal expected life, to replace it with an equally effective soil erosion control practice or to repay the cost-sharing funds to the land conservation committee;

(b) To conduct all land management activities in substantial accordance with the committee's approved plan or to repay the cost-sharing funds to the land conservation committee; and

(c) To repay to the land conservation committee the cost-sharing funds if title to the land on which the cost-shared practice is installed is transferred, unless the subsequent landowner or land user agrees to comply with the requirements of the committee's approved plan.

History: 1981 c. 346; 1983 a. 524; 1985 a. 29.

92.104 Soil and water conservation plan. (1) **PREPARATION.** A land conservation committee shall ensure that a soil and water conservation plan is prepared for land covered by a farmland preservation agreement.

(2) **APPROVAL.** A soil and water conservation plan approved by the land conservation committee is required to be included in the farmland preservation agreement.

(3) **MONITORING.** A county land conservation committee shall ensure that a soil and water conservation plan incorporated in a farmland preservation agreement is followed except that deviations may be allowed if, in the judgment of the land conservation committee, personnel are not available to lay out the suggested practices on the land or if practices are not economical for the owner to adopt.

(4) **NONCOMPLIANCE.** If the land conservation committee determines that farming operations are not being conducted

in compliance with a soil and water conservation plan and that the deviation is not permitted under sub. (3), it shall issue a notice of noncompliance to the farmer and send a copy to the department of revenue. This notice remains in effect until canceled. If actions are taken to comply with the soil and water conservation plan in a manner satisfactory to the land conservation committee, it shall cancel the notice of noncompliance by notifying the farmer and the department of revenue.

(5) **ELIGIBILITY FOR FARMLAND PRESERVATION CREDIT.** A farmland preservation credit may not be allowed under s. 71.09 (11) if a notice of noncompliance is in effect with respect to a claimant to which this section applies at the time the claim is filed.

(6) **APPLICABILITY.** This section and a soil and water conservation plan prepared under this section apply to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based on a farmland preservation agreement applied for prior to July 1, 1986.

History: 1985 a 29

92.105 Soil and water conservation standards. (1) ESTABLISHMENT. A land conservation committee shall establish soil and water conservation standards. It shall submit these standards to the board for review.

(2) **GUIDELINES; REVIEW.** The board shall develop guidelines to be used for the establishment and administration of soil and water conservation standards. The board shall review and shall approve or disapprove submitted soil and water conservation standards based on the guidelines it develops. If the board approves soil and water conservation standards, it shall notify any appropriate zoning authority of its approval.

(3) **APPROVED STANDARDS REQUIRED FOR FARMLAND PRESERVATION CREDIT.** A farmland preservation credit may not be allowed under s. 71.09 (11) for claims relating to any land to which this section applies unless the land conservation committee for the county where the property is located establishes soil and water conservation standards which are approved by the board.

(4) **MONITORING.** The land conservation committee shall monitor compliance with soil and water conservation standards on land to which this section applies.

(5) **NONCOMPLIANCE.** If the land conservation committee determines that farming operations on land to which this section applies do not comply with soil and water conservation standards, it shall issue a notice of noncompliance to the farmer and send a copy of the notice to any appropriate zoning authority. If no appropriate zoning authority exists, it shall send a copy to the department of revenue. This notice of noncompliance remains in effect until canceled. If actions are taken to comply with the soil and water conservation standards in a manner satisfactory to the land conservation committee, it shall cancel the notice of noncompliance by notifying the farmer and by sending a copy of the cancellation to any appropriate zoning authority. If no appropriate zoning authority exists or if the original notice was sent to the department of revenue, it shall send a copy of the cancellation to the department of revenue.

(6) **ELIGIBILITY FOR FARMLAND PRESERVATION CREDIT.** A farmland preservation credit may not be allowed under s. 71.09 (11) if a notice of noncompliance is in effect with respect to a claimant to which this section applies at the time the claim is filed.

(7) **APPLICABILITY.** (a) *General applicability; farmland preservation.* This section and soil and water conservation stan-

dards established under this section apply only to a person claiming a farmland preservation credit under s. 71.09 (11), land related to that claim and farming operations on that land and apply only as provided under pars. (b) to (d).

(b) *Participants eligible under new farmland preservation agreements.* This section and soil and water conservation standards established under this section apply to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based upon a farmland preservation agreement applied for on or after July 1, 1986.

(c) *Existing participants under exclusive agricultural zoning.* This section and soil and water conservation standards established under this section apply beginning on January 1, 1988, to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based on exclusive agricultural zoning and if a farmland preservation credit was received by that person for property taxes on the same land accruing in 1984 or any prior year.

(d) *New participants under exclusive agricultural zoning.* This section and soil and water conservation standards established under this section apply beginning on July 1, 1986, to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based on exclusive agricultural zoning and if a farmland preservation credit was not received by that person for property taxes on the same land in 1984 or any prior year.

History: 1985 a 29, 332.

92.11 Regulation of land use and management practices.

(1) **PROPOSED ORDINANCES.** To promote soil and water conservation or nonpoint source water pollution abatement, a land conservation committee may develop proposed county ordinances for the regulation of land use and land management practices.

(2) **APPLICABILITY; CONTENTS.** (a) An ordinance enacted under this section may be applicable throughout the county or to any part of the county, including both incorporated and unincorporated areas.

(b) An ordinance enacted under this section may prohibit land uses and land management practices which cause excessive soil erosion, sedimentation, nonpoint source water pollution or storm water runoff.

(3) **PRESENTATION; NOTICE; HEARING; COUNTY BOARD ADOPTION.** Any ordinance proposed by the land conservation committee under this section shall be presented to the county board together with a report on the need for the ordinance and its expected economic and environmental impact. Within 2 weeks after its receipt, the county board shall publish the proposed ordinance as a class 2 notice, under ch. 985, in a newspaper having general circulation throughout the county and make the report available for public inspection. The county board shall hold one or more public hearings on the proposed ordinance before taking final action. The county board shall adopt, adopt with revisions or disapprove the ordinance.

(4) **REFERENDUM; LOCAL APPROVAL REQUIRED.** (a) *Definition.* As used in this subsection, "affected area" means the entire town, all of a village within the county or all of a city within a county if an ordinance adopted under this section or a revision to an ordinance adopted under this section is applicable to any part of the town, village or city.

(b) *Referendum required.* No ordinance adopted under this section and no revision to an ordinance adopted under this

section may take effect in any affected area in that county unless the ordinance or revision is approved by referendum.

(c) *Wording of ballot question; procedure.* The county board shall include the wording of the question to be placed before the electors in the referendum as a part of the ordinance adopted under this section or the revision to an ordinance adopted under this section. Upon the adoption of the ordinance or revision the county board shall forward a copy of the ordinance or revision to the county clerk who shall cause the question to be placed before the voters of the affected area in the next spring or general election occurring not less than 45 days after the adoption of the ordinance or revision. The form of the ballot shall correspond substantially with form "D" annexed to s. 5.64 (2).

(d) *Approval; disapproval.* If the question placed before the electors in the referendum is approved by a majority of all votes cast on that subject in an affected area in that county, the ordinance adopted under this section or the revision to an ordinance adopted under this section takes effect in that affected area. Otherwise, the ordinance or revision does not take effect in that affected area.

(5) **ENFORCEMENT.** (a) The county board shall by ordinance prescribe administrative procedures and provide personnel necessary for the enforcement of any ordinance enacted under this section. Ordinances enacted under this section may be enforced through civil forfeiture or through issuance of an injunction by the circuit court in an action initiated by the county or land conservation committee. The court may award reasonable attorney fees to any plaintiff in a successful action for enforcement through injunction.

(b) At least one year before the county or land conservation committee may initiate an action for enforcement, the land conservation committee shall make a reasonable effort to contact the landowner or land user in person and to furnish the landowner or land user all of the following:

1. An explanation orally and in writing of the reasons for the excessive soil erosion.
2. A management plan which, if followed, would reduce soil erosion to a rate established as acceptable by the land conservation committee. The management plan shall, with reasonable limits, set forth all of the options which are available to the landowner or land user to achieve acceptable soil erosion rates.
3. An explanation of the financial aids and technical assistance which are available to the landowner or land user. These may include, but are not necessarily limited to, cost-sharing, loans, tax incentives and technical assistance available from the land conservation committee and other agencies.

(6) **BOARD OF ADJUSTMENT.** The county board shall provide for the appointment of a board of adjustment in any county which adopts an ordinance under this section.

(7) **CONSTRUCTION.** Any ordinance enacted under this section shall be liberally construed in favor of the county. It shall be construed as setting minimum requirements for the purposes stated and not as a limitation on other powers granted the county board and land conservation committee.

History: 1981 c. 346.

92.12 Intergovernmental cooperation. Counties, cities, villages, towns and public agencies with natural resource responsibilities in the same or different counties may cooperate in carrying out the purposes of this chapter. If a problem of soil or water conservation is defined in part by drainage basin boundaries beyond a single county's borders or otherwise transcends these borders, the respective counties, cities, villages, towns and public agencies with natural resource responsibilities may enter into mutually binding agreements

and contracts containing, but not limited to, provisions for mutually enforced and administered regulatory ordinances and cost-sharing distribution arrangements.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.13 State and local agencies to cooperate. Agencies of the state having jurisdiction over, or charged with the administration of any state-owned lands, and any county or other governmental subdivision of the state having jurisdiction over, or charged with the administration of any county-owned or other publicly owned lands, shall cooperate to the fullest extent with the land conservation committee in carrying out programs under this chapter. The land conservation committee may enter and perform work upon these publicly owned lands. The provisions of land conservation practices ordinances enacted under s. 92.11 are applicable to these publicly owned lands, and shall be in all respects observed by the agencies administering the lands.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.14 State aids for conservation activities. (1) APPLICATION. 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 to provide basic administrative, technical and clerical staff for operating effective land conservation programs and 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.

(2) **APPROVAL; ALLOCATION; PRIORITY.** After receiving recommendations of the board on the applications, the department shall approve or disapprove each application. No payment may be made under this section unless an application is approved under this section. The department shall allocate the funds appropriated under s. 20.115 (7) (c) to the land conservation committees with approved applications first for conservation activities under sub. (3). Following the allocation of funds under sub. (3), the department shall allocate any remaining funds under sub. (4).

(3) **PRIMARY ALLOCATION.** (a) The department shall pay annually to each county land conservation committee an amount equal to the lesser of \$7,000 or the amount the land conservation committee expends from county funds in employing county personnel for soil and water conservation work.

(b) The department shall pay annually to each county land conservation committee an amount equal to the lesser of \$5,000 or the amount the land conservation committee expends from county funds in employing county conservationists under contract with the department.

(c) In addition to the payments under pars. (a) and (b), the department shall pay annually to each land conservation committee an additional \$5,000 in state aid if that county has an approved soil erosion control plan under s. 92.10 and an approved animal waste management plan under s. 92.15 (2) (a).

(4) **RESIDUAL ALLOCATION.** The department shall pay to each land conservation committee an amount not to exceed 70% of the cost of one or more conservation projects proposed. Funds allocated under this subsection 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, 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 pro-

gram under s. 144.25 and the animal waste management program adopted under ch. 147.

(5) STATUS REPORT. The land conservation committee shall keep the department informed of the status of work on funded activities.

History: 1981 c. 346; 1983 a. 416; 1985 a. 29; 1985 a. 135 s. 85; 1985 a. 332

92.15 Wisconsin farmers fund program. (1) The department shall establish an animal waste water pollution grant program. The department shall adopt rules necessary for the proper execution of this program. Except as provided under sub. (3), the grants under this section may be used only for engineering design or construction of animal waste treatment or storage facilities or runoff control systems and shall be paid from the appropriation under s. 20.115 (7) (f).

(2) Except as provided under sub. (3m), the department may make payments under this section only to a county which:

(a) Submits a plan to the department identifying the animal waste water pollution problems in the county and ways to deal with them and their cost, and establishing a priority ranking of the problems.

(b) Adopts an ordinance under s. 92.16.

(c) Administers a Wisconsin farmers fund program which:

1. Limits grants under this section to animal waste treatment or storage facilities or runoff control systems which are necessary to meet water quality objectives.

2. Ensures that the facilities and systems under subd. 1 are designed consistent with rules of the department and with the technical standards of the county.

3. Ensures that the facilities and systems under subd. 1 are constructed and operated to avoid water pollution problems.

4. Requires, as a condition of the grant under this section, an applicant to use the most cost-effective method to meet water quality standards.

5. Limits a grant for any facility or system under subd. 1 to \$10,000 of total grants from the program under this section and all other government programs. This limitation does not apply to any facility or system the principal purpose of which is to prevent or control barnyard runoff, although it does apply to a manure storage facility and all other facilities.

6. Limits the state share of the cost of any facility or structure under subd. 1 to 70% and any county share to 10%.

(3) Beginning July 1, 1985, a county may use up to 10% of the payment under this section for technical assistance and administrative expenses of designing and constructing facilities and systems described under sub. (1).

(3m) The department may make payments under this section directly to farmers who receive a notice of discharge related to animal waste or who are required to apply for a permit under ch. 147.

(4) The department of natural resources shall furnish the department and counties water quality information needed to identify animal waste water pollution under sub. (2) (a).

(5) Nothing in this section affects the authority of the department of natural resources to act under statutes and rules administered or adopted by the department of natural resources.

History: 1983 a. 27; 1983 a. 410 ss. 24k, 24q, 2202 (2); 1985 a. 8 ss. 5, 7, 9, 12; 1985 a. 29 s. 3202 (3).

This section does not violate Art. VIII, sec. 3 or 10, nor the public purpose doctrine. 74 Atty. Gen. 25.

92.16 Earthen manure storage facilities. A county may adopt an ordinance requiring all earthen manure storage facilities constructed after July 2, 1983, to meet the technical standards of the county and rules of the department. The department shall adopt rules for ordinances setting standards and criteria for construction of earthen manure storage facilities.

History: 1983 a. 27; 1983 a. 410 s. 24n; 1985 a. 8 s. 10.