

1989 Assembly Bill 710

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1989 WISCONSIN ACT 324

AN ACT *to renumber and amend* 59.974 (9), 61.354 (8) and 62.234 (8); *to amend* chapter 33 (title), 30.77 (3) (a), 31.39 (3), 33.001, 59.974 (9) (title), 61.354 (8) (title) and 62.234 (8) (title); *to repeal and recreate* 33.01 (intro.); and *to create* subchapter V of chapter 33, 17.15 (3), 17.27 (1n), 59.974 (9) (c), 61.354 (8) (c) and 62.234 (8) (c) of the statutes, **relating to:** creating a Dane county lakes and watershed commission, authorizing a tax and granting rule-making authority.

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

SECTION 1. 17.15 (3) of the statutes is created to read:

17.15 (3) DANE COUNTY LAKES AND WATERSHED COMMISSION. Any commissioner of the Dane county lakes and watershed commission appointed under s. 33.44 (1) (c) to (g) may be removed by the appointing authority for cause.

SECTION 2. 17.27 (1n) of the statutes is created to read:

17.27 (1n) DANE COUNTY LAKES AND WATERSHED COMMISSION. If a vacancy occurs in the office of any appointed commissioner of the Dane county lakes and watershed commission, the county executive of Dane county shall appoint a member who meets the applicable requirements under s. 33.44 (1) (c) to (g).

SECTION 3. 30.77 (3) (a) of the statutes is amended to read:

30.77 (3) (a) Any town, village or city may, in the interest of public health, safety or welfare, adopt local regulations applicable on any waters of this state within its jurisdiction if the regulation is not contrary to or inconsistent with this chapter and if the regulation relates to the equipment, use or operation of boats or to any activity regulated by ss. 30.60 to 30.71, ~~but~~. Except as provided under s. 33.455 (3) (b), no such local regulation which pertains to the equipment, use or operation of a boat on an inland lake is valid unless all towns, cities and villages

having jurisdiction on the waters of the lake have enacted an identical local regulation.

SECTION 4. 31.39 (3) of the statutes is amended to read:

31.39 (3) This section does not apply to any federal agency, state agency, county, city, village, town, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, the Dane county lakes and watershed commission or any federally recognized Native American tribal governing body.

SECTION 5. Chapter 33 (title) of the statutes is amended to read:

CHAPTER 33 PUBLIC INLAND LAKE PROTECTION AND REHABILITATION WATERS

SECTION 6. 33.001 of the statutes is amended to read:

33.001 (title) **Findings and declaration of intent.**
(1) The legislature finds environmental values, wildlife, public rights in navigable waters, and the public welfare are threatened by the deterioration of public lakes; that the protection and rehabilitation of the public inland lakes of this state are in the best interest of the citizens of this state; that the public health and welfare will be benefited thereby; that the current state effort to abate water pollution will not undo the eutrophic and other deteriorated conditions of many lakes; that current efforts to protect and rehabilitate the water quality of the navigable waters in Dane county, which receive intense urban, rec-

1989 Assembly Bill 710

reational and agricultural usage, are seriously handicapped by the fact that numerous governmental bodies have jurisdiction over the management of the watersheds in Dane county; that lakes form an important basis of the state's recreation industry; that the increasing recreational usage of the waters of this state justifies state action to enhance and restore the potential of our inland lakes to satisfy the needs of the citizenry; and that the positive public duty of this state as trustee of waters requires affirmative steps to protect and enhance this resource and protect environmental values. ~~To this end~~

(2) In accordance with sub. (1), the legislature declares that it is necessary to embark upon a program of lake protection and rehabilitation, to authorize a conjunctive state and local program of lake protection and rehabilitation to fulfill the positive duty of the state as trustee of navigable waters, and protect environmental values. The legislature finds that a state effort of research, analysis, planning and financing, and a local effort undertaken by public inland lake rehabilitation and protection and rehabilitation districts and the Dane county lakes and watershed commission of planning and plan implementation are necessary and desirable and that the local districts should be formed by persons directly affected by the deteriorated condition of inland waters and willing to assist financially, or through other means, in remedying lake problems. The legislature further finds that state efforts are needed to aid and assist local efforts, to ensure that projects are undertaken only if they promote the public rights in navigable waters, environmental values, and the public welfare, and to administer a program of financial aids to support rehabilitation projects with benefits to all state citizens.

SECTION 7. 33.01 (intro.) of the statutes is repealed and recreated to read:

33.01 Definitions. (intro.) In ss. 33.001 to 33.37:

SECTION 8. Subchapter V of chapter 33 of the statutes is created to read:

CHAPTER 33

SUBCHAPTER V

DANE COUNTY LAKES AND WATERSHED COMMISSION

33.41 Definitions. In this subchapter:

(1) "Board of commissioners" means the board of commissioners of the Dane county lakes and watershed commission.

(1m) "Commission" means the Dane county lakes and watershed commission created under s. 33.42.

(2) "County" means Dane county.

(3) "County board" means the county board of the county.

(5g) "Municipality" means any city, village or town.

33.42 Creation. There is created a Dane county lakes and watershed commission as part of county government. The board of commissioners shall govern the commission.

33.44 Board of commissioners; composition. (1)

The board of commissioners shall consist of the following persons, all of whom shall be residents of the county:

(a) The county executive of the county or his or her designee.

(b) The mayor of the city of Madison or his or her designee.

(c) Two members who are supervisors on the county board and who represent supervisory districts located entirely outside the city of Madison.

(d) Two members who are supervisors on the county board and who represent supervisory districts located entirely within the city of Madison.

(e) 1. Except as provided in subd. 2, one member who is not a supervisor on the county board, who resides in the city of Madison and whose name is on a list of at least 2 nominees submitted to the county executive by the mayor of the city of Madison.

2. If the list of nominees required under this paragraph is not submitted at least 60 days before the term of the member appointed under this paragraph expires or at least 60 days before the county executive must fill a vacancy under this paragraph, the county executive shall appoint a member who is not a supervisor on the county board and who resides in the city of Madison.

(f) 1. Except as provided in subds. 2 and 3, one member who is not a supervisor on the county board, who resides outside the city of Madison and whose name is on a list of at least 2 nominees submitted to the county executive by the Dane county towns association.

2. For terms subsequent to the initial term, the person appointed under this paragraph must reside outside the city of Madison and the person's name must be on a list of at least 2 nominees submitted to the county executive by the Dane county towns association. Unless the person has served continuously as the member appointed under this paragraph for all previous terms, including the initial term, the person may not be a supervisor on the county board.

3. If the list of nominees required under this paragraph is not submitted at least 60 days before the term of the member appointed under this paragraph expires or at least 60 days before the county executive must fill a vacancy under this paragraph, the county executive shall appoint a member who resides outside the city of Madison and who either has served continuously as the member appointed under this paragraph for all previous terms, including the initial term, or who is not a supervisor on the county board.

(g) 1. Except as provided in subds. 2 and 3, one member who is not a supervisor on the county board, whose name is on a list of at least 2 nominees submitted to the county executive by a majority of the chief executives of the villages and cities, except the city of Madison, that are located at least partially in the county, and who is a resident of such a village or city.

1989 Assembly Bill 710

2. For terms subsequent to the initial term, the person appointed under this paragraph must not be a supervisor on the county board. Unless the person has served continuously as the member appointed under this paragraph for all previous terms, including the initial term, the name of the person must be on a list submitted to the county executive by a majority of the chief executives of the villages and cities, except the city of Madison, that are located at least partially in the county, and the person must be a resident of such a village or city.

3. If the list of nominees, when required under this paragraph, is not submitted at least 60 days before the term of the member appointed under this paragraph expires or at least 60 days before the county executive must fill a vacancy under this paragraph, the county executive shall appoint a member who is not a supervisor on the county board and who either has served continuously as the member appointed under this paragraph for all previous terms, including the initial term, or who is a resident of a village or city, except the city of Madison, that is located at least partially within the county.

(2) The county executive shall appoint the members listed under sub. (1) (c) to (g) subject to confirmation by the county board.

(2g) In making the appointments under sub. (1) (c) and (d), the county executive shall appoint persons who will represent the diverse interests of the urban and rural communities in improving the water quality and the scenic and environmental value of the county surface waters and groundwaters.

(2m) The term of a member appointed under sub. (1) (c) to (g) begins on the 3rd Tuesday in April of the year in which the member is appointed and ends on the 3rd Tuesday in April in the 3rd year following the year in which the member is appointed.

(3) Five commissioners shall constitute a quorum for the transaction of business.

(5) Commissioners shall be paid actual and necessary expenses incurred while conducting business of the commission and shall be paid the same per diem as members of county board committees.

(6) (a) If a commissioner appointed under sub. (1) (c) or (d) is not reelected to be a supervisor on the county board during his or her term on the commission, he or she may continue to serve on the commission until the position is filled as provided in par. (b).

(b) Vacancies occurring during the term of any commissioner appointed under sub. (1) (c) to (g) shall be filled within 90 days in the manner provided in s. 17.27 (1n). A commissioner appointed to fill a vacancy may be reappointed for subsequent full terms.

(7) The board of commissioners shall meet at least quarterly, and at other times on the call of the chairperson or on the petition of 5 of the members.

(8) Any action by the board of commissioners requires the affirmative vote of the majority of members present and voting.

(9) The board of commissioners shall elect a chairperson, vice chairperson and secretary from its members each year, and these officers shall have the following duties:

(a) The chairperson shall preside at all meetings and all public hearings held by the board of commissioners.

(b) The vice chairperson shall preside at any meeting or any public hearing held by the board of commissioners at which the chairperson is unable to preside.

(c) The secretary shall keep minutes of all meetings of the board of commissioners and hearings held by it.

33.445 Board of commissioners; duties. (1) The board of commissioners shall initiate and coordinate surveys and research projects for the purpose of gathering data relating to the surface waters and groundwaters of the county.

(2) The board of commissioners shall maintain a liaison with agencies of the federal, state and local governments and other organizations that are involved in programs or projects designed to protect, rehabilitate and manage water resources.

(3) The board of commissioners shall develop a public information and education program on issues related to the surface waters and groundwaters of the county.

(4) To the greatest extent practicable, the board of commissioners and the county shall encourage and utilize the Wisconsin conservation corps for appropriate projects.

33.45 Board of commissioners; powers. (1) The board of commissioners may develop and implement plans, projects or programs to do any or all of the following:

(a) Improve the water quality and the scenic, economic and environmental value of the surface waters and the groundwaters of the county.

(b) Protect or enhance the recreational use of the navigable waters of the county.

(c) Coordinate and integrate, for efficient and effective cost management, any county programs or projects for the waters of the county that relate to any of the following:

1. Surface water and groundwater quality.

2. The recreational use of and public access to navigable waters.

3. Water safety and boating regulations.

4. Algae and aquatic plant management.

(d) Reduce soil erosion and bring cropland soil erosion loss into conformance with s. 92.025.

(2) The board of commissioners may develop and propose to the county board programs or projects to make improvements to the navigable waters in the county

1989 Assembly Bill 710

including, but not limited to, constructing and maintaining public boat launching facilities, maintaining park or other open natural areas adjacent to the navigable waters, implementing shoreline maintenance requests, maintaining and improving locks and dredging waterways.

(3) The board of commissioners may create advisory committees as it considers necessary to apprise the board of commissioners of the information necessary to implement its duties and powers. The advisory committees may include, but are not limited to, representatives of the following: fishing groups; farmers; businesses; riparian and other real property owners; industry groups; public bodies; sailing clubs; boating clubs; environmentalists; scientists; conservationists; hunters; and water skiing, diving and other sports clubs.

(4) The board of commissioners may promulgate any rules necessary to implement the duties and powers granted to the board of commissioners.

33.455 Regulation proposed by board of commissioners. (1) **ORDINANCES AND LOCAL REGULATIONS.** The board of commissioners may propose to the county board the adoption, modification or rescission of any ordinance or local regulation relating to boating, recreation or safety upon the navigable waters of the county.

(2) **MINIMUM STANDARDS.** The board of commissioners may propose to the county board minimum standards for local regulations and ordinances for municipalities and the county to protect and rehabilitate the water quality of the surface waters and groundwaters of the county that relate to any of the following:

(a) The environmental control of land surfaces, which includes, but is not limited to, one or more of the following:

1. Erosion control.
2. Construction site control.
3. Zoning of shorelands, wetlands and floodplains.
4. Subdivision of land under ch. 236.
5. Environmental control of agricultural land.
6. Other conservation programs or projects that relate to the environmental control of land surfaces.

(b) The maintenance of property owned or maintained by a municipality, including public ways and shorelands.

(3) **ADOPTION BY COUNTY BOARD.** (a) The county board may adopt a minimum standard, an ordinance or a local regulation, or a modification to or rescission of an ordinance or a local regulation, as proposed by the board of commissioners under sub. (1) or (2).

(b) Notwithstanding s. 30.77 (3) (a), an ordinance, local regulation or minimum standard as adopted by the county board under this section shall apply to the county and to any municipality partially or totally within the county and shall supersede any less restrictive and conflicting provision of a minimum standard, ordinance or local regulation adopted by a municipality.

33.457 Implementation plan. (1) The board of commissioners shall develop an implementation plan, with the advice of the Dane county regional planning commission, and shall submit the plan to the presiding officers of each house of the legislature, the chairperson of the county board and the county executive of the county by July 1, 1992.

(2) The implementation plan shall include all of the following:

(a) Minimum standards for shoreland, floodplain and wetland zoning ordinances to control polluting activities.

(b) Storm drainage system plans that incorporate water quality protection measures to the maximum extent feasible.

(c) Minimum standards in urban areas for street sweeping, salt usage reduction, shoreline maintenance and leaf collection.

(d) Plans for bringing cropland soil erosion loss into conformance with the standards in s. 92.025.

(e) Barnyard and feedlot runoff and waste management control plans.

(f) Minimum standards for construction site erosion control ordinances.

(g) Standards for algae and aquatic plant management.

(h) Proposals to finance the effectuation of the implementation plan.

(3) The implementation plan may include recommendations for any of the following:

(a) Dredging and maintenance of navigability of waterways.

(b) Operation of navigation locks and control of water levels and flow.

(c) Maintenance, protection and improvement of shorelines, banks and beds of navigable waters.

(cm) Protection of banks of nonnavigable streams, wetlands, groundwater recharge areas and other areas significant to environmental quality.

(d) Access to shoreline recreational areas and facilities.

(e) Water safety, navigational and boating regulations.

(f) Research activities and feasibility studies.

(4) Within 3 months after the implementation plan is developed and submitted under sub. (1), the department and the designated planning agency under s. 144.235 that covers the county shall evaluate the implementation plan to determine whether it is consistent with the criteria for water quality planning under s. 144.235 and whether the plan is adequate to:

(a) Protect and rehabilitate the water quality of the surface waters and the groundwaters of the county.

(b) Protect and enhance the recreational use of the navigable waters of the county.

1989 Assembly Bill 710

(c) Increase water and boating safety on the navigable waters of the county.

(5) After July 1, 1996, but no later than July 1, 1997, the legislative audit bureau shall conduct a performance evaluation audit on the implementation plan and on any programs, projects or plans adopted under this subchapter by the county board or by the board of commissioners. The legislative audit bureau shall distribute a report of its audit to those persons specified in sub. (1).

33.46 Budget proposals. (1) PROCEDURES. (a) Annually, the board of commissioners shall prepare a proposed budget for the commission's activities for plans, programs or projects under this subchapter as follows:

1. The budget shall list all anticipated revenue from all sources during the ensuing year and shall list all proposed appropriations for each activity and reserve account for the ensuing year. The budget shall also show actual revenues and expenditures for the preceding year, if applicable, actual revenue and expenditures for the current year and estimated revenues and expenditures for the balance of the current year. The budget shall also show for informational purposes by fund all anticipated unexpended or unappropriated balances and all surpluses.

2. A summary of the budget, a notice of the place where a copy of the budget is located for public inspection and a notice of the time and place for a public hearing on the budget shall be published as a class 1 notice under ch. 985 in the county at least 15 days before the public hearing.

3. The summary required under subd. 2 shall include all of the following for the proposed budget, for the budget in effect and for the budget of the preceding year, if applicable:

- a. All expenditures, by major expenditure category.
- b. All revenues by major revenue source.
- c. Any financing source and use not included under subd. 3. a and b.
- d. All beginning and year-end fund balances.

(b) Not less than 15 days after the publication of the summary of the budget and of the notices required under par. (a) 2., the board of commissioners shall hold a public hearing at the time and place specified in the notice. At the hearing, any resident or taxpayer of the county shall have the opportunity to be heard on the proposed budget. The budget hearing may be adjourned from time to time. At the hearing, the board of commissioners may adopt changes to the budget.

(c) After the public hearing, the board of commissioners shall submit the proposed budget to the county for incorporation in the county's budget to be subject to any review procedures that apply to the county budget under ss. 59.84 and 65.90.

(2) TAXES; SPECIAL ASSESSMENTS; SPECIAL CHARGES; FEES. As part of the commission's budget, the board of

commissioners may propose that the county board levy or impose any of the following:

(a) A tax upon all taxable real property in the county for the costs of operation of the commission for each fiscal year.

(b) Special assessments or special charges under s. 33.47

(c) Fees that the county is empowered to charge under ss. 30.77 (3) (e), 33.475 and 59.07 (42).

33.47 Special assessments and special charges. (1) The county board may levy special assessments or special charges to implement programs or projects undertaken under this subchapter as an exercise of the county's police power.

(1m) The county board shall determine the boundaries of any area within which any special assessment or special charge will be levied.

(2) The county board shall determine the total amount of any special assessment or special charge to be levied.

(3) The board of commissioners shall make a recommendation to the county board regarding the manner in which any special assessment or a special charge to be levied will be apportioned to real property that is benefited within the area determined under sub. (1m).

(4) The county board shall apportion any special assessment or special charge it levies to real property within the county on a reasonable basis.

(5) Any special assessment or special charge levied shall be in accordance with s. 66.60 to the extent it is applicable to and not in conflict with this subsection.

(6) The county board may allow annual instalment payments of special assessments, but not to exceed 10 in number.

(7) Real property located in the county that is owned by any county or a municipality is subject to special assessments and special charges. The procedure for collecting special assessments under s. 33.32 (3) (b) shall apply to collections of special assessments and special charges under this subsection.

(8) Outstanding unpaid assessments on privately owned real property shall be paid in full by any public body, including the state, that purchases the real property.

33.475 Boating fees. Notwithstanding the prohibition in s. 30.77 (1) against local regulations that exclude any boat from the free use of the waters of the state, and in addition to the powers granted the county under ss. 30.77 (3) (e) and 59.07 (42), the county may charge boat operators reasonable fees for the costs of providing other recreational boating services not specified in ss. 30.77 (3) (e) and 59.07 (42).

33.48 Continued expenditure level by county and municipalities. The county or a municipality within the county may not reduce in any fiscal year its expenditures relating to environmental control of land surfaces below

the expenditures it made in the fiscal year ending in 1990 if the county or the municipality makes the expenditures for the purposes of protecting or rehabilitating the quality of the surface waters and the groundwaters of the county. These expenditures include, but are not limited to, spending for erosion control, for construction site control, for environmental control of agricultural land and for conservation programs or projects but do not include extraordinary or nonrecurring expenses for these purposes.

SECTION 9. 59.974 (9) (title) of the statutes is amended to read:

59.974 (9) (title) INTERGOVERNMENTAL COOPERATION.

SECTION 10. 59.974 (9) of the statutes is renumbered 59.974 (9) (a) and amended to read:

59.974 (9) (a) ~~Section~~ Except as provided in par. (c), s. 66.30 applies to this section, except that but for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance.

(b) 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.

SECTION 11. 59.974 (9) (c) of the statutes is created to read:

59.974 (9) (c) If the board of commissioners of the Dane county lakes and watershed commission consents, Dane county may empower it by ordinance to administer an ordinance enacted under this section whether or not the area otherwise served by the commission includes all of Dane county. Section 66.30 does not apply to this paragraph.

SECTION 12. 61.354 (8) (title) of the statutes is amended to read:

61.354 (8) (title) INTERGOVERNMENTAL COOPERATION.

SECTION 13. 61.354 (8) of the statutes is renumbered 61.354 (8) (a) and amended to read:

61.354 (8) (a) ~~Section~~ Except as provided in par. (c), s. 66.30 applies to this section, except that but for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance.

(b) 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 14. 61.354 (8) (c) of the statutes is created to read:

61.354 (8) (c) If a village is served by the Dane county lakes and watershed commission, 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 66.30 does not apply to this paragraph.

SECTION 15. 62.234 (8) (title) of the statutes is amended to read:

62.234 (8) (title) INTERGOVERNMENTAL COOPERATION.

SECTION 16. 62.234 (8) of the statutes is renumbered 62.234 (8) (a) and amended to read:

62.234 (8) (a) ~~Section~~ Except as provided in par. (c), s. 66.30 applies to this section, except that but for the purposes of this section any agreement under s. 66.30 shall be effected by ordinance.

(b) 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 17. 62.234 (8) (c) of the statutes is created to read:

62.234 (8) (c) If a city is served by the Dane county lakes and watershed commission, 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 66.30 does not apply to this paragraph.

SECTION 18. Nonstatutory provisions; terms for commissioners. (1) Notwithstanding section 33.44 (2m) of the statutes, as created by this act, the terms of the initial commissioners of the Dane county lakes and watershed commission appointed under section 33.44 (1) (c) to (g) of the statutes, as created by this act, shall begin on the date the member is appointed and qualified and shall expire as follows:

(a) The 2 commissioners who were appointed under section 33.44 (1) (d) of the statutes, as created by this act, on April 16, 1991, or on the date a successor is appointed and qualified, whichever is later.

(b) The 3 commissioners who were appointed under section 33.44 (1) (c) and (g) of the statutes, as created by this act, on April 21, 1992, or on the date a successor is appointed and qualified, whichever is later.

(c) The 2 commissioners who were appointed under section 33.44 (1) (e) and (f) of the statutes, as created by this act, on April 20, 1993, or on the date a successor is appointed and qualified, whichever is later.

(2) Notwithstanding section 33.44 (1) (f) 1. and (2) of the statutes, as created by this act, if, on the effective date of this subsection, there is a person serving on the Dane county lakes and watershed commission, as created by Dane county ordinance, as the member nominated by the Dane county towns association, that person shall be the initial commissioner under section 33.44 (1) (f) of the statutes, as created by this act.

(3) Notwithstanding section 33.44 (1) (g) 1. and (2) of the statutes, as created by this act, if, on the effective

1989 Assembly Bill 710

date of this subsection, there is a person serving on the Dane county lakes and watershed commission, as created by Dane county ordinance, as the member who does not

reside in the Yahara river watershed, that person shall be the initial commissioner under section 33.44 (1) (g) of the statutes, as created by this act.

