

1993 Senate Bill 470

Date of enactment: **March 26, 1994**Date of publication*: **April 8, 1994**

1993 WISCONSIN ACT 166

AN ACT *to repeal* 144.25 (4) (ge); *to renumber and amend* 144.025 (2) (v) 1, 144.25 (4) (gm) and 144.25 (7); *to amend* 20.370 (4) (cc), 20.370 (4) (cq), 144.025 (2) (u) 1, 144.025 (2) (u) 2, 144.025 (2) (v) 2. (intro.), 144.25 (4) (e), 144.25 (4m) (d), 144.25 (5m), 144.25 (5s) and 144.25 (8) (jm); and *to create* 20.115 (7) (km), 92.04 (2) (k), 92.04 (2) (L), 92.14 (5), 144.025 (2) (v) 1m, 144.025 (2) (w), 144.25 (3) (ap) and (at), 144.25 (4) (g) 8. am., 144.25 (4) (t), 144.25 (5y) and 144.25 (7) (a) and (b) of the statutes, **relating to:** grants for animal waste management facilities or systems, water pollution from agricultural nonpoint sources, approval of priority watershed and lake plans, designation of critical sites under the nonpoint source water pollution program, review of rules for that program and making appropriations.

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

SECTION 1. 20.115 (7) (km) of the statutes is created to read:

20.115 (7) (km) *Animal waste management grants.* All moneys transferred from the appropriation accounts under s. 20.370 (4) (cc) and (cq) for animal waste management grants under s. 92.14 (5).

SECTION 2. 20.370 (4) (cc) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

20.370 (4) (cc) *Environmental aids; nonpoint source.* Biennially, from the general fund, the amounts in the schedule for grants and assistance under the nonpoint source water pollution abatement program under s. 144.25 and for transfers to the appropriation account under s. 20.115 (7) (km) as provided in s. 144.25 (4) (t). The department shall allocate \$300,000 in each fiscal year from this appropriation for grants under s. 144.25 (8) (cm).

SECTION 3. 20.370 (4) (cq) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

20.370 (4) (cq) *Environmental aids — nonpoint source program.* Biennially, from the environmental fund, the amounts in the schedule for nonpoint source grants and assistance under s. 144.25 and for transfers to

the appropriation account under s. 20.115 (7) (km) as provided in s. 144.25 (4) (t).

SECTION 4. 92.04 (2) (k) of the statutes is created to read:

92.04 (2) (k) *Review of pollution abatement determinations.* The board shall review and affirm or reverse decisions of county land conservation committees under s. 144.025 (2) (v) 1m when review is requested under s. 144.025 (2) (w). The board may conduct an informal hearing that is not a contested case under ch. 227.

SECTION 5. 92.04 (2) (L) of the statutes is created to read:

92.04 (2) (L) *Review of critical site determinations.* The board shall review and affirm or reverse decisions of county land conservation committees under s. 144.25 (7) (a) 2. when review is requested under s. 144.25 (7) (b). The board may conduct an informal hearing which is not a contested case under ch. 227.

SECTION 6. 92.14 (5) of the statutes is created to read:

92.14 (5) **ANIMAL WASTE MANAGEMENT GRANTS IN A PRIORITY WATERSHED OR PRIORITY LAKE AREA.** (a) From the appropriation under s. 20.115 (7) (km), the department may make a grant for the purpose specified in sub. (4) (c) if the facility or system will be located in a priority watershed, as defined in s. 144.25 (2) (c), or a priority

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lake area, as defined in s. 144.25 (2) (bs), and the conditions specified in sub. (4) (c) are satisfied.

(b) The department, with the approval of the board, may request the department of natural resources to transfer funds from the appropriation account under s. 20.370 (4) (cc) or (cq) to the appropriation account under s. 20.115 (7) (km) if the funds are needed to pay grants under par. (a).

SECTION 7. 144.025 (2) (u) 1. of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

144.025 (2) (u) 1. Order or cause the abatement of pollution which the department, in consultation with the department of agriculture, trade and consumer protection if the source is agricultural, has determined to be significant and caused by a nonpoint source, as defined in s. 144.25 (2) (b), including pollution which causes the violation of a water quality standard, pollution which significantly impairs aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health or pollution which otherwise significantly impairs water quality, ~~but not including except that under this subdivision the department may not order or cause the abatement of~~ any pollution caused primarily by animal wastes or of pollution from an agricultural source that is located in a priority watershed or priority lake area unless the source is designated as a critical site in a priority watershed or priority lake plan under s. 144.25 (5m) or a modification to such a plan under s. 144.25 (5s).

SECTION 8. 144.025 (2) (u) 2. of the statutes, as created by 1993 Wisconsin Act 16, is amended to read:

144.025 (2) (u) 2. If it provided notice under s. 144.25 (4) (gm) and, if the source is agricultural, with the approval of the land conservation committee created under s. 92.06 of every county in which the source is located (5w), order the owner or operator of a critical site source that is designated under s. 144.25 (4) (ge) as a critical site in a priority watershed or priority lake area plan under s. 144.25 (5m) or in a modification to such a plan under s. 144.25 (5s) to implement best management practices, but not with respect to any pollution caused primarily by animal waste.

SECTION 9. 144.025 (2) (v) 1. of the statutes, as affected by 1993 Wisconsin Act 16, is renumbered 144.025 (2) (v) 1. a. and amended to read:

144.025 (2) (v) 1. a. If the department determines that it is authorized to issue an order under par. (u) 1. ~~that significant pollution is to abate pollution~~ caused by a nonpoint source, the department shall send a written notice of intent to issue ~~an~~ the order to abate the pollution to the person whom the department determines to be responsible for the nonpoint source.

b. If the department determines under par. (u) 2. that ~~the person an owner or operator~~ is required to implement best management practices in a priority watershed or priority lake area, the department shall send a written

notice of intent to issue an order to implement the designated best management practices to the owner or operator.

c. The notice of intent to issue an order shall describe the department's findings and intent, and shall include a date by which that person is required to abate the pollution or implement the best management practices. That date shall be at least one year after the date of the notice unless the department determines that the pollution is causing or will cause severe water quality degradation that could be mitigated or prevented by abatement action taken in less than one year. In its determination under this paragraph, the department shall consider the nature of the actual or potential damage caused by the pollution and the feasibility of measures to abate that pollution.

SECTION 10. 144.025 (2) (v) 1m of the statutes is created to read:

144.025 (2) (v) 1m. If the nonpoint source that is the subject of a notice under subd. 1 is agricultural, the department shall send the notice to the land conservation committee created under s. 92.06 of any county in which the source is located. If the notice is issued under subd. 1. b., the land conservation committee may disapprove issuance of an order within 60 days after the department issues the notice of intent to issue the order.

SECTION 11. 144.025 (2) (v) 2. (intro.) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

144.025 (2) (v) 2. (intro.) If the nonpoint source which is the subject of a notice under subd. 1 is agricultural, the department shall send the notice to the department of agriculture, trade and consumer protection ~~and to the land conservation committee created under s. 92.06 in every county in which the nonpoint source is located.~~ The department of agriculture, trade and consumer protection shall do all of the following:

SECTION 12. 144.025 (2) (w) of the statutes is created to read:

144.025 (2) (w) 1. Except as provided in subd. 3, if the department issues a notice under par. (v) 1. b., the source is agricultural and no land conservation committee disapproves the proposed order under par. (v) 1m, the owner or operator of the critical site may obtain a review of the proposed order by filing a written request with the land and water conservation board within 60 days after the expiration of the time limit under par. (v) 1m. If the land conservation committee of any county in which a source is located disapproves of a proposed order under par. (v) 1m, the department may obtain a review of that disapproval by filing a written request with the land and water conservation board within 60 days after receiving the decision of the land conservation committee.

2. The owner or operator of a critical site may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under subd. 1 by filing a written request with the department within

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60 days after receiving an adverse decision of the land and water conservation board.

3. The owner or operator of a critical site who obtains review of the critical site determination under any or all of the review procedures in s. 144.25 (7) may not obtain review of a proposed order under this paragraph.

SECTION 13. 144.25 (3) (ap) and (at) of the statutes are created to read:

144.25 (3) (ap) Review and approve priority lake and priority watershed plans prepared under sub. (5m) and modifications to those plans prepared under sub. (5s). The board may exempt minor plan modifications from the requirement of board approval.

(at) Review rules drafted under this section and make recommendations regarding the rules before final approval of the rules by the natural resources board.

SECTION 14. 144.25 (4) (e) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

144.25 (4) (e) Promulgate rules, in consultation with the department of agriculture, trade and consumer protection, as are necessary for the proper execution and administration of the program under this section. Before promulgating rules under this paragraph, the department shall submit the rules to the land and water conservation board for review under sub. (3) (at). The rules shall include standards and specifications concerning best management practices which are required for eligibility for cost-sharing grants under this section. The department may waive the standards and specifications in exceptional cases. Only persons involved in the administration of the program under this section, persons who are grant recipients or applicants and persons who receive notices of intent to issue orders under s. 144.025 (2) (u) 2. are subject to the rules promulgated under this paragraph. Any rule promulgated under this paragraph which relates or pertains to agricultural practices relating to animal waste handling and treatment are subject to s. 13.565.

SECTION 15. 144.25 (4) (g) 8. am. of the statutes is created to read:

144.25 (4) (g) 8. am. Designation as critical sites those sites that are significant sources of nonpoint source pollution upon which best management practices must be implemented in order to obtain a reasonable likelihood that the water quality objectives established under par. (dm) can be achieved.

SECTION 16. 144.25 (4) (ge) of the statutes, as created by 1993 Wisconsin Act 16, is repealed.

SECTION 17. 144.25 (4) (gm) of the statutes, as created by 1993 Wisconsin Act 16, is renumbered 144.25 (5w) and amended to read:

144.25 (5w) After designating the land and water conservation board approves a priority watershed or priority lake plan or a modification to such a plan that designates a site to be a critical site under par. (ge), the department shall notify the owner or operator of that site of the designation and of the provisions in sub. (7) and

either s. 144.025 (2) (u) 2. and, (v) and (w) or, if the pollution is caused primarily by animal waste, ss. NR 243.21 to 243.26, Wis. adm. code.

SECTION 18. 144.25 (4) (t) of the statutes is created to read:

144.25 (4) (t) Transfer funds from the appropriation account under s. 20.370 (4) (cc) or (cq) to the appropriation account under s. 20.115 (7) (km) at the request of the department of agriculture, trade and consumer protection, after the land and water conservation board approves the transfer, under s. 92.14 (5) (b).

SECTION 19. 144.25 (4m) (d) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

144.25 (4m) (d) After the department considers the comments of the department of agriculture, trade and consumer protection on a plan under par. (c) and receives approval of the plan by every county to which it was sent and by the land and water conservation board, the department shall designate the plan to be an element of the appropriate areawide water quality management plan under P.L. 92-500, section 208.

SECTION 20. 144.25 (5m) of the statutes is amended to read:

144.25 (5m) Upon completion of plans by the department under sub. (4) (g), the governmental unit or regional planning commission under sub. (4m) and the department of agriculture, trade and consumer protection under sub. (5), and upon receiving the approval of the land and water conservation board, the department shall prepare and approve the final plan for a priority watershed or priority lake.

SECTION 21. 144.25 (5s) of the statutes, as created by 1993 Wisconsin Act 16, is amended to read:

144.25 (5s) The department may make modifications, including designating additional sites as critical sites under sub. (4) (ge), in a priority watershed or priority lake plan with the approval of every county to which the department sent the original plan under sub. (4m) (c) and of the land and water conservation board. If the owner or operator of a site prevails in a final review under sub. (7) or the site is not designated as a critical site in the original plan under sub. (5m) and the pollution is from an agricultural source and is not caused by animal waste, the department may not make a modification designating the site as a critical site unless the designation is based on a substantial increase in pollution from the site, on information about pollution from the site that was not available when the plan was prepared or on a substantial change to the criteria for designating a site as a critical site. This subsection applies to a priority watershed or priority lake plan completed before, on or after August 12, 1993.

SECTION 22. 144.25 (5y) of the statutes is created to read:

144.25 (5y) If the owner or operator of a critical site installs and maintains best management practices as provided under the priority watershed or priority lake plan,

the site is no longer a critical site. The owner or operator may discontinue maintenance of a best management practice for a period during which the owner or operator changes the use of the site if the best management practice is not needed for the changed use.

SECTION 23. 144.25 (7) of the statutes, as created by 1993 Wisconsin Act 16, is renumbered 144.25 (7) (c) and amended to read:

144.25 (7) (c) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. ~~(4)(ge)~~ (5s) may request a contested case hearing under ch. 227 to review ~~that designation~~ the decision of the land and water conservation board under par. (b) by filing a written request with the department within 60 days after receiving ~~notice under sub. (4)(gm)~~ an adverse decision of the land and water conservation board.

SECTION 24. 144.25 (7) (a) and (b) of the statutes are created to read:

144.25 (7) (a) 1. The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) may request a review of that designation by filing a written request within 60 days after receiving notice under sub. (5w) with the land conservation committee of the county in which the site is located or, if the site is located in more than one county, with the land conservation committee of the county in which the largest portion of the site is located.

2. A county land conservation committee receiving a request under subd. 1 shall provide the owner or operator with a hearing and shall provide reasonable notice of the hearing to the owner or operator, the department and the department of agriculture, trade and consumer protection. The county land conservation committee shall conduct the hearing under this subdivision as an informal hearing. Section 68.11 (2) does not apply to the hearing. The land conservation committee shall hold the

hearing in a place convenient to the owner or operator. Within 60 days after the hearing, the department shall, and the department of agriculture, trade and consumer protection may, submit a report and recommendation to the land conservation committee concerning the issues at the hearing. The land conservation committee may affirm or reverse the designation of the site as a critical site.

(b) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) or the department of natural resources may obtain a review of the decision of a county land conservation committee under subd. 2 by filing a written request with the land and water conservation board within 60 days after receiving the decision of the county land conservation committee.

SECTION 25. 144.25 (8) (jm) of the statutes, as created by 1993 Wisconsin Act 16, is amended to read:

144.25 (8) (jm) Notwithstanding pars. (f) to (h), after cost-sharing grants have been available in a priority watershed or priority lake area for 36 months only a reduced grant, which may not exceed a percentage established by the department by rule of the cost of implementing the best management practice, may be provided to the owner or operator of a ~~critical~~ critical site designated as a critical site in a priority watershed plan under sub. (5m) or in a modification to such a plan under sub. ~~(4)(ge)~~ (5s).

SECTION 26. Appropriation changes; natural resources. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of natural resources under section 20.370 (2) (mr) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$66,100 for fiscal year 1993–94 and the dollar amount is increased by \$66,100 for fiscal year 1994–95 to increase the authorized FTE positions for the department by 2.0 SEG positions for duties related to water pollution caused primarily by animal waste.