

1999 SENATE BILL 428

March 1, 2000 – Introduced by Senators RISSER, BURKE and GEORGE, cosponsored by Representatives BOCK, BERCEAU and MILLER. Referred to Agriculture, Environmental Resources and Campaign Finance Reform.

1 **AN ACT** *to amend* 20.370 (3) (ma), 30.12 (4) (a), 30.202 (3), 30.204 (5), 41.41 (8),
2 66.021 (7) (a), 66.023 (3) (e), 66.023 (7m), 66.024 (5m), 66.025, 70.32 (1g), 91.73
3 (1), 289.33 (3) (d), 289.35 and 289.43 (7) (c); and *to create* 66.427 of the statutes;
4 **relating to:** zoning of upland environmental corridors, requiring the exercise
5 of rule-making authority and making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, a county must enact specific zoning ordinances to regulate activities in any shorelands that are in unincorporated areas of the county and a village or city must enact specific zoning ordinances to regulate activities in wetlands that are five acres or more in size and that are located in shorelands. These zoning ordinances must comply with standards established by the department of natural resources (DNR). Current law defines “shorelands” as lands within certain distances of navigable waters.

This bill creates similar requirements for upland environmental corridors. Under the bill, DNR must promulgate rules to establish criteria for determining what are to be considered upland environmental corridors. DNR must also promulgate rules to establish standards for identifying these corridors, including a minimum size requirement.

Once DNR identifies these corridors, the regional planning commission for the area in which each corridor is located must map the corridor. If a corridor is not under the jurisdiction of such a planning commission, the county, city or village (local unit

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of government) in which the corridor is located must either map the corridor or contract with a regional planning commission to perform the mapping.

The bill requires DNR to promulgate rules to establish objectives for protecting these corridors from land use practices that reduce the upland environmental corridors' natural values, including objectives as to the amount and type of development that may occur in upland environmental corridors. Each local unit of government in which a upland environmental corridor is located must then enact an ordinance that meets these objectives. If a local unit of government fails to do so within one year after the mapping is completed, DNR must then enact an ordinance for the local unit of government.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.370 (3) (ma) of the statutes is amended to read:

2 20.370 **(3)** (ma) *General program operations — state funds.* From the general
3 fund, the amounts in the schedule for regulatory and enforcement operations under
4 chs. 30, 31 and 280 to 299, except s. 281.48, and ss. 44.47, 59.692, 59.693, 61.351,
5 61.354, 62.231, 62.234, 66.427 and 87.30, for reimbursement of the conservation
6 fund for expenses incurred for actions taken under s. 166.04; for review of
7 environmental impact requirements under ss. 1.11 and 23.40; and for enforcement
8 of the treaty-based, off-reservation rights to fish, hunt and gather held by members
9 of federally recognized American Indian tribes or bands.

10 **SECTION 2.** 30.12 (4) (a) of the statutes, as affected by 1999 Wisconsin Act 9, is
11 amended to read:

12 30.12 **(4)** (a) Activities affecting waters of the state as defined in s. 281.01 (18)
13 that are carried out under the direction and supervision of the department of
14 transportation in connection with highway, bridge or other transportation project
15 design, location, construction, reconstruction, maintenance and repair are not

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1 subject to the prohibitions or permit or approval requirements specified under this
2 section or s. 29.601, 30.11, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231,
3 66.427 or 87.30 or chs. 281 to 285 or 289 to 299, except s. 281.48. However, at the
4 earliest practical time prior to the commencement of these activities, the department
5 of transportation shall notify the department of the location, nature and extent of the
6 proposed work that may affect the waters of the state.

7 **SECTION 3.** 30.202 (3) of the statutes is amended to read:

8 30.202 (3) EXEMPTION FROM STATUTES AND RULES. Dredge spoil disposal activities
9 authorized under sub. (2) are exempt from any prohibition, restriction, requirement,
10 permit, license, approval, authorization, fee, notice, hearing, procedure or penalty
11 specified under s. 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692, 66.427 or 87.30 or
12 chs. 281 to 285 or 289 to 299, except s. 281.48, or specified in any rule promulgated,
13 order issued or ordinance adopted under those sections or chapters.

14 **SECTION 4.** 30.204 (5) of the statutes is amended to read:

15 30.204 (5) EXEMPTION FROM CERTAIN STATUTES AND RULES. Activities of the
16 department in conducting the lake acidification experiment are exempt from any
17 prohibition, restriction, requirement, permit, license, approval, authorization, fee,
18 notice, hearing, procedure or penalty specified under s. 29.601 (3), 30.01 to 30.03,
19 30.06 to 30.16, 30.18 to 30.29, 30.50 to 30.99, 59.692, 66.427, 87.30, 287.81, 299.15
20 to 299.23, 299.91, 299.95 or 299.97 or chs. 281, 283 or 289 to 292 or specified in any
21 rule promulgated, order issued or ordinance adopted under any of those sections or
22 chapters.

23 **SECTION 5.** 41.41 (8) of the statutes is amended to read:

24 41.41 (8) ZONING. Notwithstanding ss. 13.48 (13) (a), 59.69 (4), 60.61 (2), 60.62
25 (1), 61.35 and 62.23 (7), the Kickapoo valley reserve is not subject to the zoning

1 ordinance of any county or municipality, except that any ordinance enacted under s.
2 59.692, 61.351, 62.231, 66.427 87.30 governing the zoning of floodplains, upland
3 environmental corridors, shorelands or wetlands in shorelands and any ordinance
4 that is required by law under s. 59.693, 61.354 or 62.234 governing construction site
5 erosion control or storm water management applies in the reserve.

6 **SECTION 6.** 66.021 (7) (a) of the statutes is amended to read:

7 66.021 (7) (a) An ordinance for the annexation of the territory described in the
8 annexation petition may be enacted by a two-thirds vote of the elected members of
9 the governing body not less than 20 days after the publication of the notice of
10 intention to circulate the petition and not later than 120 days after the date of filing
11 with the city or village clerk of the petition for annexation or of the referendum
12 election if favorable to the annexation. If the annexation is subject to sub. (11) the
13 governing body shall first review the reasons given by the department of
14 administration that the proposed annexation is against the public interest. Subject
15 to s. ss. 59.692 (7) and 66.427 (5) (a) 5., such an ordinance may temporarily designate
16 the classification of the annexed area for zoning purposes until the zoning ordinance
17 is amended as prescribed in s. 62.23 (7) (d). Before introduction of an ordinance
18 containing such temporary classification, the proposed classification shall be
19 referred to and recommended by the plan commission. The authority to make such
20 temporary classification shall not be effective when the county ordinance prevails
21 during litigation as provided in s. 59.69 (7).

22 **SECTION 7.** 66.023 (3) (e) of the statutes is amended to read:

23 66.023 (3) (e) *Content of plan; compatibility with existing law.* The cooperative
24 plan shall describe how the plan is consistent with current state and federal laws,

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1 county shoreland zoning ordinances under s. ss. 59.692 and 66.427, municipal
2 regulations and administrative rules that apply to the territory affected by the plan.

3 **SECTION 8.** 66.023 (7m) of the statutes is amended to read:

4 **66.023 (7m) ZONING IN TOWN TERRITORY.** If a town is a party to a cooperative plan
5 with a city or village, the town and city or village may agree, as part of the cooperative
6 plan, to authorize the town, city or village to adopt a zoning ordinance under s. 60.61,
7 61.35 or 62.23 for all or a portion of the town territory covered by the plan. The
8 exercise of zoning authority by a town under this subsection is not subject to s. 60.61
9 (3) or 60.62 (3). If a county zoning ordinance applies to the town territory covered
10 by the plan, that ordinance and amendments to it continue until a zoning ordinance
11 is adopted under this subsection. If a zoning ordinance is adopted under this
12 subsection, that zoning ordinance continues in effect after the planning period ceases
13 until a different zoning ordinance for the territory is adopted under other applicable
14 law. This subsection does not affect zoning ordinances adopted that are in effect
15 under ss. 59.692, 66.427, 87.30 or 91.71 to 91.78.

16 **SECTION 9.** 66.024 (5m) of the statutes is amended to read:

17 **66.024 (5m) TEMPORARY ZONING OF AREA PROPOSED TO BE ANNEXED.** An interim
18 zoning ordinance to become effective only upon approval of the annexation at the
19 referendum election may be enacted by the governing body of the city or village.
20 Subject to s. ss. 59.692 (7) and 66.427 (5) (a) 5., the ordinance may temporarily
21 designate the classification of the annexed area for zoning purposes until the zoning
22 ordinance is amended as prescribed in s. 62.23 (7) (d). The proposed interim zoning
23 ordinance shall be referred to and recommended by the plan commission prior to
24 introduction. Authority to make such temporary classification shall not be effective

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1 when the county zoning ordinance prevails during litigation as provided in s. 59.69
2 (7).

3 **SECTION 10.** 66.025 of the statutes is amended to read:

4 **66.025 Annexation of owned territory.** In addition to other methods
5 provided by law and subject to ss. 59.692 (7) and 66.023 (7) and 66.427 (5) (a) 5.,
6 territory owned by and lying near but not necessarily contiguous to a village or city
7 may be annexed to a village or city by ordinance enacted by the board of trustees of
8 the village or the common council of the city, provided that in the case of
9 noncontiguous territory the use of the territory by the city or village is not contrary
10 to any town or county zoning regulation. The ordinance shall contain the exact
11 description of the territory annexed and the names of the towns from which
12 detached, and shall operate to attach the territory to the village or city upon the filing
13 of 6 certified copies thereof in the office of the secretary of state, together with 6 copies
14 of a plat showing the boundaries of the territory attached. Two copies of the
15 ordinance and plat shall be forwarded by the secretary of state to the department of
16 transportation, one copy to the department of natural resources, one copy to the
17 department of revenue and one copy to the department of public instruction.

18 **SECTION 11.** 66.427 of the statutes is created to read:

19 **66.427 Zoning of upland environmental corridors. (1) DEFINITIONS.** In
20 this section:

21 (a) “Department” means the department of natural resources.

22 (b) “Local unit of government” means a city, village or county.

23 (c) “Shorelands” has the meaning given in s. 59.692 (1) (b).

24 **(2) DETERMINATION OF UPLAND ENVIRONMENTAL CORRIDORS.** (a) The department
25 shall promulgate rules that specify criteria for determining the types of areas that

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1 shall be included as upland environmental corridors on the maps under sub. (3). The
2 types of areas may include:

- 3 1. Woodlands.
- 4 2. Wetlands that are not located in shorelands.
- 5 3. Wildlife habitat areas.
- 6 4. Areas consisting of prairie communities.
- 7 5. Areas of steep slope or rough topography.

8 (b) The department shall promulgate rules that establish standards for
9 identifying and delineating upland environmental corridors, including minimum
10 requirements for the sizes of these corridors.

11 (c) Upland environmental corridors that meet the criteria and standards
12 established by rule under this subsection shall be mapped as required under sub. (3)
13 and are subject to the ordinances required under sub. (5).

14 **(3) MAPPING.** (a) Each regional planning commission shall map the upland
15 environmental corridors within its region. If any part of a local unit of government
16 is not under the jurisdiction of a regional planning commission, the local unit of
17 government shall either map the upland environmental corridors within the
18 boundaries of the local unit of government or shall contract with a regional planning
19 commission to perform the mapping. The mapping required under this paragraph
20 shall be completed before January 1, 2005.

21 (b) If a regional planning commission or a local unit of government fails to
22 complete the mapping before January 1, 2005, the department shall complete the
23 mapping before January 1, 2006.

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1 (c) The department shall promulgate rules to be used by the department to
2 review and certify the mapping performed by regional planning commissions and
3 local units of government under this subsection.

4 (4) OBJECTIVES FOR UPLAND ENVIRONMENTAL CORRIDORS. The department shall
5 promulgate rules that establish objectives for protecting upland environmental
6 corridors from land use practices that reduce the upland environmental corridors'
7 natural values, including objectives as to the amount and type of development that
8 may occur in upland environmental corridors.

9 (5) ORDINANCES. (a) *County ordinances.* 1. Each county that has an upland
10 environmental corridor within the county's unincorporated area shall enact an
11 ordinance that meets the objectives established by the department under sub. (4).
12 An ordinance enacted under this section may be enacted separately from ordinances
13 enacted under s. 59.69.

14 2. Except as otherwise provided in this section, the provisions of s. 59.69 apply
15 to an ordinance enacted under this section, but the ordinance is exempt from any
16 requirement that it be approved by a town or a town board.

17 3. If a town ordinance that is in effect on the effective date of this subdivision
18 [revisor inserts date], and that relates to land located in an upland environmental
19 corridor is more restrictive than an ordinance enacted under this section affecting
20 the same land, it continues as a town ordinance in all respects to the extent of the
21 greater restrictions, but not otherwise.

22 4. Requests for variances and appeals regarding upland environmental
23 corridors within a county shall be decided by the board of adjustment for that county
24 under s. 59.694, and the procedures of that section apply to such requests and
25 appeals.

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1 5. Provisions of an upland zoning ordinance that are enacted under this section
2 and that were applicable, prior to annexation, to any upland environmental corridor
3 area annexed by a city or village after the county has enacted the ordinance under
4 this section shall continue in effect and shall be enforced after annexation by the
5 annexing city or village.

6 (b) *City and village ordinances.* 1. Each city or village that has an upland
7 environmental corridor within its borders shall enact an ordinance that meets the
8 objectives established by the department under sub. (4). An ordinance enacted under
9 this section may be enacted separately from ordinances enacted under s. 62.23 (7).

10 2. Except as otherwise provided in this section, the provisions of s. 62.23 (7)
11 apply to an ordinance enacted under this section.

12 3. Requests for variances and appeals regarding upland environmental
13 corridors within a city or village shall be decided by the board of adjustment for that
14 city or village under s. 62.23 (7) (e), and the procedures of that paragraph apply to
15 such requests and appeals.

16 (c) *Ordinances in general.* 1. An ordinance enacted under this section
17 supersedes all provisions of an ordinance enacted under ss. 59.69, 61.35 and 62.23
18 (7) that relate to upland environmental corridors.

19 2. If a local unit of government does not enact an ordinance within one year
20 after the mapping for the local unit of government is completed under sub. (2) or if
21 the department, after notice and hearing, determines that a local unit of government
22 has enacted an ordinance that fails to meet the objectives established by the
23 department under sub. (4), the department shall enact such an ordinance for the
24 local unit of government.

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1 3. Ordinances enacted under this section may not result in duplicate zoning
2 restrictions for areas that are subject to zoning under s. 59.692, 61.351, 62.231 or
3 87.30.

4 **(6) RULES.** In promulgating rules under this section, the department shall
5 consult with local units of government and regional planning commissions.

6 **SECTION 12.** 70.32 (1g) of the statutes, as affected by 1999 Wisconsin Act 9, is
7 amended to read:

8 70.32 **(1g)** In addition to the factors set out in sub. (1), the assessor shall
9 consider the effect on the value of the property of any zoning ordinance under s.
10 59.692, 61.351 ~~or~~ 62.231 or 66.427, any conservation easement under s. 700.40, any
11 conservation restriction under an agreement with the federal government and any
12 restrictions under ch. 91. Beginning with the property tax assessments as of
13 January 1, 2000, the assessor may not consider the effect on the value of the property
14 of any federal income tax credit that is extended to the property owner under section
15 42 of the Internal Revenue Code.

16 **SECTION 13.** 91.73 (1) of the statutes is amended to read:

17 91.73 **(1)** Except as otherwise provided, exclusive agricultural zoning
18 ordinances shall be adopted and administered in accordance with any applicable
19 provisions under ss. 59.69, 59.692, 59.693 ~~and~~ 59.694, 61.35 ~~or~~ 62.23 ~~or~~ and 66.427
20 and under subch. VIII of ch. 60.

21 **SECTION 14.** 289.33 (3) (d) of the statutes is amended to read:

22 289.33 **(3)** (d) “Local approval” includes any requirement for a permit, license,
23 authorization, approval, variance or exception or any restriction, condition of
24 approval or other restriction, regulation, requirement or prohibition imposed by a
25 charter ordinance, general ordinance, zoning ordinance, resolution or regulation by

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1 a town, city, village, county or special purpose district, including without limitation
2 because of enumeration any ordinance, resolution or regulation adopted under s.
3 59.03 (2), 59.11 (5), 59.42 (1), 59.48, 59.51 (1) and (2), 59.52 (2), (5), (6), (7), (8), (9),
4 (11), (12), (13), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26) and (27),
5 59.53 (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (13), (14), (15), (19), (20) and (23),
6 59.535 (2), (3) and (4), 59.54 (1), (2), (3), (4), (4m), (5), (6), (7), (8), (10), (11), (12), (16),
7 (17), (18), (19), (20), (21), (22), (23), (24), (25) and (26), 59.55 (3), (4), (5) and (6), 59.56
8 (1), (2), (4), (5), (6), (7), (9), (10), (11), (12), (12m), (13) and (16), 59.57 (1), 59.58 (1) and
9 (5), 59.62, 59.69, 59.692, 59.693, 59.696, 59.697, 59.698, 59.70 (1), (2), (3), (5), (7), (8),
10 (9), (10), (11), (21), (22) and (23), 59.79 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) and
11 (11), 59.80, 59.82, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.354,
12 62.11, 62.23, 62.231, 62.234, 66.01, 66.052, 66.24 (8), 66.427, 87.30, 91.73, 196.58,
13 236.45, 281.43 or 349.16 or subch. VIII of ch. 60.

14 **SECTION 15.** 289.35 of the statutes is amended to read:

15 **289.35 Shoreland, upland and floodplain zoning.** Solid waste facilities
16 are prohibited within areas under the jurisdiction of ~~shoreland and floodplain zoning~~
17 ~~regulations adopted zoning ordinances that are in effect~~ under ss. 59.692, 61.351,
18 62.231, 66.427 and 87.30, except that the department may issue permits authorizing
19 facilities in such areas.

20 **SECTION 16.** 289.43 (7) (c) of the statutes is amended to read:

21 289.43 (7) (c) The department shall approve the requester's exemption
22 proposal if the department finds that the proposal, as approved, will comply with this
23 chapter and chs. 30, 31, 160 and 280 to 299 and ss. 1.11, 23.40, 59.692, 59.693, 60.627,
24 61.351, 61.354, 62.231, 62.234, 66.427 and 87.30. If the proposal does not comply
25 with one or more of the requirements specified in this paragraph, the department

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1 shall provide a written statement describing how the proposal fails to comply with
2 those requirements. The department shall respond to an application for an
3 exemption under this subsection within 90 days.

4 **SECTION 17. Nonstatutory provisions.**

5 (1) The department of natural resources shall submit in proposed form the
6 rules required under section 66.427 of the statutes, as created by this act, to the
7 legislative council staff under section 227.15 (1) of the statutes no later than the first
8 day of the 19th month beginning after the effective date of this subsection.

9 (END)