

2001 DRAFTING REQUEST

Bill

Received: **01/25/2002**

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

For: **Eugene Hahn (608) 266-3404**

By/Representing: **Paul Merline**

This file may be shown to any legislator: **NO**

Drafter: **shoveme**

May Contact:

Addl. Drafters:

Subject: **Agriculture - miscellaneous
Munis - miscellaneous
Munis - zoning**

Extra Copies: **RCT, MGG, RNK**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Changes to drainage district statutes

Instructions:

See Attached; WI Drainage District Assoc. resolution 6 re: cr; 88.83 (6); change "shall" to "may" in s. 88.63 (2); AM; s. 66.1001, Smart Growth, to require drainage district boards to be notified of contents of comprehensive plans.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	shoveme 01/25/2002	jdye 01/30/2002	pgreensl 01/30/2002	_____	lrb_docadmin 01/30/2002		S&L
/2	shoveme 02/13/2002	hhagen 02/14/2002	jfrantze 02/15/2002	_____	lrb_docadmin 02/15/2002	lrb_docadminS&L 03/01/2002	

FE Sent For: *At Intro.*

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1/2 MES 2/13/02
FE Sent For:
12 h/m/h
1/14/02

2/14
2/14
<END>

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1?	shoveme	1/30 jld	1/30 pg	1/30 pg/kjr			

FE Sent For:

<END>

Resolution #1 & 2

The Dane County Farm Drainage Board in general session, with all members presents does hereby unanimously adopt the following resolutions, to-wit:

#1 RESOLVED:

That the board seek to have amended Sec. 88.83 Wis. Stats. to add as subsection (6), the following:

(6) In the event the city or village to which the jurisdiction has been transferred fails to maintain or repair the drainage system as defined in Sec. 88.63(3), Wis. Stats., the board may give written notice to the city or village stating the work to be done, and if it isn't substantially completed within sixty (60) days the board may enter the lands, do the needed work and bill the city or village for the cost thereof. If the city or village denies in writing prior to the sixty (60) days, that such maintenance or repair is needed, the matter pursuant to Sec. 88.14(2), Wis. Stats. shall be submitted to arbitration.

and further,

#2 RESOLVED:

That the statutes be amended to require all sizeable developments to construct water retention ponds able to control catastrophic runoffs of heavy rain or melting of snow.

BE IT FURTHER RESOLVED, That as part of design of detention facility outlets, consideration should be given to capacity of downstream ditches and channels.

Steven Querin-Schultz, being the duly elected and acting secretary of the Dane County Farm Drainage Board, states that the above and foregoing was duly adopted by the board on the

1st day of December, 2001.

Steven M. Querin-Schultz
Steven Querin-Schultz, Secretary

Approved by Dane County Farm Drainage Board on December 1, 2001, at Cottage Grove Town Hall, Cottage Grove, Wisconsin, at the Annual Meeting of the Dane County Farm Drainage Board.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4799/1

MES.....

Handwritten initials: jld, KMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON

Handwritten initials: jld

1 AN ACT ...; relating to: the authority of a drainage board to maintain drains,
2 assessments levied by drainage boards, and the dissemination of
3 comprehensive plans. ✓

Analysis by the Legislative Reference Bureau (board)

Under current law, the owners of the majority of the land in a drainage district that is located entirely, or partly, within the boundaries of a city or village may petition the drainage board having jurisdiction over the district to transfer jurisdiction of the district, or that part of the district that is located in the city or village, to the city or village. If the district is located only partially within a city or village, however, the district and the city or village must be in agreement regarding the terms of transfer. If, after a hearing, the drainage board finds that the petition requirements have been met, the board must issue an order transferring jurisdiction. After a transfer, all proceedings regarding a drainage district, or part of a district, shall be under the city or village drainage law.

Also under current law, a city or village may adopt a resolution stating that the city or village is willing to accept a drain or part of a drain and to administer it under city or village drainage laws, and may petition the drainage board with jurisdiction over the drain to transfer jurisdiction to the city or village. After a hearing the board may, but is not required to, issue an order transferring jurisdiction of the drain or part of the drain to the city or village.

Under this bill, if a city or village to which jurisdiction over a drainage district is transferred fails to maintain and repair the drains, the drainage board may provide the city or village with written notice that describes the maintenance and

repair that the board believes is necessary. If the maintenance and repair is not substantially completed within 60 days after the city or village receives the notification, the board may enter the drainage district and complete the necessary maintenance and repair, and may bill the city or village for its costs. If the city or village, within 60 days of receiving the notification, notifies the drainage board in writing that the maintenance and repair described by the board is not needed, the board may take no further action and the matter must be submitted to arbitration. *

* Under current law, a drainage board is required to establish a fund for the payment of costs of maintenance and repair. Whenever the amount of the fund falls below an amount specified by law, the board is required to levy an additional assessment for maintenance and repair. Under the bill, if the fund falls below the specified level, the board may levy an assessment for maintenance and repair.

Also under current law, before the comprehensive plan of a local governmental unit (a city, village, town, county, or regional planning commission) may take effect, the local governmental unit must send a copy of the adopted plan, or amendment to such a plan, to a number of entities, including every governmental body that is located in whole or in part within the boundaries of the local governmental unit. This bill specifies that a drainage board is one of the governmental bodies which must receive a copy of the plan or amendment. *

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. 66.1001 (4) (b) 1. of the statutes is amended to read:

2 66.1001 (4) (b) 1. Every governmental body, including a drainage board, that
3 is located in whole or in part within the boundaries of the local governmental unit.

4 History: 1999 a. 9, 148; 1999 a. 150 s. 74; Stats. 1999 s. 67.1001; 1999 a. 185 s. 57; 1999 a. 186 s. 42; s. 13.93 (2) (c).

SECTION 2. 88.63 (2) of the statutes is amended to read:

5 88.63 (2) The board shall establish a fund for the payment of costs of
6 maintenance and repair. Whenever the amount of the fund falls below an amount
7 equivalent to 5% of the confirmed benefits currently in effect in the district, the board
8 shall may levy an additional assessment under s. 88.23 for maintenance and repair.

9 Assessments for costs of maintenance and repair shall be apportioned on the basis
10 of the confirmed benefits then in effect in the district but may be made

1 notwithstanding the fact that assessments of benefits in the district may have been
2 exhausted by previous assessments for other costs. Assessments for costs of
3 maintenance and repair, including costs incurred and per diems earned by board
4 members under sub. (1), are not limited by the extent of unexhausted assessments
5 of benefits in the district and shall not be counted in determining whether there are
6 unexhausted assessments of benefits against which assessments for costs other than
7 those authorized by this section may be made.

8 History: 1993 a. 456.

8 **SECTION 3.** 88.83 (6) of the statutes is created to read:

9 88.83 (6) If a city or village, to which jurisdiction over a drainage district is
10 transferred under this section, fails in its maintenance and repair of the drains, as
11 that term is used in s. 88.63 (3), the board may provide the city or village with written
12 notice that describes the maintenance and repair that the board believes is
13 necessary. If the maintenance and repair as described by the board is not
14 substantially completed, not later than 60 days after the city or village receives the
15 written notice from the board, the board may enter the drainage district and
16 complete the necessary maintenance and repair. The board may bill the city or
17 village for the cost of completing the maintenance and repair, and the city or village
18 shall promptly pay the bill. If the city or village, not later than 60 days after the city
19 or village receives the written notice from the board, notifies the board in writing that
20 the maintenance and repair described by the board is not needed, the board may not
21 take any further action, except in response to a finding by an arbitrator, and the
22 matter shall be submitted to arbitration under ch. 788.

23

(END)

Shovers, Marc

From: Merline, Paul
Sent: Tuesday, February 12, 2002 4:35 PM
To: Shovers, Marc
Cc: Merline, Paul
Subject: LRB 4799/1 Draft Modifications

Importance: High

Hi Marc,

Well, we had a good meeting yesterday discussing the bill draft for the drainage board. After much debate, they settled on a 'final' version. Could you make the following modifications:

Section 1 - The original confusion between drainage *board* and drainage *district* language was here, but as we discussed, this section can be omitted to avoid redundant legislation.

Section 2 - Unless this change brings about additional concerns, please change the second sentence in Section 2 to read as follows:

"Whenever the amount of the fund falls below an amount that allows for maintenance and repair, the board shall levy an additional assessment under s. 88.23."

Section 3 - No changes.

If you have any questions, please let me know. As soon as I receive the revised draft from you, I will circulate back to the drainage folks for final approval. We are still hoping to move this legislation through this term. Hope to hear from you soon.

Thanks again for your help,

Paul Merline
Legislative Aide

Office of Representative Eugene Hahn
Wisconsin 47th Assembly District

Shovers, Marc

From: Merline, Paul
Sent: Monday, February 11, 2002 8:48 AM
To: Shovers, Marc
Subject: RE: LRB 4799/1 - Changes to Drainage District statutes

Marc,

Thanks for the quick reply and comments. I will run these past the drainage group at the meeting this afternoon and see how they would like to proceed. I will also try and have them indicate specifically where they see conflicts between drainage board and drainage district.

Thanks again for the follow up. I'll drop you another line when I know more.

Paul

-----Original Message-----

From: Shovers, Marc
Sent: Friday, February 08, 2002 5:34 PM
To: Merline, Paul
Subject: RE: LRB 4799/1 - Changes to Drainage District statutes

Hi Paul:

I read through the draft again and I don't think that the use of the terms "drainage board" and "drainage district" are confusing or used improperly. It would be helpful if those who feel the terms are used incorrectly could indicate, using page and line numbers, where they think the confusion is. I believe that s. 88.83 (6), stats., as created in the bill, accomplishes your intent and uses "board", "drain", and "drainage district" correctly. If I have misinterpreted your intent or the usages of the terms are incorrect, let me know and I'll redraft the bill. I do need to know, however, what your specific concerns are.

I haven't talked to Brian Ohm but, based on my reading of s. 66.1001 (4) (b) 1., I agree that the term "governmental body" includes drainage districts and that current law does not need to be amended to include a drainage district. My understanding from the meeting, however, is that although current law requires a local governmental unit (defined in s. 66.1001 (1) (b) to send an adopted comprehensive plan or an amendment to such a plan to "every governmental body that is located in whole or in part within the boundaries of the local governmental body", the statute is not being followed because plans are not being sent to drainage districts.

It seems as if the choice you have is either to educate local governmental units about their responsibility under s. 66.1001 (4) (b) 1. or to change the law in an unnecessary, redundant fashion to ensure that drainage districts receive copies of the plans. Maybe one approach would be to change the booklet you referred to ("Guidelines for the Adoption and Distribution of Your Community's Comprehensive Plan") to include drainage districts and every other conceivable "governmental body."

Marc

Marc E. Shovers

Senior Legislative Attorney
Legislative Reference Bureau

Phone: (608) 266-0129
Fax: (608) 264-8522
e-mail: marc.shovers@legis.state.wi.us

-----Original Message-----

From: Merline, Paul
Sent: Friday, February 08, 2002 3:51 PM
To: Shovers, Marc
Cc: Merline, Paul
Subject: re: LRB 4799/1 - Changes to Drainage District statutes

Hello Marc,

Quick update for you on the drainage district statute changes along with some feedback. The drainage district folks today invited me to attend a meeting this Monday 2/12 to discuss the draft and offer comments. It is scheduled for 1pm in Westfield, so I'll probably need to leave Madison by 11:30 Monday morning. If you can reply before then I would really appreciate it.

Anyway, comments back from Dave Russell at DATCP as well as initial drainage board comments indicate that they feel there could be some confusion regarding the use of the terms 'drainage board' and 'drainage district' in the language throughout the draft. They feel that one would do the actual maintenance and the other is just the areas itself. Do you see the need for additional clarification?

Also, in talks with Mike Blaska who received feedback from Brian Ohm at UW-Extension, they are of the feeling that the current language in 66.1001, 4 (b) (1) covers all governmental bodies that may be present in a governmental unit. Mike suggested that maybe you and Brian might be able to confer (?). Brian can be reached at 262-2098. Any thoughts?

Mike also sent over the attached "Guidelines for the Adoption and Distribution of Your Community's Comprehensive Plan" from the Office of Land Information Services. But while I understand that the distribution list for plans has been frequently interpreted to include every possible governing body in a governmental unit (including drainage districts), drainage districts are not specifically listed even in this document.

That's all for now Marc, I hope to hear from you soon. If not, and at any rate, I'm sure I will have additional comments after Monday. Have a good weekend.

Thanks again,

Paul Merline
Legislative Aide

Office of Representative Eugene Hahn
Wisconsin 47th Assembly District

<< File: guidelines_Plan_adopt_submission.pdf >>



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-4799/2
MES:jld:14
[Handwritten signature]
[Handwritten initials: RMR]

2001 BILL

[Handwritten: SDON]

[Handwritten: Regen]

1 AN ACT to amend 66.1001 (4) (b) 1. and 88.63 (2); and to create 88.83 (6) of the
2 statutes; relating to: the authority of a drainage board to maintain drains,
3 assessments levied by drainage boards, and the dissemination of
4 comprehensive plans.

Analysis by the Legislative Reference Bureau

Under current law, the owners of the majority of the land in a drainage district that is located entirely, or partly, within the boundaries of a city or village may petition the drainage board (board) having jurisdiction over the district to transfer jurisdiction of the district, or that part of the district that is located in the city or village, to the city or village. If the district is located only partially within a city or village, however, the district and the city or village must be in agreement regarding the terms of transfer. If, after a hearing, the board finds that the petition requirements have been met, the board must issue an order transferring jurisdiction. After a transfer, all proceedings regarding a drainage district, or part of a district, shall be under the city or village drainage law.

Also under current law, a city or village may adopt a resolution stating that the city or village is willing to accept a drain or part of a drain and to administer it under city or village drainage laws, and may petition the board with jurisdiction over the drain to transfer jurisdiction to the city or village. After a hearing the board may, but is not required to, issue an order transferring jurisdiction of the drain or part of the drain to the city or village.

BILL

an amount that allows for maintenance and repair

Under this bill, if a city or village to which jurisdiction over a drainage district is transferred fails to maintain and repair the drains, the board may provide the city or village with written notice that describes the maintenance and repair that the board believes is necessary. If the maintenance and repair is not substantially completed within 60 days after the city or village receives the notification, the board may enter the drainage district and complete the necessary maintenance and repair, and may bill the city or village for its costs. If the city or village, within 60 days of receiving the notification, notifies the board in writing that the maintenance and repair described by the board is not needed, the board may take no further action and the matter must be submitted to arbitration.

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

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Assessments for costs of maintenance and repair shall be apportioned on the basis

BILL

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22 take any further action, except in response to a finding by an arbitrator, and the
23 matter shall be submitted to arbitration under ch. 788.

24 (END)

EUGENE HAHN

State Representative • 47th Assembly District



Co-Chair:
Joint Survey Committee
on Tax Exemptions

Vice-Chair:
Assembly Committee
on Agriculture

CRB-Drafting -

We are hoping to move this
through as quickly as possible.

Please let me know if
you need any additional
information. Thanks,

Paul Merline
Legislative Aide

6-3464



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 15, 2002

MEMORANDUM

To: Representative Hahn

From: Marc E. Shovers, Senior Legislative Attorney

Re: LRB-4799/2 Changes to drainage district statutes

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-0129 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266 3561 if you have any questions regarding this memorandum.