

2017 Senate Bill 177 (LRB -2613)

An Act to repeal 88.83 (1m) and 88.83 (1r); to renumber 87.30 (1m) (a) and 87.30 (1m) (b) and (c); to renumber and amend 88.83 (1); to amend 87.30 (1m) (intro.), 88.13, 88.24 (intro.), 88.62 (3) (a), 88.63 (2), 88.83 (title), 88.83 (3), 88.83 (4), 88.83 (5), 281.36 (3b) (b), 281.36 (3m) (a), 281.36 (6) (a) (intro.) and 281.36 (9) (a) (intro.); and to create 30.20 (1g) (d), 70.32 (5), 87.30 (1m) (a) (intro.), 87.30 (1m) (am), 88.17 (2h) (c), 88.17 (2h) (d), 88.17 (2r), 88.212 (4), 88.31 (7r), 88.74, 88.785, 88.817, 88.83 (1c), 88.83 (2m) and 281.36 (4m) of the statutes; relating to: drainage districts and regulating the removal of material from certain drainage ditches. (FE)

2017

04-13.	S.	Introduced by Senators Wanggaard and Craig ; cosponsored by Representatives Sanfelippo, Vos, Ballweg, E. Brooks, R. Brooks, Kuglitsch, Kulp, Loudenbeck, Murphy, Novak, Ripp, Skowronski, Weatherston and Wichgers.	196
04-13.	S.	Read first time and referred to Committee on Agriculture, Small Business and Tourism	197
05-03.	S.	Fiscal estimate received	
05-30.	S.	Fiscal estimate received	
06-08.	S.	Fiscal estimate received	
09-13.	S.	Senate Amendment 1 offered by Senator Wanggaard (LRB a1218)	443
10-10.	S.	Public hearing held	
10-13.	S.	Senate Amendment 2 offered by Senator Wanggaard (LRB a1346)	484
10-18.	S.	Executive action taken	
10-18.	S.	Report adoption of Senate Amendment 1 recommended by Committee on Agriculture, Small Business and Tourism, Ayes 9, Noes 0	492
10-18.	S.	Report adoption of Senate Amendment 2 recommended by Committee on Agriculture, Small Business and Tourism, Ayes 9, Noes 0	492
10-18.	S.	Report passage as amended recommended by Committee on Agriculture, Small Business and Tourism, Ayes 9, Noes 0	492
10-18.	S.	Available for scheduling	
10-27.	S.	Referred to joint committee on Finance by Committee on Senate Organization pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	510
10-27.	S.	Withdrawn from joint committee on Finance and made Available for Scheduling by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	510
10-27.	S.	Placed on calendar 10-31-2017 pursuant to Senate Rule 18(1)	511
10-31.	S.	Read a second time	517
10-31.	S.	Senate Amendment 1 adopted	517
10-31.	S.	Senate Amendment 2 adopted	517
10-31.	S.	Ordered to a third reading	517
10-31.	S.	Rules suspended	517
10-31.	S.	Read a third time and passed , Ayes 33, Noes 0	517
10-31.	S.	Ordered immediately messaged	518
10-31.	A.	Received from Senate	493
11-06.	A.	Read first time and referred to committee on Rules	516
11-07.	A.	Placed on calendar 11-9-2017 by Committee on Rules	
11-09.	A.	Read a second time	553
11-09.	A.	Ordered to a third reading	553
11-09.	A.	Rules suspended	553
11-09.	A.	Read a third time and concurred in	553
11-09.	A.	Ordered immediately messaged	553
11-10.	S.	Received from Assembly concurred in	

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2017 ENROLLED BILL

Adopted Documents

Original

Engrossed

Substitute Amdt

17 2013 / 1

Amendments: None or Listed below.

SA 1

SA 2

Corrections: None or Listed by date below.

11/14/17

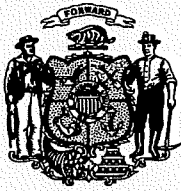
Topic: Same as relating clause or other, indicated below.

11/14/17

A handwritten signature in cursive script, likely belonging to the Enrolling Drafter.

Date

Enrolling Drafter



State of Wisconsin
2017-2018 LEGISLATURE

CORRECTIONS IN:

2017 SENATE BILL 177

Prepared by the Legislative Reference Bureau
(November 28, 2017)

In enrolling, the following corrections were made:

1. Page 8, line 9: delete "sub." and substitute "subs."

2. Page 17, line 21: delete "statutes" and substitute "statutes, as affected by 2017 Wisconsin Act 58,".

3. Page 17, line 25: delete "or (4m)" and substitute "~~or~~, (4m) (a), or (4r)".

****NOTE: Inserts text as affected by 2017 Wisconsin Act 58.

4. Page 18, line 5: delete "statutes" and substitute "statutes, as affected by 2017 Wisconsin Act 58,".

5. Page 18, line 9: delete "or (4m)" and substitute "~~or~~, (4m) (a), or (4r)".

****NOTE: Inserts text as affected by 2017 Wisconsin Act 58.

6. Page 18, line 16: delete "(4m)" and substitute "(4r)".

****NOTE: 2017 Wisconsin Act 58 created sub. (4m).

7. Page 18, line 17: delete "(4m)" and substitute "(4r)".

8. Page 19, line 2: on lines 2 and 7, delete "(4m)" and substitute "(4r)".

(END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2613/1
EVM&EHS:kjf&amn

2017 SENATE BILL 177

April 13, 2017 - Introduced by Senators WANGGAARD and CRAIG, cosponsored by Representatives SANFELIPPO, VOS, BALLWEG, E. BROOKS, R. BROOKS, KUGLITSCH, KULP, LOUDENBECK, MURPHY, NOVAK, RIPP, SKOWRONSKI, WEATHERSTON and WICHGERS. Referred to Committee on Agriculture, Small Business and Tourism.

1 **AN ACT** *to repeal* 88.83 (1m) and 88.83 (1r); *to renumber* 87.30 (1m) (a) and
2 87.30 (1m) (b) and (c); *to renumber and amend* 88.83 (1); *to amend* 87.30
3 (1m) (intro.), 88.13, 88.24 (intro.), 88.62 (3) (a), 88.63 (2), 88.83 (title), 88.83 (3),
4 88.83 (4), 88.83 (5), 281.36 (3b) (b), 281.36 (3m) (a), 281.36 (6) (a) (intro.) and
5 281.36 (9) (a) (intro.); and *to create* 30.20 (1g) (d), 70.32 (5), 87.30 (1m) (a)
6 (intro.), 87.30 (1m) (am), 88.17 (2h) (c), 88.17 (2h) (d), 88.17 (2r), 88.212 (4),
7 88.31 (7r), 88.74, 88.785, 88.817, 88.83 (1c), 88.83 (2m) and 281.36 (4m) of the
8 statutes; **relating to:** drainage districts and regulating the removal of material
9 from certain drainage ditches.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the law relating to drainage districts.

Under current law, the owners of the majority of the land in a drainage district that is located entirely within the boundaries of a city or village, or partly within the boundaries of a city, village, or town (municipality), 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 municipality, to the municipality. If the district is located only partially within a municipality, however, the district and the

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municipality 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.

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 over the drain from the district 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, the owners of a majority of the land proposed to be transferred in a drainage district that is located entirely, or partly, within the boundaries of a municipality may petition the board having jurisdiction over the district to transfer jurisdiction of the district, or a part of the district that is located in the municipality, to the municipality. After a hearing, the board may order transfer of jurisdiction if it finds that a sufficient number of owners has signed the petition, the governing body of the municipality approves the transfer, and the municipality and district have entered into an agreement that contains the following items: 1) a statement of the goal of the agreement; 2) specification of monetary obligations of the municipality and district; 3) the municipality agrees to ensure district access to, and maintenance of, drain access corridors; 4) the municipality agrees, upon request by the district, to maintain and repair former district drains; and 5) upon declaratory judgment by a court, the district may complete any maintenance work not performed by the municipality and assess the costs to the municipality.

Also under this bill, a municipality may petition the board with jurisdiction over a drain to transfer jurisdiction of the drain or part of the drain to the municipality. 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 municipality if the municipality has entered into an agreement with the district, as described above.

Under current law, members of the drainage district board are appointed by the court having jurisdiction over the district. In general, the board is made up of three or five persons selected from persons recommended by a county committee on agriculture and extension education or certain landowners owning property in the district. Under this bill, if the board has jurisdiction over a district that is located entirely or partially within the corporate limits of a city or village, the board must, with an exception, be made up of five members and one of those members must be the chief executive, or his or her designee, of a city or village within which a district is located.

Under current law, the Department of Agriculture, Trade and Consumer Protection has promulgated rules governing drainage district drain access corridors. This bill provides statutory regulation of district access corridors, which regulations are generally consistent with current DATCP rules. Specifically, the board must establish district corridors extending 20 feet from the top of the ditch bank on each side of a district ditch and 20 feet from the centerline on each side of any other district drain or facility. The board may, upon notice to affected landowners, provide for a

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wider corridor. The board must provide notice of these corridors to the county and the municipality in which the corridor is located.

District corridors are to be maintained by the board so as to allow effective access and protect water quality in the district drain or facility. The board is, with limited exceptions, authorized to access, maintain, and improve the corridor without prior notice to the landowner. The landowner is also generally prohibited from taking certain actions within the corridor, including row cropping and placement of any obstruction that interferes with the district's ability to maintain the corridor. Municipalities and counties are prohibited from restricting the board's maintenance of corridors and ditches.

Also under this bill, lands that are within the corporate limits of a city, village, or certain towns may not be included in a newly organized drainage district or annexed to a drainage district unless the governing body of the city, village, or town adopts a resolution approving the inclusion or annexation. Also, no lands that are located in a county in which no portion of the drainage district is located may be annexed to the district.

Current law generally prohibits a person from removing material from the bed of a navigable body of water unless the Department of Natural Resources has issued an individual permit or a general permit authorizing the removal. This bill creates an exemption from this prohibition for the removal of material from the bed of a drainage ditch operated by a drainage district. In order for the exemption to apply, certain conditions must be met including that the removal is for the purpose of maintaining the ditch, the material is not removed from an area listed by DNR in a database identifying contaminated properties, and the drainage district takes certain action to clean its equipment in order to prevent the spread of invasive species or viruses from one navigable water to another.

Current law prohibits any person from placing or maintaining any structure, building, fill, or development within any floodplain in violation of a floodplain zoning ordinance adopted by a county, city, or village or by a DNR order or determination. Under current law, a floodplain zoning ordinance does not apply to lands adjacent to farm drainage ditches if the lands are not within the floodplain of a natural navigable stream or river, those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching, and the lands are maintained in nonstructural agricultural use. This bill adds that a floodplain zoning ordinance also does not apply to lands adjacent to farm drainage ditches if the farm drainage ditch is subject to the jurisdiction of a drainage district, the disposal of material in a floodplain is within the drainage district corridor, and the lands adjacent to the corridor are maintained in nonstructural agricultural use.

Under current law, DNR must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur. Under current law, a wetland general or individual permit issued by DNR also constitutes a state water quality certification, which is required under

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the federal Clean Water Act in order for a person to obtain a federal permit for such a discharge into federal wetlands. Under the federal Clean Water Act, a state may also waive the requirement for certification.

This bill creates an exemption to wetland permitting requirements for any discharge that is the result of activity undertaken by a drainage district to maintain drainage district drains in accordance with plans and specifications approved by the Department of Agriculture, Trade and Consumer Protection, and requires DNR to waive any state water quality certification requested under the federal Clean Water Act for such a discharge.

Current law also requires a drainage district board to obtain a permit to conduct certain activities affecting a drainage district drain including repairing, enlarging, clearing, or maintaining the drain (drain maintenance permit). This bill exempts a drainage district board from the requirement to obtain a drain maintenance permit to remove material from the bed of a drainage district drain if the board is also exempt from the requirement to obtain a permit from DNR to remove the material.

Finally, the bill provides that, for property tax purposes, an assessor must assess the land within a district corridor in the same property class as the adjoining land, if the land within the corridor and the adjoining land are owned by the same person.

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.** 30.20 (1g) (d) of the statutes is created to read:
- 2 **30.20 (1g) (d)** The removal of material by a drainage district from the bed of
- 3 a ditch operated by the drainage district is exempt from the individual and general
- 4 permit requirements under this section if all of the following apply:
- 5 1. The material is removed for the purpose of maintaining the ditch.
- 6 2. The material is not removed from an area that is listed in a database
- 7 maintained by the department identifying contaminated properties and other
- 8 activities related to the investigation and cleanup of contaminated soil or
- 9 groundwater in this state.
- 10 3. If the removed material is spread on land, all of the following apply:
- 11 a. The material is graded and smoothed to blend into cultivated lands.

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- 1 b. The surface slope of the material does not exceed a slope of 8 to 1.
- 2 c. The material is not more than 2 feet deep at the top of the bank of the ditch.
- 3 4. If the removed material is placed in a district corridor established under s.
- 4 88.74, no portion of a pile of the removed material is closer than 12 feet from the top
- 5 of the bank of the ditch, is piled at any angle other than a stable angle of repose for
- 6 that material, nor has a slope exceeding a slope of 2 to 1.
- 7 5. The drainage district, in maintaining the drainage ditch, does all of the
- 8 following in order to prevent the spread of invasive species or the spread of viruses
- 9 from one navigable water to another:
- 10 a. Removes plants, animals, and mud and other debris from all equipment it
- 11 uses to maintain the drainage ditch before the equipment is placed in any other
- 12 navigable water.
- 13 b. Washes all equipment that it uses to maintain the drainage ditch with high
- 14 pressure water of not less than 2,000 pounds per square inch before it is placed in
- 15 any other navigable water or allows the equipment to dry for not less than 5 days
- 16 before it is placed in any other navigable water.
- 17 6. The material is not discharged into a wetland that is identified by the
- 18 department under s. 281.36 (3g) (d) 1. to 7.
- 19 7. Except as provided in this subdivision, the removal activity does not occur
- 20 between March 15 and the immediately following June 1. A department fish
- 21 biologist assigned to the area in which the removal activity is located may waive the
- 22 requirement that the limitation in this subdivision apply to an exemption under this
- 23 paragraph.

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SECTION 1

1 8. If the drainage ditch is classified by the department as a trout stream or
2 tributary of a trout stream, the drainage district coordinates the time of its removal
3 activities with department fisheries staff.

4 **SECTION 2.** 70.32 (5) of the statutes is created to read:

5 70.32 (5) Beginning with the assessments as of January 1, 2017, the assessor
6 shall assess the land within a district corridor described under s. 88.74 in the same
7 class under sub. (2) (a) as the land adjoining the corridor, if the adjoining land and
8 the land within the corridor are owned by the same person.

9 **SECTION 3.** 87.30 (1m) (intro.) of the statutes is amended to read:

10 87.30 (1m) JURISDICTION OVER DRAINAGE DITCHES LIMITED. (intro.)
11 Notwithstanding any other provision of law or administrative rule promulgated
12 thereunder, a floodplain zoning ordinance required under sub. (1) does not apply to
13 lands adjacent to farm drainage ditches if either par. (a) or (am) applies:

14 **SECTION 4.** 87.30 (1m) (a) (intro.) of the statutes is created to read:

15 87.30 (1m) (a) (intro.) All of the following apply:

16 **SECTION 5.** 87.30 (1m) (a) of the statutes is renumbered 87.30 (1m) (a) 1.

17 **SECTION 6.** 87.30 (1m) (am) of the statutes is created to read:

18 87.30 (1m) (am) All of the following apply:

19 1. The farm drainage ditch is subject to the jurisdiction of a drainage district
20 under ch. 88.

21 2. The disposal of material in a floodplain is within the drainage district
22 corridor under s. 88.74.

23 3. The lands adjacent to the corridor are maintained in nonstructural
24 agricultural use.

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1 SECTION 7. 87.30 (1m) (b) and (c) of the statutes are renumbered 87.30 (1m) (a)
2 2. and 3.

3 SECTION 8. 88.13 of the statutes is amended to read:

4 88.13 Right to enter lands of drainage district. Whenever necessary for
5 any purpose connected with the organization of a district or the construction,
6 maintenance or repair of drains and other works, members of the board,
7 representatives of the department of agriculture, trade and consumer protection,
8 and persons intending to bid on or to whom contracts have been let for the
9 construction of the works within a district or on former district lands transferred
10 under s. 88.83 and their respective agents and employees may go upon any lands
11 proposed for inclusion or included within a district or on adjoining lands or on former
12 district lands transferred under s. 88.83, and are not guilty of trespass therefor but
13 are liable for unnecessary damage caused to crops or structures.

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14 SECTION 9. 88.17 (2h) (c) of the statutes is created to read:

15 88.17 (2h) (c) Local or statewide agriculture, engineering, local government,
16 or real estate organizations, including the Wisconsin Potato and Vegetable Growers
17 Association, the Wisconsin State Cranberry Growers Association, the Wisconsin
18 Farm Bureau Federation, the Wisconsin Farmers Union, the Dairy Business
19 Association, and the Wisconsin Dairy Products Association.

20 SECTION 10. 88.17 (2h) (d) of the statutes is created to read:

21 88.17 (2h) (d) The department of agriculture, trade and consumer protection,
22 which may recommend persons who have engineering experience related to water
23 resources and agriculture.

24 SECTION 11. 88.17 (2r) of the statutes is created to read:

SENATE BILL 177**SECTION 11**

1 88.17 (2r) (a) If the board has jurisdiction of a drainage district that is located
2 entirely or partially within the corporate limits of a city or village and a city or village
3 the corporate limits of which contains any portion of a drainage district that is under
4 the jurisdiction of the board notifies the court that the city or village will recommend
5 a drainage board member, all of the following apply:

6 1. Notwithstanding subs. (1) and (2), the board shall consist of 5 persons. If the
7 number of members of a board is increased under this paragraph, the board shall
8 provide by rule for staggered terms, with all members serving terms of 5 years.

9 2. a. Notwithstanding ^{sub.} (sub.) (1) and (2h), the court shall appoint one drainage
10 board member from the list of persons recommended under this subd. 2. a. by cities
11 and villages the corporate limits of which contains any portion of a drainage district
12 that is under the jurisdiction of the board. Each city and village may recommend a
13 member and, if the city or village recommends a member, shall recommend the chief
14 executive of the city or village or the designee of the chief executive. In appointing
15 a member under this subd. 2. a., the court shall attempt to assure that the member
16 has experience in farming, familiarity with drainage, or familiarity with drainage
17 engineering.

18 b. If drainage districts under the jurisdiction of the board are located entirely
19 or partially within the corporate limits of more than one city or village, the
20 appointment under subd. 2. a. shall rotate among the cities and villages.

21 c. Notwithstanding subs. (7) and (8), a member appointed under this paragraph
22 may not be reimbursed for expenses incurred in the performance of the member's
23 duties and may not receive a per diem.

24 (b) If the position under par. (a) 2. becomes vacant and no city or village the
25 corporate limits of which contains any portion of a drainage district that is under the

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1 jurisdiction of the board recommends a drainage board member under par. (a) 2., the
2 board may, by rule, reduce the number of members to 3, but only if the size of the
3 board is reduced as vacancies occur on the board.

4 **SECTION 12.** 88.212 (4) of the statutes is created to read:

5 88.212 (4) If any portion of a drainage district that is a subject matter of a
6 drainage board meeting is located in a city, village, or town, notify the city, village,
7 or town of the date, time, and subject matter of the meeting. A notification under this
8 subsection may be in an electronic format.

9 **SECTION 13.** 88.24 (intro.) of the statutes is amended to read:

10 **88.24 Board to file annual report.** (intro.) On or before December 1 of each
11 year the board shall file with the department of agriculture, trade and consumer
12 protection; the town board or town zoning committee; the city council, plan
13 commission, or plan committee; and the county zoning administrator, in which
14 district territory is located, a separate report, for the preceding fiscal year ending
15 August 31, on each drainage district under the board's jurisdiction. Unless the board
16 selects a different fiscal year and notifies the department of the selection, the board's
17 fiscal year begins on September 1 and ends on the following August 31. All local units
18 of government that receive the report shall consider it before making any zoning or
19 planning decisions that may affect a drainage district that is located within its
20 boundaries. The reports shall constitute part of the records of the districts reported
21 on, shall be verified by the oath of one or more of the board members, and shall
22 contain:

23 **SECTION 14.** 88.31 (7r) of the statutes is created to read:

24 88.31 (7r) A drainage district that is exempt from the individual and general
25 permit requirements under s. 30.20 as specified under s. 30.20 (1g) (d) is exempt from

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SECTION 14

1 the permit requirements and procedures under subs. (1) to (7) with respect to that
2 removal.

3 **SECTION 15.** 88.62 (3) (a) of the statutes is amended to read:

4 88.62 (3) (a) If Except for a removal of material that is exempt from the
5 individual and general permit requirements under s. 30.20 as specified under s.
6 30.20 (1g) (d) and except as provided under par. (b), if drainage work is undertaken
7 in navigable waters, the drainage board shall obtain a permit under s. 30.20 or 88.31
8 or ch. 31, as directed by the department of natural resources, except as provided in
9 par. (b).

10 **SECTION 16.** 88.63 (2) of the statutes is amended to read:

11 88.63 (2) The board shall may establish and maintain a fund ~~for the payment~~
12 ~~of costs of maintenance and repair. Whenever the amount of the fund falls below an~~
13 ~~amount equivalent to 5 percent of the confirmed benefits currently in effect in the~~
14 ~~district, the board shall levy an additional assessment under s. 88.23 for~~
15 ~~maintenance and repair. Assessments for costs of maintenance and repair shall be~~
16 ~~apportioned on the basis of the confirmed benefits then in effect in the district but~~
17 ~~may be made notwithstanding the fact that assessments of benefits in the district~~
18 ~~may have been exhausted by previous assessments for other costs. Assessments for~~
19 ~~costs of maintenance and repair, including costs incurred and per diems earned by~~
20 ~~board members under sub. (1m), are not limited by the extent of unexhausted~~
21 ~~assessments of benefits in the district and shall not be counted in determining~~
22 ~~whether there are unexhausted assessments of benefits against which assessments~~
23 ~~for costs other than those authorized by this section may be made~~ for the payment
24 of the costs of normal operations and maintenance and repair and for emergency

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1 expenses. Moneys in a fund under this subsection may not exceed amounts
2 reasonably necessary for the purposes under this subsection.

3 **SECTION 17.** 88.74 of the statutes is created to read:

4 **88.74 District corridors.** (1) (a) Except as provided in par. (b), the board shall
5 establish all of the following as district corridors:

6 1. A corridor which extends 20 feet from the top of the ditch bank on each side
7 of a district ditch.

8 2. A corridor extending 20 feet from the centerline on each side of any other
9 district drain or facility.

10 (b) Upon notice to affected landowners, the board may establish and maintain
11 a wider corridor if a wider corridor is necessary to meet any of the purposes specified
12 under sub. (3).

13 (2) The board shall provide notice of any corridor established under sub. (1) to
14 the county and the city, village, or town in which the corridor is located.

15 (3) The board shall maintain a corridor established under sub. (1) to
16 accomplish all of the following purposes:

17 (a) To provide the board with effective access to the drain or facility, including
18 access for vehicles or equipment.

19 (b) To protect water quality in the drain or facility.

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20 (4) (a) Except as provided in par. (b)^{s and (d)}, the board may, without prior notice to the
21 landowner, enter a corridor established under sub. (1) to inspect, survey, maintain,
22 repair, restore, or improve a drain, facility, or corridor.

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#1 2

23 (b) Before doing any of the following in a corridor, the board shall notify the
24 landowner of the pending action:

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1 1. Cutting a tree that is more than 6 inches in diameter measured at breast
2 height.

3 2. Excavating or depositing materials in the corridor.

4 (c) Notice under par. (b) may be given at any time before performance of the
5 work and may be given in person, by telephone, by mail, or, if the landowner is not
6 available, by posting notice at a conspicuous location at an entrance to the land.

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7 (5) (a) No person may do any of the following in a corridor established under
8 sub. (1) without written permission from the board:

9 1. Engage in row cropping in the corridor.

10 2. Place any obstruction in the corridor that interferes with the board's ability
11 to accomplish a purpose under sub. (3).

12 (b) A person who violates par. (a) may not recover damages with regard to any
13 damage to crops or obstructions caused by actions taken by the board under sub. (3).

14 (c) Paragraph (a) does not require a landowner to remove any building or
15 fixture constructed or installed in a corridor prior to September 1, 1999, or any
16 structure that does not interfere with the board's maintenance of a drain and that
17 was placed in the corridor for the purpose of providing drainage.

18 (6) No city, village, town, or county may by ordinance, resolution, or any other
19 means restrict, or impose other conditions related to, the board's maintenance of
20 district corridors or ditches unless specifically required by federal law.

21 **SECTION 18.** 88.785 of the statutes is created to read:

22 **88.785 Certain annexations prohibited.** (1) Notwithstanding ss. 88.34,
23 88.77, and 88.78, no lands that are within the corporate limits of a city, a village, or,
24 if the town has a permit for storm water management under s. 283.33, a town may
25 be included in a newly organized drainage district or annexed to a drainage district

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1 unless the governing body of the city, village, or town adopts a resolution approving
2 the inclusion or annexation.

3 (2) Notwithstanding ss. 88.77 and 88.78, no lands that are located in a county
4 in which no portion of the drainage district is located may be annexed to a drainage
5 district.

6 SECTION 19. 88.817 of the statutes is created to read:

7 **88.817 Leola drainage district.** (1) Notwithstanding s. 88.815, the Leola
8 drainage district located in Adams, Portage, and Waushara counties is reinstated.

9 (2) The drainage board with jurisdiction of the Leola drainage district may not
10 levy any assessment. This subsection does not apply if the owners of land
11 representing, as calculated on the effective date of this subsection [LRB inserts
12 date], 67 percent or more of the confirmed benefits in the district, excluding benefits
13 received by land owned by this state, file with the court having jurisdiction on the
14 matter a petition for the reinstatement of assessment authority of the district.

15 SECTION 20. 88.83 (title) of the statutes is amended to read:

16 **88.83 (title) Transfer of district to city or village municipal jurisdiction.**

17 SECTION 21. 88.83 (1) of the statutes is renumbered 88.83 (1g) and amended
18 to read:

19 88.83 (1g) The owners of a majority of the land proposed to be transferred in
20 any a drainage district located entirely or partially within the corporate limits of a
21 ~~city or village~~ municipality may petition the drainage board having jurisdiction of
22 the district to transfer jurisdiction ~~thereof to the city or village~~ of the part of the
23 district proposed to be transferred that is located within the municipality to the
24 municipality.

25 SECTION 22. 88.83 (1c) of the statutes is created to read:

SENATE BILL 177**SECTION 22**

1 88.83 (1c) In this section, "municipality" means a city, village, or town.

2 **SECTION 23.** 88.83 (1m) of the statutes is repealed.

3 **SECTION 24.** 88.83 (1r) of the statutes is repealed.

4 **SECTION 25.** 88.83 (2m) of the statutes is created to read:

5 88.83 (2m) If the proposed transfer of jurisdiction is of less than the entire
6 district, jurisdiction of the part of the drainage district may not be transferred to a
7 municipality unless the municipality to which jurisdiction will be transferred and
8 the district have entered into an agreement that includes all of the following:

9 (a) The municipality and district agree that the goal of the agreement is to
10 outline the duties and responsibilities of the respective parties to maintain the drain
11 system as provided in the plans and specification for the drain system approved by
12 the department of agriculture, trade and consumer protection.

13 (b) The agreement specifies any monetary obligations of the municipality or
14 district under the agreement and the manner by which any monetary obligation
15 under the agreement will be calculated.

16 (c) The municipality agrees to ensure access to, and maintenance of, any
17 corridor established under s. 88.74 (1) that is located on land transferred under this
18 section consistent with the requirements of s. 88.74.

19 (d) The municipality agrees, upon order by the drainage district from which
20 jurisdiction was transferred, to maintain and repair any part of a former district
21 drain located in land transferred under this section.

22 (e) That if the municipality fails to complete work ordered under par. (d), the
23 district may complete the work and assess costs on the confirmed benefits to property
24 located in the municipality, as follows:

SENATE BILL 177

1 1. The district shall provide notice to the municipality that, based upon an
2 inspection by the board, maintenance of a drain on land transferred under this
3 section is necessary.

4 2. If the municipality does not within 30 days of receiving the notice under subd.
5 1. enter into an agreement with the district to perform the maintenance or does not
6 perform the ordered maintenance within 12 months of receiving the notice under
7 subd. 1., the district may file a declaratory judgment action in the court having
8 jurisdiction over the district. The only issues in an action under this subdivision
9 shall be compliance with this paragraph and whether the lands proposed to be
10 assessed are benefited by the drain.

11 3. a. If the court determines that the district has complied with this paragraph
12 and that the lands proposed to be assessed are benefited by the drain, the district
13 may complete the work and assess costs to the municipality.

14 b. If the court determines that the district has not complied with this paragraph
15 or that the lands proposed to be assessed are not benefited by the work, the district
16 may complete the work, but may not assess costs to the municipality.

17 **SECTION 26.** 88.83 (3) of the statutes is amended to read:

18 88.83 (3) If the drainage board finds upon the hearing that the petition is
19 signed by the required number of owners of a majority of the land in the district, or
20 by a majority of the owners in that part of the district lying within the corporate
21 limits of a city or village and that the conditions under sub. (2m) have been satisfied,
22 it shall may issue an order transferring jurisdiction of the district or part of the
23 district to the city or village municipality. If the order transfers jurisdiction of the
24 entire district and the governing body of the municipality approves the transfer, the
25 drainage district shall cease to exist as a district under this chapter and shall

SENATE BILL 177**SECTION 26**

1 automatically come under the jurisdiction of the governing body of the ~~city or village~~
2 municipality in which the district is located. If the order transfers jurisdiction of only
3 a part of the district and the governing body of the municipality approves the
4 transfer, the section transferred shall automatically come under the jurisdiction of
5 the governing body of the ~~city or village~~ municipality in which the district is located.
6 ~~After a transfer, all proceedings with reference to the drainage district or part of the~~
7 ~~district shall be under the city or village drainage law.~~

8 **SECTION 27.** 88.83 (4) of the statutes is amended to read:

9 88.83 (4) As an alternative, proceedings covered by this section may be
10 initiated by a resolution of the governing body of a ~~city or village~~ municipality. The
11 resolution shall state that the ~~city or village~~ municipality is willing to accept the
12 drain or part of the drain ~~and to administer it under the laws pertaining to the~~
13 ~~operation of drains by the city or village~~, and that the public interest requires that
14 the ~~city or village~~ municipality take over the operation of the drain or part of the
15 drain. The resolution shall be published as a class 1 notice under ch. 985. The ~~city~~
16 ~~or village~~ municipality may petition the drainage board having jurisdiction of the
17 drain to issue an order transferring jurisdiction of the district or part of the district
18 to the ~~city or village~~. ~~No municipality. The drainage board may not hold a hearing~~
19 ~~may be held on the petition until 30 days have elapsed from after~~ the date of
20 publication of the notice. A copy of the petition, ~~together with a copy of the and~~
21 resolution, shall be served on the county clerk of the county in which the drain is
22 located, ~~and also upon~~ the board having jurisdiction of the drain. ~~After~~ If the
23 drainage board finds upon the hearing that the conditions under sub. (2m) have been
24 met, the drainage board may issue an order transferring jurisdiction of the drain or
25 part of the drain to the ~~city or village~~ municipality. ~~If an~~ the order is issued that

SENATE BILL 177

1 transfers jurisdiction of the entire district, the drainage district shall cease to exist
 2 as a district under this chapter and shall automatically come under the jurisdiction
 3 of the governing body of the ~~city or village~~ municipality in which the district is
 4 located. If the order transfers jurisdiction of only a part of the district, the section
 5 transferred shall automatically come under the jurisdiction of the governing body of
 6 the ~~city or village~~ municipality in which the district is located. ~~After a transfer, all~~
 7 ~~proceedings with reference to the drainage district or part of the district shall be~~
 8 ~~under the city or village drainage law.~~

9 SECTION 28. 88.83 (5) of the statutes is amended to read:

10 88.83 (5) Upon entry of the an order transferring jurisdiction of such an entire
 11 district to such city or village a municipality and approval of the transfer by the
 12 municipality, the county treasurer and district shall pay to the ~~city or village~~
 13 ~~treasurer of such city or village~~ the municipality all moneys in the county treasurer's
 14 or district's hands which belong to ~~such~~ the drainage district. Upon entry of an order
 15 transferring jurisdiction of a part of a district to the ~~city or village in which it is~~
 16 ~~located~~ a municipality and approval of the transfer by the municipality, the county
 17 treasurer and district shall pay to the ~~city or village~~ treasurer of the municipality a
 18 proportional share of the moneys in the county treasurer's or district's hands which
 19 belong to the drainage district based upon assessed benefits transferred less a
 20 proportional share of outstanding indebtedness.

21 SECTION 29. 281.36 (3b) (b) of the statutes ^{as amended by 2017 Wisconsin Act 581} is amended to read:

22 281.36 (3b) (b) No person may discharge dredged material or fill material into
 23 a wetland unless the discharge is authorized by a wetland general permit or
 24 individual permit issued by the department under this section or the discharge is
 25 exempt under sub. (4) or (4m). No person may violate any condition contained in a

or, (4m)(a), or (4r)

ccc #3
cc #2

SENATE BILL 177

SECTION 29

1 wetland general or individual permit issued by the department under this section.
2 The department may not issue a wetland general or individual permit under this
3 section unless it determines that the discharge authorized pursuant to the wetland
4 general or individual permit will comply with all applicable water quality standards.

5 **SECTION 30.** 281.36 (3m) (a) of the statutes ^{is amended by 2017 Wisconsin Act 58,} is amended to read:

6 281.36 (3m) (a) *When permit required.* Any person wishing to proceed with a
7 discharge into any wetland shall submit an application for a wetland individual
8 permit under this subsection unless the discharge has been authorized under a
9 wetland general permit as provided in sub. (3g) or is exempt under sub. (4) ~~or (4m)~~.

10 Before submitting the application, the department shall hold a meeting with the
11 applicant to discuss the details of the proposed discharge and the requirements for
12 submitting the application and for delineating the wetland. An applicant may
13 include in the application a request for a public informational hearing. The
14 application shall be accompanied by the applicable fee specified in sub. (11) or (12)

15 (a).

16 **SECTION 31.** 281.36 ^(4r) (4m) of the statutes is created to read:

17 281.36 ^(4r) (4m) **DRAINAGE DISTRICT ACTIVITY EXEMPTION.** (a) The permitting
18 requirement under sub. (3b) does not apply to any discharge that is the result of
19 activity undertaken by a drainage district to maintain drainage district drains in
20 accordance with plans and specifications approved by the department of agriculture,
21 trade and consumer protection.

22 (b) The department shall waive any water quality certification requested under
23 33 USC 1341 (a) for a discharge described under par. (a).

24 **SECTION 32.** 281.36 (6) (a) (intro.) of the statutes is amended to read:

ccc #4

was added by 2017 Wisconsin Act 58,

or,
(a) or
(4r)

ccc #5

ccc #6

SENATE BILL 177

(4r)

1 281.36 **(6)** (a) (intro.) The department shall promulgate rules to interpret and
2 implement the provisions under subs. (4), ~~(4m)~~, and (5). In promulgating these rules,
3 the department shall do all of the following:

4 **SECTION 33.** 281.36 (9) (a) (intro.) of the statutes is amended to read:

5 281.36 **(9)** (a) (intro.) For purposes of determining whether to issue a wetland
6 individual permit, whether authorization to proceed as authorized under a wetland
7 general permit is appropriate, or whether an exemption under sub. (4) or ~~(4m)~~ ^(4r) is
8 appropriate, and for purposes of enforcing this section, any employee or other
9 representative of the department, upon presenting his or her credentials, may do any
10 of the following:

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11 **SECTION 34. Initial applicability.**

12 (1) The treatment of section 88.785 of the statutes first applies to the
13 organization of a drainage district or an annexation that is pending on the effective
14 date of this subsection.

15 (2) The treatment of section 88.83 (title), (1), (1c), (1m), (1r), (2m), (3), (4), and
16 (5) of the statutes first applies to a petition for transfer of jurisdiction filed on the
17 effective date of this subsection.

18 (3) The treatment of section 88.17 (2r) (a) 2. of the statutes first applies to a
19 drainage district board that has a vacancy on the effective date of this subsection.

20 **(END)**



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBa1218/1
EHS&MCP:amn&jld

SENATE AMENDMENT 1,
TO SENATE BILL 177

September 13, 2017 - Offered by Senator WANGGAARD.

1 At the locations indicated, amend the bill as follows:

2 1. Page 6, line 9: delete the material beginning with that line and ending with
3 page 7, line 2, and substitute:

4 "SECTION 3m. 87.30 (1m) of the statutes is renumbered 87.30 (1m) (ag), and
5 87.30 (1m) (ag) (intro.), 1. and 2., as renumbered, are amended to read:

6 87.30 (1m) (ag) (intro.) Notwithstanding any other provision of law or
7 administrative rule promulgated thereunder, a floodplain zoning ordinance required
8 under sub. (1) does not apply to lands adjacent to farm drainage ditches if all of the
9 following apply:

10 1. Such lands are not within the floodplain of a natural navigable stream or
11 river;

12 2. Those parts of the drainage ditches adjacent to these lands were
13 nonnavigable streams before ditching; and

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1 **SECTION 4m.** 87.30 (1m) (am) of the statutes is created to read:

2 87.30 (1m) (am) Notwithstanding any other provision of law or administrative
3 rule promulgated thereunder, a floodplain zoning ordinance required under sub. (1)
4 does not apply to lands adjacent to farm drainage ditches if all of the following apply,
5 except to the extent necessary for the municipality to which the floodplain zoning
6 ordinance applies to maintain eligibility for participation in the National Flood
7 Insurance Program:

8 1. The farm drainage ditch is subject to the jurisdiction of a drainage district
9 under ch. 88.

10 2. The disposal of material in a floodplain is within the drainage district
11 corridor under s. 88.74.

12 3. The lands adjacent to the corridor are maintained in nonstructural
13 agricultural use or other nonstructural use.”

14 **2.** Page 19, line 10: after that line insert:

15 “**SECTION 33m.** 283.33 (1) (intro.) of the statutes is amended to read:

16 283.33 (1) REQUIREMENT. (intro.) An Except as provided in sub. (1m), an owner
17 or operator shall obtain a permit under this section for any of the following:

18 **SECTION 33p.** 283.33 (1m) of the statutes is created to read:

19 283.33 (1m) EXEMPTIONS; LIMITATION ON LOCAL PERMITTING. (a) An owner or
20 operator is not required to obtain a permit under this section for any of the following:

21 1. A discharge of storm water associated with planting, growing, cultivating,
22 or harvesting crops for use or consumption by humans, livestock, as defined in s.
23 95.80 (1) (b), or poultry, including sod farms and tree nurseries.

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State of Wisconsin
2017 - 2018 LEGISLATURE

LRBa1346/1
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SENATE AMENDMENT 2,
TO SENATE BILL 177

October 13, 2017 - Offered by Senator WANGGAARD.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 11, line 19: after that line insert:

3 “(c) To allow for the placement of dredge materials from maintaining the drain
4 or facility.”

5 **2.** Page 11, line 20: delete “par. (b)” and substitute “pars. (b) and (d)”.

6 **3.** Page 12, line 6: after that line insert:

7 “(d) If a drainage board intends to perform general maintenance work in a
8 corridor during the year, the board shall provide notice to the landowner not later
9 than March 1. Notice under this paragraph shall be given in person, by telephone,
10 by mail, or by electronic means, or, if notice cannot be provided in one of these
11 manners, by posting notice at a conspicuous location at an entrance to the land. This
12 paragraph does not apply to emergency maintenance work.”

13 (END)

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