



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.

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### ***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.

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***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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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.

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:

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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. (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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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.

20 **(4)** (a) Except as provided in par. (b), 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.

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.

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:

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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:

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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

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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



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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 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

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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 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 (4m) of the statutes is created to read:

17 281.36 **(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:

