



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 246

Assembly Amendments 1 and 2

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2017 ASSEMBLY BILL 246

Drainage districts are governmental entities that are organized primarily for the purpose of draining lands for agriculture. All of the drainage districts in a county are managed by a county drainage board. Drainage laws allow drainage districts to manage drainage ditches and other related facilities to drain lands and to impose assessments on lands that benefit from those activities.

District Corridors

Under current administrative code administered by the Department of Agriculture, Trade and Consumer Protection (DATCP), certain requirements apply to the use of land abutting a drainage district ditch, called a district corridor. Similar provisions are codified in statute under the bill. The bill also specifies that local governments generally may not restrict a drainage board's maintenance of district corridors or ditches, and requires property assessors to value land in a district corridor based on the same class of land use as is applicable to the owner's adjoining lands.

Activities Associated With Dredging of District Ditches

Under current law, a person is generally required to obtain a permit from the Department of Natural Resources (DNR) for the dredging of material from the bed of a navigable water. The bill creates a new exemption to this requirement for maintenance dredging conducted by a drainage district in one of the district's ditches. The bill also creates a number of conditions applicable to this exemption, including conditions related to safe and appropriate handling of dredged material, control of the spread of invasive species, impacts to certain types of wetlands, and seasonal restrictions, among others.

Second, the bill also creates a new exemption from local floodplain zoning ordinances for lands that are adjacent to farm drainage ditches under the jurisdiction of a drainage district if the disposal of material in a floodplain is within the drainage district corridor and the lands are used for nonstructural agricultural uses.

Third, the bill creates an exemption from wetlands permitting requirements for the deposit of material into a wetland that is a result of activity undertaken by a drainage district to maintain district drains in accordance with plans and specifications approved by DATCP.

Transfer of Drainage Operations to a Municipality

Under the bill, the requirements in current law related to the transfer of part of a drainage district to a municipality are modified to ensure that the municipality and the district enter into an agreement describing ongoing responsibilities for maintenance and repair of district infrastructure and costs associated with those activities. This agreement must include a number of specified provisions, including authority for the drainage district to conduct maintenance work in the transferred area if the municipality fails to do so, and a method for the drainage district to recoup its cost from the municipality if certain requirements are met.

Drainage Board Membership

Under current law, county drainage boards may be comprised of three or five members. For drainage districts located at least in part within one or more cities or villages, the bill allows each city or village to recommend its chief executive (or the chief executive's designee) for appointment to the county drainage board. If at least one such recommendation is made in a county, the county drainage board must change from a three-member board to a five-member board if it has not done so previously, and the county circuit court is required to appoint one of the five drainage board members from the list of those recommended by cities and villages under this process. If there comes a time when no such cities or villages wish to recommend board members, the board may transition back to a three-member board.

Drainage District Expansion

This bill prohibits the creation of a drainage district that includes property within a city or village or expansion of a drainage district in a city or village unless the governing body of the city or village approves. The bill also prohibits the creation or expansion of a drainage district in areas of a town, if the town is permitted for storm water management, unless the town approves. In addition, the bill prohibits expansion of a drainage district into a county in which no portion of the drainage district is already located.

Other Provisions

The bill allows a drainage district to elect to use a different fiscal year than provided under statute; eliminates the requirement that drainage boards maintain a fund for maintenance and repair of district infrastructure that is equal to 5% of the confirmed benefits to lands in the drainage district; requires notice of drainage board meetings to be given to affected

municipalities; and allows a specified drainage district to operate without assessment authority unless certain conditions are satisfied.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 narrows the local floodplain zoning exemption under the bill by specifying that floodplain zoning ordinances would continue to apply to the extent necessary for the municipality to maintain eligibility in the National Flood Insurance Program. Amendment 1 also broadens this exemption to apply not only to land in “nonstructural agricultural use” but also to land in “other nonstructural use.”

Amendment 1 also codifies certain storm water permit exemptions related to agricultural activities that are currently contained in administrative rules and creates a new exemption from storm water permit requirements for the discharge of storm water from land containing dredged material removed from an adjacent drainage district ditch.

ASSEMBLY AMENDMENT 2

Under the current DATCP administrative code provisions related to drainage district corridors that would be codified in statute under the bill, a number of “purposes” of drainage district corridors are listed. Assembly Amendment 2 would add an additional purpose to that list specifying that drainage boards must also maintain these corridors “to allow for the placement of dredge materials from maintaining the drain or facility.”

Assembly Amendment 2 also requires a drainage board to notify a landowner by March 1 if the board intends to perform general maintenance work in a corridor during the year. This requirement does not apply to emergency maintenance work in a corridor.

BILL HISTORY

Assembly Amendments 1 and 2 were both introduced by Representative Sanfelippo. On October 24, 2017, the Assembly Committee on Agriculture voted to recommend adoption of both amendments on unanimous votes and passage of the bill, as amended, on a vote of Ayes, 13; Noes, 1.

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