

1977 Assembly Bill 463

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CHAPTER 437, Laws of 1977

AN ACT to amend 87.30 (1) (a) of the statutes, relating to revising certain flood plain zoning requirements.

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

SECTION 1. 87.30 (1) (a) of the statutes is amended to read:

87.30 (1) (a) If any county, city or village does not adopt a reasonable and effective flood plain zoning ordinance by January 1, 1968 within one year after hydraulic and engineering data adequate to formulate the ordinance becomes available, the department shall, upon petition of an interested state agency, a municipality, ~~12 or more freeholders~~, or upon its own motion as soon as practicable and after public hearing, determine and fix by order the limits of any or all flood plains within ~~such a~~ county, city or village within which serious damage may occur. Thereafter the department shall as soon as practicable after public hearing adopt a flood plain zoning ordinance applicable to ~~such a~~ county, city or village, except that no ~~such flood plain zoning~~ ordinance may be enacted unless the hydraulic and engineering studies necessary to determine the floodway or flood plain limits, or both, if ~~such floodway both~~ limits are deemed necessary by the department, have been made at state or federal expense. If the department utilizes hydraulic and engineering studies previously completed, the department shall be responsible for ensuring that ~~such the~~ studies are reasonable and accurate. Thirty days' notice of all hearings on flood plain determination or zoning before the department shall be given to the county, city or village clerk, the clerks of all towns where lands may be affected and to the highway commission. ~~The department of transportation shall keep an official record of all proceedings.~~ Exhibits and testimony shall be a part of the official record. Failure of a county, city or village to adopt a flood plain zoning ordinance for an area where appreciable damage from floods is likely to occur or to adopt an ordinance which will result in a practical minimum of flood damage in an area shall be prima facie proof of the necessity for action specified herein under this paragraph by the department. The department shall make a decision in writing of insufficiency of any county, city or village flood plain zoning ordinance before adopting an ordinance superseding ~~such a~~

county, village or city ordinance. All orders of the department under this subsection which either fix the limits of flood plains or enact local flood plain zoning ordinances shall, when they are in final draft form and before they are issued, be referred to the appropriate standing committees of the legislature, where the procedure under s. 227.018 (2) shall apply. Orders of the department under this section shall, after becoming effective, be deemed rules for purposes of s. 13.56, and may be suspended by the joint committee for review of administrative rules.

NOTE: This proposal amends the statute requiring counties, cities and villages to adopt flood plain zoning ordinances. The central thrust of the statute, that either local governments adopt ordinances conforming to minimum state standards, or the department of natural resources will adopt such an ordinance for the local government, remains unchanged. However, several modifications are made as follows:

1. The January 1, 1968, deadline for adoption of such ordinances is deleted. It has not been met; though the deadline was January 1, 1968, not all local governments have come into compliance as of January 1, 1977. The new deadline — one year after adequate data becomes available — addresses one of the principal reasons why the 1968 goal was not achieved. Hydrological data is necessary in order to compute flood elevations and to delineate floodway and flood plain boundaries. In many cases, this information has never been determined. The revised language will allow one year after data is available for a local government to adopt an ordinance, before the department can step in and formulate a local ordinance.
 2. One of the methods by which departmental adoption of a flood plain zoning ordinance for a local government can be triggered — by petition of 12 or more freeholders — is deleted. The 12-man petition has been used once in the 10 years s. 87.30 has been in existence. Three other entities can still trigger adoption of an ordinance — an interested state agency, a municipality or the department itself.
 3. The requirement that the state or federal government must pay for necessary data is broadened to include data necessary to delineate the flood plain, as well as the floodway.
 4. Orders adopted by the department which establish either flood plain boundaries or local flood plain zoning ordinances are to be referred to the appropriate legislative standing committees for review, using the procedure applicable to review of proposed administrative rules. Also, once effective, these orders are deemed to be rules for purposes of s. 13.56, and they can be suspended by the joint committee for administrative rules. The intent of this requirement is to give the legislature an opportunity to perform its function of overseeing the agency's use of delegated power. Following issuance of orders by the department in their final form, they will continue to be subject to judicial review under ch. 227.
 5. The requirement that the department of transportation keep the record of the proceedings is deleted, since the department of natural resources must, under ch. 227, also keep a record in order to formulate any subsequent order.
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