

1981 Assembly Bill 839

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CHAPTER 330 , Laws of 1981

AN ACT to renumber 30.20 (1) (c); to renumber and amend 59.971 (1); to amend 20.370 (3) (ma), 30.12 (4) (a), 30.20 (1) (b) and 144.26 (2) (d) (intro.) and (8); and to create 30.20 (1) (c) and (4) (title), 59.971 (1) and (7), 61.351 and 62.231 of the statutes, relating to wetland and shoreland zoning, permits to remove materials from waters of the state and affecting an appropriation.

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

SECTION 1. 20.370 (3) (ma) of the statutes is amended to read:

20.370 (3) (ma) *General program operations — state funds.* From the general fund, the amounts in the schedule for regulatory and enforcement operations under chs. 30, 31, 144, 147 and 162 and ss. 59.971, 61.351, 62.231, 87.30 and 144.26 and for reimbursement of the conservation fund for expenses incurred for actions taken under executive order number 17, issued May 18, 1979.

SECTION 2. 30.12 (4) (a) of the statutes is amended to read:

30.12 (4) (a) Activities affecting waters of the state as defined in s. 144.01 that are carried out under the direction and supervision of the department of transportation in connection with highway and bridge design, location, construction, reconstruction, maintenance and repair are not subject to the prohibitions or permit or approval requirements

specified under s. 29.29, 30.11, 30.12, 30.195, 30.20, 59.971, 61.351, 62.231, 87.30 or ch. 144 or 147. However, at the earliest practical time prior to the commencement of ~~such~~ these activities, the department of transportation shall notify the department of the location, nature and extent of the proposed work that may affect the waters of the state.

SECTION 2d. 30.20 (1) (b) of the statutes is amended to read:

30.20 (1) (b) ~~No~~ Except as provided under par. (c), no person shall may remove any material from the bed of any lake or stream not mentioned ~~in~~ under par. (a) without first obtaining a permit from the department under sub. (2) (c).

SECTION 2h. 30.20 (1) (c) of the statutes is renumbered 30.20 (4).

SECTION 2p. 30.20 (1) (c) of the statutes is created to read:

30.20 (1) (c) 1. Except as provided under subd. 2, a person may remove material from the bed of a farm drainage ditch which was not a navigable stream before ditching.

2. The department may require a permit under sub. (2) (c) for a removal under subd. 1 only if it finds the proposed removal may have a long-term adverse effect on cold-water fishery resources or may destroy fish spawning beds or nursery areas.

3. A person who proposes a removal under subd. 1 which may have an effect on cold-water fishery resources or may affect fish spawning beds or nursery areas shall notify the department at least 10 days prior to the removal.

SECTION 2t. 30.20 (4) (title) of the statutes is created to read:

30.20 (4) (title) PENALTY.

SECTION 3. 59.971 (1) of the statutes is renumbered 59.971 (1m) and amended to read:

59.971 (1m) To effect the purposes of s. 144.26 and to promote the public health, safety and general welfare, ~~counties may each county shall zone by ordinance, which may be enacted separately from ordinances under s. 59.97, zone all lands (referred to herein as shorelands) in their its unincorporated areas within the following distances from the normal high-water elevation of navigable waters as defined in s. 144.26 (2) (d): 1,000 feet from a lake, pond or flowage; 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater. If the navigable water is a glacial pothole lake, the distance shall be measured from the high-water mark thereof area. This ordinance may be enacted separately from ordinances enacted under s. 59.97.~~

SECTION 4. 59.971 (1) of the statutes is created to read:

59.971 (1) As used in this section, "shorelands" means the area within the following distances from the ordinary high-water mark of navigable waters, as defined under s. 144.26 (2) (d):

(a) One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high-water mark of the lake.

(b) Three hundred feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

SECTION 5. 59.971 (7) of the statutes is created to read:

59.971 (7) An ordinance enacted under this section by a county continues in effect in any shoreland area annexed by a city or village after the effective date of this subsection (1981) unless the city or village adopts, maintains and enforces a zoning ordinance which complies with the requirements of this section to the extent possible and which is at least as restrictive as the county shoreland zoning ordinance. If the department determines that a zoning ordinance adopted by a city or village which is applicable to a shoreland area annexed after the effective date of this subsection (1981) does not meet these standards after providing notice and conducting a hearing on the matter, it either shall issue an order declaring the city or village ordinance void and reinstating the applicability of

the county shoreland zoning ordinance to the annexed area or it shall issue an order declaring the city or village ordinance void and adopting an ordinance for the annexed area for the city or village which does meet these standards. As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

SECTION 6. 61.351 of the statutes is created to read:

61.351 Zoning of wetlands in shorelands. (1) DEFINITIONS. As used in this section:

- (a) "Shorelands" has the meaning specified under s. 59.971 (1).
- (b) "Wetlands" has the meaning specified under s. 23.32 (1).

(2) FILLED WETLANDS. Any wetlands which are filled prior to the date on which a village receives a final wetlands map from the department of natural resources in a manner which affects their characteristics as wetlands are filled wetlands and not subject to an ordinance adopted under this section.

(2m) CERTAIN WETLANDS ON LANDWARD SIDE OF AN ESTABLISHED BULKHEAD LINE. Any wetlands on the landward side of a bulkhead line, established by the village under s. 30.11 prior to the effective date of this section (1981), and between that bulkhead line and the ordinary high-water mark are exempt wetlands and not subject to an ordinance adopted under this section.

(3) ADOPTION OF ORDINANCE. To effect the purposes of s. 144.26 and to promote the public health, safety and general welfare, each village shall zone by ordinance all unfilled wetlands of 5 acres or more which are shown on the final wetland inventory maps prepared by the department of natural resources for the village under s. 23.32, which are located in any shorelands and which are within its incorporated area. A village may zone by ordinance any unfilled wetlands which are within its incorporated area at any time.

(4) VILLAGE PLANNING. (a) *Powers and procedures.* Except as provided under sub. (5), s. 61.35 applies to ordinances and amendments enacted under this section.

(b) *Impact on other zoning ordinances.* If a village ordinance enacted under s. 61.35 affecting wetlands in shorelands is more restrictive than an ordinance enacted under this section affecting the same lands, it continues to be effective in all respects to the extent of the greater restrictions, but not otherwise.

(5) REPAIR AND EXPANSION OF EXISTING STRUCTURES PERMITTED. Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on the effective date of an ordinance adopted under this section related to that structure.

(6) FAILURE TO ADOPT ORDINANCE. If any village does not adopt an ordinance required under sub. (3) within 6 months after receipt of final wetland inventory maps prepared by the department of natural resources for the village under s. 23.32, or if the department of natural resources, after notice and hearing, determines that a village adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives of s. 144.26 (1), the department of natural resources shall adopt an ordinance for the village. As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

SECTION 7. 62.231 of the statutes is created to read:

62.231 Zoning of wetlands in shorelands. (1) DEFINITIONS. As used in this section:

- (a) "Shorelands" has the meaning specified under s. 59.971 (1).
- (b) "Wetlands" has the meaning specified under s. 23.32 (1).

(2) **FILLED WETLANDS.** Any wetlands which are filled prior to the date on which a village receives a final wetlands map from the department of natural resources in a manner which affects their characteristics as wetlands are filled wetlands and not subject to an ordinance adopted under this section.

(2m) **CERTAIN WETLANDS ON LANDWARD SIDE OF AN ESTABLISHED BULKHEAD LINE.** Any wetlands on the landward side of a bulkhead line, established by the city under s. 30.11 prior to the effective date of this section (1981), and between that bulkhead line and the ordinary high-water mark are exempt wetlands and not subject to an ordinance adopted under this section.

(3) **ADOPTION OF ORDINANCE.** To effect the purposes of s. 144.26 and to promote the public health, safety and general welfare, each city shall zone by ordinance all unfilled wetlands of 5 acres or more which are shown on the final wetland inventory maps prepared by the department of natural resources for the city under s. 23.32, which are located in any shorelands and which are within its incorporated area. A city may zone by ordinance any unfilled wetlands which are within its incorporated area at any time.

(4) **CITY PLANNING.** (a) *Powers and procedures.* Except as provided under sub. (5), s. 62.23 applies to ordinances and amendments enacted under this section.

(b) *Impact on other zoning ordinances.* If a city ordinance enacted under s. 62.23 affecting wetlands in shorelands is more restrictive than an ordinance enacted under this section affecting the same lands, it continues to be effective in all respects to the extent of the greater restrictions, but not otherwise.

(5) **REPAIR AND EXPANSION OF EXISTING STRUCTURES PERMITTED.** Notwithstanding s. 62.23 (7) (h), an ordinance adopted under this section may not prohibit the repair, reconstruction, renovation, remodeling or expansion of a nonconforming structure in existence on the effective date of an ordinance adopted under this section or any environmental control facility in existence on the effective date of this section (1981) related to that structure.

(6) **FAILURE TO ADOPT ORDINANCE.** If any city does not adopt an ordinance required under sub. (3) within 6 months after receipt of final wetland inventory maps prepared by the department of natural resources for the city under s. 23.32, or if the department of natural resources, after notice and hearing, determines that a city adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives of s. 144.26 (1), the department of natural resources shall adopt an ordinance for the city. As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

SECTION 8. 144.26 (2) (d) (intro.) and (8) of the statutes are amended to read:

144.26 (2) (d) (intro.) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within ~~Wisconsin~~ this state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Notwithstanding any other provision of law or administrative rule promulgated ~~thereunder~~, a shoreland zoning ordinance required under s. 59.971 and this section or a wetland zoning ordinance required under s. 61.351 or 62.231 and this section does not apply to lands adjacent to farm drainage ditches if:

(8) This section and s. ss. 59.971, 61.351 and 62.231 shall be construed together to accomplish the purposes and objective of this section.

SECTION 9. **Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections 15.341 (intro.)	References Deleted none	References Inserted 61.351, 62.231