

CHAPTER 92

SOIL AND WATER CONSERVATION AND ANIMAL WASTE MANAGEMENT

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92.02 Legislative intent. (1) The legislature finds that the soil resources of this state are being depleted by wind and water erosion and that the waters of this state are being polluted by nonpoint sources of pollution. The legislature further finds that these are statewide problems endangering the health and welfare of the state's citizens, its recreational resources, agricultural productivity and industrial base.

(2) The legislature declares it to be the policy of this state to halt and reverse the depletion of the state's soil resources and pollution of its waters.

(3) It is the intent of the legislature to implement this policy by enacting this soil and water conservation law to:

(a) Establish goals and standards for conservation of soil and water resources;

(b) Provide for cost sharing, technical assistance, educational programs and other programs to conserve soil and water resources;

(c) Encourage coordinated soil and water conservation planning and program implementation; and

(d) Enable the regulation of harmful land use and land management practices by county ordinance where necessary to achieve the purposes of this chapter.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8)

92.025 State soil erosion control goals. It is the intent of the legislature that:

(1) **STATUTORY GOAL.** The soil erosion rate on each individual cropland field in the state does not exceed the tolerable erosion level on or after January 1, 2000.

(2) **INTERIM GOALS; COUNTIES.** The soil erosion rate in each county in the state does not exceed 1.5 times the tolerable erosion level on or after July 1, 1990 and does not exceed the tolerable erosion level on or after July 1, 1993.

(3) **INTERIM GOALS; INDIVIDUAL CROPLAND FIELDS.** The soil erosion rate in each individual cropland field in the state does not exceed 3 times the tolerable erosion level on or after July 1, 1990, and does not exceed 2 times the tolerable erosion level on or after July 1, 1995.

(4) **INTERIM GOAL; STATE-RUN FARMS.** The soil erosion rate on individual cropland fields of farms owned by the university of Wisconsin system or any other department or agency of state government does not exceed the tolerable soil erosion level on or after July 1, 1990.

History: 1985 a. 29.

92.03 Definitions. In this chapter:

(1) "Agency" means any department, agency, board, commission, committee, council, officer, subdivision or instrumentality, corporate or otherwise, of this state.

(2) "Board" means the land and water conservation board created under s. 15.135 (4).

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Landowner" means any person over 18 years of age and any partnership, limited liability company, firm or corporation that holds title to land lying within a county whether or not this land is subject to easement, mortgage, lien, lease or restrictive covenant, except that this term does not include any person who is under guardianship, a person who is incompetent or a person who is mentally ill. A person, partnership, limited liability company, firm or corporation is deemed to hold title to land if the person, partnership, limited liability company, firm or corporation has any of the following:

(a) Title as sole owner.

(b) Title as a joint owner.

(c) Title as owner of an undivided interest.

(d) Title as sole or joint trustee or as sole or joint assignee.

(e) A land contract vendee's interest therein.

(5) "Land user" means any person who uses land as an operator, lessor or renter.

(6) "Secretary" means the secretary of the department.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1993 a. 16, 112.

92.04 Land and water conservation board. (1) **POWERS** (a) *Hearings.* The board may hold public hearings in the performance of its functions.

(b) *Delegation.* The board may delegate to its chairperson or to one or more of its members any of its powers or duties.

(c) *Soil and water conservation studies and recommendations.* The board may make studies and recommendations on matters relating to soil and water conservation.

(2) **DUTIES** (a) *Advise secretary and department.* The board shall advise the secretary and department on matters relating to exercise of the department's authority under this chapter.

(b) *Review erosion control plans.* The board shall review soil erosion control plans prepared under s. 92.10 and make recommendations to the department on approval or disapproval of those plans.

(c) *Review and approve soil and water conservation standards.* The board shall review soil and water conservation standards prepared under s. 92.105. The board shall establish guidelines for the approval of these standards.

(d) *Review plans.* The board shall review annual grant allocation plans developed under s. 92.14 (6) (b) and make recommendations to the department on approval, modification or disapproval of the plans.

(e) *Review joint evaluation plan.* The board shall review the evaluation plan prepared under s. 92.14 (13). After its review, the board shall make recommendations on the plan to the department and to the department of natural resources.

(f) *Review annual reports.* The board shall review the annual reports under ss. 92.14 (12) and 144.25 (4) (o).

(g) *Advise the university of Wisconsin system.* The board shall advise the university of Wisconsin system annually on needed research and educational programs relating to soil and water conservation.

(h) *State erosion control goals; compliance and evaluation.* The board shall review compliance with state soil erosion control goals established under s. 92.025. The board shall notify the department and the legislature if these goals are not achieved or if it is unlikely that these goals will be achieved.

(i) *Tolerable erosion levels.* The board shall establish a tolerable erosion level based on an erosion rate which is acceptable and maintains long-term soil productivity.

(j) *Records.* The board shall keep a full and accurate record of all proceedings before it and all actions taken by it.

(k) *Review of pollution abatement determinations.* The board shall review and affirm or reverse decisions of county land conservation committees under s. 144.025 (2) (v) 1m when review is requested under s. 144.025 (2) (w). The board may conduct an informal hearing that is not a contested case under ch. 227.

(L) *Review of critical site determinations.* The board shall review and affirm or reverse decisions of county land conservation committees under s. 144.25 (7) (a) 2. when review is requested under s. 144.25 (7) (b). The board may conduct an informal hearing which is not a contested case under ch. 227.

(3) RULES REVIEW (a) *Board review.* The board shall review all rules of the department relating to implementation of this chapter prior to promulgation.

(b) *Submission for review.* Before submitting proposed rules to the legislative council staff under s. 227.15, the department shall submit the proposed rules to the board for comment. The board has 30 days to submit comments on the proposed rules to the department.

(c) *Emergency rules.* If the department promulgates an emergency rule under s. 227.24, it shall provide a copy of the rule to the board prior to publication of the rule in the official state paper.

(d) *Hearing.* The chairperson of the board, or his or her designee from the board, may cochair with the department any public hearing held by the department on proposed rules.

(e) *Dissenting report.* The department shall submit to the board a copy of the report required under s. 227.19 (2) on proposed rules. The board may prepare a dissenting report stating its recommendations on the proposed rules. The board shall prepare any dissenting report within 10 days from the date of receipt of the department's report. The department shall attach the dissenting report to the department's report, send them to the presiding officer of each house of the legislature and distribute copies under s. 227.19 (2). The department shall cause a statement to appear in the Wisconsin administrative register to the effect that a dissenting report of the board was submitted to the presiding officer of each house of the legislature.

(f) *No rule-making power.* The board has no rule-making authority on matters relating to soil and water conservation.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1983 a. 416; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (8); 1987 a. 27; 1993 a. 16, 166.

92.05 Department. (1) **CENTRAL AGENCY.** The department is the central agency of this state responsible for setting and implementing statewide soil and water conservation policies and administering the state's soil and water conservation programs. The department shall coordinate its soil and water conservation program with the nonpoint source water pollution abatement program established under s. 144.25, the inland lake protection and

rehabilitation program established under ch. 33 and other programs with objectives related to soil and water conservation administered by the department of natural resources or by other state or federal agencies.

(2) POWERS. (a) *Accept gifts.* The department may accept contributions of money or gifts for soil and water conservation purposes.

(b) *Require reports.* The department may require reports from the counties as needed.

(3) DUTIES. (a) *Information.* The department shall keep county land conservation committee members generally informed of activities and experience useful to them.

(b) *Development; coordination.* The department shall assist in developing and coordinating the plans and programs of each county.

(c) *Rules.* The department shall promulgate rules governing implementation of this chapter and distribution of state or federal funds by the department to the counties. The department shall comply with the procedures under s. 92.04 (3) in promulgating these rules.

(d) *Advise university of Wisconsin system.* The department shall advise the university of Wisconsin system annually on developing research and educational programs relating to soil and water conservation.

(e) *Studies.* The department may undertake studies and investigations and make and issue reports and recommendations with respect to state soil and water conservation program needs. Biennially, the department shall prepare a state soil and water conservation report. This report shall include a description of present soil and water resource uses and a projection of future trends, an assessment of soil and water conservation problems in relation to soil and water resource use practices and any actions necessary to correct or solve these problems including specific goals, action schedules, program evaluation criteria and provisions for the coordination of these actions with programs developed by other agencies for the development, management and conservation of soil, water and related natural resources. This report shall include the identification of counties and specific parcels within these counties where soil and water conservation problems are most acute and recommendations for actions necessary to correct or solve these problems.

(f) *Nonpoint source water pollution abatement.* The department shall perform the duties specified for the department in the nonpoint source water pollution abatement program under s. 144.25 (5).

(g) *Watershed protection and flood prevention act.* The department has responsibility over programs provided by 16 USC 1001 to 1008 relating to the planning and carrying out of works of improvement for soil and water conservation and other purposes.

(h) *Model ordinances.* The department shall make available model ordinances for counties and municipalities concerning regulation and control of land use and land management practices as authorized under s. 92.11.

(i) *Provide staff.* The department shall provide staff to assist the board in performing its statutory duties.

(j) *Milkhouse wastewater.* The department, in consultation with appropriate state and federal agencies, shall promulgate guidelines for determining eligibility for financial assistance under ss. 92.14 and 144.25 for milkhouse wastewater.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1987 a. 27; 1991 a. 309.

92.06 Land conservation committees. (1) **CREATION; MEMBERSHIP.** (a) *Creation.* Each county board shall create a land conservation committee.

(b) *Membership.* 1. The county board shall appoint to the land conservation committee at least 2 persons who are members of the

committee on agriculture and extension education created under s. 59.87 (2).

2. The county board shall appoint to the land conservation committee a person who is the chairperson of the county agricultural stabilization and conservation committee created under 16 USC 590h (b) or other county agricultural stabilization and conservation committee member designated by the chairperson of the county agricultural stabilization and conservation committee.

3. The county board may appoint to the land conservation committee any number of members who are also members of the county board.

4. The county board may appoint to the land conservation committee up to 2 members who are not members of the county board.

(c) *Terms.* Each member of the land conservation committee shall serve for a term of 2 years or until a successor is appointed, whichever is longer.

(d) *Reimbursement.* Each member of the land conservation committee shall be reimbursed for necessary expenses and shall be paid the same per diem as members of other county board committees.

(e) *Programs and responsibilities.* The county board may assign other programs and responsibilities to the land conservation committee.

(2) **DESIGNATED REPRESENTATIVES** The county board shall designate a representative of each county committee with responsibilities related to natural resource management to serve as an adviser to the land conservation committee. The county board shall designate, at a minimum, representatives from any county zoning or land use, forestry, parks and solid waste committees. In addition, the land conservation committee may invite any state, federal or local agency with which the county or committee has a memorandum of understanding to designate a representative to advise the land conservation committee.

(4) **PUBLIC PARTICIPATION** The committee shall actively solicit public participation in the planning and evaluation of soil and water conservation programs.

History: 1981 c. 346; 1985 a. 29

Appointments to committee are made by county board, not county executive. 76 Atty Gen 173.

Committee responsibilities and prohibition of private interest in public contracts discussed. 76 Atty Gen 184.

92.07 Land conservation committee; powers.

(1) **POWERS GENERALLY** Each land conservation committee may carry out the powers delegated to the committee subject to the approval of the county board.

(2) **STANDARDS** Each land conservation committee may develop and adopt standards and specifications for management practices to control erosion, sedimentation and nonpoint source water pollution.

(3) **DISTRIBUTE FUNDS** Each land conservation committee may distribute and allocate federal, state and county funds made available to the committee for cost-sharing programs or other incentive programs for improvements and practices relating to soil and water conservation on private or public lands, and within the limits permitted under these programs, to determine the methods of allocating these funds.

(5) **EDUCATIONAL AND OTHER PROGRAMS** Each land conservation committee may encourage research and educational, informational and public service programs, advise the university of Wisconsin system on educational needs and assist the university of Wisconsin system and the department in implementing educational programs under ss. 36.25 (7), 59.87 and 92.05.

(6) **PREVENTIVE AND CONTROL MEASURES AND WORKS OF IMPROVEMENT** Each land conservation committee may carry out preventive and control measures and works of improvement for flood prevention and for conservation, development, utilization and control of water within the county. These preventive and con-

rol measures and works of improvement may include, but are not limited to, changes in the use of land and use of engineering operations such as terraces, terrace outlets, desilting basins, floodwater retarding structures, floodways, dikes and ponds, methods of cultivation and the growing of vegetation. These preventive and control measures and works of improvement may be carried out on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other lands within the county upon obtaining the consent of the landowner or the necessary rights or interests in the land.

(7) **ASSISTANCE** Each land conservation committee, in the name of the county, may cooperate with, enter into agreements with, or furnish financial, technical, planning or other assistance to any agency, governmental or otherwise, or any landowner or land user within the incorporated or unincorporated parts of the county, in carrying out resource conservation operations and works of improvement for flood prevention or for the conservation, development, utilization and protection of soil and water resources within the county.

(8) **OBTAIN PROPERTY** Each land conservation committee, in the name of the county, may obtain options upon and acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property or rights or interests in property or in water. A land conservation committee may maintain, administer and improve any properties acquired. A land conservation committee may receive income from these properties on behalf of the county and may expend this income in carrying out the purposes and provisions of this chapter. A land conservation committee may sell, lease or otherwise dispose of the property or interests in property in furtherance of the purposes and the provisions of this chapter.

(9) **MACHINERY AVAILABILITY** Each land conservation committee may make available, on terms it may prescribe, to landowners and land users within the incorporated and unincorporated parts of the county, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and other material or equipment which will assist the landowners and land users in carrying on operations upon their lands for the conservation of soil resources, for the prevention and control of soil erosion, for flood prevention, for the conservation, development and utilization of water or for the prevention of nonpoint source water pollution.

(10) **STRUCTURES** Each land conservation committee may construct, improve, operate and maintain structures necessary or convenient for the performance of any of the operations or activities authorized in this chapter.

(11) **ADMINISTRATION OF PROJECTS OR PROGRAMS** Each land conservation committee, in the name of the county, may acquire, by purchase, lease or otherwise, and administer, any soil conservation, flood prevention, water management or nonpoint source water pollution abatement project or combinations of these projects, and participate in programs concerned with the conservation of natural resources located within the county undertaken by the United States or any of its agencies, or by this state or any of its agencies. A land conservation committee may administer, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, flood prevention, water management, water quality improvement, nonpoint source water pollution abatement, erosion control, erosion prevention project or resource conservation program within the county. A land conservation committee may act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation or administration of any resource conservation program within the county. A land conservation committee, on behalf of the county, may accept donations, gifts and contributions in money, services, materials or otherwise from any source and use or expend these moneys, services, materials or other contributions in carrying on its operations.

(12) **CONTRACTS; RULES.** Each land conservation committee, in the name of the county, may make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(13) **CONTRIBUTIONS; AGREEMENTS.** As a condition to extending any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, a land conservation committee may require contributions in money, services, materials or otherwise to any operations conferring the benefits, and may require landowners and land users to enter into and perform agreements or covenants respecting the use of land as will lead to conservation of soil and water resources.

(14) **ENTER UPON LANDS.** Each land conservation committee may enter upon any lands within the county to examine the land and make surveys or plans for soil and water conservation without being liable for trespass in the reasonable performance of these duties. This authorization applies to the land conservation committee members and their agents.

(15) **ADMINISTRATION AND ENFORCEMENT OF ORDINANCES.** A land conservation committee may, if authorized by the county board, administer and enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to construction site erosion, a zoning ordinance enacted under s. 59.974 or an ordinance enacted under authority granted under s. 101.1205.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1991 a. 309; 1993 a. 16.

Cross-reference: See ss. 59.879 (3) and 60.10 (2) (i) for authorization of county or town appropriations.

92.08 Basic workload allocation plan. (1) Every land conservation committee shall prepare annually for its county a plan which describes the soil and water resource activities to be undertaken by that county and the dollar amounts required for personnel to administer and implement activities in that county related to soil conservation activities required under ss. 92.104 and 92.105 to claim a farmland preservation credit under s. 71.09 (11) [subch. IX of ch. 71], activities required under s. 92.17 related to shoreland management or activities required under s. 144.25 (8m) related to the development or implementation of animal waste ordinances. The land conservation committee shall submit that plan to the county board of that county and to the department.

NOTE: The bracketed language indicates the correct cross-reference.

(2) The department shall review and approve, modify or disapprove any plan prepared under sub. (1).

History: 1987 a. 27; 1991 a. 309.

92.09 Land conservation committee staff. The land conservation committee may employ county soil and water conservation staff, subject to the approval of the county board. The county soil and water conservation staff is responsible for the administration of the county soil and water conservation program and may exercise the powers granted to the land conservation committee.

History: 1981 c. 346.

92.10 Erosion control planning program. (1) **CREATION.** There is created an erosion control planning program. The department, board and land conservation committees in identified priority counties jointly shall develop and administer this program.

(2) **PURPOSES.** The purposes of the erosion control planning program are to conserve long-term soil productivity, protect the quality of related natural resources, enhance water quality and focus on severe soil erosion problems in identified priority counties.

(3) **IDENTIFICATION OF PRIORITY COUNTIES.** (a) **Identification.** The department shall identify priority soil erosion control counties. Identified priority counties are required to prepare soil erosion control plans.

(b) **Criteria.** In identifying priority soil erosion control counties, the department shall consider the following factors:

1. The amount of cropland in the county.
2. The magnitude and extent of cropland erosion in the county.
3. The availability of soil survey information in the county.

(c) **Plan preparation.** If a county is identified as a priority soil erosion control county under this subsection, the land conservation committee in that county shall prepare and submit a soil erosion control plan for that county as specified under sub. (6).

(4) **IMPLEMENTATION; DEPARTMENT DUTIES.** (a) **Data.** The department shall develop a systematic method of collecting and organizing data related to soil erosion. The department shall cooperate with the land information board under s. 16.967 in developing this methodology or any related activities related to land information collection.

(c) **Plan assistance.** The department shall assist land conservation committees in identified priority counties in preparing soil erosion control plans. The department may allocate funds appropriated under s. 20.115 (7) (c) to land conservation committees in identified priority counties to cover up to 50% of the cost of preparing soil erosion control plans.

(d) **Plan review.** The department shall review and approve or disapprove soil erosion control plans submitted by the land conservation committees in identified priority counties. The department may require land conservation committees to indicate specific projects to be funded under each plan and the related cost-sharing rates.

(5) **IMPLEMENTATION; BOARD DUTIES.** (a) **Plan review.** The board shall review soil erosion control plans submitted by the land conservation committees and make recommendations to the department.

(b) **Solicit comments.** The board shall solicit comments on land conservation committee plans from the agencies identified as advisers to the board under s. 15.135 (4).

(6) **IMPLEMENTATION; COMMITTEE DUTIES.** (a) **Plan preparation.** A land conservation committee in an identified priority county shall prepare a soil erosion control plan which does all of the following:

1. Specifies maximum acceptable rates of soil erosion.
2. Identifies the parcels and locations of the parcels where soil erosion standards are not being met.
3. Identifies the land use changes or management practices which would bring each area of land into compliance with standards adopted by the land conservation committee.
4. Specifies procedures to be used to assist landowners and land users in controlling soil erosion.
5. Establishes priorities for controlling soil erosion.

(b) **Notification.** A land conservation committee in an identified priority county shall notify landowners and land users of the results of any determinations of soil erosion rates, and provide an opportunity for landowners and land users to present information relating to the accuracy of the determinations during preparation of the soil erosion control plan.

(c) **Hearings.** A land conservation committee in an identified priority county shall hold one or more public hearings on the soil erosion control plan.

(d) **Plan submission.** A land conservation committee in an identified priority county shall submit the soil erosion control plan to the board and department.

(e) **Plan adoption.** A land conservation committee in an identified priority county shall make the approved soil erosion control plan a part of the committee's long-range planning strategy to improve soil and water resource management.

History: 1981 c. 346; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31.

92.103 Wind erosion control pilot program. (1) The department shall do all of the following:

(a) Select at least one county subject to severe wind erosion and designate that county as eligible for grants under this section.

(b) Provide grants to the county designated under par. (a) for one or more of the following:

1. Property tax credits applied on a per-acre basis to persons owning land subject to wind erosion. The county clerk shall notify the clerk of the taxation district of any credit awarded under this subdivision and the clerk of the taxation district shall reduce the appropriate tax bill under s. 74.09 (2m).

2. Funding for on-farm wind erosion control tillage demonstrations.

3. Funding for county personnel to administer and implement the program under this section.

(c) Promulgate rules to administer the program under this section.

(2) This section does not apply after June 30, 1995.

History: 1989 a 31; 1993 a 16.

92.104 Soil and water conservation plan. (1) PREPARATION. A land conservation committee shall ensure that a soil and water conservation plan is prepared for land covered by a farmland preservation agreement.

(2) APPROVAL. A soil and water conservation plan approved by the land conservation committee is required to be included in the farmland preservation agreement.

(3) MONITORING. A county land conservation committee shall ensure that a soil and water conservation plan incorporated in a farmland preservation agreement is followed except that deviations may be allowed if, in the judgment of the land conservation committee, personnel are not available to lay out the suggested practices on the land or if practices are not economical for the owner to adopt.

(4) NONCOMPLIANCE. If the land conservation committee determines that farming operations are not being conducted in compliance with a soil and water conservation plan and that the deviation is not permitted under sub. (3), it shall issue a notice of noncompliance to the farmer and send a copy to the department of revenue. This notice remains in effect until canceled. If actions are taken to comply with the soil and water conservation plan in a manner satisfactory to the land conservation committee, it shall cancel the notice of noncompliance by notifying the farmer and the department of revenue.

(5) ELIGIBILITY FOR FARMLAND PRESERVATION CREDIT. A farmland preservation credit may not be allowed under subch. IX of ch. 71 if a notice of noncompliance is in effect with respect to a claimant to which this section applies at the time the claim is filed.

(6) APPLICABILITY. This section and a soil and water conservation plan prepared under this section apply to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based on a farmland preservation agreement applied for prior to July 1, 1986.

History: 1985 a 29; 1987 a 312 s. 17.

92.105 Soil and water conservation standards.

(1) ESTABLISHMENT. A land conservation committee shall establish soil and water conservation standards. It shall submit these standards to the board for review.

(2) GUIDELINES; REVIEW. The board shall develop guidelines to be used for the establishment and administration of soil and water conservation standards. The board shall review and shall approve or disapprove submitted soil and water conservation standards based on the guidelines it develops. If the board approves soil and water conservation standards, it shall notify any appropriate zoning authority of its approval.

(3) APPROVED STANDARDS REQUIRED FOR FARMLAND PRESERVATION CREDIT. A farmland preservation credit may not be allowed

under subch. IX of ch. 71 for claims relating to any land to which this section applies unless the land conservation committee for the county where the property is located establishes soil and water conservation standards which are approved by the board.

(4) MONITORING. The land conservation committee shall monitor compliance with soil and water conservation standards on land to which this section applies.

(5) NONCOMPLIANCE. If the land conservation committee determines that farming operations on land to which this section applies do not comply with soil and water conservation standards, it shall issue a notice of noncompliance to the farmer and send a copy of the notice to any appropriate zoning authority. If no appropriate zoning authority exists, it shall send a copy to the department of revenue. This notice of noncompliance remains in effect until canceled. If actions are taken to comply with the soil and water conservation standards in a manner satisfactory to the land conservation committee, it shall cancel the notice of noncompliance by notifying the farmer and by sending a copy of the cancellation to any appropriate zoning authority. If no appropriate zoning authority exists or if the original notice was sent to the department of revenue, it shall send a copy of the cancellation to the department of revenue.

(6) ELIGIBILITY FOR FARMLAND PRESERVATION CREDIT. A farmland preservation credit may not be allowed under subch. IX of ch. 71 if a notice of noncompliance is in effect with respect to a claimant to which this section applies at the time the claim is filed.

(7) APPLICABILITY. (a) *General applicability; farmland preservation.* This section and soil and water conservation standards established under this section apply only to a person claiming a farmland preservation credit under subch. IX of ch. 71, land related to that claim and farming operations on that land and apply only as provided under pars. (b) to (d).

(b) *Participants eligible under new farmland preservation agreements.* This section and soil and water conservation standards established under this section apply to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based upon a farmland preservation agreement applied for on or after July 1, 1986.

(c) *Existing participants under exclusive agricultural zoning.* This section and soil and water conservation standards established under this section apply beginning on January 1, 1988, to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based on exclusive agricultural zoning and if a farmland preservation credit was received by that person for property taxes on the same land accruing in 1984 or any prior year.

(d) *New participants under exclusive agricultural zoning.* This section and soil and water conservation standards established under this section apply beginning on July 1, 1986, to a person claiming a farmland preservation credit, land related to that claim and farming operations on that land if eligibility for the credit is based on exclusive agricultural zoning and if a farmland preservation credit was not received by that person for property taxes on the same land in 1984 or any prior year.

History: 1985 a 29, 332; 1987 a 312 s. 17.

92.106 Department review. The department shall review all soil and water conservation standards under s. 92.105 at least once every 5 years to determine whether the standards are consistent with the purposes of the soil and water resource management program under s. 92.14 (2).

History: 1991 a 309.

92.11 Regulation of local soil and water resource management practices. (1) PROPOSED ORDINANCES. To promote soil and water conservation or nonpoint source water pollution abatement, a county, city, village or town may enact ordinances for the regulation of land use, land management and pollutant management practices.

(2) **APPLICABILITY; CONTENTS.** (a) An ordinance enacted under this section may be applicable throughout the county or to any part of the county, including both incorporated and unincorporated areas.

(b) An ordinance enacted under this section may prohibit land uses and land management practices which cause excessive soil erosion, sedimentation, nonpoint source water pollution or storm water runoff.

(3) **PRESENTATION; NOTICE; HEARING; COUNTY BOARD ADOPTION.** Any ordinance proposed by the land conservation committee under this section shall be presented to the county board together with a report on the need for the ordinance and its expected economic and environmental impact. Within 2 weeks after its receipt, the county board shall publish the proposed ordinance as a class 2 notice, under ch. 985, in a newspaper having general circulation throughout the county and make the report available for public inspection. The county board shall hold one or more public hearings on the proposed ordinance before taking final action. The county board shall adopt, adopt with revisions or disapprove the ordinance.

(4) **REFERENDUM; LOCAL APPROVAL REQUIRED.** (a) *Definition.* As used in this subsection, "affected area" means the entire town, all of a village within the county or all of a city within a county if an ordinance adopted under this section or a revision to an ordinance adopted under this section is applicable to any part of the town, village or city.

(b) *Referendum required.* No ordinance adopted under this section and no revision to an ordinance adopted under this section may take effect in any affected area in that county unless the ordinance or revision is approved by referendum.

(c) *Wording of ballot question; procedure.* The county board shall include the wording of the question to be placed before the electors in the referendum as a part of the ordinance adopted under this section or the revision to an ordinance adopted under this section. Upon the adoption of the ordinance or revision the county board shall forward a copy of the ordinance or revision to the county clerk who shall cause the question to be placed before the voters of the affected area in the next spring or general election occurring not less than 45 days after the adoption of the ordinance or revision. The form of the ballot shall correspond substantially with form "D" annexed to s. 5.64 (2).

(d) *Approval; disapproval.* If the question placed before the electors in the referendum is approved by a majority of all votes cast on that subject in an affected area in that county, the ordinance adopted under this section or the revision to an ordinance adopted under this section takes effect in that affected area. Otherwise, the ordinance or revision does not take effect in that affected area.

(5) **ENFORCEMENT.** (a) The county board shall by ordinance prescribe administrative procedures and provide personnel necessary for the enforcement of any ordinance enacted under this section. Ordinances enacted under this section may be enforced through civil forfeiture or through issuance of an injunction by the circuit court in an action initiated by the county or land conservation committee. The court may award reasonable attorney fees to any plaintiff in a successful action for enforcement through injunction.

(b) At least one year before the county or land conservation committee may initiate an action for enforcement, the land conservation committee shall make a reasonable effort to contact the landowner or land user in person and to furnish the landowner or land user all of the following:

1. An explanation orally and in writing of the reasons for the excessive soil erosion.

2. A management plan which, if followed, would reduce soil erosion to a rate established as acceptable by the land conservation committee. The management plan shall, with reasonable limits, set forth all of the options which are available to the landowner or land user to achieve acceptable soil erosion rates.

3. An explanation of the financial aids and technical assistance which are available to the landowner or land user. These may include, but are not necessarily limited to, cost-sharing, loans, tax incentives and technical assistance available from the land conservation committee and other agencies.

(6) **BOARD OF ADJUSTMENT.** The county board shall provide for the appointment of a board of adjustment in any county which adopts an ordinance under this section.

(7) **CONSTRUCTION.** Any ordinance enacted under this section shall be liberally construed in favor of the county. It shall be construed as setting minimum requirements for the purposes stated and not as a limitation on other powers granted the county board and land conservation committee.

History: 1981 c. 346; 1987 a. 27; 1993 a. 246.

Ordinance passed under this section may be applicable to incorporated as well as unincorporated areas of the county. 77 Atty. Gen. 87

92.12 Intergovernmental cooperation. Counties, cities, villages, towns and public agencies with natural resource responsibilities in the same or different counties may cooperate in carrying out the purposes of this chapter. If a problem of soil or water conservation is defined in part by drainage basin boundaries beyond a single county's borders or otherwise transcends these borders, the respective counties, cities, villages, towns and public agencies with natural resource responsibilities may enter into mutually binding agreements and contracts containing, but not limited to, provisions for mutually enforced and administered regulatory ordinances and cost-sharing distribution arrangements.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.13 State and local agencies to cooperate. Agencies of the state having jurisdiction over, or charged with the administration of any state-owned lands, and any county or other governmental subdivision of the state having jurisdiction over, or charged with the administration of any county-owned or other publicly owned lands, shall cooperate to the fullest extent with the land conservation committee in carrying out programs under this chapter. The land conservation committee may enter and perform work upon these publicly owned lands. The provisions of land conservation practices ordinances enacted under s. 92.11 are applicable to these publicly owned lands, and shall be in all respects observed by the agencies administering the lands.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8).

92.14 Soil and water resource management program. (1) **DEFINITIONS.** In this section:

(a) "Best management practices" has the meaning given under s. 144.25 (2) (a).

(b) "Nonpoint source" has the meaning given under s. 144.25 (2) (b).

(c) "Priority watershed" has the meaning given under s. 144.25 (2) (c).

(2) **ESTABLISHMENT.** There is created a soil and water resource management program, which has all of the following purposes:

(a) Enhancing protection of surface water and groundwater resources in this state.

(c) Providing financial and technical assistance for soil and water conservation activities.

(d) Promoting cost-effective soil and water conservation activities.

(e) Promoting compliance with the requirements under ss. 92.104 and 92.105 by persons claiming a farmland preservation credit under s. 71.09 (11) [subch. IX of ch. 71].

NOTE: The bracketed language indicates the correct cross-reference.

(g) Promoting and attaining the soil erosion control goals specified under s. 92.025.

(h) Encouraging innovative local strategies, regulations and incentives to address soil and source water conservation activities.

(i) Increasing local technical assistance to address soil and water resource problems.

(j) Enhancing the administration and coordination of state nonpoint source water pollution abatement activities by the department and the department of natural resources.

(3) BASIC ALLOCATIONS TO COUNTIES To help counties meet administrative and technical operating costs in their soil and water conservation activities, the department shall award grants from the appropriation under s. 20.115 (7) (c) to any county land conservation committee which has a workload allocation plan approved by the department under s. 92.08 (2), and which, by county board action, has resolved to match any moneys granted under this subsection with an equal amount of county moneys. The county shall use the grant for county land conservation personnel to administer and implement activities directly related to any of the following:

(a) Compliance with requirements under ss. 92.104 and 92.105 by persons claiming a farmland preservation credit under s. 71.09 (11) [subch. IX of ch. 71].

NOTE: The bracketed language indicates the correct cross-reference.

(b) Animal waste management activities and ordinances under s. 92.16.

(c) Soil erosion control activities in accordance with plans approved under s. 92.10 and construction site ordinances.

(d) Nonpoint source water pollution abatement activities

(e) Other conservation activities determined by the county to be necessary for conservation and resource management in that county.

(3m) SHORELAND MANAGEMENT GRANTS From the appropriation under s. 20.115 (7) (qd), the department shall award grants to counties or farmers for implementing best management practices required under a shoreland management ordinance enacted under s. 92.17, including reimbursement for all of the following:

(a) The cost of fencing that the landowner installs in order to comply with the ordinance.

(b) The cost of providing a well for livestock if, as a result of complying with the ordinance, the livestock does not have adequate access to water for drinking purposes.

(4) OTHER SOIL AND WATER RESOURCE GRANTS From the moneys remaining in s. 20.115 (7) (c) after the department has awarded all grants for a year under sub. (3) or from the appropriation under s. 20.115 (7) (qd), the department may award grants to any eligible county, including any county which has received a grant under sub. (3), for one or more of the following:

(a) Implementing soil and water resource management projects to manage animal waste and conserve soil approved in plans under s. 92.10 and under s. 92.15, 1985 stats.

(b) Implementing soil and water resource management projects undertaken to comply with the requirements under ss. 92.104 and 92.105 by persons claiming a farmland preservation credit under s. 71.09 (11) [subch. IX of ch. 71].

NOTE: The bracketed language indicates the correct cross-reference.

(c) Construction of a facility or system related to animal waste management by a farmer who has received a notice of discharge under ch. 147 or management practices required under a notice to a farmer under s. 144.025 (2) (v). In awarding grants under this paragraph, the department shall give preference to farmers who have received a notice of discharge under s. 144.025 (2) or ch. 147. The amount of a grant for management practices required under a notice to a farmer under s. 144.025 (2) (v) shall be based on the cost of the method of controlling nonpoint source pollution which the department determines to be the most cost-effective and may not exceed 70% of the total cost of that method. The department may issue grants directly to farmers under this paragraph.

(4m) GRANT PRIORITY Grants awarded under sub. (4) shall be awarded in the following order:

(a) Grants authorized under sub. (4) (c).

(b) Grants authorized under sub. (4) (b).

(c) Grants authorized under sub. (4) (a).

(4r) REQUESTING TRANSFER OF FUNDS The department shall submit a request to the joint committee on finance for the transfer of funds from the appropriation under s. 20.370 (4) (cq) to the appropriation under s. 20.115 (7) (qd) if necessary to provide grants under sub. (4) (c).

(5) ANIMAL WASTE MANAGEMENT GRANTS IN A PRIORITY WATERSHED OR PRIORITY LAKE AREA (a) From the appropriation under s. 20.115 (7) (km), the department may make a grant for the purpose specified in sub. (4) (c) if the facility or system will be located in a priority watershed, as defined in s. 144.25 (2) (c), or a priority lake area, as defined in s. 144.25 (2) (bs), and the conditions specified in sub. (4) (c) are satisfied.

(b) The department, with the approval of the board, may request the department of natural resources to transfer funds from the appropriation account under s. 20.370 (4) (cc) or (cq) to the appropriation account under s. 20.115 (7) (km) if the funds are needed to pay grants under par. (a).

(6) ADMINISTRATION OF GRANTS (a) The department shall establish a priority list of funding needs for soil and water resource management activities under this section.

(b) The department, in cooperation with the department of natural resources, shall prepare an annual grant allocation plan identifying the amounts to be spent annually for the categories of soil and water resource management projects to be funded under this section and the general purposes of those projects, which it shall specify. The department shall submit that plan to the board.

(c) In developing the allocation plan for projects under par. (b), the department, in cooperation with the department of natural resources, may consider any of the following factors:

1. Cost-effectiveness of an activity, including but not limited to technical assistance, educational assistance, management practices, and satisfying the requirements under ss. 92.104 and 92.105 for claiming farmland preservation credits under s. 71.09 (11) [subch. IX of ch. 71].

NOTE: The bracketed language indicates the correct cross-reference.

2. The amount of soil erosion reduction proposed to be effected by the activity.

3. Severity of the water quality problem addressed by an activity.

4. The comprehensiveness of an activity's planning methods and the area affected by an activity.

5. The degree of cooperation and commitment and the amount of supplemental funds from other sources contributed by counties related to an activity.

6. The need for staff and project continuity.

(d) The board shall review the annual allocation plan submitted to it under par. (b) and make recommendations to the department on approval, modification or disapproval of the plan. The department shall review and approve or disapprove the plan and shall notify the board of the department's final action on the plan.

(e) The department shall make grant awards under this section to eligible applicants which are consistent with the allocation plan approved by the department under par. (d).

(f) The department shall provide summaries of projects awarded grants under par. (e) to the board for its review.

(g) Every project awarded a grant under this section shall be consistent with the plans under s. 92.15, 1985 stats., and under this section and ss. 92.08, 92.10 and 144.25.

(h) 1. The department may not make a grant under this section for the construction of any facility or system related to animal waste management unless all of the following conditions are met:

a. The facility or system is necessary to meet surface water or groundwater quality objectives.

b. The facility or system is designed consistent with rules of the department and with the technical standards of the county and

is designed to be constructed and operated to avoid water pollution.

c. The facility or system will use the most cost-effective method to meet water quality standards.

d. The grant for the facility or system, combined with all other governmental funding, is no more than an amount specified by the department by rule, except that there is no limit on the amount of the grant if the principal purpose of the facility or system is to prevent or control barnyard runoff.

e. The amount of the grant does not exceed 70% of the cost of the facility or structure.

2. The department may make payments under this section for the construction of a facility or system related to animal waste management directly to farmers who receive a notice of discharge related to animal waste under ch. 147.

3. Nothing in this paragraph affects the authority of the department of natural resources to act under ch. 147.

4. The department may exceed the limits under subd. 1. d. and e. in cases of economic hardship, as defined by rule by the department.

(i) No cost-sharing funds from any grant awarded under this section may be distributed to a landowner or land user unless he or she, by contract with the grant recipient, agrees to do all of the following:

1. Maintain any funded practice for its normal expected life, replace it with an equally effective practice or improvement or repay the cost-sharing funds to the grant recipient.

2. Conduct all land management and pollutant management activities in substantial accordance with plans approved under s. 92.15, 1985 stats., and under ss. 92.08, 92.10, 92.14 and 144.25, or to repay the cost-sharing funds to the grant recipient.

(j) A grant awarded under this section may be used for technical assistance, educational and training assistance, ordinance development and administration, cost-sharing for management practices and capital improvements, plan preparation under s. 92.10 (4) (c), easements or other activities determined by the department to satisfy the requirements of this chapter.

(k) The department shall identify by rule the types of cost-shared practices and the minimum grant amounts for cost-sharing grants that require any subsequent owner of the property to maintain the cost-shared practice for the life of the cost-shared practice, as determined by the department.

(L) The department may make a grant under this section to replace a structure or facility at a new location, rather than to repair or reconstruct the structure or facility, if the relocation reduces water pollution and replacement is cost-effective compared to repairing or reconstructing the structure or facility.

(7) MAINTENANCE OF EFFORT. The department may not make a grant to a county under this section in any fiscal year unless that county enters into an agreement with the department to maintain or increase its aggregate expenditures from other sources for soil and water conservation activities at or above the average level of such expenditures in its 2 fiscal years preceding August 1, 1987.

(8) RULES. In consultation with the department of natural resources, the department shall promulgate rules to administer this section and the department's duties under s. 144.25.

(10) TRAINING. The county may use a grant under this section for training required under s. 92.18 or for any other training necessary to prepare personnel to perform job duties related to this section. The department may contract with any person from the appropriation under s. 20.115 (7) (c) for services to administer or implement this chapter, including information and education and training.

(11) AID TO STATE AGENCIES. The department may distribute grants and aids to any state agency, including itself, for implementation of the soil and water resource management program on land under state ownership or control, subject to this chapter.

(12) ANNUAL REPORT. Annually, the department, in cooperation with the department of natural resources, shall submit a report on the progress of the program under this section and s. 144.25 to the board.

(13) EVALUATION PLAN. The department, jointly with the department of natural resources, shall prepare a plan, which includes water quality monitoring and analysis, for evaluating the program administered under this section and s. 144.25 and submit the plan to the board. The board shall make recommendations to the department and the department of natural resources on the plan. The department shall review and approve or disapprove the plan and shall notify the board of its final action on the plan. The department shall implement any part of the plan for which the plan gives it responsibility.

(14) APPLICATION, REPORTING AND EVALUATION FORMS. The department, jointly with the department of natural resources, shall develop a single set of grant application, reporting and evaluation forms for use by counties receiving grants under this section and s. 144.25.

(15) FINANCIAL INFORMATION. The department shall consult with the department of natural resources when it prepares the information which it submits to the department of administration under s. 16.42.

History: 1987 a 27, 297; 1989 a 56; 1991 a 39, 309; 1993 a 16, 166, 213

92.16 Manure storage facilities. A county, city, village or town may enact an ordinance requiring manure storage facilities constructed after July 2, 1983, to meet the technical standards of the county, city, village or town and rules of the department. The department shall adopt rules for ordinances setting standards and criteria for construction of manure storage facilities.

History: 1983 a 27; Stats 1983 s 92.16; 1983 a 410 s 24n; Stats 1983 s 92.34; 1985 a 8 s 10; Stats 1985 s 92.16; 1987 a 27; 1993 a 246

Ordinance passed under this section is applicable only in unincorporated areas of the county. 77 Atty. Gen. 87.

92.17 Shoreland management. (1) GUIDELINES ORDINANCE. The guidelines for a shoreland management ordinance shall establish standards for activities related to the purpose of maintaining and improving surface water quality.

(2) AUTHORITY TO ENACT ORDINANCE (a) A city or village may enact a shoreland management ordinance.

(ag) A county may enact a shoreland management ordinance. A county shoreland management ordinance does not apply in any town that enacts an ordinance under par. (ar).

(ar) A town may enact a shoreland management ordinance that is prepared under sub. (1).

(b) If a county, city or village proposes to enact an ordinance based on the guidelines prepared under sub. (1), or if a town proposes to enact a shoreland management ordinance, the county, city, village or town shall submit a draft of the ordinance to the department.

(c) The board shall review a draft of an ordinance submitted under par. (b) and make recommendations to the department.

(d) The department shall review and approve or disapprove a draft of an ordinance submitted under par. (b).

(e) A county, city or village may enact an ordinance based on the guidelines prepared under sub. (1) only if the draft of the ordinance is approved by the department under par. (d). A town may enact a shoreland management ordinance only if the draft of the ordinance is approved by the department under par. (d).

(2m) AUTHORITY TO ENFORCE ORDINANCE. A county, city, village or town may not enforce a shoreland management ordinance unless funds have been appropriated for grants under s. 92.14 (3m).

(2r) DEPARTMENT NOT TO REQUIRE ENACTMENT. The department may not require a county, city, village or town to enact an ordinance under this section as a condition of any other program administered by the department.

(4) COOPERATION. The department shall consult with the governing bodies of counties, cities, villages and towns to secure voluntary uniformity of regulations, so far as practicable, shall identify low-cost practices and shall extend assistance to counties, cities, villages and towns under this section.

History: 1991 a. 309; 1993 a. 213.

92.18 Training and certification. (1) The department shall, by rule, establish a program of training and certification for persons who review plans for, conduct inspections of or engage in activities under any of the following:

(a) This chapter.

(b) Section 144.25, if those activities relate to agricultural practices.

(2) The department shall do all of the following:

(a) Identify those persons involved in plan review or inspections who are required to obtain certification.

(b) Establish the requirements for and the term of initial certification, and the requirements for recertification upon expiration of that term. To the extent possible, the department shall establish the requirements for certification in conformance with the engi-

neering approval system used by the federal soil conservation service in providing technical assistance under 7 CFR 610.1 to 610.5. The department may require applicants to pass an examination in order to receive initial certification.

(c) Establish different levels of certification as the department determines is appropriate.

(d) Identify persons other than inspectors and plan reviewers who may benefit from the training program, and encourage those persons to enroll in the training program.

(3) The department may impose fees for the training and certification program.

(4) The department shall promulgate rules under this section in consultation with the department of natural resources.

(5) Any training required under this section may be conducted by the department or the department of natural resources or by another person with the approval of the department.

(6) The department may suspend or revoke a certification under this section for failure to comply with this section or rules promulgated under this section.

History: 1991 a. 309.