CHAPTER 87

FLOOD CONTROL

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87.01 Definitions. In this chapter:

(1) "Department" means the department of natural resources.

(2) "Drainage area" means any parcel or parcels of land within the area whose drainage causes or contributes to flood conditions upon or in the vicinity of a designated stream or body of water.

(3) "Equalized assessed value" means:

(a) As applied to any town, village or city, the value of the real property therein as determined by the department of revenue under s. 70.57;

(b) As applied to any tract of land, such proportion of the assessed value thereof, as determined by the local assessor, as the equalized assessed value of all the real estate in the town, village or city in which such tract is located bears to the aggregate assessed value of the real estate in such town, village or city, as determined by its assessor;

(c) As applied to a parcel of land, such proportion of the equalized assessed value of the tract of which such parcel is a part, as the department shall determine to correctly represent the relative value of such parcel as compared with the remainder of the tract.

(4) "Owner" means any person, partnership, association or corporation having the fee title or any lesser estate in lands, except estates at will and by sufferance.

(5) "Parcel of land" means that portion of a tract of land which is benefited by the abatement or diminution of flood conditions.

(6) "Public corporation" means any county, town, village, city, school district, board of park commissioners and any other public body empowered to hold property, borrow money or levy taxes.

(7) "Public service corporation" means any corporation specified in s. 201.01.

(8) "Tract of land" means all of the land separately assessed as a unit for the purpose of general taxation pursuant to s. 70.23.

History: 1981 c. 20; 1983 a. 189; 1985 a. 225; 1987 a. 282; 1993 a. 490; 1997 a. 140; 1999 a. 150.

87.02 Powers of department. To accomplish the purposes of ss. 87.01 to 87.17, the department of natural resources is hereby authorized and empowered:

(1) To order the straightening, widening, altering, deepening, changing or the removing of obstructions from the course of any river, watercourse, pond, lake, creek or natural stream, ditch, drain or sewer, and the concentration, diversion or division of the flow of water therein; provided, that in the case of navigable waters no such work shall substantially impair the navigability thereof.

(2) To order the construction and maintenance or the removal of ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations, sewers and siphons, and any other works reasonably adapted or required to accomplish the purposes of said ss. 87.01 to 87.17.

87.03 Petition for flood works. Any 25 owners of lands which have been recurrently flooded by the waters of any designated stream, lake or pond or any tributaries thereof, or any public corporation within whose boundaries are located any lands subject to such overflow, may file with the department a written petition setting forth:

(1) The necessity for the construction of such works of improvement as will abate or substantially diminish the overflow of such lands, together with a statement that the construction of such works is required by the public health, safety, convenience or welfare;

(2) A general description of the purpose of the contemplated improvement and of the territory proposed to be benefited by the construction thereof. Said description need not be given by metes and bounds nor by legal or political subdivisions but shall be sufficient if it designate in general terms the territory proposed to be benefited by the improvement;

(3) A prayer for appropriate action and relief.

87.04 Action on petition. (1) Upon the filing of any petition as authorized by s. 87.03, the department shall give the project a name embodying the name of the principal river or body of water involved in the project, and shall fix a date and place of hearing upon the petition, the date being so fixed as to allow for the giving of the notice herein provided for. The department shall publish in each county in which any portion of the territory referred to in the petition is located, a class 3 notice, under ch. 985, stating the nature of the proceeding and the time and place of the proposed hearing, and shall also forward a copy of such notice to the county clerk of each such county. Each such county clerk shall thereupon mail a copy of the notice to the clerk of each town, village and city within that clerk's county. The failure of any county clerk to comply with the foregoing requirements shall not, however, affect the jurisdiction of the department to proceed.

(2) If the petition alleges that the proposed project will be located wholly upon land owned by the petitioners, that the stream affected is nonnavigable, or if navigable in fact, is not navigable for any substantial commercial or major recreational purposes, that the project is required by public health, safety, convenience or welfare and that the petitioners desire to construct and operate the project as a cooperative enterprise, the department may hear the petition upon due notice to the petitioners and to the town clerk of each town in which the project is located. If the department finds that the allegations of the petition are true, it may authorize the petitioners to proceed with the construction and operation of the project subject to plans to be approved by the department and

all other procedural requirements of this chapter may thereafter be omitted, provided that the petitioners shall be jointly and severally liable for any damage to the property of others resulting from said project.

History: 1991 a. 316.

87.05 Scope of hearing. The hearing under s. 87.04 shall be confined to the question whether the improvement prayed for in the petition is required by the public health, safety, convenience or welfare. Any person interested may appear at such hearing in person or by attorney and be heard upon said question without the filing of any formal pleading. In considering and deciding this question the department may consider investigations and reports made by the engineering staff and by the U.S. government or an officer or agency thereof, provided such reports are made a part of the record of the hearing. If at the close of such hearing the department determines that the public health, safety, convenience or welfare require the abatement or substantial diminution of the flood conditions referred to in the petition, it shall make written findings to that effect and shall direct the hearing upon the petition to proceed; but if its finding is to the contrary, it shall enter an order dismissing the petition.

87.06 Court review of dismissal. An order dismissing the petition shall be subject to review in the manner provided in ch. 227. An order directing the hearing to proceed shall not be subject to review except upon review of the final order made pursuant to s. 87.07.

87.07 Preliminary order. (1) SURVEY AND REPORT. If the department's order, made pursuant to s. 87.05, shall direct the hearing to proceed, the department shall at the same time direct its engineering department to make a survey in the form of a preliminary investigation and to file a report:

(a) Determining and showing upon a map the lands, whether contiguous or not, which will be benefited by the abatement or substantial diminution of the flood conditions referred to in the petition; defining by legal description each parcel of such lands, other than those owned by public corporations or public service corporations; stating the most recent equalized assessed value of each such parcel of land, and stating the amount of benefit estimated to be derived by each such parcel from the abatement or substantial diminution of such flood conditions;

(b) Giving a general description of the real property of any public corporation and the real and personal property of any public service corporation which will be benefited by the abatement or substantial diminution of the flood conditions referred to in the petition; stating the fair value of each parcel of real estate and piece of personal property so described, and determining the amount of benefit estimated to be derived by each of such parcels of real estate and pieces of personal property from the abatement or substantial diminution of such flood conditions; for the purposes of ss. 87.01 to 87.17, streets and highways shall be deemed to be the property of the public corporation which is under legal duty to maintain them;

(c) Defining by political subdivisions the drainage area, and stating the most recent equalized assessed value of the real estate in each of the political subdivisions constituting such area;

(d) Recommending the means deemed to be the most practical, considering cost and efficiency, for so abating or diminishing the flood conditions referred to in the petition as to effect the public purpose found by the department in its order made pursuant to s. 87.05, and stating the estimated cost of the improvement necessary to put such means into effect.

(2) NOTICE OF PRELIMINARY REPORT, HEARING. Upon the filing of such preliminary engineering report with the department, it shall forward a copy thereof to the county clerk of each county in whole or in part within the drainage area as set forth in said report, at least 30 days before the date fixed by the department for further hearing upon the petition. The department shall fix a date for such further hearing and shall publish a class 3 notice thereof, under ch. 985, in each county in whole or in part within the drainage area as set forth in the report, and shall mail a copy of the notice to each party who appeared at the preliminary hearing.

(2m) PETITION. At any time prior to the further hearing and final findings upon the several matters covered by said preliminary reports, owners who represent a majority of the lands owned by the original petitioners may file with the department a written petition requesting that no further proceeding be had. Upon receipt of such petition requesting no further proceeding and a determination by the department that same is signed by the required number of property owners, the department shall enter an order dismissing the original petition.

(3) HEARING ON REPORT, FINDINGS. (a) At the further hearing held pursuant to the notice under sub. (2), any person interested may appear in person or by attorney and be heard upon the matters covered by the preliminary engineering report, without the filing of any formal pleading on behalf of the person. The department shall make final findings upon the matters covered by the preliminary engineering report, including detailed plans and specifications for the work of constructing the improvement. In determining the estimated cost of the improvement the department shall determine and state separately:

1. The estimated cost of the lands and interest in lands necessary to be acquired for the improvement;

2. The estimated aggregate of the contract prices for the construction of the improvement;

3. The estimated expense to be incurred during the construction of the improvement for engineering, superintendence, clerical expense and other overhead expenses by the flood control board in charge of the construction; and

4. The estimated expense to be incurred by the flood control board for operation and maintenance of the improvement during the first 18 months after its completion.

(b) The department shall also find, as to each of the landowners, public corporations and public service corporations owning property to be benefited by the proposed improvement, and as to each parcel of land so benefited, and as to each of the public corporations required by s. 87.10 to contribute toward the cost of each improvement:

1. The maximum amount collectible from the parcel of land, public corporation or public service corporation under the provisions of s. 87.09; and

2. The amount actually required to be collected from the public corporation, public service corporation or parcel of land to meet the estimated cost of the improvement, which amount shall be, as to each parcel of land, public corporation and public service corporation, a uniform percentage of the total amount found by the department to be collectible therefrom.

(4) BENEFITS AND COSTS DECISIVE. If the aggregate of the amounts collectible, as thus found by the department, exceeds the estimated cost of construction of the improvement, the department shall order that the work of constructing such improvement proceed. If such aggregate amount collectible is less than the estimated cost of such improvement, the department shall enter an order dismissing the petition, unless the difference between said aggregate amounts be deposited in cash with the secretary of administration within one year. Such deposit may be made by any person or any public or private corporation. Upon the making of such deposit, the department shall enter a further order that the work of constructing the improvement proceed.

(5) COURT REVIEW. Any such order may be reviewed in the manner provided in ch. 227, except that if any finding as to the amount of benefit to any property shall be challenged upon such review the petitioner shall be entitled to a trial by jury upon demand.

History: 1987 a. 403; 2003 a. 33.

87.075 Special procedure. (1) Notwithstanding any other provision of this chapter, the department may, as provided in this

section, at any time after directing the hearing upon the petition to proceed made under s. 87.05, issue an order stating that a flood control board shall be appointed as provided in s. 87.12, in which event such a board shall be forthwith appointed. If such an order is issued, the procedures stated in ss. 87.07, 87.08, 87.09, 87.10 and 87.11 and any other section predicated thereon may be dispensed with.

(2) An order may be issued under this section under the following circumstances:

(a) That the proposed project will be financed in whole or in part by funds to be received from municipalities, other governmental agencies or others.

(b) That the benefit to public health, safety, convenience and welfare which will result from the project is such as to justify the initial and subsequent cost of the project. In making this determination the department may consider and give effect to the nature and purpose for which funds have been or may be made available for the project.

(c) That the public interest requires that a flood control board should be appointed and commence functioning as provided in this section without following the normal procedure otherwise prescribed under this chapter.

(3) In making its determination under this section, the department may consider and base its determination in whole or in part upon any plans or study made by any governmental agency, as well as upon any other material deemed by it to be relevant to such determination.

(4) When a flood control board is appointed under this section it shall:

(a) Forthwith cause all necessary surveys and studies to be made and plans and specifications prepared for the project.

(b) Submit plans and specifications to the department for approval.

(c) Cause the project to be constructed under contract let by public bids in accordance with the plans and specifications as approved by the department. The flood control board may subsequently modify the plans and specifications as originally approved, subject to approval of the department.

(d) Operate and maintain the completed project.

(e) Annually on or before March 15, assess the cost of construction, maintenance and operation of the project against the municipalities involved in the proportion that the equalized assessed value of real property located in the floodplain of the portion of the waterway in each municipality involved, exclusive of public park lands, bears to the total of such equalized assessed value for all municipalities involved. Such assessment shall be based upon data furnished by local assessors who shall forward to the secretary of the flood control board all data requested, by certified mail, within 30 days from receipt of such request. In the event the local assessor shall fail to comply with such request within the time specified, the flood control board shall conduct whatever studies are necessary in its judgment to determine the equalized assessed value of affected lands within such municipality, and the cost of such studies shall be charged to such municipality. When the flood control board determines the amount each municipality is required to pay, it shall certify that amount to each respective municipality. It shall thereupon be the duty of each municipality to pay said amount to the flood control board not later than 60 days from receipt of such certificate. The municipality may raise the funds required in the manner provided in s. 87.076.

(5) The flood control board appointed under this section shall have all powers contained herein as well as other sections of this chapter. In the event of conflict between the provisions of this section and other sections of this chapter, the provisions of this section shall control.

87.076 Financing. Any flood control project other than a project described in s. 87.04 (2) may, in addition to any other method of financing mentioned in this chapter, be financed from funds received in whole or in part by the flood control board from any governmental agency or other person. To implement this section, every municipality may obtain and provide funds for a flood control project:

(1) By levying a special assessment as provided in s. 66.0703.

(2) By borrowing money and issuing bonds as provided in ch. 67.

(3) By grants or donations.

(4) By exercise of the general power of taxation.

History: 1999 a. 150 s. 672.

87.08 Petition of board; modification of order, court review. Upon petition of the flood control board organized pursuant to s. 87.12 for the purpose of carrying out the final order of the department, the department may at any time, after public hearing, modify its final orders insofar as the same relate to the plans and specifications therein adopted by it for the construction of the improvement, but no such modification shall materially change the basic plan of the improvement. The hearing upon application for such modification shall be held upon notice to the clerk of each town, village and city containing property found by the department to be benefited by the improvement. Such order for modification may be reviewed in the same manner as the final order.

87.085 Federal cooperation. Any public corporation or flood control board acting under its powers and in conformity with state law may enter into an agreement with an agency of the federal government to cooperate in the construction, operation or maintenance of any federally authorized project contemplated under this chapter or to assume any potential liability appurtenant to such project and may do all things necessary to consummate the agreement. Such public corporation or flood control board may jointly or separately enter into such an agreement with an agency of the federal government carrying such terms and provisions concerning the division of costs and responsibilities as may be mutually agreed upon.

87.09 Assessment of benefits. The department shall determine the parcel or parcels of land benefited directly or indirectly and shall levy such assessment in proportion to the benefit accruing to such parcel or parcels of land.

87.095 Public park lands not benefited by improvement. For the purposes of this chapter it is determined that public park lands are not benefited either directly or indirectly by such improvement, and shall not be considered in the assessment of benefits made by the department or by the flood control board acting under the provisions of s. 87.075 or 87.076.

87.10 Collection of assessments; bonds. (1) Upon the making of a final order directing the work to proceed, as provided in s. 87.07, the department shall forward a certified copy of its findings and the order based thereon to the clerk of each town, village and city in which any land or other property benefited by the improvement is located; to the clerk of each public corporation owning property found to be benefited thereby, and to the clerk of each town, village and city found to be located within the drainage area. It shall thereupon be the duty:

(a) Of each town, village and city in which is located any benefited land owned otherwise than by a public corporation, or in which is located any benefited property of a public service corporation, to levy as a special assessment against the land or other property so benefited the amount which the department has found that such property should contribute to the cost of the improvement, and to collect the same in connection with the next ensuing collection of general taxes in said town, village or city. The governing body of such town, village or city may, in its discretion, make such special assessment payable in annual installments;

(b) Of each public corporation owning property found by the department to be benefited, to raise the amount which the depart-

ment shall have found that such property should contribute to the cost of the improvement;

(c) Of each town, village or city containing lands or other property found to be benefited by the improvement, to raise the amount which the department shall have found such town, village or city should contribute to the cost of the improvement;

(d) Of each town, village or city within the drainage area, to raise the amount which the department shall have found such town, village or city should contribute to the cost of the improvement.

(2) The amount required to be raised by any public corporation pursuant to sub. (1) (b), (c) and (d) of this section may be raised by the issuance of bonds or by the levy of general taxes, or may be paid out of any funds of such public corporation legally available for such purpose; provided, however, that no bonds shall be issued until provision has been made to pay the liability that will accrue thereunder. Every public corporation electing to raise such sums wholly or in part by general taxation may lawfully do so, even though the tax rate of such public corporation for the year of such levy may thus be increased beyond the legal limit otherwise applicable. The moneys to be provided by any public corporation pursuant to this section, except the deferred installments of special assessments, shall be on hand and available by March 15 following the department's final order, unless the time between the certification of such order and March 15 is insufficient for the raising of such moneys. All such moneys shall be held by the treasurer of such public corporation in a separate fund until paid over to the flood control board created pursuant to s. 87.12.

87.11 When benefits exceed cost; when costs will exceed benefits; temporary borrowing; maintenance fund. (1) If, after all contracts for construction of the improvement have been let, the aggregate of the contract prices, as certified by the flood control board created pursuant to s. 87.12, added to the department's estimated cost of acquiring the necessary lands and of overhead expense and of the first 18 months' operation and maintenance, exceeds the amount estimated by the department as the total cost of the improvement, but is less than the total amount found by the department to be collectible under s. 87.09, the work of constructing the improvement shall nevertheless proceed and the several public corporations shall provide, not later than the time fixed for the next ensuing general tax collection therein, the amounts required to make up the deficiency, in the same proportions as the original amounts were provided by such public corporations.

(2) But should the total cost, as ascertained and certified by the flood control board after the letting of the contracts, in the manner hereinabove set forth, exceed the total amount found by the department to be collectible under s. 87.09, all contracts for the construction of the work shall be null and void. At the expiration of one year after such certification, any moneys held by the secretary of administration on account of the project shall be refunded to the persons by whom they were paid to the secretary of administration; and funds in the hands of the flood control board shall be refunded to the public corporation by which they were paid to such board; any funds held by any town, village, or city, having been collected by special assessments against property benefited, shall be refunded to the owners of such property; any funds raised by any public corporation by the issuance of bonds on account of such proposed improvements shall constitute a fund for the retirement or payment of such bonds; and any fund held by any public corporation, having been raised otherwise than by special assessments or bond issues, shall be available for the general purposes of such public corporation. Provided, however, that if within one year after the last mentioned certification of the flood control board there shall be deposited with the treasurer of said board a sum equal to the difference between the aggregate cost of constructing the improvement as estimated by the department and the aggregate cost thereof as determined and certified by the flood control board after the letting of the contracts, said board shall proceed to relet the contracts for the construction of the improvement and to complete the same unless the aggregate of such new contract prices, together with the department's estimate of the cost of acquiring lands and of overhead expenses and of the first 18 months' operation and maintenance, shall again exceed the amount found by the department to be collectible under s. 87.09. The deposit herein referred to may be made by any person or any public or private corporation.

(3) If, after the letting of the contracts and during the progress of the work, it develops that the cost of completing the work exceeds the amount available therefor, the flood control board may borrow temporarily the amounts required for completing the work, upon promissory notes executed by the board, payable with interest on or before the 15th day of March next ensuing; and each town, village and city containing property found by the department to be benefited by the improvement shall upon certification of the flood control board as to the amount to be raised by such town, village or city to repay such temporary loan, include in its next general tax levy the amount so certified. Such certification by the flood control board shall require each such town, village and city to raise the same proportion of the sum required to pay the temporary loan as the total amount previously contributed by such town, village or city pursuant to s. 87.10 (1) (c) bears to the total amount contributed by all of such towns, villages and cities thereunder. If, by reason of the deferred collection of special assessments as authorized in s. 87.10 (1) (a), funds shall be required by the board before they are actually available, the board may borrow such funds upon its promissory notes payable with interest on or before March 15 of the year in which such deferred installments become due, and shall repay such loan out of the proceeds of such installments.

(4) If it shall develop that the total cost of constructing the improvement is less than the total amount available for the payment of such cost, the excess, except as provided in s. 87.13, shall constitute the commencement of the fund provided for in s. 87.14 for the maintenance and operation of the improvement.

History: 1971 c. 211; 2003 a. 33.

87.12 Flood control board, creation, duties, powers, pay, funds. (1) If the department directs the work of constructing the improvement to proceed as provided in s. 87.07, it shall certify the fact of the making of such order to the governor, together with a statement of the county in which the major part of the proposed improvement, as determined by the estimated cost thereof, is to be located and the county in which the largest amount of property to be benefited, as determined by the equalized assessed value thereof, is located. The governor shall thereupon appoint a board to take charge of the construction and the maintenance and operation of the improvement, whose membership shall be determined as follows:

(a) One member to be certified by the board of supervisors of the county in which the major part of the proposed improvement is located;

(b) One member to be certified by the board of supervisors of the county in which the largest amount of property to be benefited is located;

(c) One member to be chosen by the governor from the drainage area.

(2) The board so appointed shall serve for a term of 6 years and until their successors are duly appointed and qualified. Succeeding appointments shall be made in the same manner as original appointments. Any vacancy occurring by reason of the death, resignation or removal from the state, or permanent disability of any person thus appointed, shall be filled in the manner provided for the original appointment of such person. The county board making any such certification of an appointee may at any time certify to the governor the name of another appointee to succeed him or her, and the governor shall thereupon name such new appointee as a member of the board and the tenure of the former appointee shall terminate. The governor may at any time appoint another

person to succeed the person chosen by the governor on said board and the tenure of the latter shall thereupon terminate.

(3) The board thus constituted shall be a body corporate and shall be known as " .... Flood Control Board," the name to commence with the name of the river or body of water defined by the department pursuant to s. 87.04 as being the principal river or body of water involved in the project. The board shall organize by the election of one of its members as chairperson and one as treasurer, who shall be removable at the pleasure of the board. It shall also appoint a secretary, who need not be a member of the board and who shall likewise be removable at pleasure.

(4) Each member of the board shall file the official oath with the department, and the treasurer of the board shall file with the department the official bond, which shall be approved by the department and shall be in amount as follows: Up to the completion of the construction of the improvement, not less than 50 percent of the total cost thereof as estimated by the department; for the first 18 months thereafter, not less than 50 percent of the cost of operation and maintenance during said period as estimated by the department; and thereafter, not less than 50 percent of the annual cost of maintenance and operation as certified by the board pursuant to s. 87.14, except that in case of an addition to or reconstruction pursuant to s. 87.15, and during the period of such work such bond shall be in an additional amount not less than one−half the cost of such addition or reconstruction as estimated by the department.

(5) It shall be the duty of the flood control board to construct the proposed improvement by contract according to the plans and specifications prescribed by the department. No contract for such work shall be let or indebtedness therefor incurred until there shall actually be in the hands of the several treasurers, as provided in s. 87.10, or in the process of collection, the entire sum called for in said section, except the deferred installments, if any, of special assessments, or the amount therefor is assured by contract, lease, sale or lease with option to purchase, as provided in s. 87.18. The board shall have authority to require the treasurers of the public corporations to certify from time to time the amounts actually on hand for such purpose, the amounts in process of collection, and the amounts to be collected upon deferred installments of special assessments. The board shall apply for and obtain all necessary permits from the federal government. It shall have the power to enter upon any land for the purpose of making necessary examinations and surveys, and this right shall extend to its duly authorized assistants, representatives and employees, including any contractor engaged to do any part of the work of constructing the improvement, together with the representatives and employees of any such contractor; but any such contractor shall be responsible for any damage the contractor may do. The board has power to borrow money for the construction of a reservoir and to issue its corporate bonds for the amount so borrowed, securing the same by a mortgage on the reservoir property. The rate of interest shall not exceed 6 percent nor shall the time of repayment exceed 30 years.

(6) The board shall have the power to institute and prosecute in the manner provided in ch. 32 of the statutes such eminent domain proceedings as may be necessary in the construction of said improvement. When necessary for that purpose, this right of eminent domain shall be dominant over the rights of eminent domain of public or private corporations or governmental agencies. The board shall also have the power to acquire any lands or interest therein necessary for the aforesaid purpose, by gift, purchase or lease. Any title acquired by condemnation or gift, purchase or lease shall be held in the name of the flood control board in trust for the several towns, villages and cities and contributing, as provided in s. 87.10 (1) (c) and (d), in proportion to the amounts of their several contributions. The board shall have the power to employ engineers, attorneys, agents, assistants, clerks, employees and laborers as it may deem advisable for the proper execution of its duties, and to fix their compensation.

(7) Each member of the board shall receive compensation at the rate of $10 for each day or major part thereof actually devoted to the performance of duties as such member and shall also be reimbursed the actual necessary expenses incurred by the member in the performance of such duties, upon verified statements in each case which shall be duly audited by the board and filed with the secretary.

(8) All moneys of the board shall be deposited in credit unions, savings banks, savings and loan associations or state or national banks designated by the board, and shall be drawn out only upon checks, share drafts or other drafts signed by the chairperson and the treasurer of the board. As funds are required by the board for the work of constructing the improvement, the board shall by resolution requisition the amounts required from the treasurers of the public corporations holding money available for that purpose under s. 87.10, and each treasurer shall pay the amount requisitioned to the board. The amount to be requisitioned at any time from any treasurer shall bear the same proportion to the total amount requisitioned at that time, as the amount certified by the treasurer under this section to be on hand and available bears to the total amount certified by all of the treasurers to be on hand and available.

History: 1983 a. 368; 1991 a. 221, 316; 1993 a. 184.

87.13 Disbursements by board. All sums which shall be deposited with the secretary of administration under s. 87.07 (4) for the construction of the improvement shall be paid by the secretary of administration to the flood control board upon requisitions from said board. If any moneys, other than those for operation and maintenance during the first 18 months, remain unexpended in the hands of the flood control board or subject to their requisition after the completion of the construction of the improvement, and if the funds for construction of the improvement shall have been in part raised through voluntary contributions under s. 87.07 (4) or 87.11 (2), the amounts thus contributed, or such proportion thereof as the funds remaining in the hands of the board or subject to its requisition will pay, shall be returned to the persons or corporations who made such voluntary contributions, in proportion to the amounts contributed by them.

History: 2003 a. 33.

87.14 Operation and maintenance. The flood control board is authorized to sell, lease, or lease with power to purchase, any reservoir proposed to be constructed, in the process of construction or completed, to a duly organized river improvement company as defined by s. 182.016, on such terms and conditions as are approved by the department of natural resources as hereinafter provided. Unless so leased or sold it shall be the duty of the flood control board to maintain and operate said improvement. The cost of operation and maintenance during the period intervening between the completion of said improvement and the date when funds provided under this section become available shall be paid from the funds provided for maintenance pursuant to the estimate made by the department as provided in s. 87.07 (3). Prior to the first day of November in each year the flood control board shall certify to the clerk of each town, village and city in which lands to be benefited by the improvement are located an estimated budget, detailed as far as practicable, of the cost of operation and maintenance of said improvement for the succeeding calendar year, together with the amount due upon any judgments outstanding against the board, except those judgments from which the board has appealed or intends to appeal, and shall certify at the same time the portion of such cost to be borne by each such town, village and city. This shall be determined in the same manner and according to the same proportions as provided in s. 87.10 (1) (c). It shall thereupon become the duty of each such town, village and city to include in its next succeeding tax levy the amount so certified and to forward such amount, on or before March 15 following, to the flood control board.

87.15 Repairs, replacements and extensions; procedure. Whenever the flood control board shall determine and certify that repairs or replacements are necessary to such an extent as to amount to a partial reconstruction of the improvement rather than ordinary maintenance, or whenever said board shall determine that material additions, extensions or betterments to said improvement are necessary, the board shall file a petition with the department setting forth the necessity for such repairs, replacements, additions, extensions or betterments, and thereupon the department shall proceed to make the same determinations and certifications as in the case of an original petition for the construction of the improvement, except that the enumeration of lands or other property benefited and of the political subdivisions included within the drainage area shall be the same as in the original order for the construction of the improvement, unless the department shall affirmatively find that changes in such enumeration are necessary because of errors in the original findings.

87.16 Court proceedings given preference. Any action brought in any court for the purpose of enjoining, preventing or interfering with the construction, repairing, reconstruction, operation or maintenance of the improvement ordered by the department, or any part thereof, except actions to review the orders of the department under ss. 87.01 to 87.17, shall be given preference in the circuit court. An appeal shall be given preference.

History: 1977 c. 187, 449; 1983 a. 219.

Judicial Council Note, 1983: This section is amended by repealing the appeal deadline of 30 days from entry of the order or judgment for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats. The provisions requiring preferential court treatment are harmonized and standardized with similar provisions in the statutes. [Bill 151−S]

87.17 Trespass, penalty. Any person who shall willfully, maliciously or wantonly destroy, injure, remove, meddle or tamper with any portion of the improvements constructed pursuant to ss. 87.01 to 87.17, whether during construction or after completion of the same, or shall willfully, maliciously or wantonly obstruct, interfere with or hamper the flood control board or any of its assistants, agents, servants or employees, or any contractor employed by it in the work of constructing, repairing, reconstructing, operating or maintaining the same, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding $1,000, or both.

87.18 Lease, sale and lease with option to purchase the project. Whenever the flood control project consists of a storage reservoir and authority to create, operate and maintain a reservoir on the river affected by such storage reservoir is vested in a duly organized river improvement company as defined by s. 182.016, and the petitioners file with the department of natural resources a petition and a proposed contract with such improvement company for a lease, sale, or lease with option to purchase said reservoir, and the department finds the terms and conditions of such contract are sufficient to assure the payment of the amount the board will be obligated to pay for the cost of the reservoir and the maintenance and operation of the same, and the project will secure effective flood control and promotion of the public welfare, then notices, proceedings and assessments provided by ss. 87.04 to 87.12 are not required. The department, however, shall make findings as required by s. 87.05 and shall order that the flood control board be appointed and shall so certify to the governor as provided by s. 87.12. The governor shall thereupon appoint the board as provided in said s. 87.12. The proposed contract filed with the department by petitioners for the sale, lease, or lease with option to purchase said reservoir property shall not be binding upon the board so appointed unless the board approves such contract. Upon approval the board shall so report to the department and file with it a final contract executed by the board and lessee or purchaser. The department has authority to approve or disapprove such contract. If the department approves such contract, then it shall be final and the department shall thereupon order the board to proceed with the work. When such reservoir property is sold and the purchase price has been fully paid and any indebtedness assumed by the purchaser has been paid and discharged, including the fees and expenses of the board, and the department so finds, the said board shall thereupon be dissolved by order of the department.

87.30 Floodplain zoning. (1) STATE POWERS. (a) If any county, city or village does not adopt a reasonable and effective floodplain zoning ordinance 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 or a municipality or upon its own motion as soon as practicable and after public hearing, determine and fix by order the limits of any or all floodplains within a county, city or village within which serious damage may occur. Thereafter the department shall as soon as practicable after public hearing adopt a floodplain zoning ordinance applicable to a county, city or village, except that no floodplain zoning ordinance may be enacted unless the hydraulic and engineering studies necessary to determine the floodway or floodplain limits, or both, if 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 the studies are reasonable and accurate. Thirty days' notice of all hearings on floodplain 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 department of transportation. Exhibits and testimony shall be a part of the official record. Failure of a county, city or village to adopt a floodplain 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 under this paragraph by the department. The department shall make a decision in writing of insufficiency of any county, city or village floodplain zoning ordinance before adopting an ordinance superseding a county, village or city ordinance. All orders of the department under this subsection which either fix the limits of floodplains or enact local floodplain zoning ordinances shall, when they are in final draft form and before they are issued, be referred to the appropriate committees of the legislature, where the procedure under s. 227.19 shall apply. Section 227.15 does not apply to the orders of the department under this section. Orders of the department under this section shall, after becoming effective, be deemed rules for purposes of s. 227.26, and may be suspended by the joint committee for review of administrative rules.

NOTE: Chapter 437, laws of 1977, which amended par. (a), contained an extensive note explaining the amendment. See the 1977 session law volume.

(b) All final orders, determinations or decisions made under this subsection shall be subject to review under ch. 227 and be effective 20 days after the same have been served unless such order, determination and decision specifies a different date upon which the same shall be effective. Such floodplain determination and zoning ordinance shall be of the same effect as if adopted by the county, city or village. Thereafter it is the duty of the county, city, village and town officials to administer and enforce the ordinance in the same manner as if the county, city or village had adopted it. Floodplain determinations and zoning ordinances so adopted may be modified by the county, city or village concerned only with the written consent of the department except that nothing in this subsection may be construed to prohibit a county, city, village or town from adopting a floodplain ordinance more restrictive than that adopted by the state.

(c) Except as provided under par. (a), the cost of such floodplain determination and ordinance promulgation and enforcement by the state shall be assessed against the county, city or village concerned and collected in substantially the same manner as other taxes levied by the state.

(d) For an amendment to a floodplain zoning ordinance that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department may not proceed

under this subsection, or otherwise review the amendment, to determine whether the ordinance, as amended, is insufficient.

(1d) IMPROVEMENTS TO NONCONFORMING BUILDINGS. (a) In this subsection:

1. "Nonconforming building" has the meaning specified by rule by the department for purposes of floodplain zoning under this section and includes a building with a nonconforming use.

2. "Nonconforming use" has the meaning specified by rule by the department for purposes of floodplain zoning under this section.

3. "Nonflood disaster" means a fire or an ice storm, tornado, windstorm, mudslide or other destructive act of nature, but excludes a flood.

(b) For nonconforming buildings that are damaged or destroyed by a nonflood disaster a floodplain zoning ordinance shall permit the repair, reconstruction or improvement of any such nonconforming building, in order to restore it after the nonflood disaster except as provided in par. (c).

(c) A floodplain zoning ordinance may not permit the repair, reconstruction or improvement of a nonconforming building if the nonconforming building, after repair, reconstruction or improvement, will fail to meet one or more of the minimum requirements applicable to such a nonconforming building under 42 USC 4001 to 4129 or under the regulations promulgated thereunder.

(1g) REGULATION OF FLOODPROOFED BASEMENTS. The department may not promulgate any rule or impose any restriction that does any of the following:

(a) Results in an ordinance or other regulation containing provisions for floodproofed residential basements that are more restrictive than those imposed by the federal emergency management agency.

(b) Allows the department to deny an exception for such basements if the federal emergency management agency has granted an exception under 44 CFR 60.6.

(1m) JURISDICTION OVER DRAINAGE DITCHES LIMITED. Notwithstanding any other provision of law or administrative rule promulgated thereunder, a floodplain zoning ordinance required under sub. (1) does not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not within the floodplain of a natural navigable stream or river;

(b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and

(c) Such lands are maintained in nonstructural agricultural use.

(1r) LAND OUTSIDE OF FLOODPLAINS. This section does not authorize a county to impose a requirement, condition, or restriction on land that is not within any floodplain in the county.

(2) ENFORCEMENT AND PENALTIES. (a) Except as provided in par. (b), every structure, building, fill, or development placed or maintained within any floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 is a public nuisance and the creation thereof may be enjoined and maintenance thereof may be abated by action at suit of any municipality, the state or any citizen thereof. Any person who places or maintains any structure, building, fill or development within any floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 may be fined not more than $50 for each offense. Each day during which such violation exists is a separate offense.

(b) Paragraph (a) does not apply to a structure, building, fill, or development placed or maintained as part of a mining operation covered by a mining permit under s. 295.58 except to the extent that regulation of the placement or maintenance of the structure, building, fill, or development is required for compliance with a floodplain zoning ordinance as provided under s. 295.607 (3).

History: 1971 c. 164; 1975 c. 232, 301, 422; 1977 c. 29 s. 1654 (8) (c); 1977 c. 437, 447; 1979 c. 34 s. 2102 (58) (b); 1981 c. 339; 1985 a. 182; 1995 a. 201, 311, 455; 1999 a. 9; 2011 a. 6; 2013 a. 1; 2015 a. 178.

Cross−reference: See also ch. NR 116, Wis. adm. code.

A flood plain zoning ordinance adopted by the DNR under sub. (1) was a "rule" under s. 227.01. Citizens for Sensible Zoning, Inc. v. DNR, 90 Wis. 2d 804, 280 N.W.2d 702 (1979).

The trial court erred when it placed the burden on the department to prove theat the city's ordinance was not reasonable and effective. City of La Crosse v. DNR, 120 Wis. 2d 168, 353 N.W.2d 68 (Ct. App. 1984).

An area need not be navigable to be a lakebed. The ordinary high water mark was determinative. State v. Trudeau, 139 Wis. 2d 91, 408 N.W.2d 337 (1987).

There is nothing in the DNR's general grant of authority to regulate floodplains that permits the agency to write rules that nullify the discretion over variance decisions that the legislature has specifically committed to local boards of adjustment. To the extent that a DNR rule prohibits county boards of adjustment from granting variances from flood elevation requirements when the proper statutory standards for variances have otherwise been met, it is invalid. State v. Outagamie County Board of Adjustment, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, 98−1046.

County floodplain zoning ordinances adopted by the department under this section do not need approval of town boards in order to become effective within all unincorporated areas of the county. 62 Atty. Gen. 264.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

The public trust doctrine. 59 MLR 787.

Floodplain, wetland and shoreland regulation in Wisconsin. Johnson. WBB May 1988.

87.304 Regulation of historic property in floodplains.

(1) DEFINITIONS. In this section:

(a) "Historic property" means any building, structure or object that is any of the following:

1. Individually listed on the national register of historic places in Wisconsin or the state register of historic places.

2. Included in a district which is listed on the national register of historic places in Wisconsin and has been determined by the state historical society to contribute to the historic significance of the district.

3. Individually listed on the list of locally designated historic places under s. 44.45.

(b) "National register of historic places in Wisconsin" has the meaning given in s. 44.31 (5).

(2) TREATMENT OF HISTORIC PROPERTY. (a) The department shall by rule promulgate procedures for use by cities, villages and counties in doing all of the following:

1. Issuing variances to floodplain zoning ordinances that will be consistent with 44 CFR 60.6 but that will allow repair or rehabilitation of historic properties in floodplains to the maximum extent feasible.

2. Providing sufficient measures for public safety and protection for property in floodplains.

(b) The rules promulgated under par. (a) may include different procedures for floodway and flood−fringe areas.

History: 1991 a. 39; 2007 a. 96.

87.305 Use of certain facilities on St. Feriole island.

(1) DEPARTMENT APPROVAL. Notwithstanding s. 87.30 or any rule promulgated, order issued or ordinance adopted under that section, the department shall authorize the connection of a sanitary sewer line from the sewerage treatment plant in the city of Prairie du Chien and connection of the public water system of the city of Prairie du Chien to the railroad depot and the Dousman hotel on St. Feriole island and shall authorize historic use of the Dousman hotel as a hotel, as defined under s. 97.01 (7), if all of the following conditions are met:

(a) The department approves the developer's plans and specifications for floodproofing the railroad depot and the Dousman hotel.

(b) The department approves the city of Prairie du Chien's flood warning system and emergency evacuation plan and the city of Prairie du Chien agrees to test the evacuation plan at least once each year.

(c) The department informs the U.S. army corps of engineers, the department of transportation, the division of emergency management and the state historical society of its intention to authorize connection of sewer service and a water system to the railroad depot and the Dousman hotel and occupancy of the hotel and either:

1. Those agencies do not object within 30 days after receiving a copy of the notice; or

2. Any objections of those agencies are resolved in negotiations between those agencies, the city of Prairie du Chien and the developer.

(d) The state historic preservation officer reviews the developer's plans for preservation or rehabilitation of the Dousman hotel and certifies that the preservation or rehabilitation will be consistent with the standards used by the U.S. secretary of the interior to certify rehabilitations under 26 USC 47 (c) (2).

(2) REVOCATION OF APPROVAL. The department may revoke the approval granted under sub. (1) if any of the following occur:

(a) A floodproofing and flood warning system are not constructed substantially as designed in the plans and specifications approved by the department under sub. (1) (a).

(b) The owner or operator of the railroad depot and the Dousman hotel fails to maintain the floodproofing system substantially as designed in the plans and specifications approved by the department under sub. (1) (a).

(c) The city of Prairie du Chien fails to maintain the flood warning system and to test the emergency evacuation plan at least once each year.

(d) The state historic preservation officer determines that the preservation or rehabilitation of the Dousman hotel is not consistent with the standards used by the U.S. secretary of the interior to certify rehabilitations under 26 USC 47 (c) (2).

History: 1987 a. 282; 1993 a. 27; 1995 a. 27, 247, 378; 1997 a. 252; 2015 a. 55.

87.31 Floodplain and shoreland mapping assistance program. (1) DEPARTMENT TO ADMINISTER; PURPOSE. The department shall administer a floodplain and shoreland mapping assistance program to provide counties, cities and villages with financial assistance to produce adequate topographical mapping of floodplain and shoreland areas and to delineate floodplain and floodway boundaries, to assist in the establishment and administration of floodplain and shoreland ordinances.

(2) CRITERIA. The department shall develop on a statewide basis a priority list for awarding mapping grants. The criteria for establishing the priority list includes but is not limited to:

(a) The adequacy of existing mapping.

(b) The existence of an approved floodplain or shoreland zoning ordinance.

(c) The status of studies to develop flood profiles for the areas to be mapped.

(d) The potential for future development in the areas to be mapped.

(e) The potential for flood damage in the areas to be mapped.

(f) Applications made by 2 or more counties, cities or villages which would enable mapping of an entire river system.

(g) The availability of funds for mapping from other sources.

(3) PROCEDURE. The department shall establish by rule the procedure for application for and awarding of mapping grants.

(4) APPLICATION. A county, city or village which seeks a mapping grant shall submit a grant application which includes:

(a) The location, length and extent of the river or shorelands to be mapped.

(b) The estimated cost of and time required to complete the proposed mapping.

(c) The information necessary to determine the priority of the application under sub. (2).

(d) A statement that the applicant will assume responsibility for administering any subcontracts with mapping contractors.

(e) A statement that the applicant will adopt the resultant map, if approved by the department, as the official zoning map and any necessary ordinances or amendments within 6 months after the department approves the map.

(f) Any other information required by rule by the department.

(5) GRANTS. (a) Prior to February 8, 1986, the department shall make grants−in−aid from the appropriation under s. 20.370 (4) (gc), 1983 stats., or s. 20.370 (4) (fc), 1985 stats., to a county, city or village which qualifies under the mapping grant program. A grant−in−aid may not exceed 50 percent of the expected cost of the topographical mapping.

(b) Upon approval by the department and acceptance by the applicant, the department may make available 75 percent of the mapping grant award. The department shall make available the remaining 25 percent of the mapping grant at the time the applicant adopts the resultant map as approved by the department as the official zoning map and any necessary ordinances and amendments.

(c) A grant is valid for one year after the date of acceptance but the department may extend this period up to 3 years if warranted by the circumstances.

(6) FAILURE TO ADOPT MAP. If a mapping grant recipient fails to adopt the map as the official zoning map or fails to adopt any necessary ordinances or amendments within 6 months after the department approves the map without adequate justification as determined by the department, the recipient may not receive any further state funds under the mapping grant program and shall be required to reimburse the department for state funds already received under the program.

(7) SUNSET. After February 8, 1986, no county, city or village may submit a grant application under sub. (4) and the department may not award any additional grants−in−aid under sub. (5).

History: 1979 c. 34; 1983 a. 27 s. 2202 (38); 1985 a. 29 s. 3202 (39); 1985 a. 120.

Cross−reference: See also ch. NR 129, Wis. adm. code.