CHAPTER 92

SOIL AND WATER CONSERVATION AND ANIMAL WASTE MANAGEMENT

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Cross-reference: See also ch. ATCP 50, Wis. adm. code.

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 adjudicated 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; 2005 a. 387.

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 land and water resource management plans.* The board shall review land and water resource management plans prepared under s. 92.10 and make recommendations to the department on approval or disapproval of those plans.

(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 281.65 (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. 281.20 (3) (b) when review is requested under s. 281.20 (5). 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. 281.65 (7) (a) 2. when review is requested under s. 281.65 (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; 1995 a. 227; 1997 a. 27; 2009 a. 276.

Cross-reference: See also ch. ATCP 50, Wis. adm. code.

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. 281.65, 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. 281.65 (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 281.65 for milkhouse wastewater.

(k) *Nutrient management rules.* The department shall promulgate rules to improve agricultural nutrient management in this state. The rules shall be consistent with rules promulgated under s. 281.16 (3) and shall include incentives, educational and outreach provisions and compliance requirements.

(L) *Technical assistance; performance standards.* The department shall provide technical assistance to county land conser-

vation committees and local units of government for the development of ordinances that implement standards adopted under s. 92.07 (2), 92.15 (2) or (3) or 281.16 (3). The department's technical assistance shall include preparing model ordinances, providing data concerning the standards and reviewing draft ordinances to determine whether the draft ordinances comply with applicable statutes and rules.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1987 a. 27; 1991 a. 309; 1995 a. 227; 1997 a. 27; 1999 a. 9; 2009 a. 28.

Cross-reference: See also ch. ATCP 50, Wis. adm. code.

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. 59.56 (3) (b).

2. The county board shall appoint to the land conservation committee a person who is engaged in an agricultural use, as defined under s. 91.01 (2) (a) 1. to 7.

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; 1995 a. 201; 2011 a. 263; 2023 a. 32.

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

Discussing committee responsibilities and prohibitions of private interests in public contracts. 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. The standards and specifications for agricultural facilities and practices that are constructed or begun on or after October 14, 1997, and, if cost-sharing is available to the owner or operator under s. 92.14 or 281.65 or from any other source, for agricultural facilities and practices that are constructed or begun before that date shall be consistent with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3). The land conservation committee shall use the rules promulgated under s. 281.16 (3) (e) to determine whether cost-sharing is available.

(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), 59.56 (3) 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 control 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.

(7m) ASSISTANCE TO THE DEPARTMENT OF TRANSPORTATION. Each land conservation committee shall cooperate with the department of transportation as requested under s. 85.195.

(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. 59.693 or an ordinance enacted under authority granted under s. 101.1206.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1991 a. 309; 1993 a. 16; 1995 a. 201; 1997 a. 27; 1999 a. 9; 2009 a. 28; 2011 a. 32.

Cross-reference: See ss. 59.70 (20) (c) and 60.10 (2) (i) for authorization of county or town appropriations.

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 Land and water resource management planning program. (1) CREATION. There is created a land and water resource management planning program. The department, board and land conservation committees jointly shall develop and administer this program.

(2) PURPOSES. The purposes of the land and water resource management 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.

(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 department of administration 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 preparing land and water resource management plans.

(d) *Plan review.* The department shall review and approve or disapprove land and water resource management plans submitted by the land conservation committees. 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 land and water resource management 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 shall prepare a land and water resource management plan that, at a minimum, does all of the following:

1. Includes an assessment of water quality and soil erosion conditions throughout the county, including any assessment available from the department of natural resources.

2. Specifies water quality objectives for each water basin, priority watershed, as defined in s. 281.65 (2) (c), and priority lake, as defined in s. 281.65 (2) (be).

3. Identifies the best management practices to achieve the objectives under subd. 2. and to achieve the tolerable erosion level under s. 92.04 (2) (i).

4. Identifies applicable performance standards and prohibitions related to the control of pollution from nonpoint sources, as defined in s. 281.65 (2) (b), and to soil erosion control, including those under this chapter and chs. 281 and 283 and ss. 59.692 and 59.693.

5. Includes a multiyear description of planned county activities, and priorities for those activities, related to land and water resources, including those designed to meet the objectives specified under subd. 2. and to ensure compliance with the standards and prohibitions identified under subd. 4.

6. Describes a system to monitor the progress of activities described in the plan.

7. Includes a strategy to provide information and education related to soil and water resource management.

8. Describes methods for coordinating activities described in the plan with programs of other local, state and federal agencies.

(b) *Notification.* A land conservation committee shall notify

landowners and land users of the results of any determinations concerning soil erosion rates and nonpoint source water pollution, and provide an opportunity for landowners and land users to present information relating to the accuracy of the determinations during preparation of the land and water resource management plan.

(c) *Hearings.* A land conservation committee shall hold one or more public hearings on the land and water resource management plan.

(d) *Plan submission.* A land conservation committee shall submit the land and water resource management plan to the board and department.

(8) DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES. The department of natural resources shall provide counties with assistance in land and water resource management planning, including providing available water quality data and information, providing training and support for water resource assessments and appraisals and providing related program information.

History: 1981 c. 346; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31; 1997 a. 27 ss. 2488s to 2489L, 9456 (3m); 1999 a. 9; 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 s. 23; 2005 a. 25 ss. 1742, 2493.

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 70 days after the adoption of the ordinance or revision. The form of the ballot shall correspond substantially to the form prescribed under 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; 1999 a. 182; 2011 a. 75.

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

92.115 Municipal soil conservation on private lands. Any city, village or town by its governing body or through a committee designated by it for the purpose, may contract to do soil conservation work on privately owned lands but no contract may involve more than $1,000 for any one person and the amount of work done for any one person may not exceed $1,000 annually.

History: 1975 c. 312; 1981 c. 317, 346; 1999 a. 150 s. 371; Stats. 1999 s. 92.115.

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 lim-

ited 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. 281.65 (2) (a).

(b) "Nonpoint source" has the meaning given under s. 281.65 (2) (b).

(c) "Priority watershed" has the meaning given under s. 281.65 (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 statewide financial and technical assistance for land and water conservation activities at the county level.

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

(e) Promoting soil and water conservation by persons claiming farmland preservation tax credits under subch. IX of ch. 71.

(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, including providing a single process for grant application, funding allocation, reporting and evaluation.

(3) BASIC ALLOCATIONS TO COUNTIES. To help counties fund their land and water conservation activities, the department shall award an annual grant from the appropriation under s. 20.115 (7) (c), (qe), or (qf) or s. 20.866 (2) (we) to any county land conservation committee that has a land and water resource management plan approved by the department under s. 92.10 (4) (d), and that, by county board action, has resolved to provide any matching funds required under sub. (5g). The county may use the grant for land and water resource management planning and for any of the following purposes, consistent with the approved land and water resource management plan:

(a) County land conservation personnel to administer and implement activities directly related to any of the following:

1. Compliance with soil and water conservation requirements applicable to persons claiming farmland preservation tax credits under subch. IX of ch. 71.

2. Animal waste management activities and ordinances under s. 92.16.

4. Nonpoint source water pollution abatement activities.

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

(b) Grants to farmers for implementing best management practices required under a shoreland management ordinance enacted under s. 92.17, including reimbursement for all of the following:

1. The cost of fencing that the landowner installs in order to comply with the ordinance.

2. 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.

(c) Implementing land and water resource management projects approved in plans under s. 92.10.

(d) Implementing land and water resource management projects undertaken to comply with soil and water conservation requirements applicable to persons claiming farmland preservation tax credits under subch. IX of ch. 71.

(e) Construction of a facility or system related to animal waste management by a farmer who has received a notice of discharge under ch. 283 or management practices required under a notice to a farmer under s. 281.20 (3). The amount of a grant for management practices required under a notice to a farmer under s. 281.20 (3) shall be based on the cost of the method of controlling nonpoint source pollution that the department determines to be the most cost-effective.

(f) Training required under s. 92.18 or any other training necessary to prepare personnel to perform job duties related to this section or s. 281.65.

(g) Technical assistance, education and training, ordinance development or administration related to this chapter or s. 281.65.

(5g) MATCHING FUNDS. (a) Except as provided in par. (b), if a grant under sub. (3) provides funding for salary and fringe benefits for more than one county staff person, a county shall provide matching funds, as determined by the department by rule, equal to 30 percent of the cost of salary and fringe benefits for the 2nd staff person and 50 percent of the cost of salary and fringe benefits for any additional staff persons for whom the grant provides funding.

(b) For a grant awarded for a year before 2010, the department shall require a county to provide matching funds for priority watershed project staff equal to not less than 10 percent nor more than 30 percent of the staff funding that was provided to the county for 1997 for a priority watershed that was designated before July 1, 1998. This paragraph does not apply to matching funds for priority watershed project staff after the termination date that was in effect on October 6, 1998, for the priority watershed project.

(5r) ANNUAL GRANT REQUEST. Every land conservation committee shall prepare annually a grant request that describes the land and water resource staffing needs and activities to be undertaken or funded by the county under this chapter and ss. 281.65 and 281.66 and the funding needed for those purposes. The grant request shall be consistent with the county's plan under s. 92.10. The land conservation committee shall submit the grant request to the department.

(6) ADMINISTRATION OF GRANTS. (b) The department and the department of natural resources shall prepare an annual grant allocation plan identifying the amounts to be provided to counties under this section and ss. 281.65 and 281.66. In the allocation plan, the departments shall attempt to provide funding under this

section for an average of 3 staff persons per county with full funding for the first staff person, 70 percent funding for the 2nd staff person and 50 percent funding for any additional staff persons and to provide an average of $100,000 per county for cost-sharing grants. The department shall submit that plan to the board.

(c) When preparing an annual grant allocation plan under par. (b), the department and the department of natural resources shall consider the existence and location of impaired water bodies that the department of natural resources has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A) and agricultural enterprise areas designated under s. 91.84, and shall give priority to providing cost-sharing for nutrient management planning projects that are in or near, or that affect, those areas.

(d) The board shall review the annual allocation plan submitted to it under par. (b) and make recommendations to the department of agriculture, trade and consumer protection and the department of natural resources on approval, modification or disapproval of the plan.

(g) Every grant awarded to a county under this section and s. 281.65 shall be consistent with the plans under s. 92.15, 1985 stats., and under this section and ss. 92.10 and 281.65.

(gm) A county may not provide cost-sharing funds using funds provided under this section in an amount that exceeds 70 percent of the cost of a project, except in cases of economic hardship, as defined by the department by rule.

(h) 1. A county may not provide cost-sharing funds using funds provided 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.

3. Nothing in this paragraph affects the authority of the department of natural resources to act under ch. 283.

(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 the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 and with plans approved under this section, under s. 92.15, 1985 stats., and under ss. 92.10 and 281.65, or to repay the cost-sharing funds.

(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) A county may provide cost-sharing funds from 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.

(m) The department of agriculture, trade and consumer protection and the department of natural resources shall assist counties in conducting the activities for which grants under sub. (3) may be used.

(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 land 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. 281.65.

(10) TRAINING. The department may contract with any person for services to administer or implement this chapter, including information and education and training.

(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. 281.65 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. 281.65 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, ALLOCATION, REPORTING AND EVALUATION. 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 ss. 281.65 and 281.66. The department, jointly with the department of natural resources, shall implement a single process for grant application, funding allocation, reporting and evaluation for counties receiving grants under this section and ss. 281.65 and 281.66.

(14m) COORDINATION. The department of agriculture, trade and consumer protection and the department of natural resources, jointly, shall review applications from counties for grants under sub. (5r) and, for projects and activities selected to receive funding shall determine whether to provide funding under this section or under s. 281.65 or 281.66.

(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.

(16) COMMERCIAL NITROGEN OPTIMIZATION PILOT PROGRAM. (a) In addition to any grants provided under sub. (3), the department shall award grants from the appropriation under s. 20.115 (7) (qf) to agricultural producers and to University of Wisconsin System institutions as provided under this subsection.

(b) An agricultural producer may apply for and receive a grant to implement a project, for at least 2 growing seasons, that optimizes the application of commercial nitrogen. Any agricultural producer receiving a grant under this subsection shall collaborate

with any University of Wisconsin System institution under par. (c).

(c) A University of Wisconsin System institution shall collaborate with an agricultural producer that applies for a grant under par. (b) to monitor the grant project on-site. A collaborating institution may receive a grant to implement the monitoring under this paragraph.

(d) The department may not make a grant to an agricultural producer and the University of Wisconsin System institution collaborating with the agricultural producer in an amount that totals more than $50,000. No more than 20 percent of this total amount may be awarded to the collaborating University of Wisconsin System institution.

(e) In making a grant under this subsection, the department shall collaborate with the University of Wisconsin System institution and the agricultural producer. The department shall also seek to provide grants to agricultural producers in different parts of the state and to provide grants for projects in areas that have different soil types or geologic characteristics. The department shall prioritize projects that are innovative and that are not currently funded through existing state or federal programs and shall prioritize agricultural producers that plan to implement projects for longer periods.

(f) An agricultural producer and the University of Wisconsin System institution collaborating with the agricultural producer in implementing a project under this subsection may not be held civilly liable and may not be subject to any remedial action or other administrative or enforcement action from the department or the department of natural resources for any discharge of environmental pollution from the land involved in the project, if the actions were taken in good faith by the agricultural producer and the institution and conformed to the project specifications that were proposed to the department in an application for a grant under this subsection.

(g) The department shall promulgate rules to implement this subsection.

(17) CROP INSURANCE PREMIUM REBATES FOR PLANTING COVER CROPS. (a) From the appropriation under s. 20.115 (7) (qf), the department may provide rebates in the amount of $5 for each acre of a cover crop planted for crop insurance premiums paid on those acres. In providing crop insurance premium rebates under this subsection, the department may cooperate with the risk management agency of the U.S. department of agriculture, and may cooperate with any related federal agency, state agency, or agricultural organization.

(b) In providing crop insurance premium rebates under this subsection, the department may promulgate the following rules:

1. Rules determining the cover crops for which crop insurance premium rebates are provided under this subsection.

2. Rules establishing procedures for verifying that a cover crop is planted on acres for which a crop insurance premium rebate is provided under this subsection.

3. Rules determining the maximum amount of acres for which an applicant may receive funding in a year, except that the department may impose such a maximum only in years in which the total amount of funding requested by eligible applicants exceeds the total funding available.

4. Rules establishing the application and award process, including the application deadline and grant award schedule.

(c) The department may not provide a crop insurance premium rebate under this subsection for the planting of a cover crop on an acre for which funding for planting a cover crop is provided from a federal or state grant or incentive program other than this subsection, including from any of the following:

1. The federal environmental quality incentives program under 16 USC 3839aa to 3839-8.

2. The federal conservation stewardship program under 16 USC 3839aa-21 to 3839aa-25.

3. A producer-led watershed protection grant under s. 93.59.

4. A grant provided under sub. (3).

5. A lake management planning grant under s. 281.68.

6. A lake management grant under s. 281.69.

7. A river protection grant under s. 281.70.

(d) To receive a crop insurance premium rebate under this subsection, a person shall submit an application to the department, under the process established by the department by rule, after a cover crop is planted on the acres for which the person applies for a crop insurance premium rebate.

(e) The department may conduct inspections to verify that recipients of a crop insurance premium rebate are in compliance with the provisions of this subsection and any rules promulgated under this subsection.

History: 1987 a. 27, 297; 1989 a. 56; 1991 a. 39, 309; 1993 a. 16, 166, 213; 1995 a. 27, 225, 227; 1997 a. 27; 1999 a. 9, 185; 2001 a. 16; 2009 a. 28; 2017 a. 59; 2021 a. 223.

92.15 Local regulation of livestock operations. (1) In this section:

(a) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.

(b) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(2) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may enact regulations of livestock operations that are consistent with and do not exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3).

(3) (a) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may enact regulations of livestock operations that exceed the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 (3) only if the local governmental unit demonstrates to the satisfaction of the department of agriculture, trade and consumer protection or the department of natural resources that the regulations are necessary to achieve water quality standards under s. 281.15.

(b) The department of agriculture, trade and consumer protection and the department of natural resources shall, by rule, specify procedures for review and approval of proposed local governmental unit regulations under par. (a).

(4) A local governmental unit may not apply a regulation under sub. (2) or (3) to a livestock operation that exists on October 14, 1997, unless the local governmental unit determines, using the rules promulgated under s. 281.16 (3) (e), that cost-sharing is available to the owner or operator of the livestock operation under s. 92.14 or 281.65 or from any other source.

(5) Any livestock operation that exists on October 14, 1997, and that is required to obtain a permit under s. 283.31 or that receives a notice of discharge under ch. 283 may continue to operate as a livestock operation at the same location notwithstanding s. 59.69 (10) (am) or 62.23 (7) (h) or any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7), if the livestock operation is a lawful use or a legal nonconforming use under any zoning ordinance enacted under s. 59.69, 60.61, 60.62, 61.35 or 62.23 (7) on October 14, 1997.

History: 1997 a. 27; 1999 a. 9; 2011 a. 170.

Cross-reference: See also ch. NR 151, Wis. adm. code.

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.

Cross-reference: See also s. ATCP 50.95, Wis. adm. code.

An 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 may not enforce a shoreland management ordinance unless the county uses funds provided under s. 92.14 (3) for grants for the purposes under s. 92.14 (3) (b). A city, village or town may not enforce a shoreland management ordinance unless the county in which the city, village or town is located uses funds provided under s. 92.14 (3) for grants for the purposes under s. 92.14 (3) (b).

(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; 1999 a. 9.

Cross-reference: See also s. ATCP 50.58, Wis. adm. code.

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 281.65, 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 engineering 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.

(2m) If a person is certified under this section to review plans for, or conduct inspections of, a type of agricultural engineering practice at one of the levels under sub. (2) (c), the department shall allow the person to review plans for, or conduct inspections of, all types of agricultural engineering practices at that same level without requiring any additional certification.

(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; 1995 a. 227; 1999 a. 9.