



State of Wisconsin
2015 - 2016 LEGISLATURE

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2015 SENATE BILL 572

January 14, 2016 – Introduced by Senators WANGGAARD and MARKLEIN, cosponsored by Representatives SANFELIPPO, CRAIG, E. BROOKS, KLEEFISCH, KUGLITSCH, MURPHY, A. OTT, RIPP and SKOWRONSKI. Referred to Committee on Agriculture, Small Business, and Tourism.

1 **AN ACT to repeal** 88.83 (1m) and 88.83 (1r); **to renumber and amend** 88.83 (1);
2 **to amend** 88.13, 88.62 (3) (a), 88.83 (title), 88.83 (3), 88.83 (4), 88.83 (5) and
3 281.36 (5) (intro.); and **to create** 30.20 (1g) (d), 88.075, 88.17 (2h) (c), 88.17 (2h)
4 (d), 88.17 (2r), 88.212 (4), 88.31 (7r), 88.74, 88.785, 88.83 (1c) and 88.83 (2m) of
5 the statutes; **relating to:** drainage districts and regulating the removal of
6 material from certain drainage ditches.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the law relating to drainage districts. Under current law, the owners of the majority of the land in a drainage district that is located entirely within the boundaries of a city or village, or partly within the boundaries of a city, village, or town (municipality), may petition the drainage board (board) having jurisdiction over the district to transfer jurisdiction of the district, or that part of the district that is located in the municipality, to the municipality. If the district is located only partially within a municipality, however, the district and the municipality must be in agreement regarding the terms of transfer. If, after a hearing, the board finds that the petition requirements have been met, the board must issue an order transferring jurisdiction.

Also under current law, a city or village may adopt a resolution stating that the city or village is willing to accept a drain or part of a drain and to administer it under city or village drainage laws, and may petition the board with jurisdiction over the

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drain to transfer jurisdiction over the drain from the district to the city or village. After a hearing the board may, but is not required to, issue an order transferring jurisdiction of the drain or part of the drain to the city or village.

Under this bill, the owners of a majority of the land proposed to be transferred in a drainage district that is located entirely, or partly, within the boundaries of a municipality may petition the board having jurisdiction over the district to transfer jurisdiction of the district, or a part of the district that is located in the municipality, to the municipality. After a hearing, the board must order transfer of jurisdiction if it finds that a sufficient number of owners has signed the petition, the governing body of the municipality approves the transfer, and the municipality and district have entered into an agreement that contains the following items: 1) the municipality agrees to ensure district access to, and maintenance of, drain access corridors; 2) the municipality agrees, upon request by the district, to maintain and repair former district drains; and 3) the district may complete any maintenance work not performed by the municipality and assess the costs to certain properties that were subject to assessment by the district prior to the transfer of jurisdiction.

Also under this bill, a municipality may petition the board with jurisdiction over a drain to transfer jurisdiction of the drain or part of the drain to the municipality. After a hearing, the board may, but is not required to, issue an order transferring jurisdiction of the drain or part of the drain to the municipality if the municipality has entered into an agreement with the district regarding continuing maintenance and repair of former district drains and access corridors, as described above.

Under current law, members of the drainage district board are appointed by the court having jurisdiction over the district. In general, the board is made up of three or five persons selected from persons recommended by a county committee on agriculture and extension education or certain landowners owning property in the district. Under this bill, if a district is located entirely or partially within the corporate limits of a city or village, the chief executive of the city or village or his or her designee is also a member of the board.

Under current law, DATCP has promulgated rules governing drainage district drain access corridors. This bill provides statutory regulation of district access corridors, which regulations are generally consistent with current DATCP rules. Specifically, the board must establish district corridors extending 20 feet from the top of the ditch bank on each side of a district ditch and 20 feet from the centerline on each side of any other district drain or facility. The board may, upon notice to affected landowners, provide for a wider corridor. The board must provide notice of these corridors to the county and the municipality in which the corridor is located.

District corridors are to be maintained by the board so as to allow effective access and protect water quality in the district drain or facility. The board is, with limited exceptions, authorized to access, maintain, and improve the corridor without prior notice to the landowner. The landowner is also generally prohibited from taking certain actions within the corridor, including row cropping and placement of any obstruction that interferes with the district's ability to maintain the corridor.

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Municipalities and counties are prohibited from restricting the board's maintenance of corridors and ditches.

Also under this bill, lands that are within the corporate limits of a city, village, or certain towns may not be included in a newly organized drainage district or annexed to a drainage district unless the governing body of the city, village, or town adopts a resolution approving the inclusion or annexation. Also, no lands that are located in a county in which no portion of the drainage district is located may be annexed to the district.

Current law generally prohibits a person from removing material from the bed of a navigable body of water unless the Department of Natural Resources (DNR) has issued an individual permit or a general permit authorizing the removal. This bill creates an exemption from this prohibition for the removal of material from the bed of a drainage ditch operated by a drainage district. In order for the exemption to apply, certain conditions must be met including that the removal is for the purpose of maintaining the ditch, the material is not removed from an area listed by DNR in a database identifying contaminated properties, and the drainage district takes certain action to clean its equipment in order to prevent the spread of invasive species or viruses from one navigable water to another.

Under current law, a person may not discharge dredged material into a wetland unless the discharge is authorized by a wetland general permit or an individual permit issued by DNR or the discharge is exempt from the permit requirement. Among the activities that are generally exempt from the permit requirement are normal farming, irrigation ditch construction, and drainage ditch maintenance. Current law provides that even if these activities are exempt, a permit must still be obtained if the discharge is incidental to an activity to bring a wetland into a use for which it was not previously subject and if the discharge affects the wetland in certain other ways. This bill specifies that in order for the permit exemption to be inapplicable, the activity must be one that brings a wetland into a land use for which it was not previously subject.

Current law also requires a drainage district board to obtain a permit to conduct certain activities affecting a drainage district drain including repairing, enlarging, clearing, or maintaining the drain (drain maintenance permit). This bill exempts a drainage district board from the requirement to obtain a drain maintenance permit to remove material from the bed of a drainage district drain if the board is also exempt from the requirement to obtain a permit from DNR to remove the material.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1 30.20 (1g) (d) The removal of material by a drainage district from the bed of
2 a ditch operated by the drainage district is exempt from the individual and general
3 permit requirements under this section if all of the following apply:

4 1. The material is removed for the purpose of maintaining the ditch.

5 2. The removal of the material does not violate any applicable floodplain zoning
6 ordinances.

7 3. The material is not removed from an area that is listed in a database
8 maintained by the department identifying contaminated properties and other
9 activities related to the investigation and cleanup of contaminated soil or
10 groundwater in this state.

11 4. If the removed material is spread on land, all of the following apply:

12 a. The material is graded and smoothed to blend into cultivated lands.

13 b. The surface slope of the material does not exceed a slope of 8 to 1.

14 c. The material is not more than 2 feet deep at the top of the bank of the ditch.

15 5. No portion of a pile of the removed material is closer than 12 feet from the
16 top of the bank of the ditch, is piled at any angle other than a stable angle of repose
17 for that material, nor has a slope exceeding a slope of 2 to 1.

18 6. The drainage district, in maintaining the drainage ditch, does all of the
19 following in order to prevent the spread of invasive species or the spread of viruses
20 from one navigable water to another:

21 a. Removes plants, animals, and mud and other debris from all equipment it
22 uses to maintain the drainage ditch before the equipment is placed in any other
23 navigable water.

24 b. Washes all equipment that it uses to maintain the drainage ditch with high
25 pressure water of not less than 2000 pounds per square inch before it is placed in any

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1 other navigable water or allows the equipment to dry for not less than 5 days before
2 it is placed in any other navigable water.

3 7. The material is not discharged into a wetland that is identified by the
4 department under s. 281.36 (3g) (d) 1. to 7.

5 8. If the drainage ditch is located south of STH 29, the removal activity does
6 not occur between March 15 and the immediately following May 15.

7 9. If the drainage ditch is located north of STH 29, the removal activity does
8 not occur between April 1 and the immediately following June 1.

9 10. If the drainage ditch is classified by the department as a trout stream, the
10 drainage district coordinates the time of its removal activities with department
11 fisheries staff.

12 **SECTION 2.** 88.075 of the statutes is created to read:

13 **88.075 Transfer of certain authority.** (1) If a drainage district has been
14 inactive for 3 or more years, the court may transfer authority to make appointments
15 to the drainage board under s. 88.17 to the county board of the county in which the
16 drainage district is primarily located. A transfer may be ordered under this section
17 upon a petition by the county board or upon the court's own motion, with the approval
18 of the county board.

19 (2) If authority is transferred under sub. (1), the county board shall have all
20 of the duties and powers specified for the court under s. 88.17.

21 **SECTION 3.** 88.13 of the statutes is amended to read:

22 **88.13 Right to enter lands of drainage district.** Whenever necessary for
23 any purpose connected with the organization of a district or the construction,
24 maintenance or repair of drains and other works, members of the board,
25 representatives of the department of agriculture, trade and consumer protection,

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1 and persons intending to bid on or to whom contracts have been let for the
2 construction of the works within a district or on former district lands transferred
3 under s. 88.83 and their respective agents and employees may go upon any lands
4 proposed for inclusion or included within a district or on adjoining lands or on former
5 district lands transferred under s. 88.83, and are not guilty of trespass therefor but
6 are liable for unnecessary damage caused to crops or structures.

7 **SECTION 4.** 88.17 (2h) (c) of the statutes is created to read:

8 88.17 **(2h)** (c) Local or statewide agriculture, engineering, local government,
9 or real estate organizations, including the Wisconsin Potato and Vegetable Growers
10 Association, the Wisconsin State Cranberry Growers Association, the Wisconsin
11 Farm Bureau Federation, the Wisconsin Farmers Union, the Dairy Business
12 Association, and the Wisconsin Dairy Products Association.

13 **SECTION 5.** 88.17 (2h) (d) of the statutes is created to read:

14 88.17 **(2h)** (d) The department of agriculture, trade and consumer protection,
15 which may recommend persons who have engineering experience related to water
16 resources and agriculture.

17 **SECTION 6.** 88.17 (2r) of the statutes is created to read:

18 88.17 **(2r)** Notwithstanding subs. (1) to (2p), if a drainage district is located
19 entirely or partially within the corporate limits of a city or village, the chief executive
20 of the city or village or his or her designee shall be a member of the board. A member
21 required under this subsection does not replace a member or count toward the
22 minimum or maximum number of members under sub. (1) or (2) or toward the
23 determination of whether a quorum exists and may not be eliminated under sub. (2).
24 A member under this subsection may vote only on matters related to a drainage

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1 district that is located entirely or partially within the corporate limits of the city or
2 village that the member represents.

3 **SECTION 7.** 88.212 (4) of the statutes is created to read:

4 88.212 (4) If any portion of a drainage district that is a subject matter of a
5 drainage board meeting is located in a city, village, or town, notify the city, village,
6 or town of the date, time, and subject matter of the meeting. A notification under this
7 subsection may be in an electronic format.

8 **SECTION 8.** 88.31 (7r) of the statutes is created to read:

9 88.31 (7r) A drainage district that is exempt from the individual and general
10 permit requirements under s. 30.20 as specified under s. 30.20 (1g) (d) is exempt from
11 the permit requirements and procedures under subs. (1) to (7) with respect to that
12 removal.

13 **SECTION 9.** 88.62 (3) (a) of the statutes is amended to read:

14 88.62 (3) (a) If Except for a removal of material that is exempt from the
15 individual and general permit requirements under s. 30.20 as specified under s.
16 30.20 (1g) (d) and except as provided under par. (b), if drainage work is undertaken
17 in navigable waters, the drainage board shall obtain a permit under s. 30.20 or 88.31
18 or ch. 31, as directed by the department of natural resources, ~~except as provided in~~
19 ~~par. (b).~~

20 **SECTION 10.** 88.74 of the statutes is created to read:

21 **88.74 District corridors. (1)** (a) Except as provided in par. (b), the board shall
22 establish all of the following as district corridors:

23 1. A corridor which extends 20 feet from the top of the ditch bank on each side
24 of a district ditch.

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1 2. A corridor extending 20 feet from the centerline on each side of any other
2 district drain or facility.

3 (b) Upon notice to affected landowners, the board may establish and maintain
4 a wider corridor if a wider corridor is necessary to meet any of the purposes specified
5 under sub. (3).

6 **(2)** The board shall provide notice of any corridor established under sub. (1) to
7 the county and the city, village, or town in which the corridor is located.

8 **(3)** The board shall maintain a corridor established under sub. (1) to
9 accomplish all of the following purposes:

10 (a) To provide the board with effective access to the drain or facility, including
11 access for vehicles or equipment.

12 (b) To protect water quality in the drain or facility.

13 **(4)** (a) Except as provided in par. (b), the board may, without prior notice to the
14 landowner, enter a corridor established under sub. (1) to inspect, survey, maintain,
15 repair, restore, or improve a drain, facility, or corridor.

16 (b) Before doing any of the following in a corridor, the board shall notify the
17 landowner of the pending action:

18 1. Cutting a tree that is more than 6 inches in diameter measured at breast
19 height.

20 2. Excavating or depositing materials in the corridor.

21 (c) Notice under par. (b) may be given at any time before performance of the
22 work and may be given in person, by telephone, by mail, or, if the landowner is not
23 available, by posting notice at a conspicuous location at an entrance to the land.

24 **(5)** (a) No person may do any of the following in a corridor established under
25 sub. (1) without written permission from the board:

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1 1. Engage in row cropping in the corridor.

2 2. Place any obstruction in the corridor that interferes with the board's ability
3 to accomplish a purpose under sub. (3).

4 (b) A person who violates par. (a) may not recover damages with regard to any
5 damage to crops or obstructions caused by actions taken by the board under sub. (3).

6 (c) Paragraph (a) does not require a landowner to remove any building or
7 fixture constructed or installed in a corridor prior to September 1, 1999, or any
8 structure that does not interfere with the board's maintenance of a drain and that
9 was placed in the corridor for the purpose of providing drainage.

10 **(6)** No city, village, town, or county may by ordinance, resolution, or any other
11 means restrict, or impose other conditions related to, the board's maintenance of
12 district corridors or ditches.

13 **SECTION 11.** 88.785 of the statutes is created to read:

14 **88.785 Certain annexations prohibited.** (1) Notwithstanding ss. 88.34,
15 88.77, and 88.78, no lands that are within the corporate limits of a city, a village, or,
16 if the town operates a municipal utility that manages storm water or has entered into
17 a maintenance agreement under s. 88.83 (2m) with the annexing drainage district
18 covering the portion of the town proposed to be annexed, a town may be included in
19 a newly organized drainage district or annexed to a drainage district unless the
20 governing body of the city, village, or town adopts a resolution approving the
21 inclusion or annexation.

22 **(2)** Notwithstanding ss. 88.77 and 88.78, no lands that are located in a county
23 in which no portion of the drainage district is located may be annexed to a drainage
24 district.

25 **SECTION 12.** 88.83 (title) of the statutes is amended to read:

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1 **88.83** (title) **Transfer of district to city or village municipal jurisdiction.**

2 **SECTION 13.** 88.83 (1) of the statutes is renumbered 88.83 (1g) and amended
3 to read:

4 88.83 **(1g)** The owners of a majority of the land proposed to be transferred in
5 any a drainage district located entirely or partially within the corporate limits of a
6 ~~city or village~~ municipality may petition the drainage board having jurisdiction of
7 the district to transfer jurisdiction ~~thereof to the city or village~~ of the part of the
8 district proposed to be transferred that is located within the municipality to the
9 municipality.

10 **SECTION 14.** 88.83 (1c) of the statutes is created to read:

11 88.83 **(1c)** In this section, “municipality” means a city, village, or town.

12 **SECTION 15.** 88.83 (1m) of the statutes is repealed.

13 **SECTION 16.** 88.83 (1r) of the statutes is repealed.

14 **SECTION 17.** 88.83 (2m) of the statutes is created to read:

15 88.83 **(2m)** If the proposed transfer of jurisdiction is of less than the entire
16 district, jurisdiction of the part of the drainage district may not be transferred to a
17 municipality unless the municipality to which jurisdiction will be transferred and
18 the district have entered into an agreement to which all of the following apply:

19 (a) The municipality agrees to ensure access to, and maintenance of, any
20 corridor established under s. 88.74 (1) that is located on land transferred under this
21 section consistent with the requirements of s. 88.74.

22 (b) The municipality agrees, upon order by the drainage district from which
23 jurisdiction was transferred, to maintain and repair any part of a former district
24 drain located in land transferred under this section.

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1 (c) That if the municipality fails to complete work ordered under par. (b), the
2 district may complete the work and assess costs on the confirmed benefits to property
3 subject to assessment at the time of transfer of jurisdiction.

4 **SECTION 18.** 88.83 (3) of the statutes is amended to read:

5 88.83 (3) If the drainage board finds upon the hearing that the petition is
6 signed by the required number of owners of a majority of the land in the district, or
7 by a majority of the owners in that part of the district lying within the corporate
8 limits of a city or village and that the conditions under sub. (2m) have been satisfied,
9 it shall issue an order transferring jurisdiction of the district or part of the district
10 to the city or village municipality. If the order transfers jurisdiction of the entire
11 district and the governing body of the municipality approves the transfer, the
12 drainage district shall cease to exist as a district under this chapter and shall
13 automatically come under the jurisdiction of the governing body of the city or village
14 municipality in which the district is located. If the order transfers jurisdiction of only
15 a part of the district and the governing body of the municipality approves the
16 transfer, the section transferred shall automatically come under the jurisdiction of
17 the governing body of the city or village municipality in which the district is located.
18 ~~After a transfer, all proceedings with reference to the drainage district or part of the~~
19 ~~district shall be under the city or village drainage law.~~

20 **SECTION 19.** 88.83 (4) of the statutes is amended to read:

21 88.83 (4) As an alternative, proceedings covered by this section may be
22 initiated by a resolution of the governing body of a city or village municipality. The
23 resolution shall state that the city or village municipality is willing to accept the
24 drain or part of the drain ~~and to administer it under the laws pertaining to the~~
25 ~~operation of drains by the city or village,~~ and that the public interest requires that

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1 the ~~city or village~~ municipality take over the operation of the drain or part of the
2 drain. The resolution shall be published as a class 1 notice under ch. 985. The ~~city~~
3 ~~or village~~ municipality may petition the drainage board having jurisdiction of the
4 drain to issue an order transferring jurisdiction of the district or part of the district
5 to the ~~city or village~~. ~~No municipality.~~ The drainage board may not hold a hearing
6 ~~may be held~~ on the petition until 30 days ~~have elapsed from~~ after the date of
7 publication of the notice. A copy of the petition, ~~together with a copy of the~~ and
8 resolution, shall be served on the county clerk of the county in which the drain is
9 located, ~~and also upon~~ the board having jurisdiction of the drain. ~~After~~ If the
10 drainage board finds upon the hearing that the conditions under sub. (2m) have been
11 met, the drainage board may issue an order transferring jurisdiction of the drain or
12 part of the drain to the ~~city or village~~ municipality. If ~~an~~ the order is issued that
13 transfers jurisdiction of the entire district, the drainage district shall cease to exist
14 as a district under this chapter and shall automatically come under the jurisdiction
15 of the governing body of the ~~city or village~~ municipality in which the district is
16 located. If the order transfers jurisdiction of only a part of the district, the section
17 transferred shall automatically come under the jurisdiction of the governing body of
18 the ~~city or village~~ municipality in which the district is located. ~~After a transfer, all~~
19 ~~proceedings with reference to the drainage district or part of the district shall be~~
20 ~~under the city or village drainage law.~~

21 **SECTION 20.** 88.83 (5) of the statutes is amended to read:

22 88.83 (5) Upon entry of ~~the~~ an order transferring jurisdiction of such an entire
23 district to such city or village a municipality and approval of the transfer by the
24 municipality, the county treasurer and district shall pay to the ~~city or village~~
25 ~~treasurer of such city or village~~ the municipality all moneys in the county treasurer's

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1 ~~or district's~~ hands which belong to ~~sueh~~ the drainage district. Upon entry of an order
2 transferring jurisdiction of a part of a district to ~~the city or village in which it is~~
3 ~~located~~ a municipality and approval of the transfer by the municipality, the county
4 treasurer and district shall pay to the ~~city or village~~ treasurer of the municipality a
5 proportional share of the moneys in the county treasurer's ~~or district's~~ hands which
6 belong to the drainage district based upon assessed benefits transferred less a
7 proportional share of outstanding indebtedness.

8 **SECTION 21.** 281.36 (5) (intro.) of the statutes is amended to read:

9 281.36 (5) INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding sub. (4),
10 a discharge that would be exempt under sub. (4) is subject to the permitting
11 requirement under sub. (3b) if the discharge is incidental to an activity that has as
12 its purpose bringing a wetland, or part of a wetland, into a land use for which it was
13 not previously subject and if the activity may do any of the following:

14 **SECTION 22. Initial applicability.**

15 (1) The treatment of section 88.785 of the statutes first applies to the
16 organization of a drainage district or an annexation that is pending on the effective
17 date of this subsection.

18 (2) The treatment of section 88.83 (title), (1), (1c), (1m), (1r), (2m), (3), (4), and
19 (5) of the statutes first applies to a petition for transfer of jurisdiction filed on the
20 effective date of this subsection.

21 (END)