

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. Except as provided in par. (e), 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 as provided in par. (e), 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.

(e) 1. Except as provided in subd. 4., on the request of a property owner who has obtained a letter of map amendment from the federal emergency management agency under 44 CFR 70, the county, city, village, or town in which the property is located shall amend its floodplain determination as necessary to conform with the letter of map amendment. After amending its floodplain determination, the county, city, village, or town may not enforce a floodplain zoning ordinance with respect to that specific property or area to the extent that the ordinance is contrary to the letter of map amendment.

2. A property owner requesting an amendment to a floodplain determination under subd. 1. shall submit to the county, city, village, or town the letter of map amendment and all supplementary documents submitted to the federal emergency management agency as part of the application for the letter of map amendment.

3. The department shall consent to an amendment to a floodplain determination that is necessary to conform with a letter of map amendment under subd. 1.

4. Subdivision 1. does not apply to a county, city, village, or town that participates in the community rating system under the National Flood Insurance Program if amending a floodplain determination to conform with a letter of map amendment would conflict with eligibility requirements under the community rating system.

**(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.

(d) If the department regulates or prohibits repair, reconstruction, or improvement of a nonconforming building, the department may not do so based on cost if, as a result of repair, reconstruction, or improvement authorized under county, city, village, or town regulations, all of the following apply:

1. The entire nonconforming building is or will be permanently changed to comply with the applicable requirements under 42 USC 4001 to 4129 or the regulations promulgated under those provisions.

2. Any living quarters in the nonconforming building are or will be at or above the flood protection elevation, as established by the department.

**(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.** (ag) 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 all of the following apply:

1. Such lands are not within the floodplain of a natural navigable stream or river.

2. Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching.

3. Such lands are maintained in nonstructural agricultural use.

(am) 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 all of the following apply, except to the extent necessary for the municipality to which the floodplain zoning ordinance applies to maintain eligibility for participation in the National Flood Insurance Program:

1. The farm drainage ditch is subject to the jurisdiction of a drainage district under ch. 88.

2. The disposal of material in a floodplain is within the drainage district corridor under s. 88.74.

3. The lands adjacent to the corridor are maintained in nonstructural agricultural use or other nonstructural 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; 2017 a. 115, 242; 2019 a. 175.

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

A flood plain zoning ordinance adopted by the Department of Natural Resources 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 of Natural Resources to prove that 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 Department of Natural Resources’ 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 department 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 of Natural Resources 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 Department of Natural Resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

The public trust doctrine. 59 MLR 787.

**87.30 FLOOD CONTROL**

Updated 21–22 Wis. Stats. 8

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.