



## 1997 ASSEMBLY BILL 755

January 27, 1998 - Introduced by Representatives OLSEN, KAUFERT, KLUSMAN and WIECKERT, cosponsored by Senator ROESSLER. Referred to Committee on Natural Resources.

1     **AN ACT to amend** 30.28 (1), 30.28 (2m) (a), 30.28 (2m) (b) and 30.28 (2m) (d); and  
2             **to create** 30.206 (7), 30.207, 30.28 (2) (b) and 30.28 (2m) (am) of the statutes;  
3             **relating to:** issuing general permits for activities in navigable waters that are  
4             located in the Wolf River and the Fox River basin area.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the department of natural resources (DNR) must issue permits authorizing activities in navigable waters such as the placement of structures or deposits. Under current law, for certain types of activities in navigable waters, DNR may issue a general permit that allows anyone to engage in a type of activity as opposed to an individual permit to a specific individual who wants to engage in the activity. These activities include placing certain structures such as fish cribs or bird nesting platforms, placing gravel and riprap and enlarging certain artificial waterways.

This bill establishes a 5-year project for the Wolf River and Fox River basin area under which DNR will issue general permits. The basin area consists of all of Winnebago County and Fond du Lac County and portions of Waushara County, Calumet County, Waupaca County and Outagamie County. Under the bill, in this area, certain persons and entities may apply for a general permit to engage in any activity that would require an individual permit in a certain area of the river basin area. The persons or entities who may apply are counties, cities, towns, villages, public inland lake protection and rehabilitation districts, town sanitary districts, any group of 10 riparian owners and any person or entity that has constructed more

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than 25 projects requiring a permit for an activity in navigable waters. The bill establishes a specific application process under which DNR makes an initial determination. If DNR decides not to deny the permit at this initial step, DNR proceeds on the application by conducting an environmental analysis, consulting with interested parties and holding a hearing in certain instances. Under the bill, DNR must issue the general permit if it determines that the environmental impact of the activity is insignificant and that the issuance of the permit will not cause pollution or injury the rights of the public or riparian property owners.

Once a general permit is issued, a person may notify DNR in writing that the person wishes to proceed to conduct an activity covered by the general permit. DNR may inform the person that the person may not proceed with the activity if the activity would cause an adverse environmental impact, cause pollution or injure public rights and interests.

The bill establishes fees for applying for a general permit and for submitting a written notice under a general permit. The bill establishes a partial refund for an applicant who is denied a general permit.

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

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

1           **SECTION 1.** 30.206 (7) of the statutes is created to read:

2           30.206 (7) This section does not apply to an application for a general permit for  
3 the Wolf River and Fox River basin area if the application for the general permit may  
4 be submitted under s. 30.207.

5           **SECTION 2.** 30.207 of the statutes is created to read:

6           **30.207 General permit pilot program for the Wolf River and Fox River**  
7 **basin area. (1) GEOGRAPHICAL AREA.** For purposes of this section, the Wolf River and  
8 Fox River basin area consists of all of Winnebago County; the portion and shoreline  
9 of Lake Poygan in Waushara County; the area south of STH 21 and east of STH 49  
10 in Waushara County; that portion of Calumet County in the Lake Winnebago  
11 watershed; all of Fond du Lac County north of STH 23; that portion of Outagamie  
12 County south and east of USH 41; that portion of Waupaca County that includes the

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1 town of Mukwa, city of New London, town of Caledonia, town of Fremont, and the  
2 portion and shoreline of Partridge Lake and the Wolf River in the town of  
3 Weyauwega.

4 (2) ACTIVITIES COVERED. Within the Wolf River and Fox River basin area, the  
5 department may issue a general permit under this section authorizing any activity  
6 that would require a permit or approval under this chapter if the department  
7 determines that it is appropriate to issue a general permit under sub. (6). The  
8 department may issue a general permit on its own initiative or based on an  
9 application submitted under sub. (3).

10 (3) APPLICATION FOR GENERAL PERMIT. (a) Any municipality, public inland lake  
11 protection and rehabilitation district or town sanitary district, any group of 10  
12 riparian owners who will be affected by the issuance of a general permit, or any  
13 person or entity that has constructed more than 25 projects requiring a permit or  
14 approval under this chapter may apply for a general permit under this section.

15 (b) Upon the request of a prospective applicant specified in par. (a), and before  
16 an application is submitted, the department shall meet with the prospective  
17 applicant, and other interested persons as determined by the prospective applicant  
18 or the department, to make a preliminary analysis of the likelihood that the  
19 department will issue the general permit.

20 (c) An application for a general permit under this section shall include all of the  
21 following:

- 22 1. The name, legal address and telephone number of each applicant.
- 23 2. A U.S. geological survey map or similar map that has a scale of not less than  
24 one inch per 2,000 feet and that shows the proposed permit area.

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1           3. A general legal description to quarter-quarter section of the proposed permit  
2 area.

3           4. A diagram to scale showing the activity proposed for the general permit with  
4 contours and cross-section profiles that show a representative example of existing  
5 conditions and a representative example of any alteration to navigable waters or the  
6 adjacent lands that may result from the activity.

7           5. Topographic, bathymetric, soil or other maps, photographs or other data to  
8 demonstrate the characteristics of the proposed permit area if the maps,  
9 photographs or data are reasonably available.

10           6. The names and addresses of at least 5 persons who own real property  
11 adjacent to the navigable waters located in the proposed permit area. If fewer than  
12 5 persons own real property adjacent to such waters, the application shall include  
13 the names and addresses of all of these persons.

14           (d) The department shall respond to the application in writing within 90  
15 business days after receiving the application. In its response the department shall  
16 do either of the following:

17           1. Deny the application and specify the reason for the denial.

18           2. Specify the department's plans for proceeding on the application. The plans  
19 shall include a timetable for the notice and hearing required under sub. (4).

20           **(4) ENVIRONMENTAL ANALYSIS; HEARING; CONSULTATION.** After receiving an  
21 application that the department does not deny under sub. (3) (d) 1. and before  
22 determining whether to issue the general permit, the department shall do all of the  
23 following:

24           (a) Conduct an environmental analysis.

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1 (b) Provide for notice and a hearing on whether to issue the general permit if  
2 so required under sub. (5).

3 (c) Consult with any of the following as the department considers appropriate:

4 1. Officials of local units of government that have jurisdiction over the  
5 navigable waters located in the proposed permit area.

6 2. Any contractor who is or has been involved in the construction of structures  
7 or improvements in or along navigable waters located in the proposed permit area.

8 3. Any riparian owners whose property rights may be affected by the issuance  
9 of the general permit.

10 4. Any other interested party, as determined by the department or the  
11 applicant.

12 **(5) HEARING REQUIREMENTS.** If an activity for which an application for which a  
13 general permit has been submitted would be subject to the hearing and notice  
14 provisions under s. 30.02 (3) and (4) for the issuance of an individual permit, the  
15 department shall comply with those provisions. Notice and hearing shall be required  
16 on an application for a general permit under this section only if a notice and hearing  
17 are required under s. 30.02 (3) and (4) for the activity as part of an application for  
18 an individual permit under this chapter.

19 **(6) ISSUANCE OF GENERAL PERMITS.** The department shall issue a general permit  
20 under this section if the department determines that the cumulative adverse  
21 environmental impact of the activity in the proposed permit area is insignificant and  
22 that the issuance of the general permit will not injure public rights or interest, cause  
23 environmental pollution, as defined in s. 299.01 (4), or result in material injury to the  
24 rights of any riparian owners.

**ASSEMBLY BILL 755****SECTION 2**

1           (b) The standards for the activity contained in a general permit issued under  
2 this section shall supersede any conflicting standards required under this chapter  
3 for the activity.

4           **(7) ACTIVITIES UNDER GENERAL PERMITS.** (a) At least 15 days before beginning  
5 the activity that is authorized by a general permit under this section the person who  
6 wishes to conduct the activity shall submit a notice to the department and shall pay  
7 the fee specified in s. 30.28 (2) (b) 2. The notice shall describe the activity, state the  
8 name of the person that will be conducting the activity and state the site where the  
9 activity will be conducted. The notice shall also contain a statement signed by the  
10 person conducting the activity that the person will act in conformance with the  
11 standards contained in the general permit.

12           (b) Upon receipt of a notice that complies with par. (a), the department may  
13 inform the person that the activity may not be conducted under the general permit  
14 if conditions at the site where the activity would be conducted would cause adverse  
15 environmental impact, injure public rights and interests or cause environmental  
16 pollution, as defined in s. 229.01(4). The department shall respond to the person  
17 within 15 days after receiving the notice. Failure of the department to respond  
18 within 15 days shall constitute the department's approval of the activity under the  
19 general permit.

20           **(8) OPTION TO REQUEST INDIVIDUAL PERMITS.** A person proposing an activity for  
21 which a general permit has been issued under this section may apply for an  
22 individual permit under this chapter in lieu of seeking authorization under the  
23 general permit. A person proposing an activity for which a general permit has not  
24 been issued under this section may apply for an individual permit under this chapter.

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1           **(9) ACCESS TO PROPERTY.** For inspection purposes, an employe or agent of the  
2 department shall have free access during reasonable hours to any site where an  
3 activity is proposed to be, is or has been authorized under a general permit issued  
4 under this section if the employe or agent shows to any person who is present at the  
5 site and who owns the area or is otherwise in control of the area either of the  
6 following:

7           (a) For an employe of the department, proper identification issued by the  
8 department.

9           (b) For an agent who is not an employe of the department, written  
10 documentation that the agent is authorized by the department to have access for  
11 inspection purposes.

12           **(10) SUNSET.** The department may not issue any further general permits under  
13 this section on or after the date on which 5 years have lapsed after the effective date  
14 of the first general permit issued under this section.

15           **SECTION 3.** 30.28 (1) of the statutes is amended to read:

16           **30.28 (1) FEES REQUIRED.** The department shall charge a permit or approval fee  
17 for carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and  
18 30.21 to 30.27. The permit or approval fee shall accompany the permit application,  
19 notice or request for approval.

20           **SECTION 4.** 30.28 (2) (b) of the statutes is created to read:

21           **30.28 (2) (b) 1.** For an application for a general permit submitted under s.  
22 30.207 (3), the fee shall be \$2,000.

23           2. For a notice submitted under s. 30.207 (7), the fee shall be \$100.

24           **SECTION 5.** 30.28 (2m) (a) of the statutes is amended to read:

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1           30.28 (2m) (a) The department shall refund a permit or approval fee if the  
2 applicant requests a refund before the department determines that the application  
3 for the permit or approval is complete. The Except as provided in par. (am), the  
4 department may not refund a permit or approval fee after the department  
5 determines that the application is complete.

6           **SECTION 6.** 30.28 (2m) (am) of the statutes is created to read:

7           30.28 (2m) (am) The department shall refund \$1,000 of the fee specified in sub.  
8 (2) (b) 1. if the department denies an application for a general permit under s. 30.207  
9 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

10          **SECTION 7.** 30.28 (2m) (b) of the statutes is amended to read:

11          30.28 (2m) (b) If the applicant applies for a permit ~~or~~, requests an approval, or  
12 submits a notice under s. 30.207 (7) after the project is begun or after it is completed,  
13 the department shall charge an amount equal to twice the amount of the fee that it  
14 would have charged under this section.

15          **SECTION 8.** 30.28 (2m) (d) of the statutes is amended to read:

16          30.28 (2m) (d) The department, by rule, may increase any fee specified in sub.  
17 (2) (a). The department, by rule, may increase a fee specified in sub. (2) (b) only if  
18 the increase is necessary to meet the costs incurred by the department in acting on  
19 general permits or on notices submitted under s. 30.207.

20          **SECTION 9. Nonstatutory provisions.**

21          (1) REPORT. The department of natural resources shall submit a report on the  
22 issuance of general permits in the Wolf River and the Fox River basin area under  
23 section 30.207 of the statutes, as created in this act, to the appropriate standing  
24 committees of the legislature in the manner provided in section 13.172 (3) of the  
25 statutes. The department shall submit this report no earlier than the first day of the



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1 3rd year beginning after the effective date of this subsection and no later than 60  
2 days after the date on which the department may no longer issue general permits as  
3 provided in section 30.207 (10) of the statutes, as created in this act.

4 (END)