



2015 SENATE BILL 459

December 18, 2015 – Introduced by Senators LASEE, NASS, LEMAHIEU, STROEBEL and KAPENGA, cosponsored by Representatives JARCHOW, NYGREN, KNODL, TITTL, HUTTON, CRAIG, ALLEN, CZAJA and PETERSEN. Referred to Committee on Natural Resources and Energy.

1 **AN ACT to repeal** 30.025 (5) and 30.12 (3) (a) 6. a., b. and c.; **to renumber and**
2 **amend** 30.12 (3) (a) 6. (intro.), 30.121 (3w) (c) and 281.36 (3n) (a); **to amend**
3 30.01 (1am) (c), 30.01 (1d), 30.12 (1k) (f), 30.12 (3) (a) 3c., 30.12 (3) (a) 3g., 30.12
4 (3) (a) 3r., 30.12 (3) (a) 13., 30.12 (3) (c), 30.121 (1), 30.121 (3c), 30.133 (1), 30.19
5 (1b) (a), 30.19 (1g) (a), 30.19 (1g) (am), 30.206 (1) (a), 30.29 (3) (d), 31.02 (1),
6 31.185 (5) and 281.36 (4) (d); and **to create** 23.24 (4) (b) 4., 30.025 (6), 30.053,
7 30.106, 30.115, 30.12 (1g) (am), 30.12 (3m) (cr), 30.121 (3b), 30.121 (3w) (c) 3.,
8 30.125, 30.19 (1m) (dm), 30.20 (1g) (b) 3., 30.20 (1t) (b), 30.20 (1t) (c), 30.20 (2)
9 (cn), 281.16 (2) (c), 281.31 (2) (b), 281.36 (3n) (a) 4. and 281.36 (4) (f) of the
10 statutes; **relating to:** the regulation of navigable waters and wetlands.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes to the regulation of navigable waters, artificial water bodies, wetlands, and nonpoint source pollution.

SENATE BILL 459**NAVIGABLE WATERS*****Title to the bed of certain filled navigable waters***

Under current statutory and common law, this state holds title to navigable waters in trust for public purposes. This body of law, commonly referred to as the public trust doctrine, is encompassed in article IX, section 1, of the Wisconsin Constitution. Under the public trust doctrine, the state has traditionally been the owner of lake beds up to the ordinary high-water mark (OHWM).

This bill provides that any area of a navigable water that was filled before January 1, 1975, and that has remained continuously filled since January 1, 1975, is owned by the riparian owner in whose riparian zone the filled area is located. The bill defines the riparian zone as the area that extends from the riparian land waterward to the line of navigation, the depth which is generally needed to operate a boat on the water, as determined by a method that establishes riparian zone lines between adjacent riparian owners in a manner that equitably apportions access to the line of navigation. The bill prohibits the Department of Natural Resources (DNR) from requiring the riparian owner of the filled area to remove the fill and requires DNR to furnish a quitclaim deed to the riparian owner of the filled area upon request.

Applicability of navigable water law to artificial water bodies

Under this bill, unless specifically provided otherwise, the statutes that regulate navigable waters, harbors, and boating do not apply to an artificial water body that is not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm events. An artificial water body is a body of water that does not have a history of being a lake or stream or of being part of a lake or stream.

The level and flow of water

Under the bill, DNR may regulate and control the level and flow of water in all navigable waters in the interest of public rights in navigable waters; to promote safety; and to protect life, health, property, property values, and economic values.

Navigable water permits

Under current law, a person must obtain one or more permits from DNR in order to conduct certain activities that occur in or near navigable waterways, including placement of structures or deposits in navigable waters; construction or maintenance of bridges and culverts; enlarging or connecting waterways; altering the courses of streams and rivers; removing material from the bed of a navigable waterway; and constructing, dredging, or enlarging an artificial water body that connects with a navigable waterway or that is located within 500 feet of the OHWM of an existing navigable waterway. The bed of a navigable water includes the area between the water's edge and the OHWM (shoreline area).

Under current law, some activities are exempt from these permitting requirements, some activities require that the person be issued an individual permit for the activity, and some activities are authorized under statewide general permits. If a general permit covers an activity, the person proposing to conduct the activity must notify DNR that the person wishes to proceed with the activity. If DNR does

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not request additional information or notify the person that an individual permit will be required within 30 days after receipt of the notification, the person may proceed with the activity.

This bill does the following with respect to general permits and individual permits to conduct activities in navigable waters:

1. Requires DNR to issue a general permit that authorizes a riparian owner to remove 30 cubic yards of material from the bed of an inland lake adjacent to the riparian owner's property and 100 cubic yards of material from the bed of outlying waters adjacent to the riparian owner's property once each calendar year.

2. Prohibits DNR from requiring a person to collect a sediment sample as part of an application for an individual permit or prior to proceeding under a general permit, unless DNR has specific information that indicates the potential that contaminants may be present in the material proposed to be dredged.

3. Exempts from the permit requirements certain shoreline maintenance activities that are conducted in certain shoreline areas.

4. Exempts from the permit requirements the dredging of an artificial water body that does not connect with a navigable waterway.

5. Establishes that a permit is required to construct or enlarge an artificial water body that is within 500 feet of the OHWM of an existing navigable waterway but that does not or will not connect with the existing navigable waterway.

6. Limits the types of areas that DNR may identify as possessing significant scientific value, which under current law are considered areas of special natural resource interest (ASNRI), and requires the Joint Committee for Review of Administrative Rules to approve this identification. Under current law, a riparian owner is exempt from the permit requirement for depositing material or placing a structure on the bed of certain navigable waters if the structure or material is located in an area other than an ASNRI, does not interfere with riparian rights of other riparian owners, and is a certain type of structure or material.

7. Provides that, in issuing general permits for the replacement or repair of existing riprap or the replacement of seawalls, DNR may not impose conditions that prohibit the replacement or repair of riprap or the replacement of seawalls located in areas designated as ASNRI.

Structures in navigable waters**Piers**

Under this bill, a DNR decision that a riparian owner does not fall under an exemption to the prohibition against placing a pier or wharf on the bed of a navigable water may only be challenged through a declaratory judgment proceeding in the circuit court for the county in which the riparian property is located and is not subject to a contested case hearing or judicial review under the statutory administrative review procedures. Under current law, a DNR decision against the riparian owner is subject to a new trial.

Under this bill, an owner of riparian land abutting a navigable water who owns a boat docking facility that is lawfully placed in that water is not prohibited from entering into an agreement with another owner of riparian land abutting the same navigable water for the shared use of that boat docking facility.

SENATE BILL 459**Boathouses**

This bill changes the definition of a boathouse to specify that a boathouse is a structure used for one or more years for the storage of watercraft and associated materials regardless of its current use. The bill also makes various changes to the regulation of boathouses, including:

1. Allows a boathouse located beyond the OHWM of a navigable waterway to be expanded, and provides that the expansion does not require a permit, if the boathouse is listed in the national register of historic places in Wisconsin or the state register of historic places, the boathouse is not expanded beyond its listed historical boundaries, and the expansion does not involve the placement of any new structure on the bed of a navigable water.
2. Adds foundations to the list of structural elements of a boathouse that may be replaced within the current cost limit on repairing and maintaining a boathouse.
3. Allows the repair or maintenance of a boathouse in existence on December 16, 1979, to affect the configuration of the boathouse and still fall under the exception to the cost limit on repairing and maintaining such a boathouse.

Boat shelters

Under current law, a boat shelter is a structure used for the storage of watercraft and associated materials that has no walls or sides. This bill eliminates the conditions that DNR may place on a general permit authorizing a riparian owner to place a boat shelter relating to the location of the shelter and other existing structures. Under the bill, DNR may impose conditions on the general permit governing the architectural features of boat shelters and the number of boat shelters that may be placed adjacent to a parcel of land, but those conditions may not govern the distance that a boat shelter will extend from the shore and may not be based on the degree to which adjacent land is developed. Also under the bill, in determining whether to issue an individual permit to the owner of a proposed permanent boat shelter, DNR may not deny the permit on the basis of the distance at which a boat shelter will extend from the shore or the degree to which adjacent land is developed.

Seawalls

This bill requires DNR, in the general permit authorizing a riparian owner to replace an existing seawall for which DNR has issued a permit, to authorize a seawall for which DNR granted an exemption from a permit requirement or for which no permit was required when the seawall was built.

Riprap

This bill requires DNR, in the general permit authorizing a riparian owner to place riprap on the bed or bank of a navigable water adjacent to the owner's property in certain amounts, to authorize the riprap to extend to the top of the bank of the navigable water or four feet above the OHWM, whichever is lower.

Operation of a vehicle in navigable water

This bill exempts from the general prohibition on operating a utility terrain vehicle or all-terrain vehicle on any navigable water or the exposed bed of a navigable water a person engaged in activities landward of a lawfully established bulkhead line for which no general or individual permit and no contract is required under navigable water law.

SENATE BILL 459**WETLANDS*****Wetland permits***

Current law requires DNR to issue certain wetland general permits for discharges to wetlands that are necessary for the treatment or disposal of hazardous waste or toxic pollutants if not more than two acres of wetlands are affected, and discharges for commercial, residential, or agricultural purposes if not more than 10,000 square feet of wetland are affected. Current law allows DNR to establish different requirements, conditions, and exceptions in general permits to ensure that the discharges will cause only minimal adverse environmental effects. Current law establishes a procedure for obtaining authorization to proceed under a wetland general permit that is similar to the procedure for obtaining authorization under general permits that authorize structures and other activities in or near navigable waters. Current law also authorizes DNR to require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

This bill exempts from the permitting requirement any discharge that is the result of maintaining a roadside ditch or sedimentation or storm water detention basin and associated conveyance features.

Practicable alternatives review

Under current law, DNR reviews the practicable alternatives presented in an application for a individual permit, and must find that the project complies with wetland quality standards if it determines that the proposed project represents the least environmentally damaging practicable alternative, all practicable measures to minimize the adverse impact to wetland functional values will be taken, and the discharge will not result in significant adverse impacts to wetland functional values or to water quality or result in any other significant adverse environmental consequences. Upon making such a finding, DNR is authorized, but is not required, to issue a wetland individual permit. Current law requires DNR to limit its review of practicable alternatives to those that are located at the site of the discharge or adjacent to that site if the applicant has demonstrated that the proposed project causing the discharge will result in a demonstrable economic public benefit, that the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, or that the proposed project will occur in an industrial park that is in existence at the time the application is submitted. Under this bill, for wetlands that are not subject to federal jurisdiction, DNR is required to limit its review to those practicable alternatives that are both consistent with the overall purpose and scope of the project and are either located at the site of discharge or located adjacent to that site if both sites are owned by the same owner. The limitation to the discharge site or adjacent site does not apply if the proposed discharge affects more than 20 percent of the area of the site or more than five acres.

SENATE BILL 459**UTILITY PERMIT PROCEDURE**

Under current law, with certain exceptions, a public utility may not begin construction on a utility project, and no person, including a public utility, may construct a large electric generating facility or a high-voltage transmission line, unless the Public Service Commission (PSC) has issued a certificate for the project. A public utility is a company or municipality that produces or delivers heat, light, water, or power to or for the public.

Generally, under current law, a person must submit an application to DNR for each required permit, including an individual permit to conduct an activity in a navigable water or a discharge in a wetland. If the applicant is a utility that is required to obtain a certificate from the PSC, however, the utility must submit a single application to DNR requesting all of the DNR permits that the utility is required to obtain for a given project affecting navigable waters and wetlands and must follow a different procedure for obtaining these DNR permits (utility application procedure).

This bill removes the exemption in current law that provides that the permit application procedures that would normally apply to an application for an individual permit do not apply to an application for an individual permit submitted under the utility application procedure. This bill also removes the exemption in current law that provides that the procedures that would normally apply to administrative and judicial review of a DNR decision on an individual permit do not apply to decisions on an individual permit submitted under the utility application procedure. Also, under the bill, the only method of review of a DNR decision with respect to any permit applied for under the utility application procedure is direct judicial review, not a contested case hearing.

Also under this bill, there is no opportunity to object to, and request a stay of, a DNR decision related to a wetland individual permit applied for under the utility application procedure.

NONPOINT WATER POLLUTION

This bill provides that DNR may not prohibit the construction of storm water management ponds in navigable or nonnavigable artificial waterways as a method for achieving compliance with DNR's prescribed performance standards for sources of nonpoint water pollution, which is water pollution from diffuse sources. DNR's rules provide that, for the purpose of determining compliance with performance standards, DNR may give credit for the use of practices, measures, or techniques (best management practices) that minimize pollutants carried in runoff. The rules prohibit DNR from giving credit for a best management practice that is located in a navigable water. The bill provides that DNR must give credit for any pollutant reduction achieved by the pond in determining compliance with performance standards specified in a storm water discharge permit.

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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:

1 **SECTION 1.** 23.24 (4) (b) 4. of the statutes is created to read:

2 23.24 (4) (b) 4. A person who engages in an activity listed under sub. (3) (a) in
3 the course of performing shoreline maintenance as authorized under s. 30.125.

4 **SECTION 2.** 30.01 (1am) (c) of the statutes is amended to read:

5 30.01 (1am) (c) An area that possesses significant scientific value, as identified
6 by the department under s. 30.106.

7 **SECTION 3.** 30.01 (1d) of the statutes is amended to read:

8 30.01 (1d) "Boathouse" means a structure with one or more walls or sides that
9 has been used for one or more years for the storage of watercraft and associated
10 materials which has one or more walls or sides, regardless of the current use of the
11 structure.

12 **SECTION 4.** 30.025 (5) of the statutes is repealed.

13 **SECTION 5.** 30.025 (6) of the statutes is created to read:

14 30.025 (6) REVIEW. Notwithstanding s. 227.42, the sole option for review of a
15 decision of the department with respect to a permit under this section or an
16 authorization to proceed under this section is to commence an action in circuit court
17 to review that decision under ss. 227.52 and 227.53.

18 **SECTION 6.** 30.053 of the statutes is created to read:

19 **30.053 Applicability of chapter to artificial water bodies.** Except as
20 specifically provided otherwise in this chapter, nothing in this chapter applies to an
21 artificial water body, as defined in s. 30.19 (1b) (a), that is not hydrologically

1 connected to a natural navigable waterway and that does not discharge into a
2 natural navigable waterway except as a result of storm events.

3 **SECTION 7.** 30.106 of the statutes is created to read:

4 **30.106 Areas that possess significant scientific value.** (1) Areas that the
5 department may identify as possessing significant scientific value are limited to the
6 following:

7 (a) The portion of a body of water that contains critical habitat for endangered
8 or threatened species.

9 (b) The portion of a body of water that is immediately adjacent to an area that
10 contains critical habitat for endangered or threatened species and that directly
11 affects that habitat.

12 (c) A body of water designated as a wild rice water under a written agreement
13 between the department and the Great Lakes Indian Fish and Wildlife Commission.

14 (d) A body of water in a wetland along Lake Michigan or Lake Superior that
15 the department has identified as an ecologically significant coastal wetland.

16 (e) A river that is included in the national wild and scenic rivers system.

17 (f) A river that is designated as a wild river under s. 30.26.

18 **(2)** The department may not identify an area as possessing significant
19 scientific value unless it first notifies the joint committee for review of administrative
20 rules in writing of the proposal and obtains the approval of the committee. Any area
21 the department has identified as possessing significant scientific value on the
22 effective date of this subsection ... [LRB inserts date], that is not identified again as
23 possessing significant scientific value using the process under this subsection on or
24 before December 31, 2017, loses this identification.

25 **SECTION 8.** 30.115 of the statutes is created to read:

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1 **30.115 Ownership of certain filled navigable waters. (1)** In this section:

2 (a) “Line of navigation” means the depth of a navigable water that is the greater
3 of the following:

4 1. Three feet.

5 2. The depth required to operate a boat on the navigable water based on normal
6 summertime low levels on the navigable water or summer minimum levels if
7 summer minimum levels are established by the department.

8 (b) “Riparian zone” means the area that extends from riparian land waterward
9 to the line of navigation as determined by a method that establishes riparian zone
10 lines between adjacent riparian owners in a manner that equitably apportions access
11 to the line of navigation.

12 **(2)** If a person placed fill on the bed of a navigable water before January 1, 1975,
13 the filled area above the ordinary high-water mark is owned by the riparian owner
14 in whose riparian zone the fill is located on the effective date of this subsection ...
15 [LRB inserts date], if the filled area has continuously remained above the ordinary
16 high-water mark since January 1, 1975.

17 **(3)** The department may not require the riparian owner of a filled area
18 described under sub. (2) to remove the fill, whether above or below the ordinary
19 high-water mark, from that area.

20 **(4)** Upon request, the department shall furnish a quitclaim deed to the riparian
21 owner described under sub. (2).

22 **(5)** This section does not apply to a lake bed area conveyed by the legislature
23 as provided under s. 13.097.

24 **SECTION 9.** 30.12 (1g) (am) of the statutes is created to read:

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1 30.12 (1g) (am) A deposit of sand, gravel, or stone that is necessary to perform
2 an activity authorized under s. 30.125 (2) (a).

3 **SECTION 10.** 30.12 (1k) (f) of the statutes is amended to read:

4 30.12 (1k) (f) ~~A decision of~~ If the department against determines that the
5 owner of a structure for which is not entitled to an exemption is claimed under this
6 subsection is subject to a trial de novo, the owner may bring an action for declaratory
7 judgment under s. 806.04 in the circuit court for the county in which the riparian
8 property is located. The owner is not entitled to a contested case hearing or judicial
9 review under ch. 227.

10 **SECTION 11.** 30.12 (3) (a) 3c. of the statutes is amended to read:

11 30.12 (3) (a) 3c. Place riprap in order to replace or repair existing riprap, other
12 than riprap that is exempt under sub. (1g) (i) or (j). Under the permit, the
13 department shall allow riprap to extend to the top of the bank of the navigable water
14 or 4 feet above the ordinary high-water mark, whichever is lower. In issuing the
15 permit, the department may not impose conditions that prohibit the replacement or
16 repair of riprap located in an area of special natural resource interest.

17 **SECTION 12.** 30.12 (3) (a) 3g. of the statutes is amended to read:

18 30.12 (3) (a) 3g. Place riprap on the bed or bank of a navigable water adjacent
19 to an owner's property in an amount up to and including 100 continuous feet in an
20 inland lake of 300 acres or more. Under the permit the department shall allow riprap
21 to extend to the top of the bank of the navigable water or 4 feet above the ordinary
22 high-water mark, whichever is lower.

23 **SECTION 13.** 30.12 (3) (a) 3r. of the statutes is amended to read:

24 30.12 (3) (a) 3r. Place riprap on the bed or bank of a navigable water adjacent
25 to an owner's property in an amount up to and including 300 continuous feet in a

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1 Great Lakes water body. Under the permit the department shall allow riprap to
2 extend to the top of the bank of the navigable water or 4 feet above the ordinary
3 high-water mark, whichever is lower.

4 **SECTION 14.** 30.12 (3) (a) 6. (intro.) of the statutes is renumbered 30.12 (3) (a)
5 6. and amended to read:

6 30.12 (3) (a) 6. Place a permanent boat shelter adjacent to the owner's property
7 for the purpose of storing or protecting watercraft and associated materials, ~~except~~
8 ~~that no general or individual permit may be issued for a permanent boat shelter that~~
9 ~~is constructed after May 3, 1988, if any of the following apply:.~~

10 **SECTION 15.** 30.12 (3) (a) 6. a., b. and c. of the statutes are repealed.

11 **SECTION 16.** 30.12 (3) (a) 13. of the statutes is amended to read:

12 30.12 (3) (a) 13. Place a seawall to replace an existing seawall for which a
13 permit has been issued or an exemption granted under this chapter, or for which no
14 permit was required at the time the seawall was built. The replacement may not
15 exceed 100 continuous feet in an inland lake of 300 or more acres and may not exceed
16 300 continuous feet in a Great Lakes water body. In issuing the permit, the
17 department may not impose conditions that prohibit the replacement of a seawall
18 located in an area of special natural resource interest.

19 **SECTION 17.** 30.12 (3) (c) of the statutes is amended to read:

20 30.12 (3) (c) The department may impose conditions on general permits issued
21 under par. (a) 6. to govern the architectural features of boat shelters and the number
22 of boat shelters that may be constructed adjacent to a parcel of land. The conditions
23 may not govern the aesthetic features or color of boat shelters or the distance at
24 which a boat shelter may extend from the shore and may not be based on the degree
25 to which adjacent land is developed. The conditions shall be designed to ensure the

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1 structural soundness and durability of boat shelters. A municipality may enact
2 ordinances that are consistent with this paragraph and with any conditions imposed
3 on general permits issued to regulate the architectural features of boat shelters that
4 are under the jurisdiction of the municipality.

5 **SECTION 18.** 30.12 (3m) (cr) of the statutes is created to read:

6 30.12 **(3m)** (cr) In determining whether to issue an individual permit to the
7 owner of a proposed permanent boat shelter, the department may not deny the
8 permit on the basis of the distance at which the shelter will extend from the shore
9 or the degree to which adjacent land is developed.

10 **SECTION 19.** 30.121 (1) of the statutes is amended to read:

11 30.121 **(1)** DEFINITION. In this section, the terms “maintain” and “repair”
12 include replacing structural elements, including roofs, doors, walls, windows,
13 beams, porches, and floors, and foundations.

14 **SECTION 20.** 30.121 (3b) of the statutes is created to read:

15 30.121 **(3b)** EXPANSION OF HISTORIC BOATHOUSES. The riparian owner of any
16 boathouse or fixed houseboat extending beyond the ordinary high-water mark of any
17 navigable waterway may expand the boathouse without a permit under s. 30.12 if
18 the boathouse is listed in the national register of historic places in Wisconsin or the
19 state register of historic places, the boathouse is not expanded beyond its listed
20 historical boundaries, and the expansion does not involve the placement of any new
21 structure on the bed of a navigable water.

22 **SECTION 21.** 30.121 (3c) of the statutes is amended to read:

23 30.121 **(3c)** EXCEPTION; CERTAIN BOATHOUSES. Subsection (3) does not apply to
24 repairing or maintaining a boathouse if the boathouse was in existence on December
25 16, 1979, and the repairing or maintaining does not affect the size, or location, ~~or~~

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1 ~~configuration~~ of the boathouse and does not result in the boathouse being converted
2 into living quarters.

3 **SECTION 22.** 30.121 (3w) (c) of the statutes is renumbered 30.121 (3w) (c) (intro.)
4 and amended to read:

5 30.121 (**3w**) (c) (intro.) The boathouse is ~~located within~~ in any of the following
6 locations:

7 1. Within a harbor that is being operated as a commercial enterprise ~~or is~~
8 ~~located on.~~

9 2. On a river that is a tributary of Lake Michigan or Lake Superior.

10 **SECTION 23.** 30.121 (3w) (c) 3. of the statutes is created to read:

11 30.121 (**3w**) (c) 3. On an outlying water and the work is limited to the
12 expansion, repair, or maintenance of an existing boathouse.

13 **SECTION 24.** 30.125 of the statutes is created to read:

14 **30.125 Shoreline maintenance in outlying waters. (1)** In this section:

15 (a) "Outlying waters" has the meaning given in s. 29.001 (63).

16 (b) "Shoreline area" means the area that is located between the ordinary
17 high-water mark and water's edge.

18 **(2)** The permitting requirements under ss. 23.24 (3) and 30.12 and the contract
19 and permitting requirements under s. 30.20 do not apply to any of the following
20 maintenance activities conducted in a shoreline area of an outlying water:

21 (a) The leveling of sand or the grooming of soil if the leveling or grooming will
22 occur in an area of unconsolidated material predominately composed of sand, rock,
23 and pebble that is authorized by the owner of the riparian land that abuts the
24 shoreline area.

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1 (b) The removal of debris or the mowing of vegetation that is authorized by the
2 owner of the riparian land that abuts the shoreline area.

3 **SECTION 25.** 30.133 (1) of the statutes is amended to read:

4 30.133 (1) Beginning on April 9, 1994, and except as provided in s. 30.1335, no
5 owner of riparian land that abuts a navigable water may grant by an easement or
6 by a similar conveyance any riparian right in the land to another person, except for
7 the right to cross the land in order to have access to the navigable water. This right
8 to cross the land may not include the right to place any structure or material,
9 including a boat docking facility, as defined in s. 30.1335 (1) (a), in the navigable
10 water. This subsection does not prohibit an owner of riparian land that abuts a
11 navigable water who owns a boat docking facility that is lawfully placed on that
12 water from entering into an agreement with another owner of riparian land that
13 abuts the same navigable water for the shared use of that boat docking facility.

14 **SECTION 26.** 30.19 (1b) (a) of the statutes is amended to read:

15 30.19 (1b) (a) “Artificial water body” means a ~~proposed or existing~~ body of
16 water that does not have a history of being a lake or stream or of being part of a lake
17 or stream.

18 **SECTION 27.** 30.19 (1g) (a) of the statutes is amended to read:

19 30.19 (1g) (a) Construct, dredge, or enlarge any artificial water body that
20 connects with ~~a~~ an existing navigable waterway.

21 **SECTION 28.** 30.19 (1g) (am) of the statutes is amended to read:

22 30.19 (1g) (am) Construct, ~~dredge,~~ or enlarge any part of an artificial water
23 body that is or will be located within 500 feet of the ordinary high-water mark of, but
24 that does not or will not connect with, an existing navigable waterway, ~~including.~~
25 An artificial water body that meets the requirements of this paragraph includes a

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1 stormwater management pond that does not discharge into a navigable waterway
2 except as a result of storm events.

3 **SECTION 29.** 30.19 (1m) (dm) of the statutes is created to read:

4 30.19 **(1m)** (dm) The dredging of any part of an artificial water that does not
5 connect with a navigable waterway. An artificial water body that meets the
6 requirements of this paragraph includes a stormwater management pond that does
7 not discharge into a navigable waterway except as a result of storm events.

8 **SECTION 30.** 30.20 (1g) (b) 3. of the statutes is created to read:

9 30.20 **(1g)** (b) 3. The removal is necessary to perform an activity authorized
10 under s. 30.125 (2).

11 **SECTION 31.** 30.20 (1t) (b) of the statutes is created to read:

12 30.20 **(1t)** (b) 1. In this paragraph:

13 a. "Inland lake" means an inland water that is a lake.

14 b. "Inland water" has the meaning given in s. 29.001 (45).

15 2. The department shall issue a statewide general permit under s. 30.206 that
16 authorizes any riparian owner to remove material in the following amounts once in
17 a calendar year from a lake bed adjacent to the riparian owner's riparian property:

18 a. From an inland lake, 30 cubic yards.

19 b. From an outlying water, 100 cubic yards.

20 3. The department may not limit to non-mechanized equipment the types of
21 equipment that may be used to conduct the activity under the general permit under
22 this paragraph.

23 **SECTION 32.** 30.20 (1t) (c) of the statutes is created to read:

24 30.20 **(1t)** (c) The department may not require a person to collect a sediment
25 sample prior to proceeding under a general permit issued under par. (a) unless the

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1 department has specific information that indicates the potential that contaminants
2 may be present in the material proposed to be dredged.

3 **SECTION 33.** 30.20 (2) (cn) of the statutes is created to read:

4 30.20 (2) (cn) The department may not require an applicant for a permit under
5 par. (bn) to collect a sediment sample unless the department has specific information
6 that indicates the potential that contaminants may be present in the material
7 proposed to be dredged.

8 **SECTION 34.** 30.206 (1) (a) of the statutes is amended to read:

9 30.206 (1) (a) The department shall issue the statewide general permits
10 required under ss. 30.12 (3) (a) and (b), 30.123 (7), 30.19 (3r), and 30.20 (1t) (a) and
11 (b).

12 **SECTION 35.** 30.29 (3) (d) of the statutes is amended to read:

13 30.29 (3) (d) ~~Activities for which a permit is issued~~ Authorized activities. A
14 person or agent of a person who is engaged in activities as authorized under a general
15 or individual permit issued under this subchapter or as authorized under a contract
16 entered into under this subchapter or who is engaged in activities landward of a
17 lawfully established bulkhead line for which no permit or contract is required under
18 this subchapter.

19 **SECTION 36.** 31.02 (1) of the statutes is amended to read:

20 31.02 (1) The department, in the interest of public rights in navigable waters
21 ~~or,~~ to promote safety, and to protect life, health and, property, property values, and
22 economic values may regulate and control the level and flow of water in all navigable
23 waters and may erect, or may order and require bench marks to be erected, upon
24 which shall be designated the maximum level of water that may be impounded and
25 the lowest level of water that may be maintained by any dam heretofore or hereafter

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1 constructed and maintained and which will affect the level and flow of navigable
2 waters; and may by order fix a level for any body of navigable water below which the
3 same shall not be lowered except as provided in this chapter; and shall establish and
4 maintain gauging stations upon the various navigable waters of the state and shall
5 take other steps necessary to determine and record the characteristics of such
6 waters.

7 **SECTION 37.** 31.185 (5) of the statutes is amended to read:

8 31.185 (5) As a prerequisite to the granting of a permit under this section, the
9 department may require the applicant to comply with such conditions as it deems
10 reasonably necessary in the particular case to preserve public rights in navigable
11 waters, to promote safety, and to protect life, health and, property, property values,
12 and economic values.

13 **SECTION 38.** 281.16 (2) (c) of the statutes is created to read:

14 281.16 (2) (c) The department may not prohibit the construction of storm water
15 management ponds in navigable or nonnavigable artificial waterways as a method
16 for achieving compliance with performance standards under par. (a). The
17 department shall give credit for any pollutant reduction achieved by a storm water
18 management pond in determining compliance with performance standards specified
19 in a permit under s. 283.33.

20 **SECTION 39.** 281.31 (2) (b) of the statutes is created to read:

21 281.31 (2) (b) "Artificial water body" means a body of water that does not have
22 a history of being a lake or stream or of being part of a lake or stream.

23 **SECTION 40.** 281.36 (3n) (a) of the statutes is renumbered 281.36 (3n) (a) 1. and
24 amended to read:

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1 281.36 **(3n)** (a) 1. For the purpose of issuing a wetland individual permit,
2 during the period between the date on which the application under sub. (3m) (a) is
3 submitted and the date on which a decision under sub. (3m) (i) is rendered, the
4 department shall conduct its review under this subsection.

5 2. The department shall review the analysis of practicable alternatives
6 presented in the application under sub. (3m) (b). ~~The~~

7 3. ~~For federal wetlands, the~~ department shall limit its review to those
8 practicable alternatives that are located at the site of the discharge and that are
9 located adjacent to that site if the applicant has demonstrated that the proposed
10 project causing the discharge will result in a demonstrable economic public benefit,
11 that the proposed project is necessary for the expansion of an existing industrial,
12 commercial, or agricultural facility that is in existence at the time the application is
13 submitted, or that the proposed project will occur in an industrial park that is in
14 existence at the time the application is submitted.

15 **SECTION 41.** 281.36 (3n) (a) 4. of the statutes is created to read:

16 281.36 **(3n)** (a) 4. For nonfederal wetlands, the department shall limit its
17 review to those practicable alternatives to which all of the following apply:

18 a. The practicable alternative is consistent with the overall purpose and scope
19 of the project.

20 b. The practicable alternative is located at the site of the discharge or located
21 adjacent to that site if both sites are owned by the same person. This requirement
22 does not apply if the proposed discharge affects more than 20 percent of the area of
23 the site or more than 5 acres.

24 **SECTION 42.** 281.36 (4) (d) of the statutes is amended to read:

25 281.36 **(4)** (d) Maintenance of drainage or roadside ditches.

