

1991 Assembly Bill 563

Date of enactment: **November 20, 1991**

Date of publication\*: **December 5, 1991**

# 1991 WISCONSIN ACT 76

**AN ACT** to repeal 30.44 (3) (c) 2g, 30.45 (3) (c) and 30.45 (8); to renumber and amend 30.45 (12); to amend 30.40 (11), 30.42 (1) (d), 30.435 (1), 30.44 (title), 30.44 (1) (a), 30.44 (3) (bn), 30.44 (3) (c) 2m, 30.44 (3) (c) 4, 30.44 (7), 30.44 (8) (a), 30.44 (8) (am), 30.44 (8) (c) (intro.), 30.44 (8) (c) 2, 30.44 (8) (d) 1 and 2, 30.44 (8) (e), 30.44 (9) (a), 30.44 (9) (c) (intro.), 30.44 (9) (c) 2, 30.44 (9) (d) 1 and 2, 30.44 (9) (e), 30.45 (title), 30.45 (3) (ar), 30.45 (3) (d), 30.45 (3m) (a), 30.45 (3m) (b), 30.45 (4m) (intro.), 30.455 (1) and 30.455 (4), (5) (intro.), (6) and (8); and to create 30.40 (10m), 30.40 (22m), 30.43 (3), 30.44 (3) (c) 2p, 30.44 (3) (c) 5, 30.44 (4), 30.44 (8) (f), 30.445 (3m), 30.445 (9), 30.45 (3) (de), 30.45 (3) (df), 30.45 (3) (f), 30.45 (3) (g), 30.45 (3p) and 30.45 (4p) of the statutes, relating to: the lower Wisconsin state riverway, granting rule-making authority and providing an exemption from and extending the time limit for emergency rule procedures.

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

**SECTION 1.** 30.40 (10m) of the statutes is created to read:

30.40 (10m) "Private drive" means a way in private ownership that is used for vehicular travel upon a single parcel of real property.

**SECTION 2.** 30.40 (11) of the statutes is amended to read:

30.40 (11) "Private road" means a way or thoroughfare in private ownership and used for vehicular travel ~~only by the owner and those having express or implied permission from the owner between 2 or more parcels of real property, not under common ownership, and a highway.~~

**SECTION 3.** 30.40 (22m) of the statutes is created to read:

30.40 (22m) "Waterproof container" means a can, bucket, bag, box or other similar receptacle made of a material that retains its usefulness when exposed to water.

**SECTION 4.** 30.42 (1) (d) of the statutes is amended to read:

30.42 (1) (d) Promulgate rules that are applicable only to land in the riverway to regulate the cutting and harvesting of timber so that the effect of cutting or harvesting of timber on the scenic beauty and the natural value of the riverway is minimized. The rules promulgated under this paragraph do not apply to any cutting or harvesting of timber subject to regulation under s. 30.43 (3).

**SECTION 5.** 30.43 (3) of the statutes is created to read:

30.43 (3) Promulgate rules establishing procedures for the cutting or harvesting of timber or the cutting of woody vegetation in order to restore or maintain prairies or other native plant communities, to enhance wildlife habitat or to maintain confirmed archaeological sites. The rules shall require the person proposing the cutting or harvesting to prepare a management plan and obtain approval of the management plan from the department.

**SECTION 5m.** 30.435 (1) of the statutes is amended to read:

30.435 (1) Grant waivers under s. 30.44 (8) (c) and (f) and impose conditions under s. 30.44 (7) and (11) (d).

**SECTION 6.** 30.44 (title) of the statutes is amended to read:

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**30.44 (title) Permits; waivers; board and county procedures.**

**SECTION 7.** 30.44 (1) (a) of the statutes is amended to read:

30.44 (1) (a) For purposes of this subsection, notwithstanding s. 30.40 (18), "structure" excludes boat shelters, boathouses, bridges, dams, fishing rafts, fixed houseboats, piers, public access sites, stairways, swimming rafts, high-voltage transmission lines, utility facilities, walkways ~~and~~, wharves ~~and any other structures that the board excludes by rule if the structures excluded by rule are of a minimal size or are of a type that is not visible from the river.~~

**SECTION 8.** 30.44 (3) (bn) of the statutes is amended to read:

30.44 (3) (bn) The cutting and harvesting of timber shall comply with the rules regulating timber cutting and harvesting promulgated by the department under s. 30.42 (1) (d) ~~or by the board under s. 30.43 (3).~~

**SECTION 9.** 30.44 (3) (c) 2g of the statutes is repealed.

**SECTION 10.** 30.44 (3) (c) 2m of the statutes is amended to read:

30.44 (3) (c) 2m. The cutting of timber that is necessary for maintenance of an easement or a right-of-way for a highway, a railroad, a high-voltage transmission line or a utility facility.

**SECTION 11.** 30.44 (3) (c) 2p of the statutes is created to read:

30.44 (3) (c) 2p. The cutting of timber that is necessary for maintenance of the right-of-way for a private drive or a private road if the width of the area subject to cutting does not exceed the minimum width necessary for safe travel, but not to exceed 20 feet for a private drive or 30 feet for a private road.

**SECTION 12.** 30.44 (3) (c) 4. of the statutes is amended to read:

30.44 (3) (c) 4. Timber cut on land that is more than 75 feet beyond the high-water mark of the river and that is owned or occupied by a person if the ~~cut~~ timber ~~cut~~ is used as firewood, fence posts or Christmas trees for the ~~person's~~ agricultural or household use and if the cut timber is not sold or bartered to another person.

**SECTION 13.** 30.44 (3) (c) 5. of the statutes is created to read:

30.44 (3) (c) 5. Timber cut pursuant to a written contract between private parties that is entered into before October 31, 1989, if a copy of the contract has been filed with the board before the next cutting that occurs after the effective date of this subdivision .... [revisor inserts date], together with an affidavit on a form supplied by the board. The affidavit shall state that the contract was entered before October 31, 1989, and shall inform the person filing the contract and affidavit of the penalty for false swearing under s. 946.32.

**SECTION 14.** 30.44 (4) of the statutes is created to read:

30.44 (4) PUBLIC ACCESS SITES. (a) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction or modification of a public access site.

2. Repair of a damaged public access site or reconstruction of a destroyed public access site unless exempt under par. (d).

(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (c) is met.

(c) All reasonable efforts, as determined by the board, shall be taken to minimize the visual impact of the public access site, including the use of exterior colors that harmonize with the surroundings and the limited use of glass or other reflective materials.

(d) Paragraphs (a) to (c) do not apply to the repair of a damaged public access site or to the reconstruction of a destroyed public access site if all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair or reconstruction.

2. The repaired or reconstructed public access site will not be larger in size or more visible from the river than it was immediately before it was damaged or destroyed.

**SECTION 15.** 30.44 (7) of the statutes is amended to read:

30.44 (7) CONDITIONS ON PERMITS. The board or county may impose on a permit a condition that is necessary to assure compliance with the performance standards in subs. (1) to (5) or to assure that the activity is completed within a reasonable time, except that only the board may impose such a condition on a permit issued under sub. ~~(3), (3m) or (4).~~

**SECTION 16.** 30.44 (8) (a) of the statutes is amended to read:

30.44 (8) (a) Except as provided under sub. (1) (f), a person shall apply for and be issued by the board a permit for an activity in subs. (1) ~~to (3)~~, (2) and (5) for land in the riverway that is not zoned shorelands under s. 59.971.

**SECTION 17.** 30.44 (8) (am) of the statutes is amended to read:

30.44 (8) (am) A person shall apply for and be issued by the board a permit for an activity in sub. ~~(3), (3m) or (4)~~ for land in the riverway.

**SECTION 18.** 30.44 (8) (c) (intro.) of the statutes is amended to read:

30.44 (8) (c) (intro.) The board may grant a waiver of a performance standard for an activity in sub. (1) (b) ~~or a waiver for an activity prohibited in s. 30.45 (3) or (3m)~~ and issue a permit under par. (a) ~~or (am) or may grant a waiver authorizing an activity prohibited under s. 30.45 (3) or (3m) for land in the riverway that is not zoned shorelands under s. 59.971~~ if one of the following applies:

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**SECTION 19.** 30.44 (8) (c) 2. of the statutes is amended to read:

30.44 (8) (c) 2. A ~~municipality~~ An individual requests the waiver ~~on behalf of a resident of a municipality,~~ enforcement of the performance standard or prohibition will cause unnecessary hardship to the ~~resident~~ individual and the visual impact of the activity will be minimized to the greatest degree possible.

**SECTION 20.** 30.44 (8) (d) 1. and 2. of the statutes are amended to read:

30.44 (8) (d) 1. Compelling personal needs of the ~~resident~~ individual that are not self-imposed or self-created and that are not solely based on the financial hardship of the ~~resident~~ individual; or

2. Natural causes beyond the control of the ~~resident~~ individual.

**SECTION 21.** 30.44 (8) (e) of the statutes is amended to read:

30.44 (8) (e) The board may not grant a waiver under par. (c) 2. for unnecessary hardship due to natural causes beyond the control of the ~~resident~~ individual if the reason for granting the waiver is based solely on the financial hardship of the ~~resident~~ individual.

**SECTION 21m.** 30.44 (8) (f) of the statutes is created to read:

30.44 (8) (f) 1. The board may grant a waiver to modify a limitation for a wharf in the riverway, as specified under s. 30.45 (9) (a), if an individual requests the waiver, if enforcement of the limitation will cause unnecessary hardship to the individual and if the visual impact of the wharf will be minimized to the greatest degree possible.

2. For purposes of subd. 1, unnecessary hardship must be compelling personal needs of the individual that are not self-imposed or self-created and that are not solely based on the financial hardship of the individual.

**SECTION 22.** 30.44 (9) (a) of the statutes is amended to read:

30.44 (9) (a) A person shall apply for and be issued by the county in which the land is located a permit for an activity in subs. (1) ~~to (3)~~, (2) and (5) for land in the riverway that is in the county and that is zoned shorelands under s. 59.971.

**SECTION 23.** 30.44 (9) (c) (intro.) of the statutes is amended to read:

30.44 (9) (c) (intro.) The county may grant a waiver of a performance standard for an activity in sub. (1) (b) ~~or a waiver for an activity prohibited in s. 30.45 (3) or (3m)~~ and issue a permit for the activity under par. (a) or may grant a waiver authorizing an activity prohibited under s. 30.45 (3) or (3m) for land in the riverway that is in the county and that is zoned shorelands under s. 59.971 if one of the following applies:

**SECTION 24.** 30.44 (9) (c) 2. of the statutes is amended to read:

30.44 (9) (c) 2. A ~~municipality~~ An individual requests the waiver ~~on behalf of a resident of a municipality,~~ enforcement of the performance standard or prohibition will cause unnecessary hardship to the ~~resident~~ individual and the visual impact of the activity will be minimized to the greatest degree possible.

**SECTION 25.** 30.44 (9) (d) 1. and 2. of the statutes are amended to read:

30.44 (9) (d) 1. Compelling personal needs of the ~~resident~~ individual that are not self-imposed or self-created and that are not solely based on the financial hardship of the ~~resident~~ individual; or

2. Natural causes beyond the control of the ~~resident~~ individual.

**SECTION 26.** 30.44 (9) (e) of the statutes is amended to read:

30.44 (9) (e) The county may not grant a waiver under par. (c) 2. for unnecessary hardship due to natural causes beyond the control of the ~~resident~~ individual if the reason for granting the waiver is based solely on the financial hardship of the ~~resident~~ individual.

**SECTION 26g.** 30.445 (3m) of the statutes is created to read:

30.445 (3m) Notwithstanding subs. (2), (3) and (7), the board shall issue a permit to have and maintain a pier in the riverway to an owner of a pier in the riverway that was in existence on October 31, 1989, if the person applies for the permit before September 1, 1992, and if at least a two-thirds majority of the board votes to approve the issuance of the permit.

(b) If an owner fails to apply for a permit under par. (a) before September 1, 1992, or to remove the pier before that date, or if the board fails to approve the permit, the owner shall remove the pier before July 1, 1993.

**SECTION 26r.** 30.455 (4), (5) (intro.), (6) and (8) of the statutes are amended to read:

30.445 (4) ~~The~~ A permit issued under sub. (3) or (3m) authorizes the person to whom the permit is issued to have and maintain the pier in the riverway on the condition that it be maintained in at least as good condition as it was in on the date of the application for the permit.

(5) (intro.) ~~The~~ A permit issued under sub. (3) or (3m) authorizes repairs to the pier unless any of the following applies:

(6) The board shall revoke any permit issued under sub. (3) or (3m) if the owner of the pier does not comply with sub. (4) or (5).

(8) If a permit issued under sub. (3) or (3m) has been revoked, the owner of the pier shall remove the pier within 15 days after the revocation, or if the board grants additional time for the removal, within that time.

**SECTION 27.** 30.445 (9) of the statutes is created to read:

30.445 (9) Subsections (1) to (8) do not apply to a pier that is not located in the river and that is constructed after

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the effective date of this subsection .... [revisor inserts date].

**SECTION 28.** 30.45 (title) of the statutes is amended to read:

**30.45 (title) Prohibited and restricted activities in the riverway.**

**SECTION 29.** 30.45 (3) (ar) of the statutes is amended to read:

30.45 (3) (ar) An activity that s. 30.44 or 30.445 exempts from a permit.

**SECTION 30.** 30.45 (3) (c) of the statutes is repealed.

**SECTION 31.** 30.45 (3) (d) of the statutes is amended to read:

30.45 (3) (d) Maintenance of a right-of-way for a highway, private road, private drive or a railroad.

**SECTION 32.** 30.45 (3) (de) of the statutes is created to read:

30.45 (3) (de) Construction, reconstruction, modification or repair of a highway or a railroad.

**SECTION 33.** 30.45 (3) (df) of the statutes is created to read:

30.45 (3) (df) Construction, reconstruction, modification or repair of a private drive or private road if the width of the area subject to cutting does not exceed the minimum width necessary for safe travel, not to exceed 20 feet for a private drive or 30 feet for a private road.

**SECTION 34.** 30.45 (3) (f) of the statutes is created to read:

30.45 (3) (f) Removal of woody vegetation that poses an imminent hazard to life or property.

**SECTION 35.** 30.45 (3) (g) of the statutes is created to read:

30.45 (3) (g) Cutting woody vegetation if the cutting complies with the rules promulgated under s. 30.43 (3).

**SECTION 36.** 30.45 (3m) (a) of the statutes is amended to read:

30.45 (3m) (a) As specified in sub. (3) (a) to (e) (g).

**SECTION 37.** 30.45 (3m) (b) of the statutes is amended to read:

30.45 (3m) (b) For woody vegetation cut on land owned or occupied by a person if the cut woody vegetation ~~cut~~ is used as firewood, fence posts or Christmas trees for the person's agricultural or household use and if the cut woody vegetation is not sold or bartered to another person.

**SECTION 38.** 30.45 (3p) of the statutes is created to read:

30.45 (3p) The restrictions against the cutting of woody vegetation under subs. (3) and (3m) do not apply to the cutting of woody vegetation that complies with sound horticultural or arboricultural practices, that does not involve the severing of the woody vegetation from the ground and that does not increase the visibility of any structure from the river.

**SECTION 39.** 30.45 (4m) (intro.) of the statutes is amended to read:

30.45 (4m) (intro.) ~~No~~ Except as provided in sub. (4p), no person may store or dispose of solid waste unless the solid waste is:

**SECTION 40.** 30.45 (4p) of the statutes is created to read:

30.45 (4p) No person may dispose of the debris resulting from the demolition of a building or a building foundation unless the disposal is on the same parcel on which the demolition site is located, the debris is of a type that is not required under s. 144.44 (7) (g) 1. a. to be disposed of in a licensed solid waste disposal facility and the debris is buried.

**SECTION 41.** 30.45 (8) of the statutes is repealed.

**SECTION 42.** 30.45 (12) of the statutes is renumbered 30.452, and 30.452 (intro.), as renumbered, is amended to read:

**30.452 (title) Prohibited activities in the river.** (intro.) ~~No~~ In the river, no person may:

**SECTION 43.** 30.455 (1) of the statutes is amended to read:

30.455 (1) Construction, reconstruction, design, maintenance, modification or repair activities, or mining or quarrying activities in the riverway, that are carried out under the direction and supervision of the department of transportation are not subject to ss. 30.44 to 30.45. At the earliest practical time before the commencement of these activities, the department of transportation shall notify and consult with the department and the board on the location, nature and extent of the proposed work.

**SECTION 44. Nonstatutory provisions.** (1) RULES FOR STRUCTURES. If the lower Wisconsin state riverway board uses the procedure under section 227.24 of the statutes to promulgate rules for the purpose of excluding certain structures from the permit requirement under section 30.44 (1) of the statutes, as affected by this act, the board shall promulgate these rules no later than 120 days after the effective date of this subsection. Notwithstanding section 227.24 (1) and (3) of the statutes, the board is not required to make a finding of emergency for a rule promulgated under this subsection. Notwithstanding section 227.24 (2) (a) of the statutes, the effective period of a rule promulgated under this subsection may be extended by the joint committee for review of administrative rules for a period not to exceed 120 days. Any number of extensions may be granted by the committee, but the total period of all extensions may not exceed 240 days.

(2) RULES FOR CUTTING OF TIMBER AND WOODY VEGETATION. (a) The lower Wisconsin state riverway board shall submit the proposed rules, as required under section 30.43 (3) of the statutes, as created by this act, to the legislative council staff for review under section 227.15 (1) of the statutes within 180 days after the effective date of this paragraph.

(b) Using the procedure under section 227.24 of the statutes, the lower Wisconsin state riverway board shall promulgate rules, as required under section 30.43 (3) of

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the statutes, as created by this act. Notwithstanding section 227.24 (1) and (3) of the statutes, the board is not required to make a finding of emergency. The board shall promulgate these rules no later than 120 days after the effective date of this paragraph. Notwithstanding section 227.24 (2) of the statutes, the effective date of a rule promulgated under this paragraph may be extended by the joint committee for review of administrative rules for a period, specified by that committee, not to exceed 120 days. Any number of extensions may be granted by that committee, but the total period for all extensions may not exceed 240 days.

**SECTION 45. Initial applicability.** (1) PERMIT PROCEDURES. The treatment of section 30.44 (7) (in respect to the cross-reference to section 30.44 (3) of the statutes,

as affected by this act), (8) (a) and (am) (in respect to the cross-reference to section 30.44 (3) of the statutes, as affected by this act) and (9) (a) of the statutes first applies to applications for permits received by a county or the lower Wisconsin state riverway board on the effective date of this subsection.

(2) PUBLIC ACCESS SITES. The treatment of sections 30.44 (4), (7) (in respect to the cross-reference to section 30.44 (4) of the statutes, as created by this act) and (8) (am) (in respect to the cross-reference to section 30.44 (4) of the statutes, as created by this act) and 30.45 (3) (c) and (8) of the statutes first applies to public access sites, as defined in section 30.40 (12) of the statutes, that are constructed, reconstructed, modified or repaired on the effective date of this subsection.

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