

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/22/99**

Received By: **traderc**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Anderson**

This file may be shown to any legislator: **NO**

Drafter: **gibsom**

May Contact:

Alt. Drafters:

Subject: **Nat. Res. - nav. waters**

Extra Copies: **RCT**

Pre Topic:

ARC:.....Anderson - Am # 302,

Topic:

Drainage board activities (provision # 14)

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|---------------------|----------------------|----------------------|----------------|--------------------------|-----------------|-----------------|
| /? | traderc 06/23/99 | | | _____ | | | |
| /1 | gibsom 06/24/99 | chanaman 06/24/99 | martykr 06/24/99 | _____ | ismith 06/24/99 | | |
| /2 | gibsom 06/26/99 | chanaman 06/26/99 | jfrantze 06/26/99 | _____ | lrb_docadmin 06/26/99 | | |

FE Sent For:

<END>

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| /? | traderc 06/23/99 | | | _____ | | | |
| /1 | gibsom 06/24/99 | chanaman 06/24/99 | martykr 06/24/99 | _____ | ismith 06/24/99 | | |

FE Sent For:

cmv
6/24
12

JG 6/26

JG 6/24
 <END>

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|--------------|-------------------------------|------------------|--------------|--------------------------|------------------|-----------------|-----------------|
| 1/? | traderc 06/23/99 gibson | cmr 6/24 h | Jm 6/24 | ch 6/24 Jm 6/24 | | | |

FE Sent For:

<END>

XIV. Drainage Board Activities

JFC Action

None.

Motion

The motion makes several changes to the statutes relating to drainage districts in an effort to clarify agency responsibilities and eliminate duplicate regulation between the DNR and the DATCP. The changes include:

- 30.104(c)
- Jim Howard Mattson*
- a) Clarify that a drainage district drain is not navigable unless it is shown by means of a United States Geological Survey map or other equally reliable scientific evidence, that the drain was a navigable stream before it became a district drain;
 - b) Specify that a county drainage board may place structures or deposits in a district drain, without a DNR permit, if DATCP, specifically approves the structure or deposit in consultation with the DNR;
 - c) Specify that a county drainage board may place a structure or deposit in a district drain without a DNR permit, if the structure or deposit is required by DATCP rules in order to conform the drain to specifications approved by DATCP in consultation with DNR, except when the drainage ditch has been previously designated a class 1 trout stream, "as of the effective date of the bill," as specified by DNR according to NR1.02(7). ~~The removal must comply with applicable conditions or limitations imposed by DATCP.~~
 - d) Specify that a county drainage board may, without DNR permit, may clean material from a drain operated by a drainage board if removal is required by DATCP rule to conform the drain to specifications approved by DATCP in consultation with DNR. Require that removal of material must also comply with applicable conditions or limitations imposed by DATCP; and
downstream DNR
 - e) Specify that county drainage boards must operate, repair and maintain dams and other structures in district drains according to chapter 88 of the state statutes and conform with DATCP rules. If the drainage board fails to carry out its responsibilities, the DNR may exercise its authority to operate and maintain dams in the interest of drainage and conservation.

Fiscal Impact

According to the Department of Agriculture, Trade and Consumer Protection, the motion would have no fiscal effect on the state of Wisconsin.

↓

DRAFT
6/22/99

224-5022

Jim
Matson
251-0010DRAINAGE LEGISLATION

SECTION ____ 30.10(4)(d) of the statutes is created to read:

30.10(4)(d) Notwithstanding any other provision of law, a drainage district drain operated by a county drainage board under ch. 88 is not navigable unless it is shown, by means of a United States geological survey map or other equally reliable scientific evidence, that the drain was a navigable stream before it became a district drain.

SECTION ____ 30.12(1)(intro.) of the statutes is amended to read:

30.12(1)(intro.) GENERAL PROHIBITION. Except as provided under sub. (4) or (4m), unless a permit has been granted by the department pursuant to statute or the legislature has otherwise authorized structures or deposits in navigable waters, it is unlawful:

SECTION ____ 30.12(4m) of the statutes is created to read:

(4m) DRAINAGE DISTRICT STRUCTURES AND DEPOSITS. Subsection (1) does not apply to a structure or deposit which a county drainage board places in a drain which the board operates within a drainage district under ch. 88, Stats., if any of the following applies and the board complies with applicable terms and conditions specified by the department of agriculture, trade and consumer protection:

✓ (a) The department of agriculture, trade and consumer protection, in consultation with the department of natural resources, specifically approves the structure or deposit.

✓ (b) The structure or deposit is required, under rules of the department of agriculture, trade and consumer protection, to conform the drain to specifications approved by the department of agriculture, trade and consumer protection in consultation with the department of natural resources.

SECTION ____ 30.20(1)(b) of the statutes is amended to read:

30.20(1)(b) Except as provided under par. (c) or (d), no person may remove any material from the bed of any lake or stream not mentioned under par. (a) without first obtaining a permit from the department under sub. (2)(c).

SECTION ____ 30.20(1)(d) is created to read:

30.20(1)(d) A county drainage board may, without a permit under sub. (2)(c), remove material from a drain which the county drainage board operates in a drainage district under ch. 88, Stats., if all the following apply:

1. The removal is required, under rules of the department of agriculture, trade and consumer protection, to conform the drain to specifications approved by the department of agriculture, trade and consumer protection in consultation with the department of natural resources.

2. The removal complies with applicable conditions or limitations imposed by the department of agriculture, trade and consumer protection.

3. The drain is not a class 1 trout stream designated by department of natural resources rule prior to the effective date of this paragraph.

SECTION ____ . 31.02(6) of the statutes is amended to read:

31.02(6) ~~The~~ Except as provided in sub. (7), the department ~~shall~~ may operate, repair and maintain the dams and ~~dykes dikes~~ constructed across drainage ditches and streams in drainage districts, in the interest of drainage control, water conservation, irrigation, conservation, pisciculture and to provide areas suitable for the nesting and breeding of aquatic wild bird life and the propagation of fur-bearing animals.

SECTION ____ . 31.02(7) of the statutes is repealed and recreated to read:

31.02(7) A county drainage board shall operate, repair and maintain dams, dikes and other structures in district drains which the board operates in drainage districts, as provided in ch. 88, Stats. The board shall comply with ch. 88, Stats., and rules of the department of agriculture, trade and consumer protection. If a county drainage board fails to carry out its responsibilities under this subsection, the department of natural resources may exercise its authority under sub. (6).

SECTION ____ . 31.02(8) and (9) of the statutes are repealed.

SECTION ____ . 88.31(1) of the statutes is amended to read:

88.31(1) ^{unless the} If it is necessary to enter upon any navigable waters that may be navigable, or to acquire and remove any dam or obstruction from the navigable waters, or to clean out, widen, deepen or straighten any navigable stream that may be navigable, the board shall ~~file with~~ obtain a permit from the department of natural resources ~~an application to do the work~~ if a permit is required s. 30.12 or 30.20. The board shall file with the permit application any information ~~that the board or the department of natural resources considers necessary~~ that the board or the department of natural resources requires by rule ~~the information to be included in an application~~. The application shall state that the public health or welfare will be promoted by the removal of the dam or other obstruction or by

88 11(1)(1)

the straightening, cleaning out, deepening or widening of the waters and that other public rights in and public uses of the waters will not be materially impaired. The application shall be duly verified.

SECTION ____ . 88.62(3) of the statutes is amended to read:

88.62(3) If drainage work is undertaken in navigable waters, the drainage board shall obtain a permit ~~under s. 30.20 or 88.31 or ch. 31, as directed by~~ from the department of natural resources if a permit is required under s. 30.12 or 30.20.

SECTION ____ . 88.72(3) of the statutes is amended to read:

88.72(3) At the hearing on the petition, any interested person may appear and contest its sufficiency and the necessity for the work. If the drainage board finds that the petition has the proper number of signers and that to afford an adequate outlet it is necessary to remove dams or other obstructions from navigable waters and streams which may be navigable, or to straighten, clean out, deepen or widen any waters or streams either within or beyond the limits of the district, the board shall ~~file an application with the department of natural resources as provided in s. 30.20 or 88.31, as directed by~~ obtain a permit from the department of natural resources if a permit is required under s. 30.12 or 30.20. ~~Thereafter, proceedings shall be had as provided in s. 30.20 or 88.31 insofar as the same is applicable.~~

Pursuant to Jim Matson
RP; all of 88.31 except (8) & (9)

Intent
if does not need permit under chapter 30
no permit at all
if does need permit under chapter 30
only permit needed is ch. 30 permit

Drainage districts are special purpose districts formed to drain land for agricultural and other purposes. Under current law, county drainage boards are responsible for operating drainage districts, maintaining district drains, and maintaining dams and other structures in district drains. Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) adopts rules for drainage districts, approves drain specifications and construction projects, and regulates county drainage boards.

Under current law, the Department of Natural Resources (DNR) regulates dredging and construction in navigable waters, including navigable drainage ditches. DNR is also responsible for operating and maintaining dams in navigable drainage ditches. DNR may regulate dam safety and water levels in navigable waters, including navigable drainage ditches. Under current law, farm drainage ditches are not navigable waters unless they were navigable before ditching. (Most, but not all, lands in drainage districts are farmlands.) DNR determines whether a ditch is navigable.

This amendment clarifies agency responsibilities, and eliminates duplicate regulation of drainage districts, as follows:

- (a) Clarify that a drainage district drain is not navigable unless it is shown, by means of a United States Geological Survey map or other equally reliable evidence, that the drain was a navigable stream before it became a district drain.
- (b) Specify that a county drainage board may place structures or deposits in a district drain, without a DNR permit, if DATCP specifically approves the structure or deposit in consultation with DNR, or if the structure or deposit is required by DATCP rules in order to conform the drain to specifications approved by DATCP in consultation with DNR.
- (c) Specify that a county drainage board may, without a DNR permit, remove material from a district drain if the removal is required, under DATCP rules, in order to conform the drain to specifications approved by DATCP in consultation with DNR. The removal must comply with applicable conditions or limitations imposed by DATCP.
- (d) Specify that county drainage boards must operate, repair and maintain dams and other structures in district drains according to ch. 88, Stats., and DATCP rules. If a drainage board fails to carry out its responsibility, DNR may exercise its authority to operate and maintain dams in the interest of drainage and conservation. DNR retains its current authority to regulate dam safety and water levels in navigable waters.

The amendment would have no fiscal effect on the state.



State of Wisconsin
1999 - 2000 LEGISLATURE

noon D-Note

RMR
LRBb0902M
MGG.....
emml

ARC:.....Anderson - Am # 302, Drainage board activities (provision # 14)

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 ^{486 18} 1. Page 8, line 8 after that line insert:

3 ^{785dd 3(b)} "SECTION 30.01 (1n) of the statutes is created to read:

4 30.01 (1n) "Drain" has the ^e meaning given in s. 88.01 (8).

5 ~~2. Page 2, line 2 after that line insert.~~

6 ^{785dh 3(b)} SECTION 30.10 (2) of the statutes is amended to read:

7 30.10 (2) STREAMS. Except as provided under sub. (4) (c) and (d), all streams,

8 sloughs, bayous and marsh outlets, which are navigable in fact for any purpose

9 whatsoever, are declared navigable to the extent that no dam, bridge or other

10 obstruction shall be made in or over the same without the permission of the state.

785dm

close space

1 SECTION ~~??~~ 30.10 (4) (d) of the statutes is created to read:

2 30.10 (4) (d) A drainage district drain operated by a county drainage board
3 under ch. 88 is not navigable unless it is shown, by means of a U. S. geological survey
4 map or other similarly reliable scientific evidence, that the drain was a navigable
5 stream before it became a district drain.

6 3. Pages ~~3~~ ⁴⁸⁷ line ~~4~~ ⁴ after that line insert:

7 SECTION ~~??~~ ^{785dm} 30.12 (1) (intro.) of the statutes is amended to read:

8 30.12 (1) GENERAL PROHIBITION. (intro.) Except as provided under ~~sub.~~ ^{strike} (4) and
9 (4m), unless a permit has been granted by the department pursuant to statute or the
10 legislature has otherwise authorized structures or deposits in navigable waters, it
11 is unlawful: "

12 History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248.

13 SECTION ~~??~~ ^{792m} 30.12 (4m) of the statutes is created to read:

14 30.12 (4m) DRAINAGE DISTRICT STRUCTURES AND DEPOSITS. (a) Subsection (1) does
15 not apply to a structure or deposit ^{that} which a county drainage boards places in a drain
16 which ^{that} the board operates within ^a drainage district under ch. 88 if ^{if} subd. 1. and subd.
2. or 3. ~~apply~~ ^{apply}

17 1. The structure or deposit complies with any applicable conditions or
18 limitations that the department of agriculture, trade and consumer protection
19 imposes on structures or deposits.

20 2. The department of agriculture, trade and consumer protection, after
21 consulting with the department of natural resources, specifically approves the
22 structure or deposit.

23 3. The structure or deposit is required, under rules promulgated by the
24 department of agriculture, trade and consumer protection, in order to conform the

1 drain to specifications imposed by the department of agriculture, trade and
2 consumer protection after consulting with the department of natural resources.

3 (b) The exemption from sub. (1) under par. (a) does not apply to a drain that is
4 classified as a Class I trout stream on the effective date of this paragraph [revisor
5 inserts date] by the department of natural resources under rules promulgated under
6 s. 23.09 ^{(2)(m) // ✓} ~~(2)(m)~~ .

7 4. Page 8, line 8; after that line insert:

8 " SECTION ^{802 mr 3(B)} ~~30.20~~ (1) (b) of the statutes is amended to read:

9 30.20 (1) (b) Except as provided under ~~par. (e), par. (d) and (d)~~ and (d), no person may
10 remove any material from the bed of any lake or stream not mentioned under par.
11 (a) without first obtaining a permit from the department under sub. (2) (c).

History: 1977 c. 391; 1979 c. 34 s. 2102 (39) (g); 1981 c. 330; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1); 1987 a. 374.

12 SECTION ^{802 mr 3(B)} ~~30.20~~ (1) (d) of the statutes is created to read:

13 30.20 (1) (d) A county drainage board ^g may without a permit under ^{sub.} (2) (c)
14 remove material from a drain ^{that} which the county drainage board operates in a
15 drainage district under ch. 88 if all of the following apply:

16 1. The removal is required, under rules promulgated by the department of
17 agriculture, trade and consumer protection, in order to conform the drain to
18 specifications imposed by the department of agriculture, trade and consumer
19 protection after consulting with the department of natural resources.

20 2. The removal complies with any applicable conditions or limitations that the
21 department of agriculture, trade and consumer protection imposes on removal of
22 material from drains.

par. (c)

1 3. The drain is not classified as a Class I trout stream on the effective date of
 2 this subdivision [revisor inserts date], by the department of natural resources
 3 under rules promulgated under s. 23.09 (2)(m). (2)(m) (m) ← (2)(m)."

4 5. Page 8, line 9 after that line insert:

5 "SECTION 31.02 (6) of the statutes is amended to read: (letter "b")

6 31.02 (6) The department shall Except as provide in sub (7), the department
 7 may operate, repair and maintain the dams and ~~dykes~~ dikes constructed across
 8 drainage ditches and streams in drainage districts, in the interest of drainage
 9 control, water conservation, irrigation, conservation, pisciculture and to provide
 10 areas suitable for the nesting and breeding of aquatic wild bird life and the
 11 propagation of fur-bearing animals.

12 SECTION 31.02 (7) of the statutes is repealed.

13 SECTION 31.02 (7m) of the statutes is created to read:

14 31.02 (7m) A county drainage board shall operate, repair and maintain dams,
 15 dikes and other structures in district drains ^u ~~which~~ ^{that} the board operates in drainage
 16 districts in compliance with ch. 88 and any rules promulgated by the department of
 17 agriculture, trade and consumer protection under ch. 88. If a county drainage board
 18 fail to perform its duties under this subsection, the department of natural resources
 19 may exercise its authority under sub. (6).

20 SECTION 31.02 (8) of the statutes is repealed.

21 SECTION 31.02 (9) of the statutes is repealed."

22 6. Page 9, line 6 after that line insert:

23 SECTION 88.11 (1) (f) of the statutes is amended to read:

1876b
 (B)

1 88.11 (1) (f) Assist districts in applying for permits under s. ~~88.31~~ ¹¹ ~~in chs.~~
2 30 and 31 from the department of natural resources.

History: 1989 a. 31 ss. 2200d, 2200k; 1991 a. 309; 1993 a. 456.

3 SECTION ~~220~~ 88.11 (1) (i) of the statutes is amended to read:

4 88.11 (1) (i) Establish, by rule, performance standards for drainage district
5 structures, ditches, maintenance and operations, in order to minimize adverse
6 effects on water quality. ~~The performance standards shall be consistent with any~~
7 ~~requirements imposed by the department of natural resources under s. 88.31.~~ ¹¹

History: 1989 a. 31 ss. 2200d, 2200k; 1991 a. 309; 1993 a. 456.

8 7. Page ~~8~~ ⁴²⁰ line ~~3~~ ¹⁷ after that line insert ^{colon stays} SECTION ~~220~~ ⁴ 88.31 (title) of the statutes
9 is amended to read:

10 88.31 (title) ~~Special procedure in cases affecting~~ Drainage work in
11 navigable waters. ^{1877d}

History: 1993 a. 456.

12 SECTION ~~220~~ 88.31 (1) to (7) of the statutes are repealed.

13 SECTION ~~220~~ 88.31 (8) (intro.) of the statutes is amended to read:

14 88.31 (8) (intro.) Subject to other restrictions imposed by this chapter, a
15 drainage board which has obtained a permit under this chapter all of the permits
16 required under ch. ³ 30 and 31 may:

History: 1993 a. 456.

17 SECTION ~~220~~ 88.35 (5m) of the statutes is repealed.

18 SECTION ~~220~~ 88.62 (3) of the statutes is amended to read:

19 88.62 (3) If drainage work is undertaken in navigable waters, the drainage
20 board shall obtain a permit under s. ~~30.20~~ or 88.31 or ch. 31, as directed by the
21 ~~department of natural resources~~ any permit that is required under ch. 30 or 31.

History: 1987 a. 275; 1991 a. 316; 1993 a. 456.

22 SECTION ~~220~~ 88.72 (3) of the statutes is amended to read:

Insert
5-17

1877m
(B)

INS. 5-17 SECTION 1877h. 88.35 (6) (intro.) of the statutes is amended to read:

88.35 (6) (intro.) Upon the completion of its duties under subs. (1) to ~~(5)~~ the board shall prepare a written report, including a copy of any maps, plans or profiles that it has prepared. The assessment of benefits and awards of damages shall be set forth in substantially the following form: ~~See Figure 88.35 (6) following~~ ^{strike} (5)

Figure 88.35-(6).

| Description of land or name of corporation | Assessed benefits | Assessed for construction | Damages | Net assessment f construction |
|--|-------------------|---------------------------|----------|-------------------------------|
| Section 6, Town | -- | -- | -- | -- |
| Range, SE 1/4 NE 1/4 | \$ 850.00 | \$ 425.00 | \$ 10.50 | \$414.50 |
| Lot 1 | 400.00 | 200.00 | -- | 200.00 |
| Village of | 2,500.00 | 1,250.00 | 666.00 | 584.00 |
| B.G. & Q. Ry. Co. | 1,000.00 | 500.00 | 600.00 | -- |
| Town of | -- | -- | 150.00 | -- |

(END OF INSERT 5-17)

cmr

D-Note

1. Note that the first stream language is drafted for both ss. 30.12 and 30.20.

~~2. I had to discuss this with Attorney Jim Matson prior to drafting because DATCP's intent was not totally clear in~~

~~2. Time permitting, you may wish to have Jim Matson of DATCP review this~~

Time permitting,

2. Please have the interested parties review this draft to ensure that it complies with their intent.

MB

2. I had to get more specific instructions from DATCP in order to draft this motion.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb0902/1dn
MGG:cmh:km

June 24, 1999

1. Note that the trout stream language is drafted for both ss. 30.12 and 30.20.
2. Time permitting, please have the interested parties review this draft to ensure that it complies with their intent. I had to get more specific instructions from DATCP in order to draft this motion.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0902M
MGG:cmh:km ^{2RME}

D-NOTE

[Handwritten signature]

[Handwritten signature]

ARC:.....Anderson - Am # 302, Drainage board activities (provision # 14)

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 **1.** Page 486, line 18: after that line insert:
- 3 **"SECTION 785dd.** 30.01 (1n) of the statutes is created to read:
- 4 30.01 (1n) "Drain" has the meaning given in s. 88.01 (8).
- 5 **SECTION 785dh.** 30.10 (2) of the statutes is amended to read:
- 6 30.10 (2) STREAMS. Except as provided under sub. (4) (c) and (d), all streams,
- 7 sloughs, bayous and marsh outlets, which are navigable in fact for any purpose
- 8 whatsoever, are declared navigable to the extent that no dam, bridge or other
- 9 obstruction shall be made in or over the same without the permission of the state.
- 10 **SECTION 785dm.** 30.10 (4) (d) of the statutes is created to read:

1 30.10 (4) (d) A drainage district drain operated by a county drainage board
2 under ch. 88 is not navigable unless it is shown, by means of a U.S. geological survey
3 map or other similarly reliable scientific evidence, that the drain was a navigable
4 stream before it became a district drain.

5 **SECTION 785dp.** 30.12 (1) (intro.) of the statutes is amended to read:

6 30.12 (1) **GENERAL PROHIBITION.** (intro.) Except as provided under ~~sub.~~ subs.
7 (4) and (4m), unless a permit has been granted by the department pursuant to
8 statute or the legislature has otherwise authorized structures or deposits in
9 navigable waters, it is unlawful.”

10 **2.** Page 487, line 4: after that line insert:

11 **“SECTION 792m.** 30.12 (4m) of the statutes is created to read:

12 30.12 (4m) **DRAINAGE DISTRICT STRUCTURES AND DEPOSITS.** (a) Subsection (1) does
13 not apply to a structure or deposit that a county drainage boards places in a drain
14 that the board operates within a drainage district under ch. 88 if ~~subd. 1. and if subd.~~
either of the

15 (15)

following
2. or 3. apply:
applies

16 1. The structure or deposit complies with any applicable conditions or
17 limitations that the department of agriculture, trade and consumer protection
18 imposes on structures or deposits.

19 1. ~~2.~~ The department of agriculture, trade and consumer protection, after
20 consulting with the department of natural resources, specifically approves the
21 structure or deposit.

22 2. ~~3.~~ The structure or deposit is required, under rules promulgated by the
23 department of agriculture, trade and consumer protection, in order to conform the

1 drain to specifications ^{that have been approved} ~~imposed~~ by the department of agriculture, trade and
2 consumer protection after consulting with the department of natural resources.

3 (b) The exemption from sub. (1) under par. (a) does not apply to a drain that is
4 classified as a Class I trout stream on the effective date of this paragraph [revisor
5 inserts date] by the department of natural resources under rules promulgated under
6 s. 23.09 (2) (m)."

7 **3.** Page 489, line 13: after that line insert:

8 "SECTION 802mg. 30.20 (1) (b) of the statutes is amended to read:

9 30.20 (1) (b) Except as provided under ~~par. (e)~~ pars. (c) and (d), no person may
10 remove any material from the bed of any lake or stream not mentioned under par.
11 (a) without first obtaining a permit from the department under sub. (2) (c).

12 SECTION 802mr. 30.20 (1) (d) of the statutes is created to read:

13 30.20 (1) (d) A county drainage board may without a permit under sub. (2) (c)
14 remove material from a drain that the county drainage board operates in a drainage
15 district under ch. 88 if all of the following apply:

16 1. The removal is required, under rules promulgated by the department of
17 agriculture, trade and consumer protection, in order to conform the drain to
18 specifications imposed by the department of agriculture, trade and consumer
19 protection after consulting with the department of natural resources.

20 2. The removal ~~complies with any applicable conditions or limitations that the~~
21 ~~department of agriculture, trade and consumer protection imposes on removal of~~
22 ~~material from drains.~~

1 2. ~~3.~~ The drain is not classified as a Class I trout stream on the effective date of
2 this subdivision ... [revisor inserts date], by the department of natural resources
3 under rules promulgated under s. 23.09 (2) (m).”.

4 4. Page 499, line 9: after that line insert:

5 “SECTION 867xo. 31.02 (6) of the statutes is amended to read:

6 31.02 (6) ~~The department shall~~ Except as provided in sub. (7m), the
7 department may operate, repair and maintain the dams and ~~dykes~~ dikes constructed
8 across drainage ditches and streams in drainage districts, in the interest of drainage
9 control, water conservation, irrigation, conservation, pisciculture and to provide
10 areas suitable for the nesting and breeding of aquatic wild bird life and the
11 propagation of fur-bearing animals.

12 SECTION 867xq. 31.02 (7) of the statutes is repealed.

13 SECTION 867xr. 31.02 (7m) of the statutes is created to read:

14 31.02 (7m) A county drainage board shall operate, repair and maintain dams,
15 dikes and other structures in district drains that the board operates in drainage
16 districts in compliance with ch. 88 and any rules promulgated by the department of
17 agriculture, trade and consumer protection under ch. 88. If a county drainage board
18 fails to perform its duties under this subsection, the department of natural resources
19 may exercise its authority under sub. (6).

20 SECTION 867xs. 31.02 (8) of the statutes is repealed.

21 SECTION 867xt. 31.02 (9) of the statutes is repealed.”.

22 5. Page 980, line 6: after that line insert:

23 “SECTION 1876b. 88.11 (1) (f) of the statutes is amended to read:

1 88.11 (1) (f) Assist districts in applying for permits under ~~s. 88.31~~ chs. 30 and
2 31 from the department of natural resources.

3 **SECTION 1876m.** 88.11 (1) (i) of the statutes is amended to read:

4 88.11 (1) (i) Establish, by rule, performance standards for drainage district
5 structures, ditches, maintenance and operations, in order to minimize adverse
6 effects on water quality. ~~The performance standards shall be consistent with any~~
7 ~~requirements imposed by the department of natural resources under s. 88.31.”.~~

8 **6.** Page 980, line 17: after that line insert:

9 “**SECTION 1877c.** 88.31 (title) of the statutes is amended to read:

10 **88.31** (title) ~~Special procedure in cases affecting~~ Drainage work in
11 navigable waters.

12 **SECTION 1877d.** 88.31 (1) to (7) of the statutes are repealed.

13 **SECTION 1877e.** 88.31 (8) (intro.) of the statutes is amended to read:

14 88.31 (8) (intro.) Subject to other restrictions imposed by this chapter, a
15 drainage board which has obtained ~~a permit under this chapter~~ all of the permits
16 required under chs. 30 and 31 may:

17 **SECTION 1877f.** 88.35 (5m) of the statutes is repealed.

18 **SECTION 1877h.** 88.35 (6) (intro.) of the statutes is amended to read:

19 88.35 (6) (intro.) Upon the completion of its duties under subs. (1) to ~~(5m)~~ (5),
20 the board shall prepare a written report, including a copy of any maps, plans or
21 profiles that it has prepared. The assessment of benefits and awards of damages
22 shall be set forth in substantially the following form:

23 **SECTION 1877j.** 88.62 (3) of the statutes is amended to read:

NOTES

ss. 30.10(4)(a) and 30.20(1)(d)3.

1. David Setney in his review of the draft, ^{the} LFB
analyst found this draft somewhat confusing.

Therefore, again ^{spoke} consulted with Attorney Jim

Matson from DATCP and the changes in the

above-referenced sections are based on our

conversation.

MY

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb0902/2dn
MGG:cmh:jf

June 26, 1999

In his review of the draft, the LFB analyst found ss. 30.10 (4m) (a) and 30.20 (1) (d) 3. in this draft somewhat confusing. I, therefore, again spoke with Attorney Jim Matson from DATCP and the changes in the above-referenced sections are based on our conversation.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0902/2
MGG:cmh:jf

ARC:.....Anderson - Am # 302, Drainage board activities (provision # 14)

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 486, line 18: after that line insert:

3 **“SECTION 785dd.** 30.01 (1n) of the statutes is created to read:

4 30.01 (1n) “Drain” has the meaning given in s. 88.01 (8).

5 **SECTION 785dh.** 30.10 (2) of the statutes is amended to read:

6 30.10 (2) STREAMS. Except as provided under sub. (4) (c) and (d), all streams,

7 sloughs, bayous and marsh outlets, which are navigable in fact for any purpose

8 whatsoever, are declared navigable to the extent that no dam, bridge or other

9 obstruction shall be made in or over the same without the permission of the state.

10 **SECTION 785dm.** 30.10 (4) (d) of the statutes is created to read:

1 30.10 (4) (d) A drainage district drain operated by a county drainage board
2 under ch. 88 is not navigable unless it is shown, by means of a U.S. geological survey
3 map or other similarly reliable scientific evidence, that the drain was a navigable
4 stream before it became a district drain.

5 **SECTION 785dp.** 30.12 (1) (intro.) of the statutes is amended to read:

6 30.12 (1) GENERAL PROHIBITION. (intro.) Except as provided under ~~sub.~~ subs.
7 (4) and (4m), unless a permit has been granted by the department pursuant to
8 statute or the legislature has otherwise authorized structures or deposits in
9 navigable waters, it is unlawful.”

10 **2.** Page 487, line 4: after that line insert:

11 “**SECTION 792m.** 30.12 (4m) of the statutes is created to read:

12 30.12 (**4m**) DRAINAGE DISTRICT STRUCTURES AND DEPOSITS. (a) Subsection (1) does
13 not apply to a structure or deposit that a county drainage boards places in a drain
14 that the board operates within a drainage district under ch. 88 if either of the
15 following applies:

16 1. The department of agriculture, trade and consumer protection, after
17 consulting with the department of natural resources, specifically approves the
18 structure or deposit.

19 2. The structure or deposit is required, under rules promulgated by the
20 department of agriculture, trade and consumer protection, in order to conform the
21 drain to specifications approved by the department of agriculture, trade and
22 consumer protection after consulting with the department of natural resources.

23 (b) The exemption from sub. (1) under par. (a) does not apply to a drain that is
24 classified as a Class I trout stream on the effective date of this paragraph [revisor

1 inserts date] by the department of natural resources under rules promulgated under
2 s. 23.09 (2) (m).”.

3 **3.** Page 489, line 13: after that line insert:

4 “**SECTION 802mg.** 30.20 (1) (b) of the statutes is amended to read:

5 30.20 (1) (b) Except as provided under ~~par. (e)~~ pars. (c) and (d), no person may
6 remove any material from the bed of any lake or stream not mentioned under par.
7 (a) without first obtaining a permit from the department under sub. (2) (c).

8 **SECTION 802mr.** 30.20 (1) (d) of the statutes is created to read:

9 30.20 (1) (d) A county drainage board may without a permit under sub. (2) (c)
10 remove material from a drain that the county drainage board operates in a drainage
11 district under ch. 88 if all of the following apply:

12 1. The removal is required, under rules promulgated by the department of
13 agriculture, trade and consumer protection, in order to conform the drain to
14 specifications imposed by the department of agriculture, trade and consumer
15 protection after consulting with the department of natural resources.

16 2. The drain is not classified as a Class I trout stream on the effective date of
17 this subdivision ... [revisor inserts date], by the department of natural resources
18 under rules promulgated under s. 23.09 (2) (m).”.

19 **4.** Page 499, line 9: after that line insert:

20 “**SECTION 867xo.** 31.02 (6) of the statutes is amended to read:

21 31.02 (6) ~~The department shall~~ Except as provided in sub. (7m), the
22 department may operate, repair and maintain the dams and ~~dykes~~ dikes constructed
23 across drainage ditches and streams in drainage districts, in the interest of drainage
24 control, water conservation, irrigation, conservation, pisciculture and to provide

1 areas suitable for the nesting and breeding of aquatic wild bird life and the
2 propagation of fur-bearing animals.

3 **SECTION 867xq.** 31.02 (7) of the statutes is repealed.

4 **SECTION 867xr.** 31.02 (7m) of the statutes is created to read:

5 31.02 (7m) A county drainage board shall operate, repair and maintain dams,
6 dikes and other structures in district drains that the board operates in drainage
7 districts in compliance with ch. 88 and any rules promulgated by the department of
8 agriculture, trade and consumer protection under ch. 88. If a county drainage board
9 fails to perform its duties under this subsection, the department of natural resources
10 may exercise its authority under sub. (6).

11 **SECTION 867xs.** 31.02 (8) of the statutes is repealed.

12 **SECTION 867xt.** 31.02 (9) of the statutes is repealed.”.

13 **5.** Page 980, line 6: after that line insert:

14 “**SECTION 1876b.** 88.11 (1) (f) of the statutes is amended to read:

15 88.11 (1) (f) Assist districts in applying for permits under ~~s. 88.31~~ chs. 30 and
16 31 from the department of natural resources.

17 **SECTION 1876m.** 88.11 (1) (i) of the statutes is amended to read:

18 88.11 (1) (i) Establish, by rule, performance standards for drainage district
19 structures, ditches, maintenance and operations, in order to minimize adverse
20 effects on water quality. ~~The performance standards shall be consistent with any~~
21 ~~requirements imposed by the department of natural resources under s. 88.31.”.~~

22 **6.** Page 980, line 17: after that line insert:

23 “**SECTION 1877c.** 88.31 (title) of the statutes is amended to read:

1 **88.31** (title) ~~Special procedure in cases affecting~~ Drainage work in
2 navigable waters.

3 **SECTION 1877d.** 88.31 (1) to (7) of the statutes are repealed.

4 **SECTION 1877e.** 88.31 (8) (intro.) of the statutes is amended to read:

5 88.31 (8) (intro.) Subject to other restrictions imposed by this chapter, a
6 drainage board which has obtained ~~a permit under this chapter~~ all of the permits
7 required under chs. 30 and 31 may:

8 **SECTION 1877f.** 88.35 (5m) of the statutes is repealed.

9 **SECTION 1877h.** 88.35 (6) (intro.) of the statutes is amended to read:

10 88.35 (6) (intro.) Upon the completion of its duties under subs. (1) to ~~(5m)~~ (5),
11 the board shall prepare a written report, including a copy of any maps, plans or
12 profiles that it has prepared. The assessment of benefits and awards of damages
13 shall be set forth in substantially the following form:

14 **SECTION 1877j.** 88.62 (3) of the statutes is amended to read:

15 88.62 (3) If drainage work is undertaken in navigable waters, the drainage
16 board shall obtain ~~a permit under s. 30.20 or 88.31 or ch. 31, as directed by the~~
17 ~~department of natural resources~~ any permit that is required under ch. 30 or 31.

18 **SECTION 1877m.** 88.72 (3) of the statutes is amended to read:

19 88.72 (3) At the hearing on the petition, any interested person may appear and
20 contest its sufficiency and the necessity for the work. If the drainage board finds that
21 the petition has the proper number of signers and that to afford an adequate outlet
22 it is necessary to remove dams or other obstructions from waters and streams which
23 may be navigable, or to straighten, clean out, deepen or widen any waters or streams
24 either within or beyond the limits of the district, the board shall ~~file an application~~
25 ~~with the department of natural resources as provided in s. 30.20 or 88.31, as directed~~

1 by the department of natural resources. Thereafter, proceedings shall be had as
2 provided in ~~s. 30.20 or 33.31~~ insofar as the same is applicable obtain any permit that
3 is required under ch. 30 or 31.

4 **SECTION 1877p.** 88.72 (4) of the statutes is amended to read:

5 88.72 (4) Within 30 days after the department of natural resources has issued
6 ~~a permit under s. 30.20 or 33.31~~ all of the permits as required under chs. 30 and 31,
7 the board shall proceed to estimate the cost of the work, including the expenses of
8 the proceeding together with the damages that will result from the work, and shall,
9 within a reasonable time, award damages to all lands damaged by the work and
10 assess the cost of the work against the lands in the district in proportion to the
11 assessment of benefits then in force.”

12 (END)