State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–0209/P1
MGG&RNK:lmk:ch

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to repeal*** 30.03 (title), 30.03 (3), 30.10 (2), 30.10 (4) (title), 30.10 (4) (c), 30.105, 30.11 (5) (title), 30.12 (5), 30.123 (5), 30.126 (10) (title) and (a) (title), 30.126 (10) (b) (title), 30.13 (3) (title), 30.13 (6) (title), 30.14 (title), 30.14 (1) (title), 30.15 (title), 30.18 (3) (title) and (a) (title), 1. and 2., 30.18 (3) (a) 4., 30.18 (3) (b), 30.18 (9), 30.2035, 30.292, 30.298 (title), 30.501 (8), 30.537 (4) (e), 30.60, 30.61 (9), 30.62 (2) (d) 3., 30.62 (2) (f), 30.62 (2) (i), 30.62 (9), 30.67 (3) (title), 30.67 (3) (c), 30.68 (4) (b), 30.68 (12), 30.71 (1), 30.73 (4), 30.74 (2) (b), 30.78 (1g), 30.78 (3), 30.79 (1) (a) and 30.81 (1m) and (2); ***to renumber*** 30.01 (1b), 30.01 (1m), 30.01 (1t), 30.01 (3e), 30.01 (3m), 30.01 (3s), 30.01 (6d), 30.01 (7m), 30.01 (9), 30.01 (10), 30.10 (4) (d), 30.103, 30.11 (title), 30.11 (5) (a), 30.11 (5) (b) and (c), 30.11 (6), 30.121 (title) and (2) to (3w), 30.121 (5) and (6), 30.1235 (title), 30.1235, 30.1255, 30.13 (6), 30.133, 30.134, 30.14 (1), 30.15 (1) (intro.), 30.15 (3), 30.16, 30.18 (6) (d) (title), 30.18 (8), 30.2022 (title), 30.2022 (3) to (6), 30.2023 (1) to (9), 30.2026, 30.2037, 30.207 (title), 30.207 (1m), (2) and (3) (title), 30.207 (3) (b) and (c) (intro.) and 1. to 5., 30.207 (3) (d) and (4) (intro.), (a) and (c) (intro.),

1 30.207 (4) (c) 2. to 4. and (6) (title), 30.207 (6) (b) and (7) (title), 30.207 (7) (c) and
2 (8) to (10), 30.21, 30.24, 30.25, 30.26, 30.265, 30.27, 30.275, 30.277, 30.29,
3 30.294, 30.298 (2), subchapter III (title) of chapter 30 [precedes 30.299], 30.32,
4 30.33, subchapter IV (title) of chapter 30 [precedes 30.40], 30.67 (3) (a) and (b),
5 30.742 and 709.03 (form) C. 27.; ***to renumber and amend*** 30.025, 30.027,
6 30.03 (2), 30.03 (4) (a), 30.03 (4) (b), 30.05, 30.056, 30.06, 30.10 (title), 30.10 (1)
7 (title), 30.10 (1), 30.10 (3), 30.10 (4) (a), 30.10 (4) (b), 30.11 (1) to (4), 30.12 (1m),
8 30.121 (4), 30.121 (7), 30.122, 30.124, 30.126 (title) and (2) to (9), 30.126 (10) (a),
9 30.126 (10) (b), 30.13 (3), 30.131, 30.14 (2), 30.15 (1) (title), 30.15 (1) (a), (b) and
10 (c), 30.15 (1) (d), 30.18 (3) (a) 3., 30.18 (6) (b), 30.18 (6) (c), 30.18 (6) (d), 30.196,
11 30.20 (1g) (c), 30.202, 30.2022 (1), 30.2022 (2), 30.2023 (intro.), 30.2025, 30.203,
12 30.204, 30.205, 30.206, 30.207 (1), 30.207 (3) (a), 30.207 (3) (c) 6., 30.207 (4) (c)
13 1., 30.207 (6) (a), 30.207 (7) (a), 30.207 (7) (b), 30.208, 30.209, 30.2095 (title),
14 30.2095 (1) (a), 30.2095 (1) (b), 30.2095 (2), 30.28 (title) and (1) to (3), 30.291,
15 30.298 (1), 30.298 (3), 30.298 (4), 30.298 (5), 30.30, 30.31, 30.34, 30.35, 30.37,
16 30.38, 30.50 (2), 30.61 (10), 30.62 (2) (c), 30.62 (2) (d) 1., 30.62 (2) (d) 2., 30.62
17 (4) (b), 30.62 (6), 30.63, 30.635, 30.64, 30.67 (1), 30.675 (intro.) and (1), 30.68 (3)
18 (a), 30.68 (3) (b) to (d), 30.68 (4) (a), 30.68 (5m), 30.68 (7), 30.69 (1) (a), 30.69 (1)
19 (b), 30.69 (1) (c) and 30.70; ***to amend*** 20.370 (1) (mu), 25.29 (1) (a), 28.11 (12),
20 29.601 (5) (a), subchapter II (title) of chapter 30 [precedes 30.035], 30.12 (title),
21 30.12 (2m) (b), 30.12 (2r) (b) 1., 30.12 (3) (a) (intro.), 30.12 (3m) (b), 30.123 (title),
22 30.123 (6) (a), 30.123 (6) (b), 30.123 (6m) (b), 30.123 (6r) (b) 1., 30.123 (7) (a)
23 (intro.), 30.123 (8) (b), 30.13 (title), (1) (intro.), (b) and (c), 30.13 (4) (c), 30.135
24 (2), 30.18 (2) (a) (intro.), 30.18 (2) (b), 30.18 (4) (a), 30.18 (4) (b), 30.18 (5) (a)
25 (intro.), 30.18 (5) (a) 1., 30.18 (5) (a) 2., 30.18 (5) (b), 30.18 (6) (title), 30.18 (6)

1 (a), 30.18 (6m) (a) (intro.), 30.18 (6m) (a) 1. and 2., 30.18 (6m) (b), 30.18 (6m) (c),
2 30.18 (7), 30.19 (3r) (a) (intro.), 30.19 (4) (b), 30.19 (4) (c) 2., 30.195 (2) (b), 30.20
3 (1m) (b), 30.20 (1r) (b) 1., 30.20 (1t) (a), 30.20 (2) (e), 30.50 (4q), 30.50 (9), 30.501
4 (9), 30.505, 30.52 (1) (b) 1r., 30.54 (2), 30.571, 30.61 (1), (2) (intro.), (3) (intro.),
5 (4), (6) (b), (7) and (8), 30.62 (title), (1) and (2) (b), 30.62 (2) (g) 1. to 3., 30.62 (2m)
6 and (3) (a), 30.62 (4) (a), 30.62 (5), 30.62 (8), 30.625 (1) (intro.) and (2), 30.65 (1)
7 (intro.), (b) and (f) and (2), 30.66 (1), (2) (title) and (3), 30.67 (2), 30.67 (4), (5)
8 and (6) (b), 30.675 (2), 30.68 (title) and (2), 30.68 (4m) (title) and (5), 30.68 (6),
9 30.68 (7) (title), 30.68 (8) and (8m) (a), 30.68 (9) and (11), 30.69 (title), 30.69 (1)
10 (title), 30.69 (2), 30.69 (3), 30.69 (4), 30.74 (1) (c) and (d), 30.74 (2) (a), 30.74 (3),
11 30.772 (3) (d) 4., 30.772 (4), 30.78 (1r) and (2), 30.79 (1) (b) 1. and 2., 30.79 (2),
12 (3) and (4), 30.80 (2), 30.80 (3), 30.80 (4), 30.81 (3), 30.81 (4), 30.90 (title), 30.90
13 (1), 30.90 (2), 31.03, 33.475, 60.782 (2) (d), 200.35 (4), 236.16 (3) (d) (intro.),
14 281.35 (4) (b) (intro.), 293.65 (2) (b), 299.05 (1), 299.05 (2) (a), 299.85 (7) (a) 2.
15 and 299.85 (7) (a) 4.; ***to repeal and recreate*** subchapter I (title) of chapter 30
16 [precedes 30.01], 30.18 (4) (title), 30.18 (5) (title), 30.18 (6m) (title), 30.73 (2) (a),
17 30.77, 30.78 (1) (intro.) and 30.81 (1); and ***to create*** 30.01 (1nq), 30.01 (1nw),
18 30.01 (6r), 30.035 (1) (b), 30.035 (3) and (4), 30.04, 30.18 (1) (intro.), 30.18 (1)
19 (b), 30.18 (3m) (intro.), 30.18 (3m) (b), 30.18 (4) (a) 1., 30.18 (5) (a) 1m., 30.18
20 (6) (cm) 3., 30.18 (6m) (bm), 30.215, 30.246, 30.249 (title), 30.249 (2), 30.253,
21 30.263 (title), 30.263 (1) (title), 30.266 (1) (intro.), 30.323 (title), 30.327 (title),
22 30.341 (1), 30.343 (title), 30.381 (title), 30.381 (3) (title), 30.381 (4) (title), 30.381
23 (4) (b), 30.381 (5), 30.381 (6) (title), 30.50 (1b), 30.50 (4u), 30.50 (9b), 30.50 (10g),
24 30.50 (13r), 30.5005, 30.605, 30.62 (2) (c) 2., 30.62 (3) (c), 30.62 (4) (b) 3., 30.62
25 (6) (b), 30.66 (3) (c), 30.67 (1g) (title), 30.68 (3m) (title), 30.68 (5g) (c), 30.68 (8m)

(c), 30.68 (14) (title), 30.69 (1) (b) 2., 30.69 (1) (bm), 30.735, 30.771, subchapter VI (title) of chapter 30 [precedes 30.94], 30.96 (title), 30.98 (title), 30.98 (3) (title), 31.93, 60.782 (1m) and 709.03 (form) C. 27. of the statutes; **relating to:** determinations concerning the navigability of bodies of water; determinations as to whether bodies of waters are lakes or streams; procedures, requirements, and exemptions that apply to permits and contracts for activities that affect navigable waters; maintenance of bridges over navigable streams; liability for changing the courses of streams; rights of the public and riparian owners in navigable waters; mediation in making determinations in issuing individual permits and entering contracts for certain activities that affect navigable waters; elimination of obsolete provisions of ch. 30; recodification of chapter 30; the duties and powers of the department of natural resources relating to the regulation of boating; certificate of number and registration requirements for boats; equipment requirements for boats; requirements regarding boat operation; regulation of water skiing and similar activities; marking of water areas; local regulation of boating and seaplanes; placement and use of moorings; local water safety patrols; local regulations on icebound waters; boating fees charged by counties; requiring the exercise of rule–making authority; and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill is explained in the PREFATORY NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill contains the final recommendation of the Joint Legislative Council's special committee on navigable waters

recodification. The special committee was charged by the Joint Legislative Council with recodifying ch. 30, in order to update language and make technical corrections in ch. 30. The special committee determined that the following portions of ch. 30 merit recodification:

— Subch. I (definitions)

— Subch. II (regulation of structures, deposits, dredging, and other activities that affect navigable waters)

— Subch. V (boating)

This bill creates a new subch. VI for penalties and enforcement provisions that apply to the entire chapter.

The other 2 subchapters in ch. 30 are not recodified. This bill relocates subch. III (harbors) to make room for the renumbered provisions in subch. II, but makes no other changes in either subch. III (harbors) or subch. IV (Lower Wisconsin State Riverway).

The changes made by this bill to current statutes are described in detailed notes throughout this bill. In addition, the report to the legislature regarding this bill contains background information, a summary of special committee discussions, and a bibliography of information prepared for and submitted to the special committee. The remainder of the prefatory note contains a brief summary of the key provisions of this bill.

NAVIGABLE WATERS REGULATION

The bill:

Reorganizes all of the statutes that provide for permits or approvals under subch. II of ch. 30, so that these statutes are in a consistent format, use consistent terminology and have consistent decision–making standards where appropriate.

Requires the Department of Natural Resources (DNR) to develop and make publicly available maps and data that show the results of its determinations of navigability.

Directs the DNR to develop rules that describe the methods it uses for making determinations of navigability.

Requires DNR to promulgate rules that describe the public interest and public rights and the rights of riparian owners for purposes of decisions to approve or deny permits and approvals affecting navigable waters under subch. II of ch. 30.

Codifies the supreme court cases that set forth the kinds of evidence that can be used to determine if a lake or stream is navigable.

Modifies provisions regarding farm drainage ditches to provide an exemption from regulation, rather than an exemption from the definition of "navigable", and clarifies the exemption so that it only applies to projects for an agricultural purpose.

Creates a procedure to request a hearing if the DNR issues an order modifying or rescinding a permit or contract.

Authorizes DNR to issue a permit for a deposit in navigable waters if, among other things, the deposit will promote public rights and interests in navigable waters.

Authorizes additional "short form" permits to simplify the approval process for several of the permit statutes.

Modifies the current notice and hearing process by allowing the DNR to issue a denial directly after receiving a complete permit or contract application.

Requires a person who wishes to challenge a permit or contract in a contested case hearing to make a more detailed showing of the facts and legal standards that support the objection, and requires DNR to find that those facts raise a reasonable doubt that the project, as proposed, complies with the applicable standards in subch. II.

Authorizes mediation between the applicant and persons with an interest in a permit or contract if the applicant, DNR and the other interested parties agree to this process.

STATE BOATING REGULATION

The bill:

Eliminates the authority of DNR to change statutory regulations by administrative rule in order to conform to federal regulations; and requires DNR to submit legislation to conform statutes to federal regulations.

Consolidates and makes consistent the provisions regarding equipment and operation of patrol boats.

Updates references to activities that involve being towed behind a boat.

Updates federal cross–references that are incorrect, and adds federal cross–references where current statutes have a nonspecific reference to federal law.

Extends the current prohibition on retail sale of a boat made in this state that does not comply with noise limits so that this prohibition also applies to retail sale of boats made elsewhere.

Creates a statutory exemption from the requirement to carry a personal flotation device for racing shells, sculls, kayaks and canoes, to duplicate the current exemption in federal law.

Authorizes but does not require that a parent or guardian be liable for a minor's actions in boat operation; violations by a minor are currently deemed to be a violation by the parent or guardian.

Permits operation of a boat within 100 feet from a skin diver's flag or swimmer if there is not sufficient room beyond 100 feet from the flag to maneuver, but boat operation may not exceed slow–no–wake speed.

LOCAL BOATING REGULATION

The bill:

Authorizes a town, village, or city to enact boating ordinances of clearly local concern, even if another local governmental unit (county, lake district, or town sanitary district) has adopted an ordinance applicable to the same lake or stream.

Expands county authority so that a county may enact boating ordinances for an inland lake if authorized to do so by the towns, villages, or cities surrounding the lake or if those towns, villages, or cities do not enact a boating ordinance.

Provides that counties may enact boating ordinances for outlying waters contiguous to the county.

Lists state boating regulations that require strict conformity in local ordinances and sets standards for other local ordinances which are required by statute to be consistent with state regulations.

Expands the scope of DNR review so that it applies to all local boating ordinances.

Authorizes a sheriff or a town, village, or city to issue emergency regulations applicable to boating.

1 **SECTION 1.** 20.370 (1) (mu) of the statutes is amended to read:

2 20.370 **(1)** (mu) *General program operations — state funds.* The amounts in
3 the schedule for general program operations that do not relate to the management
4 and protection of the state's fishery resources and that are conducted under ss. 23.09
5 to 23.11, 27.01, ~~30.203, 30.277~~ 30.355, 30.361, and 90.21, and chs. 29 and 169 and for
6 transfers to the appropriation account under s. 20.285 (1) (kf).

7 **SECTION 2.** 25.29 (1) (a) of the statutes is amended to read:

25.29 **(1)** (a) Except as provided in ss. 25.293 and 25.295, all moneys accruing to the state for or in behalf of the department under chs. 26, 27, 28, 29, 169, and 350, subchs. I and VI of ch. 77, and ss. 23.09 to 23.31, 23.325 to 23.42, 23.50 to 23.99, 30.50 to ~~30.55~~ 30.578, 70.58, 71.10 (5), 71.30 (10), and 90.21, including grants received from the federal government or any of its agencies except as otherwise provided by law.

SECTION 3. 28.11 (12) of the statutes is amended to read:

28.11 **(12)** ENFORCEMENT. If at any time it appears to the department that the lands are ~~not~~ being managed in ~~accordance with~~ violation of this section ~~it~~, the department shall so advise the county forestry committee and the county clerk. If the condition persists, the department may proceed against the persons responsible for ~~such noncompliance under s. 30.03 (4)~~ the possible violation by ordering a hearing under ch. 227. The department may request that the hearing examiner issue an order directing the responsible persons to perform or refrain from acts in order to fully protect the county forest lands. If any person fails or neglects to obey an order, the department may request the attorney general to institute proceedings for the enforcement of the order in the name of the state. The proceeding shall be brought in the manner and with the effect of proceedings under s. 111.07 (7). No penalty may be imposed for violating a hearing examiner's order under this subsection, but the violation of a judgment enforcing the order may be punished in civil contempt proceedings.

SECTION 4. 29.601 (5) (a) of the statutes is amended to read:

29.601 **(5)** (a) This section does not apply to any activities carried out under the direction and supervision of the department of transportation in connection with the construction, reconstruction, maintenance and repair of highways and bridges in accordance with s. ~~30.2022~~ 30.341.

1 **SECTION 5.** Subchapter I (title) of chapter 30 [precedes 30.01] of the statutes
2 is repealed and recreated to read:

3 **CHAPTER 30**

4 SUBCHAPTER I

5 DEFINITIONS

6 **SECTION 6.** 30.01 (1b) of the statutes is renumbered 30.18 (1) (a).

7 **SECTION 7.** 30.01 (1m) of the statutes is renumbered 30.50 (3m).

NOTE: The definition of "designated mooring area" is moved to the boating subchapter, where that term is used.

8 **SECTION 8.** 30.01 (1nq) of the statutes is created to read:

9 30.01 **(1nq)** "Environmental pollution" has the meaning given in s. 299.01 (4).

10 **SECTION 9.** 30.01 (1nw) of the statutes is created to read:

11 30.01 **(1nw)** "Farm drainage ditch" means any artificial channel that drains
12 water from lands that are used for agricultural purposes.

13 **SECTION 10.** 30.01 (1t) of the statutes is renumbered 30.266 (1) (a).

NOTE: The definition of "flotation device" is relocated to s. 30.266, where the term is used.

14 **SECTION 11.** 30.01 (3e) of the statutes is renumbered 30.50 (5g).

NOTE: The definition of "mooring" is relocated to the boating statutes, where the term is used.

15 **SECTION 12.** 30.01 (3m) of the statutes is renumbered 30.50 (5m).

NOTE: The definition of "mooring anchor" is moved to the boating statutes, where the term is used.

16 **SECTION 13.** 30.01 (3s) of the statutes is renumbered 30.50 (5r).

NOTE: The definition of "mooring buoy" is moved to the boating statutes, where the term is used.

17 **SECTION 14.** 30.01 (6d) of the statutes is renumbered 293.01 (27m).

NOTE: The definition of "surplus water" is only used in s. 30.18. The substance of this definition is incorporated into s. 30.18 (5) (a) 2. The definition is moved to the chapter dealing with metallic mining, where the definition is used by cross–reference.

SECTION 15. 30.01 (6r) of the statutes is created to read:

30.01 **(6r)** "Vessel" has the meaning given for "boat" in sub. (1bm).

SECTION 16. 30.01 (7m) of the statutes is renumbered 30.18 (1) (c).

NOTE: The definition of "water loss" is relocated to s. 30.18, where the term is used.

SECTION 17. 30.01 (9) of the statutes is renumbered 30.18 (1) (d).

NOTE: The definition of "withdrawal" is relocated to s. 30.18, where that term is used.

SECTION 18. 30.01 (10) of the statutes is renumbered 30.266 (1) (b).

NOTE: The definition of "Wolf River municipality" is relocated to where that term is used. The new numbering of this statute is s. 30.266 as proposed by this bill.

SECTION 19. 30.025 of the statutes is renumbered 30.295, and 30.295 (1b) (b) and (5), as renumbered, are amended to read:

30.295 **(1b)** (b) "Permit" means an individual permit, a general permit, an approval, or a contract required under this subchapter ~~or subch. II~~, a permit or an approval required under ch. 31, a storm water discharge permit required under s. 283.33 (1) (a), or a water quality certification required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a).

(5) EXEMPTION FROM CERTAIN PROCEDURES. Sections ~~30.208~~ 30.244 and ~~30.209~~ 30.245 do not apply to an application for any permit under this section.

SECTION 20. 30.027 of the statutes is renumbered 30.255 and amended to read:

30.255 Lower Wisconsin State Riverway. For activities in the Lower Wisconsin State Riverway, as defined in s. 30.40 (15), ~~no person obtaining~~ the department shall include a condition in a permit issued under ~~subchs. I, II or V~~ this subchapter that the person obtaining the permit may not start or engage in the activity for which the permit was issued unless the person obtains any permit that is required for the activity under s. 30.44 or 30.445.

NOTE: The only permits under subch. V are for motorboat races and moorings. Neither of these activities appear to require a permit under s. 30.44 or 30.445. Therefore, the reference to subch. V is deleted.

This provision is rewritten as a permit condition for a permit issued under ch. 30. This shifts the burden to DNR to condition its issuance of a ch. 30 permit upon obtaining any additional permit that may be required if the activity is located in the Lower Wisconsin State Riverway.

SECTION 21. 30.03 (title) of the statutes is repealed.

SECTION 22. 30.03 (2) of the statutes is renumbered 30.97 and amended to read:

30.97 <u>Enforcement of forfeitures; abatement of nuisances.</u> The district attorney of the appropriate county or, at the request of the department, the attorney general shall institute proceedings to recover any forfeiture imposed or to abate any nuisance committed under this chapter ~~or ch. 31~~.

NOTE: This bill deletes the cross–reference to ch. 31 and replicates current s. 30.03 (2) as s. 31.93.

SECTION 23. 30.03 (3) of the statutes is repealed.

NOTE: The current text of s. 30.03 (3) is as follows: "All forfeitures shall be recovered by civil action as provided in ch. 778 and when collected shall be paid directly into the state treasury.". This provision is unnecessary.

SECTION 24. 30.03 (4) (a) of the statutes is renumbered 30.96 (1) and amended to read:

30.96 **(1)** If the department learns of a possible violation of the statutes relating to navigable waters or a possible infringement of the public rights relating to navigable waters, and the department determines that the public interest may not be adequately served by imposition of a penalty or forfeiture, the department may proceed as provided in this ~~paragraph~~ <u>subsection</u>, either in lieu of or in addition to any other relief provided by law. The department may order a hearing under ch. 227 concerning the possible violation or infringement, and may request the hearing examiner to issue an order directing the responsible parties to perform or refrain from performing acts in order to fully protect the interests of the public in the

navigable waters. If any person fails or neglects to obey an order, the department may request the attorney general to institute proceedings for the enforcement of the department's order in the name of the state. The proceedings shall be brought in the manner and with the effect of proceedings under s. 111.07 (7).

SECTION 25. 30.03 (4) (b) of the statutes is renumbered 30.96 (2) and amended to read:

30.96 **(2)** No penalty may be imposed for ~~violation of~~ violating a hearing examiner's order under this ~~subsection~~ section, but the violation of a judgment enforcing the order may be punished in civil contempt proceedings.

SECTION 26. Subchapter II (title) of chapter 30 [precedes 30.035] of the statutes is amended to read:

CHAPTER 30

SUBCHAPTER II

NAVIGABLE WATERS ~~AND~~

~~NAVIGATION IN GENERAL~~

SECTION 27. 30.035 (1) (b) of the statutes is created to read:

30.035 **(1)** (b) A stream is navigable in fact if it is capable of floating any boat, skiff, or canoe that is of the shallowest draft and is of a type used for recreational purposes.

SECTION 28. 30.035 (3) and (4) of the statutes are created to read:

30.035 **(3)** DETERMINING NAVIGABILITY OF STREAMS BY DEPARTMENT. (a) The department may determine whether a stream is navigable in fact by means of actual navigation. If the department does so, the department shall use a boat, skiff, or canoe, carrying one adult, that is of the shallowest draft and that is of a type used

for recreational purposes. The department may determine the stream to be navigable in fact by means of navigation even though any of the following applies:

1. It is necessary to drag or carry the boat, skiff, or canoe over occasional areas of shallow water or occasional obstructions.

2. The conditions of navigability are present only in regularly recurring periods of high water, so long as the periods of high water are of sufficient duration to allow recreational use.

3. The conditions of navigability are the result of natural or artificial conditions, if the natural or artificial conditions are of long standing.

(b) The department may determine whether a stream is navigable in fact based on measurements or calculations that predict, to a reasonable scientific certainty, the existence of water in the stream sufficient to allow actual navigation as required for a determination of navigability under par. (a).

(c) The department may determine whether a stream is navigable in fact based on reliable records that show a history of actual navigation.

(d) In addition to the department, any person may determine whether a stream is navigable in fact by using a method described in pars. (a) to (c). A stream is presumed to be navigable as a matter of law if it is determined to be navigable in fact using a method described in pars. (a) to (c).

(4) MAPS AND DATA. The department shall develop, and make publicly available, maps and data that show the results of determinations of navigability that are made by the department. At a minimum, the maps and data shall include navigability determinations made after the effective date of this subsection .... [revisor inserts date]. To the extent practicable, within the constraints of available staff and funds,

1 the department shall incorporate past determinations of navigability into the maps
2 and data.

NOTE: The determination of whether a lake or stream meets the legal standard of navigability is critical, both for the public and for riparian property owners, because it is the means for determining whether a project that affects surface waters is subject to the regulations in subch. II of ch. 30, through the statutory system of permits, contracts and other regulations. It is also critical to determining the property rights of and among riparian owners.

The special committee has determined that public confidence in the regulatory system for navigable waters is being undermined by the lack of a clear, publicly accessible statement of: (1) the legal standard used to determine if streams are navigable; and (2) the various methods that the DNR may use to determine if a particular stream meets the legal standard of navigability.

With respect to the first issue, above, the legal standard for determining if a stream is navigable is currently found in court cases and in a very brief description in s. 30.10. To address the concerns regarding the ability of members of the public to locate the legal standard for navigability of a stream, this bill restates the current test of navigability that is found in court cases and the statutes. In these provisions, the special committee is merely restating and not recommending a change in the legal standard for determining whether a stream is navigable.

With respect to the 2nd issue, above, the methods that the DNR currently uses to determine if a lake or stream is navigable are not currently set forth in any statute or rule. To address the concerns regarding the methods used by DNR to determine if a stream is navigable, this bill proposes a combination of statutes and rules to expressly state the test of navigability. The DNR is required to make its determinations of navigability using, at a minimum, a boat, skiff, or canoe of the shallowest draft used for recreational purposes, with one adult in the boat, skiff, or canoe. This method of determining navigability is the "test" set forth in Wisconsin supreme court cases. The DNR is also directed to promulgate rules (see s. 30.04 (2) in this bill) describing the methods it uses to determine if a lake or stream is navigable. In addition to the test involving actual navigation, the DNR may also use other methods to determine navigability of streams (such as measurements or calculations), so long as those methods predict sufficient water in the stream to allow for actual navigation during periods of high water.

The special committee's objective in recommending this change is to create a test of navigability for streams that will be applied consistently throughout the state by the DNR. For the first time, this will give the test of navigability for streams a clear public statement, a substantial degree of predictability and repeatability and, from the public perspective, a sense of fairness. This test of navigability will lessen the chance for the application of public rights in navigable waters to depend on the choices made by DNR staff regarding the type of watercraft and the amount of weight carried in the watercraft.

The special committee is not recommending a change in the statutes related to the determination of navigability for lakes. The current statutory standard for lakes is "navigable in fact", and does not appear to cause problems. For consistency, the phrase "for any purpose whatsoever" is applied to lakes under this bill, just as that phrase applies to streams under current s. 30.10 (2). The public concerns regarding the test of navigability relate to streams, particularly those at the margins between navigability and nonnavigability.

The special committee discussed, but chose not to recommend, a test of navigability for streams that involves specification of the size and weight of the canoe, paddlers, and cargo, as well as other aspects of the test. Although court cases mention depth of water, and duration of high water, the courts are referring to evidence that supports determinations of navigability, and not to the test of navigability.

The current legal standard of navigability is summarized in Memo No. 4, *Alternatives for Consideration by the Special Committee: The Definition of Navigability and Related Issues* (November 20, 2000). Memo No. 4 discusses the leading case on the navigability of streams, *DeGayner and Co. v. Department of Natural Resources*. The key provisions of the "test" of navigability in *DeGayner* are that navigability of a stream is tested with the shallowest draft boat available for recreational use, such as a kayak or canoe, and that navigability is determined based on the amount of water in the stream during the periodic and recurring spring runoff.

With respect to the depth of the stream, the supreme court noted that evidence had been presented to the trial court in *DeGayner* that canoes and kayaks used for recreational purposes could be floated in as little as 3 inches of water. With respect to the duration of high water, the supreme court cited an earlier case that had found navigability during periodic rises of a stream from 4 to 13 days duration.

However, it is important to understand that these numeric standards were not adopted by the supreme court as part of the "test" for determining whether a stream is navigable. *DeGayner* was the review of a judgment of the circuit court which had sustained the order of the DNR determining that the stream in question was navigable in fact. Conflicting evidence had been presented to the trial court, including testimony by DNR employees that the stream was not navigable. The legal issue in *DeGayner* was whether there was "substantial evidence" in the record to support the DNR determination. The substantial evidence standard for review of agency determinations does not require the court to find that there was a preponderance of evidence to sustain the agency's findings, but rather that the finding was supported by substantial evidence in view of the entire record. Thus, in referring to 3 inches of water and 4 to 13 days of high water, the court was acknowledging evidence that supported the DNR determination. The court's holding in *DeGayner* did not specify how much water must be available, for how long, or even require that the determination of navigability be conducted by means of actual navigation.

The special committee's recommendation continues to allow various other testing methods, and to allow the exercise of discretion and judgment by the DNR. The supreme court has not precluded the use of calculations of water depth and duration, consultation of historic records, or any other method of determining navigability, so long as that evidence relates to the potential for actual navigation.

The special committee acknowledges that the current court test of navigability is based on any form of recreational use of waters for boating. It is not appropriate to make the statutory test overly precise, so as to exclude any common methods of or future developments in recreational boating. The special committee determined that a more precise test of navigability would, in fact, involve a change from current law.

Any determination of navigability using the statutory methods is cast as a presumption, which can be rebutted by other evidence of navigability or nonnavigability. It should be noted that the presumption applies to any determination of navigability or nonnavigability, regardless of who makes the determination. Thus, the presumption could apply in a dispute between riparian owners, in which the navigability or nonnavigability of the stream was at issue.

This bill uses "lake" and "stream" in new s. 30.035 and elsewhere in subch. II of ch. 30. There does not appear to be a pattern in the cases or statutes with respect to these terms. Other terms are used throughout the statutes to describe surface waters, including river, slough, bayou, marsh, pond, spring pond, glacial pothole lake, flowage, creek, bay, watercourse, and brook. No legal significance attaches to the use of any of these terms. "Lake" and "stream" are used as collective terms to refer to all such waters.

1 **SECTION 29.** 30.04 of the statutes is created to read:

1 **30.04 Rule making. (1)** The department may promulgate rules under this
2 chapter.
3 **(2)** The department shall promulgate rules that describe all of the following:
4 (a) The standards in common law and statutes for determining whether a body
5 of water is a lake or stream.
6 (b) The methods used by the department for making determinations of whether
7 a lake or stream is navigable under s. 30.035.
8 (c) The public interest and public rights and the rights of riparian owners in
9 navigable waters.
10 (d) The methods for evaluating how an activity, deposit, or structure regulated
11 under this subchapter may promote or be detrimental to the public interest and
12 public rights in navigable waters and to the rights of riparian owners.
13 (e) The methods for evaluating how an activity, deposit, or structure regulated
14 under this subchapter may materially obstruct navigation or materially reduce the
15 flood flow capacity of a stream.
16 (f) The kinds of scientific evidence that may be used to show that a farm
17 drainage ditch was a navigable stream before ditching for purposes of s. 30.215.
18 **(4)** Any reference to this subchapter includes any rules promulgated under this
19 subchapter, and any reference to any provision of this subchapter includes any rules
20 promulgated under that provision.

NOTE: The new requirement for rules related to navigable waters, in sub. (2), above, is described in the note following s. 30.035 (4), which is created by this bill.

21 **SECTION 30.** 30.05 of the statutes is renumbered 30.233 and amended to read:
22 **30.233 Applicability of ~~chapter to municipally–owned submerged~~**
23 **~~shorelands~~ <u>subchapter to lake beds or stream beds under the jurisdiction</u>**

of a municipality. Nothing in this ~~chapter~~ subchapter relative to the establishment of bulkhead or pierhead lines or the placing of structures or deposits in navigable waters or the removal of materials from the beds of navigable waters ~~is applicable to submerged shorelands in Lake Michigan~~ applies to any lake bed, the title to which has been granted by the state to a municipality or to any stream bed which the legislature has authorized a municipality to occupy.

NOTE: This statute is amended to apply to other lakes in which lake bed grants have been made and to authorization to occupy portions of a stream bed.

SECTION 31. 30.056 of the statutes is renumbered 30.261 and amended to read:

30.261 ~~Exemption from certain permit requirements~~ Crayfish Creek. Notwithstanding ss. 30.12, 30.19, 30.195, and ~~30.294~~ 30.94, the city of Oak Creek may not be required to remove any structure or concrete or other deposit that was placed in Crayfish Creek in the city of Oak Creek before June 1, 1991, and may continue to maintain the structure, concrete, or deposit without having a permit or other approval from the department.

SECTION 32. 30.06 of the statutes is renumbered 30.331 and amended to read:

30.331 ~~Waiver of certain provisions of~~ Federal concurrent jurisdiction; waivers under this ~~chapter~~ subchapter. The department, by rule, may waive the applicability to specified navigable waters of the United States of all or part of those provisions of this ~~chapter~~ subchapter which relate to the establishment of bulkhead or pierhead lines or the placing of structures or deposits in navigable waters or the removal of materials from the beds of navigable waters. The department may promulgate ~~such~~ the rule only after ~~it~~ the department has entered into ~~an agreement,~~ with the appropriate federal agency ~~wherein it is agreed,~~ an agreement that requires that the comparable federal law ~~will~~ be enforced on the

waters in question in lieu of the state law ~~which~~ that is being waived. The objective of ~~such~~ the agreement shall be to avoid duplication of administration with respect to navigable waters over which this state and the ~~U.S.~~ federal government have concurrent jurisdiction, in those situations wherein administration by a single governmental agency will tend to avoid confusion and the necessity of obtaining permits from both the state and federal governments by those who are subject to the law and at the same time will adequately protect the public interest. The agreement may contain such further provisions as are designed to achieve this objective.

SECTION 33. 30.10 (title) of the statutes is renumbered 30.035 (title) and amended to read:

30.035 (title) **Declarations and determinations of navigability.**

SECTION 34. 30.10 (1) (title) of the statutes is renumbered 30.035 (1) (title) and amended to read:

30.035 **(1)** (title) LAKES AND STREAMS.

SECTION 35. 30.10 (1) of the statutes is renumbered 30.035 (1) (a) and amended to read:

30.035 **(1)** (a) ~~All lakes wholly or partly within this state which~~ Lakes and streams that are navigable in fact for any purpose whatsoever are declared to be navigable ~~and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public~~ waters.

SECTION 36. 30.10 (2) of the statutes is repealed.

SECTION 37. 30.10 (3) of the statutes is renumbered 30.035 (2) and amended to read:

30.035 **(2)** ENLARGEMENTS ~~OR IMPROVEMENTS~~ IN NAVIGABLE WATERS. All enlargements in navigable waters, including inner and outer harbors, turning

basins, waterways, slips, and canals ~~created by any municipality to be used by the public for purposes of navigation, and all outer harbors connecting interior navigation with lake navigation~~, are declared to be navigable waters ~~and are subject to the same control and regulation that navigable streams are subjected to as regards improvement, use and bridging~~.

SECTION 38. 30.10 (4) (title) of the statutes is repealed.

SECTION 39. 30.10 (4) (a) of the statutes is renumbered 30.213 (2) and amended to read:

30.213 **(2)** ~~This section~~ Section 30.035 does not impair the powers granted by law under ~~s. 30.1235~~ sub. (1) or by other law to municipalities to construct highway bridges, arches, or culverts over streams.

SECTION 40. 30.10 (4) (b) of the statutes is renumbered 30.09 and amended to read:

30.09 Boundaries of lands adjoining waters. The boundaries of lands adjoining waters and the rights of the state and of individuals with respect to ~~all such~~ those lands and waters shall be determined in conformity to the common law so far as applicable, but in the case of a lake or stream erroneously meandered in the original U.S. government survey, the owner of title to lands adjoining the meandered lake or stream, as shown on ~~such~~ the original survey, is conclusively presumed to own to the actual shorelines unless it is first established in a suit in equity, brought by the ~~U.S.~~ federal government for that purpose, that the government was in fact defrauded by such survey. If the proper claims of adjacent owners of riparian lots of lands between meander and actual shorelines conflict, each shall have his or her proportion of ~~such~~ those shorelands.

SECTION 41. 30.10 (4) (c) of the statutes is repealed.

NOTE: The provision regarding farm drainage ditches is relocated to new s. 30.215.

SECTION 42. 30.10 (4) (d) of the statutes is renumbered 30.263 (1).

SECTION 43. 30.103 of the statutes is renumbered 30.325.

SECTION 44. 30.105 of the statutes is repealed.

NOTE: This provision relates to the method for determining the footage of shoreline for certain specific purposes under ch. 30. The substance of this provision is recreated at several places in this bill where the determination of shoreline footage is part of the statutory procedure.

SECTION 45. 30.11 (title) of the statutes is renumbered 30.321 (title).

SECTION 46. 30.11 (1) to (4) of the statutes are renumbered 30.321 (1) to (4) and amended to read:

30.321 **(1)** ~~WHO~~ MUNICIPALITY MAY ESTABLISH. Any municipality may, subject to the approval of the department, by ordinance establish or reestablish a bulkhead line ~~and from time to time reestablish the same~~ along any section of the shore of any navigable waters within its boundaries.

(2) STANDARDS FOR ESTABLISHING. ~~Bulkhead lines shall be established~~ A municipality shall establish a bulkhead line in the public interest and shall conform the bulkhead line as nearly as practicable to the existing shores, except that in the case of leases under ~~sub. (5) and~~ s. 24.39 (4) or 30.343 the municipality may allow the bulkhead ~~lines may be approved~~ line to be located farther ~~from~~ beyond the existing shoreline if ~~they are~~ the line is consistent with and is a part of any lease executed by the board of commissioners of public lands.

(3) ~~HOW ESTABLISHED~~ ESTABLISHMENT OF LINES. ~~Whenever any~~ If a municipality proposes to establish or reestablish a bulkhead line ~~or to reestablish an existing bulkhead line~~, the municipality shall indicate both the existing shore and the proposed bulkhead line upon a map and shall file with the department for its approval 6 copies of the map and 6 copies of the ordinance establishing the bulkhead

line. The map shall use a scale of not less than 100 feet to an inch or any other scale required by the department. The map and a metes and bounds description of the bulkhead line shall be prepared by a land surveyor registered in this state. The department may require the installation of permanent reference markers ~~to~~ for the bulkhead line. Upon approval by the department, the municipality shall deliver the map, description, and ordinance to the office of the register of deeds of the county in which the bulkhead line lies~~, to be recorded by the~~. The register of deeds shall record the map, description, and ordinance.

(4) RIPARIAN RIGHTS PRESERVED. Establishment of a bulkhead line shall not abridge the riparian rights of riparian owners. Riparian owners may place solid structures or fill up to ~~such~~ the bulkhead line.

SECTION 47. 30.11 (5) (title) of the statutes is repealed.

SECTION 48. 30.11 (5) (a) of the statutes is renumbered 30.343 (1).

SECTION 49. 30.11 (5) (b) and (c) of the statutes are renumbered 30.343 (2) and (3).

SECTION 50. 30.11 (6) of the statutes is renumbered 30.321 (5).

SECTION 51. 30.12 (title) of the statutes is amended to read:

30.12 (title) **~~Structures~~ Regulation of structures and deposits in navigable waters.**

SECTION 52. 30.12 (1m) of the statutes is renumbered 30.263 (2), and 30.263 (2) (intro.), as renumbered, is amended to read:

30.263 **(2)** DUCK CREEK DRAINAGE DISTRICT STRUCTURES AND DEPOSITS. (intro.) A structure or deposit that the drainage board for the Duck Creek Drainage District places in a drain that the board operates in the Duck Creek Drainage District is

exempt from the permit requirements under ~~this section~~ s. 30.12 if either of the following applies:

SECTION 53. 30.12 (2m) (b) of the statutes is amended to read:

30.12 **(2m)** (b) Environmental pollution~~, as defined in s. 299.01 (4)~~.

SECTION 54. 30.12 (2r) (b) 1. of the statutes is amended to read:

30.12 **(2r)** (b) 1. Enter and inspect the site on which the activity is located, subject to s. ~~30.291~~ ~~30.254~~ 30.239 if the department determines such an inspection is necessary.

SECTION 55. 30.12 (3) (a) (intro.) of the statutes is amended to read:

30.12 **(3)** (a) (intro.) The department shall issue statewide general permits under s. ~~30.206~~ 30.221 that authorize riparian owners to do all of the following:

SECTION 56. 30.12 (3m) (b) of the statutes is amended to read:

30.12 **(3m)** (b) The notice and hearing provisions of s. ~~30.208~~ 30.244 (3) to (5) ~~shall~~ apply to an application under par. (a).

SECTION 57. 30.12 (5) of the statutes is repealed.

SECTION 58. 30.121 (title) and (2) to (3w) of the statutes are renumbered 30.281 (title) and (2) to (3w).

SECTION 59. 30.121 (4) of the statutes is renumbered 30.281 (4) and amended to read:

30.281 **(4)** MAJOR REPAIR, ABANDONED STRUCTURES AND OBSTRUCTIONS TO NAVIGATION. The owner of a boathouse or a fixed houseboat which extends beyond the ordinary high–water mark of any navigable waterway and which is in a major state of disrepair or is a material obstruction to navigation may be ordered by the department to remove the structure from the waterway. The department shall follow the procedures set forth in s. ~~30.03 (4) (a)~~ 30.96 (1) for ordering removal of a structure.

If such a structure is abandoned and the department, after due diligence, cannot locate the owner, the department shall utilize the procedures set forth in s. 31.187 (1) for removing the abandoned structure.

SECTION 60. 30.121 (5) and (6) of the statutes are renumbered 30.281 (5) and (6).

SECTION 61. 30.121 (7) of the statutes is renumbered 30.381 (2) and amended to read:

30.381 **(2)** ~~PENALTIES~~ BOATHOUSES AND HOUSEBOATS. Any person who constructs, owns, or maintains a boathouse or fixed houseboat in violation of ~~this section~~ s. 30.281 or in violation of any order issued under ~~this section~~ s. 30.281 shall forfeit not less than $10 nor more than $50 for each offense. Each day during which a ~~structure~~ boathouse or a fixed houseboat exists in violation of ~~this section constitutes~~ s. 30.281 is a separate offense.

SECTION 62. 30.122 of the statutes is renumbered 30.217 and amended to read:

30.217 Unauthorized structures. All permanent alterations, deposits, or structures affecting navigable waters, other than boathouses, which were constructed before December 9, 1977 and which did not require a permit at the time of construction, shall be presumed in conformity with the law~~, unless a written complaint is filed within 180 days of December 9, 1977~~. Upon the filing of a complaint, the department shall proceed with an action to enforce the applicable statutes.

NOTE: The time period for filing a written complaint has long since expired, and has no bearing on current structures.

SECTION 63. 30.123 (title) of the statutes is amended to read:

30.123 (title) ~~**Bridges**~~ **Regulation of bridges and culverts.**

SECTION 64. 30.123 (5) of the statutes is repealed.

NOTE: This repeals a requirement that bridges constructed over navigable streams be maintained in a safe condition, as determined by the DNR. The DNR does not have the expertise to review bridge safety and maintenance.

SECTION 65. 30.123 (6) (a) of the statutes is amended to read:

30.123 **(6)** (a) The construction and maintenance of highway bridges to which s. ~~30.1235~~ 30.213 applies.

SECTION 66. 30.123 (6) (b) of the statutes is amended to read:

30.123 **(6)** (b) The construction and maintenance of bridges by the department of transportation in accordance with s. ~~30.2022~~ 30.341.

SECTION 67. 30.123 (6m) (b) of the statutes is amended to read:

30.123 **(6m)** (b) Environmental pollution~~, as defined in s. 299.01 (4)~~.

SECTION 68. 30.123 (6r) (b) 1. of the statutes is amended to read:

30.123 **(6r)** (b) 1. Enter and inspect the site on which the activity is located, subject to s. ~~30.291~~ ~~30.254~~ 30.239, if the department determines such an inspection is necessary.

SECTION 69. 30.123 (7) (a) (intro.) of the statutes is amended to read:

30.123 **(7)** (a) (intro.) The department shall issue statewide general permits under s. ~~30.206~~ 30.221 that authorize any person to do all of the following:

SECTION 70. 30.123 (8) (b) of the statutes is amended to read:

30.123 **(8)** (b) The notice and hearing provisions of s. ~~30.208~~ 30.244 (3) to (5) ~~shall~~ apply to an application under par. (a).

SECTION 71. 30.1235 (title) of the statutes is renumbered 30.213 (title).

SECTION 72. 30.1235 of the statutes is renumbered 30.213 (1).

SECTION 73. 30.124 of the statutes is renumbered 30.351, and 30.351 (1) (intro.), as renumbered, is amended to read:

30.351 **(1)** (intro.) Notwithstanding ss. 30.12, 30.20, 30.44, and 30.45, and if the department finds that the activity will not adversely affect the public interest or private rights or interests in fish and wildlife populations, navigation, or waterway flood flow capacity and will not result in environmental pollution, ~~as defined in s. 299.01 (4),~~ the department may do all of the following on public lands or waters:

SECTION 74. 30.1255 of the statutes is renumbered 30.352.

SECTION 75. 30.126 (title) and (2) to (9) of the statutes are renumbered 30.266 (title) and (2) to (9), and 30.266 (5) (g), as renumbered, is amended to read:

30.266 **(5)** (g) *May not have improper flotation devices.* No person may construct, place, or maintain a fishing raft on authorized portions of the Wolf River unless each flotation device used on the fishing raft is clean and uncontaminated, properly attached to the fishing raft, and properly maintained in conformity with minimum standards established by the department by rule. The department shall establish minimum standards for the condition, attachment, and maintenance of flotation devices used on fishing rafts. This paragraph applies to any device used to provide flotation for a fishing raft, including each individual barrel or styrofoam coffin.

SECTION 76. 30.126 (10) (title) and (a) (title) of the statutes are repealed.

SECTION 77. 30.126 (10) (a) of the statutes is renumbered 30.381 (3) (a) and amended to read:

30.381 **(3)** (a) A person who violates ~~this section, any rule promulgated under this section~~ s. 30.266 or any order issued by the department under ~~this section~~ s. 30.266 shall forfeit not less than $10 nor more than $250 for each offense. Each day ~~of violation constitutes~~ during which a fishing raft exists in violation of s. 30.266 is a separate offense.

1 **SECTION 78.** 30.126 (10) (b) (title) of the statutes is repealed.

2 **SECTION 79.** 30.126 (10) (b) of the statutes is renumbered 30.381 (3) (b) and
3 amended to read:

4 30.381 **(3)** (b) A person who violates any ordinance adopted or order issued by
5 the municipality under ~~this section~~ s. 30.266 is subject to the penalty established by
6 ordinance. A Wolf River municipality may not establish this penalty at a level which
7 is less severe than the penalty established under par. (a).

8 **SECTION 80.** 30.13 (title), (1) (intro.), (b) and (c) of the statutes are amended to
9 read:

10 **30.13** (title) **Regulation of wharves, piers, and swimming rafts;**
11 **~~establishment of pierhead lines.~~ (1)** CONSTRUCTION ALLOWED WITHOUT PERMIT
12 UNDER CERTAIN CIRCUMSTANCES. (intro.) A riparian ~~proprietor~~ owner may construct
13 a wharf or pier in a navigable waterway extending beyond the ordinary high–water
14 mark or an established bulkhead line in aid of navigation without obtaining a permit
15 under s. 30.12 if all of the following conditions are met:

16 (b) The wharf or pier does not interfere with rights of other riparian ~~proprietors~~
17 owners.

18 (c) The wharf or pier does not extend beyond any pierhead line which is
19 established under ~~sub. (3)~~ s. 30.323.

20 **SECTION 81.** 30.13 (3) (title) of the statutes is repealed.

21 **SECTION 82.** 30.13 (3) of the statutes is renumbered 30.323 (1), and 30.323 (1)
22 (a), as renumbered, is amended to read:

23 30.323 **(1)** (a) Any municipality authorized by s. ~~30.11~~ 30.321 to establish a
24 bulkhead line may also establish a pierhead line in the same manner as it is
25 authorized to establish a bulkhead line, except that a metes and bounds legal

description is not required nor is the map required to be prepared by a registered land surveyor and except that if the municipality has created a board of harbor commissioners the municipality must obtain the approval of the board concerning the establishment of the pierhead line in addition to obtaining the approval of the department.

SECTION 83. 30.13 (4) (c) of the statutes is amended to read:

30.13 **(4)** (c) *Extends beyond pierhead line; exception.* A wharf or pier which extends into navigable waters beyond any pierhead line established under ~~sub. (3)~~ s. 30.323 constitutes an unlawful obstruction of navigable waters unless a valid permit, license, or authorization for the wharf or pier is ~~granted~~ issued or unless it is a permissible preexisting wharf or pier. A wharf or pier is a permissible preexisting wharf or pier if it existed prior to the establishment of the pierhead line, if it is not extended or expanded after that date and if the ownership of the land to which it is attached did not change after that date except that a wharf or pier continues its status as a permissible preexisting wharf or pier for one year after the date the change of ownership is recorded. The seasonal removal of a wharf or pier does not affect its status as a permissible preexisting wharf or pier if it is reestablished in substantially the same form. Status as a permissible preexisting wharf or pier does not imply that authorization for the wharf or pier is provided for the purposes of par. (a) or (b). The owner of a wharf or pier may submit evidence to the municipality that it is a permissible preexisting wharf or pier at any time after the municipality establishes the pierhead line.

SECTION 84. 30.13 (6) (title) of the statutes is repealed.

SECTION 85. 30.13 (6) of the statutes is renumbered 30.323 (2).

SECTION 86. 30.131 of the statutes is renumbered 30.283, and 30.283 (1) (intro.) and (f) and (2), as renumbered, are amended to read:

30.283 **(1)** (intro.) Notwithstanding s. ~~30.133~~ 30.095, a wharf or pier of the type which does not require a permit under ss. 30.12 (1) and 30.13 that abuts riparian land and that is placed in a navigable water by a person other than the owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

(f) The placement of the wharf or pier complies with the provisions of this ~~chapter, with any rules promulgated under this chapter~~ subchapter and with any applicable municipal regulations or ordinances.

(2) Notwithstanding s. ~~30.133~~ 30.095, an easement under sub. (1) may be conveyed if it is conveyed at the same time, and to the same person, that the land to which the easement is appurtenant is conveyed.

SECTION 87. 30.133 of the statutes is renumbered 30.095.

SECTION 88. 30.134 of the statutes is renumbered ~~30.265~~ 30.85.

SECTION 89. 30.135 (2) of the statutes is amended to read:

30.135 **(2)** If the department determines that any of the requirements under sub. (1) are not met, the riparian owner shall submit an application for an individual permit to the department. The notice and hearing provisions under s. ~~30.208~~ 30.244 (3) to (5) apply to the application.

SECTION 90. 30.14 (title) of the statutes is repealed.

SECTION 91. 30.14 (1) (title) of the statutes is repealed.

SECTION 92. 30.14 (1) of the statutes is renumbered 30.327.

SECTION 93. 30.14 (2) of the statutes is renumbered 30.247 and amended to read:

30.247 Hearings by department. Upon complaint by any person to the department that any wharf, pier, or other structure exists in navigable water in violation of s. 30.12 ~~or~~, 30.13, or ~~30.207~~ 30.223 or that any wharf, pier, or other structure proposed to be built in navigable water will violate s. 30.12 ~~or~~, 30.13, or ~~30.207~~ 30.223, the department shall investigate and may hold a hearing to determine whether the wharf, pier, or other structure is or would be in violation of those sections. If no hearing is held, the complainant shall be informed of the results of the investigation.

SECTION 94. 30.15 (title) of the statutes is repealed.

SECTION 95. 30.15 (1) (title) of the statutes is renumbered 30.98 (1) (title) and amended to read:

30.98 **(1)** (title) OBSTRUCTIONS ~~PENALIZED~~.

SECTION 96. 30.15 (1) (intro.) of the statutes is renumbered 30.98 (1) (intro.).

SECTION 97. 30.15 (1) (a), (b) and (c) of the statutes are renumbered 30.98 (1) (a), (b) and (c) and amended to read:

30.98 **(1)** (a) Unlawfully obstructs any navigable ~~waters~~ water and thereby impairs the free navigation ~~thereof~~ of the navigable water.

(b) Unlawfully places in any navigable ~~waters or in any tributary thereof~~ water any substance that may float into and obstruct any ~~such waters~~ navigable water or that may impede ~~their~~ free navigation of any navigable water.

(c) Constructs or maintains in any navigable ~~waters,~~ water any boom not authorized by law or aids in the construction or maintenance ~~therein,~~ of any such boom ~~not authorized by law~~.

1 **SECTION 98.** 30.15 (1) (d) of the statutes is renumbered 30.381 (4) (a) and
2 amended to read:

3 30.381 **(4)** (a) ~~Constructs~~ Except as provided in par. (b), any person who
4 constructs or places any structure or deposits any material in navigable waters in
5 violation of s. 30.12 ~~or 30.13~~ shall forfeit not less than $100 nor more than $500 for
6 each offense. Each day during which a structure or deposit of material exists in
7 violation of s. 30.12 is a separate offense under this paragraph.

8 **SECTION 99.** 30.15 (3) of the statutes is renumbered 30.98 (2).

9 **SECTION 100.** 30.16 of the statutes is renumbered 30.95.

10 **SECTION 101.** 30.18 (1) (intro.) of the statutes is created to read:

11 30.18 **(1)** DEFINITIONS. (intro.) In this section:

12 **SECTION 102.** 30.18 (1) (b) of the statutes is created to read:

13 30.18 **(1)** (b) "Major diversion" means a diversion that will result in a water loss
14 averaging, in any 30–day period, at least 2,000,000 gallons per day above a
15 permittee's authorized base level of water loss.

16 **SECTION 103.** 30.18 (2) (a) (intro.) of the statutes is amended to read:

17 30.18 **(2)** (a) ~~*Streams*~~ *Diversions from streams.* (intro.) ~~No~~ Unless an individual
18 permit has been issued under this section, no person may divert water from a stream
19 ~~in this state without an individual permit under this section if the diversion meets~~
20 ~~either of the following conditions~~ if any of the following applies:

21 **SECTION 104.** 30.18 (2) (b) of the statutes is amended to read:

22 30.18 **(2)** (b) ~~*Streams or*~~ *Major diversions from streams or lakes.* ~~No~~ Unless an
23 individual permit has been issued under this section, no person~~, except a person~~
24 ~~required to obtain an approval under s. 281.41,~~ may divert water from any lake or
25 stream ~~in this state without an individual permit under this section~~ if the diversion

~~will result in a water loss averaging 2,000,000 gallons per day in any 30–day period above the person's authorized base level of water loss~~ is a major diversion. This paragraph does not apply to a person who is required to obtain an approval under s. 281.41.

SECTION 105. 30.18 (3) (title) and (a) (title), 1. and 2. of the statutes are repealed.

SECTION 106. 30.18 (3) (a) 3. of the statutes is renumbered 30.18 (3m) (a) and amended to read:

30.18 **(3m)** (a) ~~For a diversion under sub. (2) (a) 2., the application shall include written~~ Written statements of consent to the diversion from all riparian owners who are making beneficial use of the water proposed to be diverted.

SECTION 107. 30.18 (3) (a) 4. of the statutes is repealed.

SECTION 108. 30.18 (3) (b) of the statutes is repealed.

SECTION 109. 30.18 (3m) (intro.) of the statutes is created to read:

30.18 **(3m)** APPLICATIONS FOR PERMITS; SPECIFIC REQUIREMENTS. (intro.) An application for a permit under this section to divert water from a stream for the purpose of agriculture or irrigation shall include all of the following:

SECTION 110. 30.18 (3m) (b) of the statutes is created to read:

30.18 **(3m)** (b) Evidence of permission or authority to enter any land through which it is proposed to divert the water for the purpose of obtaining information required for drafting the plans for the project.

SECTION 111. 30.18 (4) (title) of the statutes is repealed and recreated to read:

30.18 **(4)** (title) ACTION BY DEPARTMENT.

SECTION 112. 30.18 (4) (a) of the statutes is amended to read:

30.18 **(4)** (a) Upon receipt of a complete application for a permit under this section, the department shall follow the notice and hearing procedures under s. ~~30.208~~ 30.244 (3) to (5). In addition to providing notice as required under s. ~~30.208~~ 30.244 (3) to (5), the department shall mail a copy of the notice to ~~every person upon whose land any part of the canal or any other structure will be located, to the~~ all of the following:

2. The clerk of the ~~next town~~ municipality that is the next municipality downstream~~, to the~~ from the point of the proposed diversion.

3. The clerk of ~~any village or city~~ each municipality in which the lake or stream from which water is proposed to be diverted is located and which is adjacent to any municipality in which the diversion will take place ~~and to each~~.

4. Each person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

SECTION 113. 30.18 (4) (a) 1. of the statutes is created to read:

30.18 **(4)** (a) 1. Each owner of land over which water is proposed to be diverted.

SECTION 114. 30.18 (4) (b) of the statutes is amended to read:

30.18 **(4)** (b) If a hearing on the application for a permit under this section is conducted as a part of a hearing under s. 293.43, the notice and hearing provisions in that section supersede the notice and hearing provisions ~~of par. (a)~~ under ss. 30.244 and 30.245.

SECTION 115. 30.18 (5) (title) of the statutes is repealed and recreated to read:

30.18 **(5)** (title) ISSUANCE OF PERMITS.

SECTION 116. 30.18 (5) (a) (intro.) of the statutes is amended to read:

30.18 **(5)** (a) ~~*Streams*~~ *Diversions from streams*. (intro.) The department shall ~~approve an application for~~ issue a permit required under sub. (2) (a) if the department determines ~~both~~ that all of the following conditions apply: