

**2011 DRAFTING REQUEST**

**Assembly Amendment (AA-AB177)**

Received: **06/20/2011**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Jim Steineke (608) 266-2418**

By/Representing:

May Contact:

Drafter: **mglass**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Steineke@legis.wi.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Procedures for issuing chapter 30 individual and general permits

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**Instructions:**

See attached

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**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>
/?							
/P1	mglass 06/20/2011	kfollett 06/20/2011	jfrantze 06/21/2011	_____	sbasford 06/21/2011		
/1	mglass 06/21/2011	kfollett 06/21/2011	rschluet 06/21/2011	_____	ggodwin 06/21/2011	ggodwin 06/21/2011	

FE Sent For:

<END>

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/?							
/P1	mglass 06/20/2011	kfollett 06/20/2011	ifrantze 06/21/2011	_____	sbasford 06/21/2011		

FE Sent For:

1157  
6/21

*[Handwritten signature]*

*[Handwritten signature]*

<END>

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1?	mglass	1 P/15 f 6/20	J 6/20	Ra J 6/21			

FE Sent For:

<END>

**Gibson-Glass, Mary**

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**From:** Rep.Steineke  
**Sent:** Friday, June 17, 2011 9:23 AM  
**To:** Gibson-Glass, Mary  
**Subject:** FW: AB 177 amendments  
**Importance:** High  
**Attachments:** AB 177 DNR amendments2.doc

Please prepare an amendment to LRB 1869 based on the changes recommended by the DNR (attached). If possible, please put a rush on it so that it will be available in time for the hearing on Wednesday.  
Thank you.

Rep. Jim Steineke  
304 North, State Capital  
Madison, WI 53708  
(608) 266-2418  
(888) 534-0005 Toll Free

---

**From:** Moroney, Matt S - DNR [mailto:Matt.Moroney@wisconsin.gov]  
**Sent:** Thursday, June 16, 2011 6:23 PM  
**To:** Rep.Steineke  
**Cc:** Correll, Megan E - DNR; Gunderson, Scott L - DNR; Rasmussen, Russell A - DNR  
**Subject:** FW: AB 177 amendments  
**Importance:** High

Rep. Steineke,

Attached are our comments. If you have any questions, please feel free to contact any of us (especially Megan).

We appreciate your willingness to listen to our concerns.

Matt

---

**From:** Correll, Megan E - DNR  
**Sent:** Thursday, June 16, 2011 5:25 PM  
**To:** Moroney, Matt S - DNR  
**Cc:** Rasmussen, Russell A - DNR; Johnson, Kenneth G - DNR; Kluesner, Elizabeth M - DNR; Gunderson, Scott L - DNR; Neumann, Paul F - DNR; Heinen, Paul H - DNR  
**Subject:** AB 177 amendments

Matt,

As agreed this morning, I have written up the DNR comments in a legislative amendment format. Liesa Lehmann provided significant assistance based on previous streamlining efforts we had worked on together. If you need further edits to this document please know that I will be out of the office tomorrow, but that Liesa or Russ could probably assist in my absence. Alternatively, I am available by cell for questions and could redraft portions on Monday when I'll be back in the office.  
Cell: 220-7923

  
Attorney

6/19/2011

Bureau of Legal Services  
Wisconsin Department of Natural Resources  
(☎) phone: (608) 266-2132  
(☎) fax: (608) 266-6983  
(✉) e-mail: [megan.correll@wisconsin.gov](mailto:megan.correll@wisconsin.gov)

TO: Representative Jim Steineke  
FROM: Matt Moroney, Department of Natural Resources  
DATE: June 16, 2011  
RE: Agreed Upon Amendments to 2011 AB 177 (LRB—1869/1)

Thank you for taking the time to meet with me and other Department staff today, to discuss this bill. We appreciate your interest in working with us to make amendments to the legislation. As you requested, below are suggested changes that we discussed and agreed to at the meeting. If you have any questions, please contact Attorney Megan Correll at (608) 266-2132 or Russ Rasmussen, Deputy Director, Water Division at (608)267-7651.

**Section 2**, page 4, line 12. Amend bill language as follows: Within 10 days of receiving all the additional information requested from the applicant.....

We believe it was the intent of the bill that all the information requested needs to be supplied and this addition clarifies the issue of a complete application.

**Section 5**, we suggest a change to the statute that would make a public hearing permissive rather than required.

30.208 (3)(b) If the notice of ~~complete~~ pending application does not contain a notice of public hearing, any person may request a public hearing in writing. ~~or~~ The department may decide to hold a public hearing with or without a request being submitted if the department determines there is a significant public interest in holding a hearing.

**Section 6**, page 6, line 9. Change 10 days to 15 days. Given holidays and long weekends with holidays, we believe 10 days is simply too tight a time frame.

□ **Section 7**, page 6, line 14. After the word hearing add "process under subsection 4b" .....public hearing process under subsection 4b is completed...

□ ? **Section 8**, page 6, line 21 and 22. 30.208(3)(f) If the department fails to comply with the time periods in this subsection (3)(e) or ~~sub. (4.)~~, a decision issuing the permit, modifying the permit in the manner requested by the applicant for the permit, or approving the contract shall be considered to be rendered. The Department shall issue an administrative order that specifies the terms and conditions that apply to all actions authorized under this subsection.

**Section 11:**

Amend s. 30.208(5)(a) as follows: "The department shall establish procedures ~~by rule~~ for providing notices...."

RUK □ Amend s. 30.208(5)(a)1 to read: That notice be published as a class 1 notice under ch. 985 or by electronic notification system established by the Department.

? **Section 19**, 30.209(2)(e): Strike current draft bill language and provide: In an administrative hearing under this section, the moving party for the hearing shall proceed first with the presentation of evidence and shall have the burden of proof.

**Section 20.** Revise end of provisions (1) and (2) to provide a 90-day delayed effective date for implementation of the bill.

(1) The treatment of sections 30.18 (4) (a) and 30.208 (3) (a), (b), (c), (e), and (f), (4) (a), (4m), and (5) (a) (intro.) and (b) (intro.), 4., and 5. of the statutes, the renumbering and amendment of section 30.208 (2) of the statutes, and the creation of section 30.208 (2) (d) of the statutes first apply to applications for permits or contracts that are submitted after [90 days from the effective date of the legislation]

(2) The treatment of section 30.209 (2) (e) of the statutes first applies to administrative hearings that are requested after [90 days from the effective date of the legislation].

### **General Permits**

Delete current 30.206(1)(a) and recreate:

30.206 (1) ISSUANCE; VALIDITY. (a) Upon compliance with the requirements under subs. (2) and (2m), the department may issue a general permit to a person wishing to proceed with an activity. A permit issued under this subsection is in lieu of any permit or approval that would otherwise be required for that activity under this subchapter.

(b) A general permit issued under this subsection is valid for a minimum period of 5 years and an activity that the department determines is authorized by a general permit remains authorized under the permit until the activity is completed. The department may renew, modify, or revoke a general permit issued under this subsection upon compliance with the requirement under subs. (2) and (2m) and until such time the general permit shall remain in effect.

Create 30.206(2) and (2m):

(2) PUBLIC NOTICE. (a) The department shall circulate to interested and potentially interested members of the public notices of its intention to issue a general permit. Procedures for the circulation of public notices shall include at least the following:

1. Publication of the notice as a class 1 notice under ch. 985 or by electronic notification system established by the Department.
2. Providing of the notice to any person or group upon request.

(b) The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the department's intention to issue a general permit under sub. (1). All written comments submitted during the period for comment shall be retained by the department and considered in the issuance of the general permit.

(c) Every notice issued by the department of the department's intention to issue a general permit under sub. (1) shall include a description of the activities proposed to be authorized under the general permit.

(2m) PUBLIC HEARING. (a) 1. The department shall provide an opportunity for any affected state, the U.S. environmental protection agency, or any interested state or federal agency or person or group of persons to request a public hearing with respect to the department's intention to issue a general permit under sub. (1). Such request for a public hearing shall be filed with the department within 30 days after the circulation of the

public notice under sub. (2) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted.

2. The department shall hold a public hearing upon a request under subd. 1.

if the department determines that there is a significant public interest in holding such a hearing. Hearings held under this section are not contested cases under s.

227.01 (3). (b) Public notice of any hearing held under this section shall be circulated in accordance with the requirements of sub. (2).



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa1336/R  
MGG: K

P1  
JF

(D-N)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO 2011 ASSEMBLY BILL 177**

9:00  
A.M Tues

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 6: delete “applications and hearings relating to permits” and  
3 substitute “issuing individual permits, contracts, and general permits”.

4 **2.** Page 3, line 1: before that line insert:

5

“**SECTION 30.12** (1j) (c) of the statutes is amended to read:

6 30.12 (1j) (c) If the riparian owner or owners of a property described in par. (a)  
7 are eligible and propose to place a pier or wharf with the number of boat slips  
8 specified in par. (a), the riparian owner or owners shall apply to the department for  
9 an individual permit under s. 30.208 authorizing the configuration of the pier or  
10 wharf unless the configuration is authorized by the department under a general  
11 permit under s. 30.206 (1g), 2009 stats. The department may not deny the permit  
12 on the basis of the number of slips proposed by the riparian owner or owners if the

1 number of slips proposed does not exceed the number allowed under par. (a). A  
2 riparian owner or owners who apply for a permit under this paragraph shall be  
3 presumed to be entitled to the number of slips allowed under par. (a).

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; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

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

5 30.12 (3) (a) (intro.) The department shall may issue statewide general permits  
6 ~~1d~~ under s. 30.206 that authorize riparian owners to do all of the following:

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; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

7 **SECTION 3.** 30.12 (3) (br) of the statutes is amended to read:

8 30.12 (3) (br) The department may ~~promulgate rules that~~ specify structures or  
9 deposits, in addition to those listed in par. (a), that may be authorized by statewide  
10 general permits.

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; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204.

11 **SECTION 3.** 30.123 (7) (a) (intro.) of the statutes is amended to read:

12 30.123 (7) (a) (intro.) The department shall may issue statewide general  
13 permits under s. 30.206 that authorize any person to do all of the following:

History: 1977 c. 190; Stats. 1977 s. 30.122; 1977 c. 272; Stats. 1977 s. 30.123; 1987 a. 374; 2003 a. 118.

14 **SECTION 3.** 30.123 (7) (b) of the statutes is amended to read:

15 30.123 (7) (b) The department may ~~promulgate rules that~~ specify bridges or  
16 culverts, in addition to those listed in par. (a), that may be authorized by statewide  
17 general permits.))

History: 1977 c. 190; Stats. 1977 s. 30.122; 1977 c. 272; Stats. 1977 s. 30.123; 1987 a. 374; 2003 a. 118.

18 **3.** Page 3, line 1: substitute "13" for "19".

19 **4.** Page 3, line 10: after that line insert:

20 **SECTION 5.** 30.19 (3r) (a) (intro.) of the statutes is amended to read:

1c (B)

CS (B) SECTION 19

CS (B) SECTION 1

1h.

1 30.19 (3r) (a) (intro.) The department shall may issue statewide general  
2 permits under s. 30.206 that authorize persons to do all of the following:

3 History: 1971 c. 273; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221; 1983 a. 36; 1987 a. 374; 1995 a. 227; 2003 a. 118.

3 SECTION 6. 30.19 (3r) (b) of the statutes is amended to read:

4 30.19 (3r) (b) The department may ~~promulgate rules that~~ specify other types  
5 of activities, in addition to those listed in par. (a), that may be authorized by  
6 statewide general permits.

7 History: 1971 c. 273; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221; 1983 a. 36; 1987 a. 374; 1995 a. 227; 2003 a. 118.

7 SECTION 7. 30.20 (1t) (a) of the statutes is amended to read:

8 30.20 (1t) (a) The department shall may issue statewide general permits under  
9 s. 30.206 that authorize any person to ~~remove material~~ for maintenance purposes  
10 from an area from which material has been previously removed.

11 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; 1999 a. 9, 185; 2003 a. 118.

11 SECTION 8. 30.20 (1t) (b) of the statutes is amended to read:

12 30.20 (1t) (b) The department may ~~promulgate rules that~~ specify other types  
13 of removals, in addition to the one listed in par. (a), that may be authorized by  
14 statewide general permits.

15 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; 1999 a. 9, 185; 2003 a. 118.

15 SECTION 9. 30.206 (1) (a) of the statutes is repealed.

16 SECTION 10. 30.206 (1) (am) of the statutes is created to read:

17 30.206 (1) (am) Upon compliance with the requirements under subs. (2) and  
18 (2m), the department may issue a general permit to a person wishing to proceed with  
19 an activity for which an individual permit or is issued, or a contract is entered into,  
20 under this subchapter. A permit issued under this paragraph is in lieu of any permit  
21 or contract that would otherwise be required for that activity under this subchapter.

22 SECTION 11. 30.206 (1) (b) of the statutes is created to read:

1 j (5)

1 k (5)

1 L (5)

1 m (5)

1 n (5)

1 p (5)

✓ b

✓ j

✓

*par. (am)*  
*no change*  
*to be changed*

1 30.206 (1) (b) A general permit issued under ~~this subsection~~ is valid for a period  
2 of 5 years, and an activity that the department determines is authorized by a general  
3 permit remains authorized under the general permit until the activity is completed  
4 regardless of whether the general permit expired before ~~the activity is completed~~.  
5 The department may renew or modify, or revoke a general permit <sup>(3b)</sup> issued under ~~this~~  
6 par. (am) upon compliance with the requirements <sup>of</sup> under subs. ~~(2)~~ and (2m) and until  
7 such renewal, modification, or revocation <sup>of</sup> the general permit shall remain in effect.

8 SECTION ~~12~~ 30.206 (1g) of the statutes is repealed. *1g (B)*

9 SECTION ~~13~~ 30.206 (1m) of the statutes is repealed. *1r (B)*

10 SECTION ~~14~~ 30.206 (1r) of the statutes is created to read: *15 (B)*

11 30.206 (1r) TRANSITIONS BETWEEN PERMITS. Any general permit issued under  
12 this subchapter <sup>of</sup> that is valid on the effective date of this subsection .... [LRB inserts  
13 date] <sup>of</sup> shall remain valid until the date upon which a general permit issued under  
14 sub. (1) (am) that authorizes the same activity becomes effective. *1t (B)*

15 SECTION ~~15~~ 30.206 (2) <sup>b</sup> of the statutes is created to read:

16 30.206 (2b) PUBLIC NOTICE. (a) The department shall circulate to interested  
17 and potentially interested members of the public notices of its intention to issue a  
18 general permit. Procedures for the <sup>providing</sup> circulation of public notices shall include ~~at least~~  
19 ~~one~~ all of the following:

- 20 1. ~~Either publication as~~ <sup>A procedure consisting of either publishing</sup> a class I notice under ch. 985 or <sup>or</sup> circulation <sup>when publishing</sup> by an <sup>use of</sup> *circulating the notice*  
21 electronic notification system established by the department. <sup>of the person or group</sup>
- 22 2. <sup>A procedure under which</sup> ~~Providing~~ a copy of the notice to any person or group upon request <sup>the</sup> *of the person or group*  
23 <sup>is provided</sup>

24 (b) The department shall provide a period of not less than 30 days following the  
25 date of the public notice during which time interested persons may submit their  
written views on the department's intention to issue a general permit under sub. (1)

1 (am). All written comments submitted during the period for comment shall be  
2 retained by the department and considered in the issuance of the general permit.

3 (c) Every notice issued by the department of the department's intention to issue  
4 a general permit under sub. (1) (am) shall include a description of the activities  
5 proposed to be authorized under the general permit.

6 SECTION 16. 30.206 (2m) of the statutes is created to read:

7 30.206 (2m) PUBLIC HEARING. (a) 1. The department shall provide an  
8 opportunity for any interested state agency or federal agency or person or group of  
9 persons to request a public hearing with respect to the department's intention to  
10 issue a general permit under sub. (1) (am). Such request for a public hearing shall  
11 be filed with the department within 30 days after the circulation of the public notice  
12 under sub. (2b) and shall indicate the interest of the party filing the request and the  
13 reasons why a hearing is warranted.

14 2. The department shall hold a public hearing upon a request under subd. 1.  
15 if the department determines that there is a significant public interest in holding  
16 such a hearing. Hearings held under this section are not contested cases under s.  
17 227.01 (3).

18 (b) Public notice of any hearing held under this subsection shall be circulated  
19 in accordance with the requirements of sub. (2)."

20 SECTION 17. 30.206 (7) of the statutes is amended to read:

21 30.206 (7) INAPPLICABILITY. This section does not apply to an application for a  
22 general permit for the Wolf River and Fox River basin area or any area designated  
23 under s. 30.207 (1m)."

History: 1987 a. 374; 1995 a. 227; 1997 a. 174; 2003 a. 89, 118, 326; 2007 a. 96, 204.

24 5. Page 4, line 12: substitute "requested" for "additional".

1           **6.** Page 6, line 3: after "hearing" insert "with or".

2           **7.** Page 6, line 9: substitute "15" for "10".

3           **8.** Page 6, line 14: delete that line and substitute:

4           "30.208 (3) (e) Within 30 20 days after the public hearing is held period for  
5           public comment under sub. (4) (b) has ended or".

6           **9.** Page 6, line 20: delete "in this" and substitute "under sub. (3) (e)".

7           **10.** Page 6, line 21: delete "subsection or sub. (4)".

*H Page 6, line 21: ↑*

8           **11.** Page 6, line 23: after "rendered." insert "The permit that is issued or is  
9           modified, or the contract that is approved, pursuant to the decision, shall authorize  
10           that the activity subject to the permit or contract to be conducted in the manner  
11           proposed by the applicant for the permit for the contract, but the department may  
12           impose terms and conditions on the permit or contract that do not conflict with the  
13           basic proposal contained in the application for the permit or contract."

14           **12.** Page 7, line 20: after that line insert:

15           "**SECTION 11m.** 30.208 (5) (a) 1. of the statutes is amended to read:

16           30.208 (5) (a) 1. That the notice be published as a class 1 notice under ch. 985  
17           or by a<sup>n</sup> electronic notification system established by the department."

History: 2003 a. 118 ss. 6, 149; 2007 a. 227.

18           **13.** Page 9, line 8: delete lines 8 to 13 and substitute:

19           "**SECTION 9m.** 30.209 (2) (e) of the statutes is created to read:

20           30.209 (2) (e) In an administrative hearing under this section, the petitioner  
21           shall proceed first with the presentation of evidence and shall have the burden of  
22           proof."

23           **14.** Page 9, line 13: after that line insert:

*delete the material beginning with "in the" and  
ending with "permit" on page 6, 22. e line*

*19m*

1

SECTION 18. 227.01 (13) (rt) of the statutes is amended to read:

2

227.01 (13) (rt) Is a general permit issued under s. 30.206 or 30.2065.

History: 1985 a. 182; 1987 a. 27, 119, 395, 399, 403; 1989 a. 31, 56, 335, 341; 1991 a. 39, 254, 269, 309, 315; 1993 a. 16, 123, 237, 349, 364, 419, 442, 481, 491; 1995 a. 27, 215, 227, 289, 363; 1997 a. 27, 35, 231, 237; 1999 a. 9, 70; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 38, 109; 2003 a. 33 ss. 2364, 2813; 2005 a. 217, 418; 2007 a. 20; 2009 a. 2, 28, 219, 391; 2011 a. 14.

3

15. Page 9, line 22; after that line insert:

4

SECTION 21. Effective date.

5

This act takes effect on first day of the 4th month beginning after publication.”

6

7

(END)

*O-Note*

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

LRBa1336/?dn  
MGG:...

P1  
JG

Date

Representative Steineke

1. I have prepared this amendment in preliminary form. It is quite complicated and suggest you share it with interested parties to verify that I have achieved the desired intent.

Regarding general permits: (am)

1. The language in s. 30.206 (1) which requires that a general permit be issued to a person infers that a person must request a general permit. However, is it not the intent to allow DNR to issue general permits on its own? Let me know if you want any changes.

2. I modified the language in s. 30.206 (2m). This language is based on language found currently in s. 30.2065, which is limited to wetland restoration activities sponsored by federal agencies. See s. 30.2065 (1). Since the scope of s. 30.206 (2m) is not limited to such activities, I took out the references to federal agencies and language that seemed to make sense only in the federal context.

3. Regarding general permits issued under the pilot project under s. 30.207: It is my understanding that there are no existing permits issued under s. 30.207 and that it may be possible to repeal the s. 30.207. Please let me know if you would like to include that in this amendment.

Regarding individual permits:

1. I have tried to draft s. 30.208 (3) (f) to address various concerns. It is my understanding that an individual permit is to be issued, based on a decision that is considered to be rendered. In other words, the step that is to have occurred in theory is the decision, but an actual permit will be issued. Based on this, I thought the second sentence in the proposed language for s. 30.208 (3) (f) regarding administrative orders was too broad. I therefore rewrote the language regarding the imposition of terms and conditions.

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

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

LRBa1336/P1dn  
MGG:kjf:jf

June 21, 2011

Representative Steineke:

I have prepared this amendment in preliminary form. It is quite complicated and suggest you share it with interested parties to verify that I have achieved the desired intent.

Regarding general permits:

1. The language in s. 30.206 (1) (am) which requires that a general permit be issued to a person infers that a person must request a general permit. However, is it not the intent to allow DNR to issue general permits on its own? Let me know if you want any changes.
2. I modified the language in s. 30.206 (2m). This language is based on language found currently in s. 30.2065, which is limited to wetland restoration activities sponsored by federal agencies. See s. 30.2065 (1). Since the scope of s. 30.206 (2m) is not limited to such activities, I took out the references to federal agencies and language that seemed to make sense only in the federal context.
3. Regarding general permits issued under the pilot project under s. 30.207: It is my understanding that there are no existing permits issued under s. 30.207 and that it may be possible to repeal s. 30.207. Please let me know if you would like to include that in this amendment.

Regarding individual permits:

I have tried to draft s. 30.208 (3) (f) to address various concerns. It is my understanding that an individual permit is to be issued, based on a decision that is considered to be rendered. In other words, the step that is to have occurred in theory is the decision, but an actual permit will be issued. Based on this, I thought the second sentence in the proposed language for s. 30.208 (3) (f) regarding administrative orders was too broad. I therefore rewrote the language regarding the imposition of terms and conditions.

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

**Gibson-Glass, Mary**

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**From:** Gibson-Glass, Mary  
**Sent:** Tuesday, June 21, 2011 3:02 PM  
**To:** Rep.Steineke  
**Subject:** RE: AB 177 amendments  
 Representative Steineke,

I have made the first requested change. As to the second change, I have used the language requested by DNR with a minor modification. As to the third item regarding EAs, this is somewhat complicated. After the hearing, let me know whether you want it drafted.

Mary

Mary Gibson-Glass  
 Senior Legislative Attorney  
 Legislative Reference Bureau  
 267 3215

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**From:** Rep.Steineke  
**Sent:** Tuesday, June 21, 2011 2:21 PM  
**To:** Gibson-Glass, Mary  
**Subject:** FW: AB 177 amendments

Mary – Here are a couple of notes back from DNR. Their first point regarding page 5, #5 is well taken and I'd be interested to hear if you think that is an issue. Regarding their second issue on page 6, #12 I am satisfied with your language on that unless you feel their language is sufficient and will clarify things. The last issue is one I'm ok with including, however if it will take some time to draft then I'd prefer the amendment drafted without it and then we can revisit after the public hearing because time is an issue as I'd prefer to get this in the hands of the committee by the end of the day.

Thanks Mary.

**Rep. Jim Steineke**  
 304 North, State Capitol  
 Madison, WI 53708  
 (608) 266-2418  
 (888) 534-0005 Toll Free

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**From:** Correll, Megan E - DNR [mailto:Megan.Correll@wisconsin.gov]  
**Sent:** Tuesday, June 21, 2011 1:33 PM  
**To:** Rep.Steineke  
**Cc:** Gunderson, Scott L - DNR; Rasmussen, Russell A - DNR; Lehmann Kerler, Liesa K - DNR; Moroney, Matt S - DNR; Johnson, Kenneth G - DNR  
**Subject:** RE: AB 177 amendments

Rep. Steineke,

Thank you for sharing the amendment with DNR prior to the hearing tomorrow. The amendment generally looks OK, but DNR requests the following edits:

- p. 5, #5 the LRB drafter failed to include "**all the**" before "**requested**" as we had discussed with you

- p. 6, #12 The LRB drafter conceived of a slightly different concept than we discussed. The amendment allows DNR to issue terms and conditions as we discussed, but requires DNR to issue them for each individual permit, even when presumptively approved. The drafter's general concept is probably more legally sound than our original proposal to have general terms and conditions that would apply to all projects presumptively approved because I had not previously analyzed that such a framework could be considered rule making without complying with chapter 227. I do think the proposed draft amendment language is wordy/confusing and I would simplify it and fine tune it to provide:

"The permit that is issued or is modified, or the contract that is approved shall authorize the activity as proposed by the applicant, but the department may impose terms and conditions on the permit, modification or contract that are consistent with the applicant's basic proposal."

These two edits are the only ones the DNR would request based on what we had previously discussed.

However, DNR did overlook a significant bill implementation issue regarding WEPA. We would very much appreciate if you would give the following proposal consideration.

- The department does prepare EA's for the most complex projects that are regulated as individual permits under ch. 30. These projects are less than 10% of the projects reviewed under chapter 30. For those projects that are a type II action under NR 150, and therefore require an EA, the DNR would like to request an additional 30 days to issue the decision. Currently, EAs in the chapter 30 program take 4-6 months to prepare. We propose tightening this timeline up and will have to make changes to accomplish that. This would mean adding language in Section 7 of the bill that "if an Environmental Assessment is required under Wis. Admin. Code NR 150, within 50 days after the public hearing is completed, ....the department shall render...." In my opinion, this additional time would improve the decision record for appeal of the more complex projects and allow the applicant more assurance that an approval would be upheld under contested case hearing scrutiny.

DNR does understand that this last proposal is at the 11th hour, so if you would like to discuss it sometime following tomorrow's hearing we would be happy to do so. Unfortunately, Matt went home sick, Gundy is out of cell phone range up at the NRB meeting (site tours), Ken is on vacation and Russ is headed to a personal appointment. Please do not hesitate to contact me with any questions or concerns. If I don't hear from you, I will see you tomorrow at the hearing.

Respectfully,

 *Megan E. Correll*

Attorney

Bureau of Legal Services

Wisconsin Department of Natural Resources

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(✉) e-mail: [megan.correll@wisconsin.gov](mailto:megan.correll@wisconsin.gov)

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**From:** Rep.Steineke [mailto:Rep.Steineke@legis.wisconsin.gov]

**Sent:** Tuesday, June 21, 2011 10:14 AM

**To:** Moroney, Matt S - DNR

**Cc:** Correll, Megan E - DNR; Gunderson, Scott L - DNR; Rasmussen, Russell A - DNR

**Subject:** RE: AB 177 amendments

I just received the draft amendment. Please review and let me know if it accomplishes your intent. I'm also attaching a drafter's note for review. I'd like to get this in introducible form asap, so if you can get back to me in short order I'd appreciate it.

Rep. Jim Steineke  
304 North, State Capitol  
Madison, WI 53708  
(608) 266-2418  
(888) 534-0005 Toll Free

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**From:** Moroney, Matt S - DNR [mailto:Matt.Moroney@wisconsin.gov]  
**Sent:** Thursday, June 16, 2011 6:23 PM  
**To:** Rep.Steineke  
**Cc:** Correll, Megan E - DNR; Gunderson, Scott L - DNR; Rasmussen, Russell A - DNR  
**Subject:** FW: AB 177 amendments  
**Importance:** High

Rep. Steineke,

Attached are our comments. If you have any questions, please feel free to contact any of us (especially Megan).

We appreciate your willingness to listen to our concerns.

Matt

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**From:** Correll, Megan E - DNR  
**Sent:** Thursday, June 16, 2011 5:25 PM  
**To:** Moroney, Matt S - DNR  
**Cc:** Rasmussen, Russell A - DNR; Johnson, Kenneth G - DNR; Kluesner, Elizabeth M - DNR; Gunderson, Scott L - DNR; Neumann, Paul F - DNR; Heinen, Paul H - DNR  
**Subject:** AB 177 amendments

Matt,

As agreed this morning, I have written up the DNR comments in a legislative amendment format. Liesa Lehmann provided significant assistance based on previous streamlining efforts we had worked on together. If you need further edits to this document please know that I will be out of the office tomorrow, but that Liesa or Russ could probably assist in my absence. Alternatively, I am available by cell for questions and could redraft portions on Monday when I'll be back in the office. Cell: 220-7923

 *Megan E. Correll*

Attorney  
Bureau of Legal Services  
Wisconsin Department of Natural Resources  
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State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa1336/P1  
MGG:kjf:jf

now [signature]

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO 2011 ASSEMBLY BILL 177**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 6: delete “applications and hearings relating to permits” and  
3 substitute “issuing individual permits, contracts, and general permits”.

4 **2.** Page 3, line 1: before that line insert:

5 “SECTION 1b. 30.12 (1j) (c) of the statutes is amended to read:

6 30.12 (1j) (c) If the riparian owner or owners of a property described in par. (a)  
7 are eligible and propose to place a pier or wharf with the number of boat slips  
8 specified in par. (a), the riparian owner or owners shall apply to the department for  
9 an individual permit under s. 30.208 authorizing the configuration of the pier or  
10 wharf unless the configuration is authorized by the department under a general  
11 permit under s. 30.206 (1g), 2009 stats. The department may not deny the permit  
12 on the basis of the number of slips proposed by the riparian owner or owners if the

1 number of slips proposed does not exceed the number allowed under par. (a). A  
2 riparian owner or owners who apply for a permit under this paragraph shall be  
3 presumed to be entitled to the number of slips allowed under par. (a).

4 **SECTION 1c.** 30.12 (3) (a) (intro.) of the statutes is amended to read:

5 30.12 (3) (a) (intro.) The department ~~shall~~ may issue statewide general permits  
6 under s. 30.206 that authorize riparian owners to do all of the following:

7 **SECTION 1d.** 30.12 (3) (br) of the statutes is amended to read:

8 30.12 (3) (br) The department may ~~promulgate rules that~~ specify structures or  
9 deposits, in addition to those listed in par. (a), that may be authorized by statewide  
10 general permits.

11 **SECTION 1e.** 30.123 (7) (a) (intro.) of the statutes is amended to read:

12 30.123 (7) (a) (intro.) The department ~~shall~~ may issue statewide general  
13 permits under s. 30.206 that authorize any person to do all of the following:

14 **SECTION 1f.** 30.123 (7) (b) of the statutes is amended to read:

15 30.123 (7) (b) The department may ~~promulgate rules that~~ specify bridges or  
16 culverts, in addition to those listed in par. (a), that may be authorized by statewide  
17 general permits.”.

18 **3.** Page 3, line 1: substitute “**SECTION 1g**” for “**SECTION 1**”.

19 **4.** Page 3, line 10: after that line insert:

20 “**SECTION 1h.** 30.19 (3r) (a) (intro.) of the statutes is amended to read:

21 30.19 (3r) (a) (intro.) The department ~~shall~~ may issue statewide general  
22 permits under s. 30.206 that authorize persons to do all of the following:

23 **SECTION 1j.** 30.19 (3r) (b) of the statutes is amended to read:

1           30.19 **(3r)** (b) The department may ~~promulgate rules that~~ specify other types  
2 of activities, in addition to those listed in par. (a), that may be authorized by  
3 statewide general permits.

4           **SECTION 1k.** 30.20 (1t) (a) of the statutes is amended to read:

5           30.20 **(1t)** (a) The department ~~shall~~ may issue statewide general permits under  
6 s. 30.206 that authorize any person to remove material for maintenance purposes  
7 from an area from which material has been previously removed.

8           **SECTION 1L.** 30.20 (1t) (b) of the statutes is amended to read:

9           30.20 **(1t)** (b) The department may ~~promulgate rules that~~ specify other types  
10 of removals, in addition to the one listed in par. (a), that may be authorized by  
11 statewide general permits.

12           **SECTION 1m.** 30.206 (1) (a) of the statutes is repealed.

13           **SECTION 1n.** 30.206 (1) (am) of the statutes is created to read:

14           30.206 **(1)** (am) Upon compliance with the requirements under subs. (2b) and  
15 (2m), the department may issue a general permit to a person wishing to proceed with  
16 an activity for which an individual permit is issued, or a contract is entered into,  
17 under this subchapter. A permit issued under this paragraph is in lieu of any permit  
18 or contract that would otherwise be required for that activity under this subchapter.

19           **SECTION 1p.** 30.206 (1) (b) of the statutes is created to read:

20           30.206 **(1)** (b) A general permit issued under par. (am) is valid for a period of  
21 5 years, and an activity that the department determines is authorized by a general  
22 permit remains authorized under the general permit until the activity is completed  
23 regardless of whether the general permit expired before the activity is completed.  
24 The department may renew or modify, or revoke a general permit issued under par.

1 (am) upon compliance with the requirements under subs. (2b) and (2m) and until  
2 such renewal, modification, or revocation of the general permit shall remain in effect.

3 **SECTION 1q.** 30.206 (1g) of the statutes is repealed.

4 **SECTION 1r.** 30.206 (1m) of the statutes is repealed.

5 **SECTION 1s.** 30.206 (1r) of the statutes is created to read:

6 30.206 (1r) TRANSITIONS BETWEEN PERMITS. Any general permit issued under  
7 this subchapter that is valid on the effective date of this subsection .... [LRB inserts  
8 date], shall remain valid until the date upon which a general permit issued under  
9 sub. (1) (am) that authorizes the same activity becomes effective.

10 **SECTION 1t.** 30.206 (2b) of the statutes is created to read:

11 30.206 (2b) PUBLIC NOTICE. (a) The department shall circulate to interested  
12 and potentially interested members of the public notices of its intention to issue a  
13 general permit. Procedures for providing public notices shall include all of the  
14 following:

15 1. A procedure consisting of when publishing a class 1 notice under ch. 985 or  
16 circulating the notice by use of an electronic notification system established by the  
17 department.

18 2. A procedure under which a copy of the notice is provided to any person or  
19 group upon request of the person or group.

20 (b) The department shall provide a period of not less than 30 days following the  
21 date of the public notice during which time interested persons may submit their  
22 written views on the department's intention to issue a general permit under sub. (1)  
23 (am). All written comments submitted during the period for comment shall be  
24 retained by the department and considered in the issuance of the general permit.

1 (c) Every notice issued by the department of the department's intention to issue  
2 a general permit under sub. (1) (am) shall include a description of the activities  
3 proposed to be authorized under the general permit.

4 **SECTION 1u.** 30.206 (2m) of the statutes is created to read:

5 30.206 **(2m)** PUBLIC HEARING. (a) 1. The department shall provide an  
6 opportunity for any interested state agency or federal agency or person or group of  
7 persons to request a public hearing with respect to the department's intention to  
8 issue a general permit under sub. (1) (am). Such request for a public hearing shall  
9 be filed with the department within 30 days after the circulation of the public notice  
10 under sub. (2b) and shall indicate the interest of the party filing the request and the  
11 reasons why a hearing is warranted.

12 2. The department shall hold a public hearing upon a request under subd. 1.  
13 if the department determines that there is a significant public interest in holding  
14 such a hearing. Hearings held under this section are not contested cases under s.  
15 227.01 (3).

16 (b) Public notice of any hearing held under this subsection shall be circulated  
17 in accordance with the requirements under sub. (2b)."

18 **5.** Page 4, line 12: substitute requested for additional.

19 **6.** Page 6, line 3: after "hearing" insert "with or".

20 **7.** Page 6, line 9: substitute "15" for "10".

21 **8.** Page 6, line 14: delete that line and substitute:

22 "30.208 **(3)** (e) Within ~~30~~ 20 days after the ~~public hearing is held~~ period for  
23 public comment under sub. (4) (b) has ended or".

24 **9.** Page 6, line 20: delete "in this" and substitute "under sub. (3) (e)".

1           **10.** Page 6, line 21: delete “subsection or sub. (4)”.

2           **11.** Page 6, line 21: delete the material beginning with “in the” and ending  
3 with “permit” on line 22.

4           **12.** Page 6, line 23: after “rendered.” insert “The permit that is issued or is

5 modified, or the contract that is approved, ~~pursuant to the decision~~ shall authorize

6 ~~that the activity subject to the permit or contract be conducted in the manner~~

7 ~~as~~ proposed by the applicant ~~for the permit for the contract~~, but the department may

8 impose terms and conditions on the permit or contract that ~~do not conflict~~ <sup>are consistent</sup> with the

9 ~~basic proposal contained in the application for the permit or contract.”~~ <sup>the applicant's</sup>

10           **13.** Page 7, line 20: after that line insert:

11           “**SECTION 11m.** 30.208 (5) (a) 1. of the statutes is amended to read:

12           30.208 (5) (a) 1. That the notice be published as a class 1 notice under ch. 985

13           or by an electronic notification system established by the department.”.

14           **14.** Page 9, line 8: delete lines 8 to 13 and substitute:

15           “**SECTION 18m.** 30.209 (2) (e) of the statutes is created to read:

16           30.209 (2) (e) In an administrative hearing under this section, the petitioner

17 shall proceed first with the presentation of evidence and shall have the burden of

18 proof.”.

19           **15.** Page 9, line 13: after that line insert:

20           “**SECTION 19m.** 227.01 (13) (rt) of the statutes is amended to read:

21           227.01 (13) (rt) Is a general permit issued under s. 30.206 or 30.2065.”.

22           **16.** Page 9, line 21: after that line insert:

23           “**SECTION 21m. Effective date.**

