Thurs. 12/5

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–1884/P2
RNK:wlj:all

Stays

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

D-Note

In 12/3

Regen

AN ACT ***to repeal*** 30.025 (1s) (b), 30.025 (2g), 30.025 (2s) (a) 1. and 2. and 30.025 (3) (b); ***to renumber*** 30.025 (1b) (a), 30.025 (1e) (c) and 30.025 (5); ***to renumber and amend*** 30.025 (1e) (a), 30.025 (1e) (b) and 30.025 (2s) (a) (intro.); ***to consolidate, renumber and amend*** 30.025 (3) (intro.) and (a); ***to amend*** 30.025 (1b) (b), 30.025 (1b) (c), 30.025 (1m), 30.025 (1s) (a), 30.025 (2), 30.025 (4), 196.491 (3) (a) 3. a. and 196.491 (3) (a) 3. b.; ***to repeal and recreate*** 30.025 (2s) (b) and 30.025 (5) (title); and ***to create*** 30.025 (1b) (ag), 30.025 (1b) (aj), 30.025 (1b) (am), 30.025 (1b) (d), 30.025 (1s) (c) to (f), 30.025 (2m), 30.025 (3) (c) to (e), 30.025 (4m), 30.025 (5) (d), 30.12 (1mn), 30.20 (1g) (d), 59.692 (1n) and

196.492 of the statutes; **relating to:** procedures for utility projects that require a permit from the Department of Natural Resources.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

INS. ANAL.

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

SECTION 1. 30.025 (1b) (a) of the statutes is renumbered 30.025 (1b) (ar).

SECTION 2. 30.025 (1b) (ag) of the statutes is created to read:

30.025 **(1b)** (ag) "Applicant" means a person proposing to undertake a utility project for which a permit is required.

SECTION 3. 30.025 (1b) (aj) of the statutes is created to read:

30.025 **(1b)** (aj) "Application" means a submission to the department that requests that the department issue all of the permits that an applicant requires to undertake a utility project.

SECTION 4. 30.025 (1b) (am) of the statutes is created to read:

30.025 **(1b)** (am) "Certificate" means a certificate issued by the commission under s. 196.49 or 196.491 (3).

SECTION 5. 30.025 (1b) (b) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

30.025 **(1b)** (b) "Permit" means an individual permit, authority to proceed under a general permit, an approval, or a contract required under this subchapter or subch. II, a permit or an approval required under ch. 31, an incidental taking permit required under s. 29.604 (6m), a storm water discharge permit required under s. 283.33 (1) (a) or (am), authority to proceed under a storm water discharge general permit required under

s. 283.35, or a wetland general permit or wetland individual permit required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a).

INS. 3-3

SECTION 6. 30.025 (1b) (c) of the statutes is amended to read:

30.025 **(1b)** (c) "Utility facility" means a ~~project, as defined in s. 196.49 (3) (a),~~ plant, equipment, property, or ~~a~~ facility~~, as defined in s. 196.491 (1) (e)~~ operated for the generation, transmission, or distribution of electric power.

INS. 3-7

SECTION 7. 30.025 (1b) (d) of the statutes is created to read:

30.025 **(1b)** (d) "Utility project" means a project to construct, extend, improve, maintain, or add to a utility facility.

SECTION 8. 30.025 (1e) (a) of the statutes, as affected by 2013 Wisconsin Act 1, is renumbered 30.025 (1e) and amended to read:

30.025 **(1e)** Except as provided in ~~pars. (b) and (c), this section applies to a proposal to construct a utility facility if the utility facility~~ sub. (5), an applicant who is required to obtain~~, or give notification of the wish to proceed under, one or more permits~~ in order to undertake a utility project, and who is required to obtain a certificate for the utility project, is subject to the procedures under this section instead of the procedures that apply to the issuance of the respective permit or permits under this subchapter or under s. 283.33 (1) (a) or (am) or 281.36 or subch. II or ch. 31 or under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a).

SECTION 9. 30.025 (1e) (b) of the statutes, as affected by 2013 Wisconsin Act 20, is renumbered 30.025 (5) (b) and amended to read:

30.025 **(5)** (b) This section does not apply to a proposal to ~~construct~~ undertake a utility ~~facility~~ project if the only permit that the ~~utility facility~~ applicant is required

to obtain from the department is a storm water discharge permit under s. 283.33 (1) (a) or (am) or authority to proceed under a storm water discharge general permit issued by the department under s. 283.35.

SECTION 10. 30.025 (1e) (c) of the statutes, as created by 2013 Wisconsin Act 1, is renumbered 30.025 (5) (c).

SECTION 11. 30.025 (1m) of the statutes is amended to read:

30.025 **(1m)** PREAPPLICATION PROCESS. Before ~~filing~~ an ~~application under this section, a person proposing to construct a utility facility~~ applicant submits an application under this section, the applicant shall notify the department of the intention to ~~file~~ submit an application. After receiving such notice, the department shall confer with the ~~person~~ applicant, in cooperation with the commission if the applicant is required to obtain a certificate, to make a preliminary assessment of the utility project's scope, to make an analysis of alternatives, and to identify potential interested persons~~, and to ensure that the person making the proposal is aware~~. At the time the department confers with the applicant, the department shall provide the applicant written notice of all of the following:

(a) The permits that the ~~person~~ applicant may be required to obtain and the permits under which the ~~person~~ applicant must give notification of the ~~wish~~ intention to proceed.

(b) The information that the ~~person~~ applicant will be required to provide.

(c) ~~The~~ If the applicant is required to obtain a certificate, the timing of information submissions that the ~~person~~ applicant will be required to provide in order to enable the department to participate in commission ~~review procedures~~ investigations or proceedings under s. 196.49 or 196.491 (3) and to process the application in a timely manner.

SECTION 12. 30.025 (1s) (a) of the statutes is amended to read:

30.025 **(1s)** (a) *Submission of application.* ~~Any person proposing to construct a utility facility to which this section applies~~ After the department confers with an applicant who provides notice to the department under sub. (1m), the applicant shall~~,~~ ~~in lieu of separate application for permits,~~ submit ~~one~~ an application ~~for permits~~ together with any additional information required by the department. ~~The~~ If the applicant is required to obtain a certificate, the application shall be ~~filed with~~ submitted to the department at the same time that ~~an application~~ a petition or other request for a certificate is filed with the commission under s. 196.49 or ~~in a manner consistent with s.~~ 196.491 (3) ~~and~~. The application shall include ~~the detailed~~ information ~~that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The department may require supplemental information to be furnished thereafter~~ concerning each location, site, or route proposed for the utility project in sufficient detail for the department to assess whether the proposed location, site, or route is likely to meet the criteria for the department to issue the permits identified by the department under sub. (1m) (a).

SECTION 13. 30.025 (1s) (b) of the statutes is repealed.

SECTION 14. 30.025 (1s) (c) to (f) of the statutes are created to read:

30.025 **(1s)** (c) *Review.* The department shall review an application submitted under par. (a), and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed.

(cm) *No additional information required.* If the department determines that the application is complete, the department shall notify the applicant in writing of

that fact within the 30–day period, and the date on which the notice under this paragraph is sent shall be considered the date of closure.

(d) *Additional information requested.* If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30–day period specified in par. (cm). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure. The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(e) *Specificity of notice; limits on information.* Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (d) shall state the reason for the determination or request and the specific items of information that are still needed and the statutory authority explicitly requiring the information.

(f) *Failure to meet time limits.* If the department fails to meet the 30–day time limit under par. (cm) or 10–day time limit under par. (d), the application shall be considered to have a date of closure that is the last day of that 30–day or 10–day time period.

SECTION 15. 30.025 (2) of the statutes is amended to read:

30.025 **(2)** HEARING. Once the applicant meets the requirements of sub. (1s) ~~(a)~~, the department may schedule the matter for a public hearing. Notice of the hearing

shall be given to the applicant and shall be published as a class 1 notice under ch. 985 and as a notice on the department's Internet ~~Web~~ site. The department may give such further notice as it deems proper, and shall give notice to interested persons requesting same. The department's notice to interested persons may be given through an electronic notification system established by the department. Notice of a hearing under this subsection published as a class 1 notice, as a notice on the department's Internet ~~Web~~ site, and through the electronic notification system established by the department shall include the time, date, and location of the hearing, the name and address of the applicant, a summary of the subject matter of the application, and information indicating where a copy of the application may be viewed on the department's Internet ~~Web~~ site. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the application. ~~One~~ The department shall make one copy of the application ~~shall be~~ available for public inspection at the office of the department~~,~~ and at least one copy in the regional office of the department~~, and at least one copy at~~ of the area affected. The department shall send an electronic copy of the application to the main public library~~,~~ of the area affected. At the library's request, the department shall also send a paper copy of the application. Notwithstanding s. 227.42, the hearing shall be an informational hearing and may not be treated as a contested case hearing nor converted to a contested case hearing.

SECTION 16. 30.025 (2g) of the statutes is repealed.

SECTION 17. 30.025 (2m) of the statutes is created to read:

30.025 **(2m)** APPLICATION REVIEW; SUBMISSION OF INFORMATION TO COMMISSION; PARTICIPATION IN COMMISSION PROCEEDINGS. (a) The department shall review every application for a proposed utility project, including each location, site, or route

1 proposed for the utility project, to assess whether each proposed location, site, or
2 route for the utility project can meet the criteria for obtaining the individual permits
3 or proceeding under the authority of general permits identified by the department
4 under sub. (1m) (a).

5 (b) If the applicant is required to obtain a certificate, the department shall
6 identify and communicate to the commission all of the following with regard to each
7 location, site, or route that the applicant proposes for the utility project:

8 1. Factors that would require the department to deny one or more permits
9 required for the proposed utility project to be undertaken at the location or site or
10 along the route.

11 2. Factors that would require the department to impose conditions on one or
12 more permits required for the proposed utility project to be undertaken at the
13 location or site or along the route. The department shall identify the conditions that
14 the department would be required to impose and the purposes for imposing the
15 conditions.

16 (c) The department shall provide the commission with information under par.
17 (b) that is relevant to only the statutes administered by the department and rules
18 promulgated under those statutes that the department has explicit authority to
19 enforce.

20 (d) If the applicant is required to obtain a certificate, the department shall
21 participate in commission investigations or proceedings under s. 196.49 or 196.491
22 (3) with regard to the proposed utility project.

23 **SECTION 18.** 30.025 (2s) (a) (intro.) of the statutes is renumbered 30.025 (2s)
24 (a) and amended to read:

30.025 **(2s)** (a) ~~The~~ If, after the department participates in a commission investigation or proceeding for a utility project as required under sub. (2m) (d), the commission approves under s. 196.49 or 196.491 (3) a location, site, or route for the utility project, the department shall treat the commission's ~~decision under s. 196.49 or 196.491 (3)~~ approval as ~~concluding~~ a conclusion that there is no practicable alternative to the location, site, or route for the utility ~~facility if all of the following apply:~~ project. If the department imposes conditions on a permit issued for a utility project that is the subject of that investigation or proceeding, the permit conditions may not require the applicant to undertake the utility project at a location or site or along a route other than that approved by the commission.

SECTION 19. 30.025 (2s) (a) 1. and 2. of the statutes are repealed.

SECTION 20. 30.025 (2s) (b) of the statutes is repealed and recreated to read:

30.025 **(2s)** (b) If an application concerns a utility project to extend, improve, maintain, or add to an existing utility facility and a certificate is not required for the utility project, the department may not find that there is a practicable alternative to undertaking the utility project except within the existing location, site, route, or right–of–way of the utility facility.

SECTION 21. 30.025 (3) (intro.) and (a) of the statutes are consolidated, renumbered 30.025 (3) (a) and amended to read:

30.025 **(3)** PERMIT ISSUANCE. (a) The department shall issue~~,~~ any individual permit or authorize ~~proceeding~~ the applicant to proceed under~~, the necessary permits~~ any general permit required for the utility project if it finds that the applicant has shown that the ~~proposal: (a) Complies~~ proposed utility project is consistent with ~~environmental~~ statutes administered by the department and rules promulgated

thereunder~~, and federal environmental standards which~~ that the department has explicit authority to enforce.

SECTION 22. 30.025 (3) (b) of the statutes is repealed.

SECTION 23. 30.025 (3) (c) to (e) of the statutes are created to read:

30.025 **(3)** (c) If a proposed utility project requires a certificate, the department may not do any of the following:

1. Deny a permit requested in an application under sub. (1s) (a) if the department did not identify under sub. (2m) (b) 1. factors that would require it to deny the permit.

2. Impose conditions on a permit requested in an application under sub. (1s) (a) that the department did not identify as necessary under sub. (2m) (b) 2. or that are different from the conditions the department identified as necessary under sub. (2m) (b) 2.

(d) 1. For an application submitted with respect to a utility project for which a certificate is required, the department shall grant or deny each permit requested in the application within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3) or within 120 days of the date of closure, whichever is sooner.

2. For an application submitted with respect to a utility project for which a certificate is not required, the department shall grant or deny each permit requested in the application within 120 days of the date of closure.

(e) If the department fails to comply with the relevant time limits under par. (d), a decision issuing the permits requested in the application or authorizing the applicant to proceed as requested in the application shall be considered to be rendered. The permits or authorizations to proceed shall authorize the utility project

as proposed by the applicant, but the department may impose terms and conditions on the permits or authorizations that are consistent with the basic proposal.

SECTION 24. 30.025 (4) of the statutes is amended to read:

30.025 **(4)** PERMIT CONDITIONS. ~~The permit may be issued, or the authority to proceed under a permit may be granted,~~ Except as provided in sub. (3) (c) 2., the department may issue any individual permit or authorize the applicant to proceed under any general permit required for the utility project upon stated conditions ~~deemed~~ determined to be necessary to ~~assure~~ ensure compliance with the criteria ~~designated~~ under sub. (3). ~~The department shall grant or deny the application for a permit for the utility facility within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3).~~

SECTION 25. 30.025 (4m) of the statutes is created to read:

30.025 **(4m)** BASIS OF DEPARTMENT DETERMINATIONS. When providing information to the commission under sub. (2m) or making a finding or determination under sub. (3) (a) or (4), the department shall provide to the applicant and, if the proposed utility project is subject to s. 196.49 or s. 196.491 (3), to the commission a written statement that demonstrates all of the following:

(a) The information, finding, or determination is consistent with the department's explicit authority under the statutes it administers and with rules promulgated by the department and federal standards that the department has explicit authority to enforce.

(b) The information, finding, or determination is based on sufficient facts or data.

SECTION 26. 30.025 (5) (title) of the statutes is repealed and recreated to read:

30.025 **(5)** (title) EXCEPTIONS.

SECTION 27. 30.025 (5) of the statutes is renumbered 30.025 (5) (a).

SECTION 28. 30.025 (5) (d) of the statutes is created to read:

30.025 **(5)** (d) This section does not apply to an applicant proposing to undertake a utility project if a certificate is not required for the utility project unless the applicant elects to proceed in the manner provided under this section.

SECTION 29. 30.12 (1mn) of the statutes is created to read:

30.12 **(1mn)** (CS) Electric UTILITY FACILITIES. (a) In this subsection:

1. "Construction" means installation, repair, replacement, removal, or maintenance.

2. "Facility" means a facility used to transmit or distribute electricity, gas, water, or telephone service or to collect sewerage.

2. ~~3.~~ "Structure" includes a pole, support anchor, culvert, clear–span bridge, or construction mat used to protect a wetland or land below the ordinary high–water mark.

(b) An electric public utility or a wholesale electric cooperative, as defined in s. 16.957 (1) (v), is exempt from the permit requirements under this section for any of the following:

1. The temporary use or placement within an existing utility corridor of equipment, ~~or~~ a structure, or a vehicle on the bed of a navigable water for a purpose associated with the construction of a facility used to transmit or distribute electricity.

~~2. The temporary use or placement within an existing utility corridor of a vehicle on the bed of a navigable water for a purpose associated with the construction of a facility.~~

2. ~~3.~~ The deposit of material on the bed of a navigable water if the material ~~that~~ is associated with the response to or cleanup of a release of drilling fluid associated with directional boring, if the deposit does not affect more than one–tenth of one acre of lake bed.

SECTION 30. 30.20 (1g) (d) of the statutes is created to read:

30.20 **(1g)** (d) The removal of material that is associated with the response to or cleanup of a release of drilling fluid associated with directional boring is exempt from the permit and contracts requirements under this section, if the removal does not affect more than one–tenth of one acre of lake bed.

SECTION 31. 59.692 (1n) of the statutes is created to read:

59.692 **(1n)** (a) In this subsection, "electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only.

(b) This section and ordinances enacted under this section do not apply to a project for the construction ~~and~~ or maintenance of electric, gas, telephone, water, or ~~sewerage~~ sewage collection, transmission, or distribution facilities conducted by a public utility or an electric cooperative in a shoreland if one of the following applies:

INS. 13-13

1. The department has issued all permits required for the project.

2. No permits are required for the project and the person conducting the project employs best management practices related to storm water management.

SECTION 32. 196.491 (3) (a) 3. a. of the statutes is amended to read:

196.491 **(3)** (a) 3. a. At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan if the facility is a large electric generating facility. The engineering plan shall show the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a brief description of the anticipated effects of the facility on air quality, water quality, wetlands, solid waste disposal capacity, and other natural resources. Within 30 days after a person provides an engineering plan, the department shall provide

the person with a listing of each department permit or approval, other than a permit as defined in s. 30.025 (1b) (b), which, on the basis of the information contained in the engineering plan, appears to be required for the construction or operation of the facility.

SECTION 33. 196.491 (3) (a) 3. b. of the statutes is amended to read:

196.491 **(3)** (a) 3. b. Except as provided under subd. 3. c., within 20 days after the department provides a listing specified in subd. 3. a. to a person, the person shall apply for the permits and approvals identified in the listing. The department shall determine whether an application under this subd. 3. b. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subd. 3. b. If the department fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete. ~~Except as provided in s. 30.025 (4), the~~ The department shall complete action on an application under this subd. 3. b. for any permit or approval that is required prior to construction of a facility within 120 days after the date on which the application is determined or considered to be complete.

SECTION 34. 196.492 of the statutes is created to read:

utility (B)

196.492 Siting of electric facilities. (1) In this section, "utility facility" has the meaning given in s. 30.025 (1b) (c). ~~(d)~~

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1 **(2)** Subject to sub. (3), the commission shall have exclusive jurisdiction over the
2 approval of locations, sites, or routes for utility facilities that are subject to s. 196.49
3 or 196.491 (3).

4 **(3)** In an investigation or proceeding under s. 196.49 or 196.491 (3), the
5 commission shall consider the information provided by the department of natural
6 resources under s. 30.025 (2m) when determining the location, site, or route of a
7 utility facility for which an application is submitted to the department of natural
8 resources under s. 30.025.

9 **(END)**

2013–2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

INSERT ANALYSIS

This bill changes the procedures for obtaining permits from the Department of Natural Resources (DNR) for utility facilities that undertake construction activities affecting navigable waters. The bill also exempts certain utility projects from requirements to obtain permits from DNR and from certain shoreland zoning ordinances.

Procedures under current law

Under current law, with certain exceptions, a public utility may not begin a construction project unless the Public Service Commission (PSC) has issued a certificate for the project. A public utility is a company or political subdivision that produces or delivers heat, light, water, or power to or for the public. Current law also prohibits any person, including a public utility, from constructing a large electric generating facility or a high–voltage transmission line (electric facility) without another type of certificate from the PSC. Current law also generally requires a person, including a public utility or electric facility (utility), to obtain a permit from DNR before engaging in an activity affecting navigable waters. Those permits include permits for the placement of a structure in navigable waters, for the construction or maintenance of a dam, or for activities affecting a wetland (DNR permits). Generally, under current law, a person must submit an application to DNR for each required permit. If the applicant is a utility that is required to obtain a certificate from the PSC, however, the utility must submit a single application to DNR requesting all of the DNR permits that the utility requires for a given project affecting navigable waters (utility application) and must follow a different procedure for obtaining these DNR permits (utility application procedure).

on a utility

Under current law, a person proposing to submit a utility application to DNR must first notify DNR of the intention to file that application. After DNR receives the notice, DNR must confer with that person and, in cooperation with the PSC, make certain assessments and analyses concerning the project. Once the utility application is complete, DNR may schedule the matter for a public hearing. DNR must grant or deny the application within 30 days of the date on which the PSC issues its decision on the utility's application for a certificate.

STET x2

Current law also specifies that as a part of the utility application procedure, DNR must review the proposed utility project to assess whether the location, site, or route is capable of meeting the criteria for obtaining the required DNR permits and must provide this information to the PSC. DNR must also participate in PSC investigations or proceedings relating to the application for a certificate for the utility project, and if the PSC issues the certificate for that utility project, after considering DNR's participation in the PSC's proceedings and after considering certain other factors, DNR may not require the applicant to make any further analysis of project alternatives, except that DNR may identify adjustments that may be required to address permitting issues within the location, site, or route for which the certificate is issued.

Applicability of the utility application procedure

This bill expands the applicability of the utility application procedure so that a utility that is not required to obtain a certificate from the PSC in order to construct, extend, improve, or maintain a utility facility, including a cooperative association organized for the purpose of producing or furnishing heat, light, power, or water to its members, may also use the utility application procedure. Under the bill, if a utility for which a PSC certificate is not required elects to use the utility application procedure, the requirements to provide information to PSC and to participate in PSC proceedings do not apply. If a PSC certificate is not required for a utility project and the utility chooses not to use the combined permit procedure, the utility must follow the current law procedure that otherwise applies with respect to applying for and obtaining a permit from DNR.

Additional procedures for all applicants

This bill makes changes to the utility application procedure that applies under current law. Among those changes are the following: 1) a requirement that the utility application include information concerning each location, site, or route proposed for the utility project in sufficient detail for DNR to assess whether the location, site, or route is likely to meet the criteria for DNR to issue the necessary permits; 2) a requirement that DNR review the application within 30 days after submission; 3) a prohibition against allowing DNR to make more than one request for additional information during the 30–day period; 4) a requirement that DNR notify the applicant as to whether the utility application is complete; 5) a requirement that if DNR determines the utility application to be incomplete, it notify the applicant of the reason for that determination and of the specific additional information that DNR requires. The bill also establishes a date of closure for a utility application submitted to DNR.

Application review; PSC proceedings

The bill maintains certain of the utility application procedures that apply under current law. As under current law, the bill requires an applicant to notify DNR of its intention to file a utility application with DNR; requires the applicant file to the utility application at the same time that the applicant applies for a PSC certificate, if such a certificate is required; requires DNR to participate in PSC investigations or proceedings; and requires DNR in its review of the application to assess whether each proposed location, site, or route for the utility project can meet the criteria for obtaining the necessary DNR permits. In addition to these provisions, the bill also provides that for an applicant who is required to obtain a PSC certificate, DNR must identify and communicate to the PSC certain specified information including the factors that would required DNR to deny a permit or impose conditions on a permit.

Current law provides that with respect to the information that DNR must provide to the PSC, it may only provide information that is relevant to environmental issues concerning the proposed utility facility, public rights in navigable waters that may be affected by the proposed utility facility, and location, site or route issues concerning the proposed utility facility, including alternative locations, sites, or routes. This bill specifies, instead, that DNR must provide the PSC with information

that is relevant to only the statutes that DNR administers and has explicit authority to enforce.

Practicable alternatives

Under current law, DNR must treat the PSC's decision with respect to issuance of a certificate as concluding that there is no practicable alternative for the utility facility if DNR participated in the PSC's investigations or proceedings and the PSC's decision is consistent with DNR's assessment and information. Under this bill, DNR must treat the PSC's approval of a location, site, or route for the utility project as a conclusion that there is no practicable alternative to the location, site, or route for the project. The bill also specifies that if DNR imposes conditions on a DNR permit, the conditions may not require the applicant to undertake the project at a location or site or along a route other than that approved by the PSC.

The bill also provides that if the applicant is not required to obtain a PSC certificate, and the application concerns a project to extend, improve, maintain, or add to an existing utility facility, DNR may not find that there is a practicable alternative to undertaking the utility project except within the existing location, site, route, or right–of–way of the utility facility.

Deadlines

This bill also establishes new deadlines that apply to a utility application. Under the bill, if a utility application is submitted to DNR with respect to a project for which a PSC certificate is required, DNR must grant or deny each permit requested in the application within 30 days of the date on which the PSC issues its certificate decision or within 120 days of the date of closure for the application. If no PSC certificate is required for the project, DNR must grant or deny each permit requested in the application within 120 days of the date of closure. The bill provides that if DNR fails to comply with relevant time limits, a decision issuing the permits requested in the application is considered to be rendered.

Other utility application procedures

This bill also requires DNR to provide to an applicant, and if a proposed project requires a PSC certificate, to the PSC a written statement demonstrating that any information provided, or any finding or determination made, by DNR is consistent with DNR's explicit statutory authority and is based on sufficient facts or data.

The bill also prohibits DNR from denying a permit requested in an application under the utility application procedure if DNR did not identify factors during the application review process that would require it to deny the permit. DNR is also prohibited from imposing conditions on a permit that are different than conditions identified as necessary during the application review process. from

Navigable waters permits

Under current law, with certain exceptions, no person may deposit material or place a structure on the bed of a navigable water without a permit from DNR (structure permit). Current law also prohibits, with certain exceptions, the removal of material from the bed of a navigable water without a permit from DNR (removal permit). This bill creates exemptions to the structure permit and the removal permit requirements. Under the bill the exemption applies to an electric public utility or a

wholesale electric cooperative (cooperative) that deposits material on the bed of a navigable water if the deposit or removal of material is associated with the response to or cleanup of a release of drilling fluid associated with directional boring and if the deposit or removal does not affect more than one–tenth of one acre. The bill also exempts a electric public utility or a cooperative from the structure permit requirement for the temporary use or placement within an existing utility corridor of equipment, a structure, or a vehicle on the bed of a navigable water for a purpose associated with the construction of a utility facility.

Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area. Current law defines a shoreland to be an area within a certain distance from the edge of a navigable water. This bill specifies that a shoreland zoning ordinance does not apply to a project to construct certain utility facilities if DNR has issued all the permits required for the project or, if no permits are required by DNR for the project, the person conducting the project employs best management practices related to storm water management.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

INSERT 3–3

1 **SECTION 1.** 30.025 (1b) (c) of the statutes is created to read:

2 30.025 **(1b)** (c) "Public utility" has the meaning given in s. 196.01 (5).

INSERT 3–7

3 by a public utility or by a cooperative association organized under ch. 185 for

4 the purpose of producing or furnishing heat, light, power, or water to its members

5 only.

INSERT 13–13

6 to a project for the construction or maintenance of electric transmission or

7 distribution facilities conducted by

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1884/1dn
RNK:...:...
WLJ

Please check extra spaces.

Date

This redraft incorporates the most recent requested revisions and makes some minor nonsubstantive changes for the purpose of clarity. Please note the following:

1. The draft creates an exemption to the general permit requirement under s. 30.12, stats. for the placement of structures or material on the bed of a navigable water. The previous version of the draft specified that if the exemption relates to the deposit of material associated with the response to a release of drilling fluid, the deposit may not affect more than one–tenth of one acre. I think this size limitation is unclear. Consequently, I have specified in the draft that the deposit may not affect more than one–tenth of one acre of lake bed. Is this consistent with your intent?

2. The draft refers to "cooperatives" inconsistently. In s. 30.025, the draft refers to a "cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members only." In the exemption created in the draft under s. 30.12 (1mn), the draft refers to "a wholesale electric cooperative, as defined in s. 16.957 (1) (v)". In s. 59.692 (1n) (a), the draft creates an exemption that applies only to an "electric cooperative" defined as a "cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only". Are these different terms and different definitions in these provisions consistent with your intent?

3. With regard to the exemption to shoreland zoning ordinances created in s. 59.692 (1n) (a) in the draft, I think that some of the language in this provision is vague. The language provides that a utility or electric cooperative is exempt from shoreland zoning ordinances if DNR has issued all permits required for the project. The provision does not define the term "permit". Do you want to define "permit" as having the same meaning as a permit under s. 30.025, stats.? Also, the exemption applies if no DNR permits are required but the utility or electric cooperative employs best management practices related to storm water management. If the utility or cooperative must employ best management practices related to storm water management, isn't it also likely that the utility or cooperative would require a storm water discharge permit? That is, would this exemption condition ever apply?

4. Under 2013 Senate Bill 183, which has passed both houses of the legislature, cities and villages are required to enact shoreland zoning ordinances that cover certain

annexed and incorporated shorelands. Assuming that this bill is signed by the governor, do you want this draft to include exemptions to city and village shoreland zoning ordinances that are similar to the exemption created in this draft with regard to county shoreland zoning ordinances?

Please feel free to contact me if you have any questions about this draft.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266–7291
E–mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1884/1dn
RNK:wlj:jf

December 5, 2013

This redraft incorporates the most recent requested revisions and makes some minor nonsubstantive changes for the purpose of clarity. Please note the following:

1. The draft creates an exemption to the general permit requirement under s. 30.12, stats., for the placement of structures or material on the bed of a navigable water. The previous version of the draft specified that if the exemption relates to the deposit of material associated with the response to a release of drilling fluid, the deposit may not affect more than one–tenth of one acre. I think this size limitation is unclear. Consequently, I have specified in the draft that the deposit may not affect more than one–tenth of one acre of lake bed. Is this consistent with your intent?

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governor, do you want this draft to include exemptions to city and village shoreland zoning ordinances that are similar to the exemption created in this draft with regard to county shoreland zoning ordinances?

Please feel free to contact me if you have any questions about this draft.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266–7291
E–mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Pulda, Matt
Sent: Tuesday, January 14, 2014 10:42 AM
To: Kite, Robin
Cc: Robert Fassbender (fassbender@hamilton-consulting.com); matthew.e.pagel@xcelenergy.com; nathan.franklin@dairynet.com; vmele@wheelerlaw.com
Subject: FW: Utility Projects Permitting Reform Bill

Hi, Robin,

Representative Larson met with Bob Fassbender, Matt Pagel, and Nathan Franklin this morning to go over what should be the final two changes to LRB 1884/1 (deleting Section 23 and adding "owned or" to page 6, line 9 [Section7]). Bob explains the changes below, but please let me know if you have any questions.

Thanks for all your work on this (and your patience)!

Matt Pulda
Research Assistant/Committee Clerk
Office of State Rep. Tom Larson
Assembly Committee on Family Law
(608) 266-1194

From: Robert Fassbender [mailto:fassbender@hamilton-consulting.com]
Sent: Friday, January 10, 2014 4:08 PM
To: Pulda, Matt
Cc: Vincent Mele (vmele@wheelerlaw.com)
Subject: Utility Projects Permitting Reform Bill

Matt,

As we discussed, Xcel Energy and Dairyland Power would appreciate Rep. Larson advancing LRB-1884/1 with two minor changes.

First, to be consistent with our prior statements on aligning this bill with other reforms, we request that Section 23 of LRB-1884/1 be deleted. That section repeals existing 30.025 (3) (b), which provides:

> **(3)** PERMIT ISSUANCE. The department shall issue, or authorize proceeding under, the necessary permits if it finds that the applicant has shown that the proposal:
>
> **(a)** Complies with environmental statutes administered by the department and rules promulgated thereunder, and federal environmental standards which the department has authority to enforce.
>
> **(b) Does not unduly affect:**
> **1.** Public rights and interests in navigable waterways;
> **2.** The effective flood flow capacity of a stream;
> **3.** The rights of other riparian owners; or
> **4.** Water quality.

While it remains our position that these additional authorities are not needed and that DNR has sufficient authorities in the underlying permitting statutes, we understand similar provisions were included in the Mining Bill (2013 Act 1).

Second, we ask that you consider a change to Section 7 that removes a potential for ambiguity regarding the scope of the bill. This change would entail, on page 6, line 9, adding the word "owned" to change "operated by" to "*owned or* operated by." Because of MISO's functional control of transmission assets, "operated" could be narrowly read to not include Xcel Energy and Dairyland Power, the owners of the transmission assets.

Please let Vince Mele (vmele@wheelerlaw.com, 441-3831) or me know if you have any questions.

Bob

Robert Fassbender
fassbender@hamilton-consulting.com
Hamilton Consulting Group
Office: 608-258-9506

Kite, Robin

From: Pulda, Matt
Sent: Tuesday, January 21, 2014 8:53 AM
To: Kite, Robin
Cc: Robert Fassbender; Lovell, David
Subject: RE: Utility Projects Permitting Reform Bill

Yes, please. Thanks!

Matt

From: Kite, Robin
Sent: Tuesday, January 21, 2014 8:50 AM
To: Pulda, Matt
Cc: Robert Fassbender; Lovell, David
Subject: RE: Utility Projects Permitting Reform Bill

Matt:

Do you want me to redraft to add an initial applicability provision as discussed below?

Robin

From: Robert Fassbender [mailto:fassbender@hamilton-consulting.com]
Sent: Sunday, January 19, 2014 11:22 PM
To: Pulda, Matt; Kite, Robin
Cc: matthew.e.pagel@xcelenergy.com; nathan.franklin@dairynet.com; vmele@wheelerlaw.com
Subject: RE: Utility Projects Permitting Reform Bill

Matt,/Robin,

We discussed this, but the last draft does not have an initial applicability section. It is everyone's intent that this bill, if enacted, would not apply to projects with initial PSC or DNR applications filed before the effective date of the bill, such as the Badger Coulee line.

Thanks so much for your work on the bill.

Bob

Robert Fassbender
fassbender@hamilton-consulting.com
Hamilton Consulting Group
Office: 608-258-9506

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Sent: Tuesday, January 14, 2014 10:42 AM
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Cc: Robert Fassbender; matthew.e.pagel@xcelenergy.com; nathan.franklin@dairynet.com; vmele@wheelerlaw.com
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Thanks for all your work on this (and your patience)!

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To: Pulda, Matt
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>
> **(a)** Complies with environmental statutes administered by the department and rules promulgated thereunder, and federal environmental standards which the department has authority to enforce.
>
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While it remains our position that these additional authorities are not needed and that DNR has sufficient authorities in the underlying permitting statutes, we understand similar provisions were included in the Mining Bill (2013 Act 1).

Second, we ask that you consider a change to Section 7 that removes a potential for ambiguity regarding the scope of the bill. This change would entail, on page 6, line 9, adding the word "owned" to change "operated by" to "*owned or* operated by." Because of MISO's functional control of transmission assets, "operated" could be narrowly read to not include Xcel Energy and Dairyland Power, the owners of the transmission assets.

Please let Vince Mele (vmele@wheelerlaw.com, 441-3831) or me know if you have any questions.

Bob

Robert Fassbender
fassbender@hamilton-consulting.com
Hamilton Consulting Group
Office: 608-258-9506

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–1884/1
RNK:wlj:jm

2013 BILL

AN ACT ***to repeal*** 30.025 (1s) (b), 30.025 (2g), 30.025 (2s) (a) 1. and 2. and 30.025 (3) (b); ***to renumber*** 30.025 (1b) (a), 30.025 (1e) (c) and 30.025 (5); ***to renumber and amend*** 30.025 (1e) (a), 30.025 (1e) (b) and 30.025 (2s) (a) (intro.); ***to consolidate, renumber and amend*** 30.025 (3) (intro.) and (a); ***to amend*** 30.025 (1b) (b), 30.025 (1b) (c), 30.025 (1m), 30.025 (1s) (a), 30.025 (2), 30.025 (4), 196.491 (3) (a) 3. a. and 196.491 (3) (a) 3. b.; ***to repeal and recreate*** 30.025 (2s) (b) and 30.025 (5) (title); and ***to create*** 30.025 (1b) (ag), 30.025 (1b) (aj), 30.025 (1b) (am), 30.025 (1b) (bm), 30.025 (1b) (d), 30.025 (1s) (c) to (f), 30.025 (2m), 30.025 (3) (c) to (e), 30.025 (4m), 30.025 (5) (d), 30.12 (1mn), 30.20 (1g) (d), 59.692 (1n) and 196.492 of the statutes; **relating to:** procedures for utility projects that require a permit from the Department of Natural Resources.

Analysis by the Legislative Reference Bureau

This bill changes the procedures for obtaining permits from the Department of Natural Resources (DNR) for utility facilities that undertake construction activities affecting navigable waters. The bill also exempts certain utility projects from

requirements to obtain permits from DNR and from certain shoreland zoning ordinances.

Procedures under current law

Under current law, with certain exceptions, a public utility may not begin construction on a utility project unless the Public Service Commission (PSC) has issued a certificate for the project. A public utility is a company or political subdivision that produces or delivers heat, light, water, or power to or for the public. Current law also prohibits any person, including a public utility, from constructing a large electric generating facility or a high–voltage transmission line (electric facility) without another type of certificate from the PSC. Current law also generally requires a person, including a public utility or electric facility (utility), to obtain a permit from DNR before engaging in an activity affecting navigable waters. Those permits include permits for the placement of a structure in navigable waters, for the construction or maintenance of a dam, or for activities affecting a wetland (DNR permits). Generally, under current law, a person must submit an application to DNR for each required permit. If the applicant is a utility that is required to obtain a certificate from the PSC, however, the utility must submit a single application to DNR requesting all of the DNR permits that the utility requires for a given project affecting navigable waters (utility application) and must follow a different procedure for obtaining these DNR permits (utility application procedure).

Under current law, a person proposing to submit a utility application to DNR must first notify DNR of the intention to file that application. After DNR receives the notice, DNR must confer with that person and, in cooperation with the PSC, make certain assessments and analyses concerning the project. Once the utility application is complete, DNR may schedule the matter for a public hearing. DNR must grant or deny the application within 30 days of the date on which the PSC issues its decision on the utility's application for a certificate.

Current law also specifies that as a part of the utility application procedure, DNR must review the proposed utility project to assess whether the location, site, or route is capable of meeting the criteria for obtaining the required DNR permits and must provide this information to the PSC. DNR must also participate in PSC investigations or proceedings relating to the application for a certificate for the utility project. If the PSC issues the certificate for that utility project, after considering DNR's participation in the PSC's proceedings and after considering certain other factors, DNR may not require the applicant to make any further analysis of project alternatives, except that DNR may identify adjustments that may be required to address permitting issues within the location, site, or route for which the certificate is issued.

Applicability of the utility application procedure

This bill expands the applicability of the utility application procedure so that a utility that is not required to obtain a certificate from the PSC in order to construct, extend, improve, or maintain a utility facility, including a cooperative association organized for the purpose of producing or furnishing heat, light, power, or water to its members, may also use the utility application procedure. Under the bill, if a utility for which a PSC certificate is not required elects to use the utility application

procedure, the requirements to provide information to the PSC and to participate in PSC proceedings do not apply. If a PSC certificate is not required for a utility project and the utility chooses not to use the combined permit procedure, the utility must follow the current law procedure that otherwise applies with respect to applying for and obtaining a permit from DNR.

Additional procedures for all applicants

This bill makes changes to the utility application procedure that applies under current law. Among those changes are the following: 1) a requirement that the utility application include information concerning each location, site, or route proposed for the utility project in sufficient detail for DNR to assess whether the location, site, or route is likely to meet the criteria for DNR to issue the necessary permits; 2) a requirement that DNR review the application within 30 days after submission; 3) a prohibition against allowing DNR to make more than one request for additional information during the 30–day period; 4) a requirement that DNR notify the applicant as to whether the utility application is complete; and 5) a requirement that if DNR determines the utility application to be incomplete, DNR notify the applicant of the reason for that determination and of the specific additional information that DNR requires. The bill also establishes a date of closure for a utility application submitted to DNR.

Application review; PSC proceedings

The bill maintains certain utility application procedures that apply under current law. As under current law, the bill requires 1) an applicant to notify DNR of its intention to file a utility application with DNR; 2) the applicant to file the utility application at the same time the applicant applies for a PSC certificate, if such a certificate is required; 3) DNR to participate in PSC investigations or proceedings; and 4) DNR in its review of the application to assess whether each proposed location, site, or route for the utility project can meet the criteria for obtaining the necessary DNR permits. In addition to these provisions, the bill also provides that, for an applicant who is required to obtain a PSC certificate, DNR must identify and communicate to the PSC certain specified information including the factors that would require DNR to deny a permit or impose conditions on a permit.

Current law provides that with respect to the information that DNR must provide to the PSC, it may provide only information that is relevant to environmental issues concerning the proposed utility facility, public rights in navigable waters that may be affected by the proposed utility facility, and location, site or route issues concerning the proposed utility facility, including alternative locations, sites, or routes. This bill specifies, instead, that DNR must provide the PSC with information that is relevant to only the statutes that DNR administers and has explicit authority to enforce.

Practicable alternatives

Under current law, DNR must treat the PSC's decision with respect to issuance of a certificate as concluding that there is no practicable alternative for the utility facility if DNR participated in the PSC's investigations or proceedings and the PSC's decision is consistent with DNR's assessment and information. Under this bill, DNR must treat the PSC's approval of a location, site, or route for the utility project as a

conclusion that there is no practicable alternative to the location, site, or route for the project. The bill also specifies that if DNR imposes conditions on a DNR permit, the conditions may not require the applicant to undertake the project at a location or site or along a route other than that approved by the PSC.

The bill also provides that if the applicant is not required to obtain a PSC certificate, and the application concerns a project to extend, improve, maintain, or add to an existing utility facility, DNR may not find that there is a practicable alternative to undertaking the utility project except within the existing location, site, route, or right–of–way of the utility facility.

Deadlines

This bill also establishes new deadlines that apply to a utility application. Under the bill, if a utility application is submitted to DNR with respect to a project for which a PSC certificate is required, DNR must grant or deny each permit requested in the application within 30 days of the date on which the PSC issues its certificate decision or within 120 days of the date of closure for the application. If no PSC certificate is required for the project, DNR must grant or deny each permit requested in the application within 120 days of the date of closure. The bill provides that if DNR fails to comply with relevant time limits, a decision issuing the permits requested in the application is considered to be rendered.

Other utility application procedures

This bill also requires DNR to provide to an applicant and, if a proposed project requires a PSC certificate, to the PSC a written statement demonstrating that any information provided, or any finding or determination made, by DNR is consistent with DNR's explicit statutory authority and is based on sufficient facts or data.

The bill also prohibits DNR from denying a permit requested in an application under the utility application procedure if DNR did not identify factors during the application review process that would require it to deny the permit. DNR is also prohibited from imposing conditions on a permit that are different from conditions identified as necessary during the application review process.

Navigable waters permits

Under current law, with certain exceptions, no person may deposit material or place a structure on the bed of a navigable water without a permit from DNR (structure permit). Current law also prohibits, with certain exceptions, the removal of material from the bed of a navigable water without a permit from DNR (removal permit). This bill creates exemptions to the structure permit and the removal permit requirements. Under the bill, the exemption applies to an electric public utility or a wholesale electric cooperative (cooperative) that deposits material on the bed of a navigable water if the deposit or removal of material is associated with the response to or cleanup of a release of drilling fluid associated with directional boring and if the deposit or removal does not affect more than one–tenth of one acre of lake bed. The bill also exempts an electric public utility or a cooperative from the structure permit requirement for the temporary use or placement within an existing utility corridor of equipment, a structure, or a vehicle on the bed of a navigable water for a purpose associated with the construction of a utility facility.

Under current law, a county must enact a shoreland zoning ordinance for all shorelands in its unincorporated area. Current law defines a shoreland to be an area within a certain distance from the edge of a navigable water. This bill specifies that a shoreland zoning ordinance does not apply to a project to construct certain utility facilities if DNR has issued all the permits required for the project or, if no permits are required by DNR for the project, the person conducting the project employs best management practices related to storm water management.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 30.025 (1b) (a) of the statutes is renumbered 30.025 (1b) (ar).

2 **SECTION 2.** 30.025 (1b) (ag) of the statutes is created to read:

3 30.025 **(1b)** (ag) "Applicant" means a person proposing to undertake a utility
4 project for which a permit is required.

5 **SECTION 3.** 30.025 (1b) (aj) of the statutes is created to read:

6 30.025 **(1b)** (aj) "Application" means a submission to the department that
7 requests that the department issue all of the permits that an applicant requires to
8 undertake a utility project.

9 **SECTION 4.** 30.025 (1b) (am) of the statutes is created to read:

10 30.025 **(1b)** (am) "Certificate" means a certificate issued by the commission
11 under s. 196.49 or 196.491 (3).

12 **SECTION 5.** 30.025 (1b) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
13 is amended to read:

14 30.025 **(1b)** (b) "Permit" means an individual permit, <u>authority to proceed</u>
15 <u>under</u> a general permit, an approval, or a contract required under this subchapter
16 or subch. II, a permit or an approval required under ch. 31, <u>an incidental taking</u>
17 <u>permit required under s. 29.604 (6m),</u> a storm water discharge permit required under

s. 283.33 (1) (a) or (am), authority to proceed under a storm water discharge general permit required under s. 283.35, or a wetland general permit or wetland individual permit required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a).

SECTION 6. 30.025 (1b) (bm) of the statutes is created to read:

30.025 **(1b)** (bm) "Public utility" has the meaning given in s. 196.01 (5).

SECTION 7. 30.025 (1b) (c) of the statutes is amended to read:

30.025 **(1b)** (c) "Utility facility" means a ~~project, as defined in s. 196.49 (3) (a),~~ plant, equipment, property, or a facility~~, as defined in s. 196.491 (1) (e)~~ owned or operated by a public utility or by a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members only.

SECTION 8. 30.025 (1b) (d) of the statutes is created to read:

30.025 **(1b)** (d) "Utility project" means a project to construct, extend, improve, maintain, or add to a utility facility.

SECTION 9. 30.025 (1e) (a) of the statutes, as affected by 2013 Wisconsin Act 1, is renumbered 30.025 (1e) and amended to read:

30.025 **(1e)** Except as provided in ~~pars. (b) and (c), this section applies to a proposal to construct a utility facility if the utility facility~~ sub. (5), an applicant who is required to obtain~~, or give notification of the wish to proceed under, one or more permits~~ a certificate for a utility project is subject to the procedures under this section to obtain a permit instead of the procedures that would otherwise apply to the issuance of the permit.

SECTION 10. 30.025 (1e) (b) of the statutes, as affected by 2013 Wisconsin Act 20, is renumbered 30.025 (5) (b) and amended to read:

30.025 **(5)** (b) This section does not apply to a proposal to ~~construct~~ undertake a utility ~~facility~~ project if the only permit that the ~~utility facility~~ applicant is required to obtain from the department is a storm water discharge permit under s. 283.33 (1) (a) or (am) or authority to proceed under a storm water discharge general permit issued by the department under s. 283.35.

SECTION 11. 30.025 (1e) (c) of the statutes, as created by 2013 Wisconsin Act 1, is renumbered 30.025 (5) (c).

SECTION 12. 30.025 (1m) of the statutes is amended to read:

30.025 **(1m)** PREAPPLICATION PROCESS. Before ~~filing~~ an ~~application under this section, a person proposing to construct a utility facility~~ applicant submits an application under this section, the applicant shall notify the department of the intention to ~~file~~ submit an application. After receiving such notice, the department shall confer with the ~~person~~ applicant, in cooperation with the commission if the applicant is required to obtain a certificate, to make a preliminary assessment of the utility project's scope, to make an analysis of alternatives, and to identify potential interested persons~~, and to ensure that the person making the proposal is aware~~. At the time the department confers with the applicant, the department shall provide the applicant written notice of all of the following:

(a) The permits that the ~~person~~ applicant may be required to obtain and the permits under which the ~~person~~ applicant must give notification of the ~~wish~~ intention to proceed.

(b) The information that the ~~person~~ applicant will be required to provide.

(c) ~~The~~ If the applicant is required to obtain a certificate, the timing of information submissions that the ~~person~~ applicant will be required to provide in order to enable the department to participate in commission ~~review procedures~~

investigations or proceedings under s. 196.49 or 196.491 (3) and to process the application in a timely manner.

SECTION 13. 30.025 (1s) (a) of the statutes is amended to read:

30.025 **(1s)** (a) *Submission of application.* ~~Any person proposing to construct a utility facility to which this section applies~~ After the department confers with an applicant who provides notice to the department under sub. (1m), the applicant shall~~,~~ ~~in lieu of separate application for permits,~~ submit ~~one~~ an application ~~for permits~~ together with any additional information required by the department. ~~The~~ If the applicant is required to obtain a certificate, the application shall be ~~filed with~~ submitted to the department at the same time that ~~an application~~ a petition or other request for a certificate is filed with the commission under s. 196.49 or ~~in a manner consistent with s.~~ 196.491 (3) ~~and~~. The application shall include ~~the detailed~~ information ~~that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The department may require supplemental information to be furnished thereafter~~ concerning each location, site, or route proposed for the utility project in sufficient detail for the department to assess whether the proposed location, site, or route is likely to meet the criteria for the department to issue the permits identified by the department under sub. (1m) (a).

SECTION 14. 30.025 (1s) (b) of the statutes is repealed.

SECTION 15. 30.025 (1s) (c) to (f) of the statutes are created to read:

30.025 **(1s)** (c) *Review.* The department shall review an application submitted under par. (a), and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed.

1 (cm) *No additional information required.* If the department determines that
2 the application is complete, the department shall notify the applicant in writing of
3 that fact within the 30–day period, and the date on which the notice under this
4 paragraph is sent shall be considered the date of closure.

5 (d) *Additional information requested.* If the department determines that the
6 application is incomplete, the department shall notify the applicant in writing and
7 may make only one request for additional information during the 30–day period
8 specified in par. (cm). Within 10 days after receiving all of the requested information
9 from the applicant, the department shall notify the applicant in writing as to
10 whether the application is complete. The date on which the 2nd notice under this
11 paragraph is sent shall be set as the date of closure. The department may request
12 additional information from the applicant to supplement the application, but the
13 department may not request items of information that are outside the scope of the
14 original request unless the applicant and the department both agree. A request for
15 any such additional information may not affect the date of closure.

16 (e) *Specificity of notice; limits on information.* Any notice stating that an
17 application has been determined to be incomplete or any other request for
18 information that is sent under par. (d) shall state the reason for the determination
19 or request and the specific items of information that are still needed and the
20 statutory authority explicitly requiring the information.

21 (f) *Failure to meet time limits.* If the department fails to meet the 30–day time
22 limit under par. (cm) or 10–day time limit under par. (d), the application shall be
23 considered to have a date of closure that is the last day of that 30–day or 10–day time
24 period.

25 **SECTION 16.** 30.025 (2) of the statutes is amended to read:

30.025 **(2)** HEARING. Once the applicant meets the requirements of sub. (1s) ~~(a)~~, the department may schedule the matter for a public hearing. Notice of the hearing shall be given to the applicant and shall be published as a class 1 notice under ch. 985 and as a notice on the department's Internet ~~Web~~ site. The department may give such further notice as it deems proper, and shall give notice to interested persons requesting same. The department's notice to interested persons may be given through an electronic notification system established by the department. Notice of a hearing under this subsection published as a class 1 notice, as a notice on the department's Internet ~~Web~~ site, and through the electronic notification system established by the department shall include the time, date, and location of the hearing, the name and address of the applicant, a summary of the subject matter of the application, and information indicating where a copy of the application may be viewed on the department's Internet ~~Web~~ site. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the application. ~~One~~ The department shall make one copy of the application ~~shall be~~ available for public inspection at the office of the department~~,~~ and at least one copy in the regional office of the department~~, and at least one copy at~~ of the area affected. The department shall send an electronic copy of the application to the main public library~~,~~ of the area affected. At the library's request, the department shall also send a paper copy of the application. Notwithstanding s. 227.42, the hearing shall be an informational hearing and may not be treated as a contested case hearing nor converted to a contested case hearing.

SECTION 17. 30.025 (2g) of the statutes is repealed.

SECTION 18. 30.025 (2m) of the statutes is created to read:

1 30.025 **(2m)** APPLICATION REVIEW; SUBMISSION OF INFORMATION TO COMMISSION;
2 PARTICIPATION IN COMMISSION PROCEEDINGS. (a) The department shall review every
3 application for a proposed utility project, including each location, site, or route
4 proposed for the utility project, to assess whether each proposed location, site, or
5 route for the utility project can meet the criteria for obtaining the individual permits
6 or proceeding under the authority of general permits identified by the department
7 under sub. (1m) (a).

8 (b) If the applicant is required to obtain a certificate, the department shall
9 identify and communicate to the commission all of the following with regard to each
10 location, site, or route that the applicant proposes for the utility project:

11 1. Factors that would require the department to deny one or more permits
12 required for the proposed utility project to be undertaken at the location or site or
13 along the route.

14 2. Factors that would require the department to impose conditions on one or
15 more permits required for the proposed utility project to be undertaken at the
16 location or site or along the route. The department shall identify the conditions that
17 the department would be required to impose and the purposes for imposing the
18 conditions.

19 (c) The department shall provide the commission with information under par.
20 (b) that is relevant to only the statutes administered by the department and rules
21 promulgated under those statutes that the department has explicit authority to
22 enforce.

23 (d) If the applicant is required to obtain a certificate, the department shall
24 participate in commission investigations or proceedings under s. 196.49 or 196.491
25 (3) with regard to the proposed utility project.

SECTION 19. 30.025 (2s) (a) (intro.) of the statutes is renumbered 30.025 (2s) (a) and amended to read:

30.025 **(2s)** (a) ~~The~~ If, after the department participates in a commission investigation or proceeding for a utility project as required under sub. (2m) (d), the commission approves under s. 196.49 or 196.491 (3) a location, site, or route for the utility project, the department shall treat the commission's ~~decision under s. 196.49 or 196.491 (3)~~ approval as ~~concluding~~ a conclusion that there is no practicable alternative to the location, site, or route for the utility ~~facility if all of the following apply:~~ project. If the department imposes conditions on a permit issued for a utility project that is the subject of that investigation or proceeding, the permit conditions may not require the applicant to undertake the utility project at a location or site or along a route other than that approved by the commission.

SECTION 20. 30.025 (2s) (a) 1. and 2. of the statutes are repealed.

SECTION 21. 30.025 (2s) (b) of the statutes is repealed and recreated to read:

30.025 **(2s)** (b) If an application concerns a utility project to extend, improve, maintain, or add to an existing utility facility and a certificate is not required for the utility project, the department may not find that there is a practicable alternative to undertaking the utility project except within the existing location, site, route, or right–of–way of the utility facility.

SECTION 22. 30.025 (3) (intro.) and (a) of the statutes are consolidated, renumbered 30.025 (3) (a) and amended to read:

30.025 **(3)** PERMIT ISSUANCE. (a) The department shall issue~~,~~ any individual permit or authorize ~~proceeding~~ the applicant to proceed under~~, the necessary permits~~ any general permit required for the utility project if it finds that the applicant has shown that the ~~proposal: (a) Complies~~ proposed utility project is consistent with

~~environmental~~ statutes administered by the department and rules promulgated thereunder~~, and federal environmental standards which~~ that the department has explicit authority to enforce.

SECTION 23. 30.025 (3) (b) of the statutes is repealed.

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SECTION 24. 30.025 (3) (c) to (e) of the statutes are created to read: STET

STET 30.025 **(3)** ~~(c)~~ If a proposed utility project requires a certificate, the department may not do any of the following:

1. Deny a permit requested in an application under sub. (1s) (a) if the department did not identify under sub. (2m) (b) 1. factors that would require it to deny the permit.

2. Impose conditions on a permit requested in an application under sub. (1s) (a) that the department did not identify as necessary under sub. (2m) (b) 2. or that are different from the conditions the department identified as necessary under sub. (2m) (b) 2.

STET (d) 1. For an application submitted with respect to a utility project for which a certificate is required, the department shall grant or deny each permit requested in the application within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3) or within 120 days of the date of closure, whichever is sooner.

2. For an application submitted with respect to a utility project for which a certificate is not required, the department shall grant or deny each permit requested in the application within 120 days of the date of closure.

STET (e) If the department fails to comply with the relevant time limits under par. (d), a decision issuing the permits requested in the application or authorizing the applicant to proceed as requested in the application shall be considered to be

rendered. The permits or authorizations to proceed shall authorize the utility project as proposed by the applicant, but the department may impose terms and conditions on the permits or authorizations that are consistent with the basic proposal.

SECTION 25. 30.025 (4) of the statutes is amended to read:

30.025 **(4)** PERMIT CONDITIONS. ~~The permit may be issued, or the authority to proceed under a permit may be granted,~~ Except as provided in sub. (3) (c) 2., the department may issue any individual permit or authorize the applicant to proceed under any general permit required for the utility project upon stated conditions ~~deemed~~ determined to be necessary to ~~assure~~ ensure compliance with the criteria ~~designated~~ under sub. (3). ~~The department shall grant or deny the application for a permit for the utility facility within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3).~~

SECTION 26. 30.025 (4m) of the statutes is created to read:

30.025 **(4m)** BASIS OF DEPARTMENT DETERMINATIONS. When providing information to the commission under sub. (2m) or making a finding or determination under sub. (3) ~~(a)~~ or (4), the department shall provide to the applicant and, if the proposed utility project is subject to s. 196.49 or s. 196.491 (3), to the commission a written statement that demonstrates all of the following:

(a) The information, finding, or determination is consistent with the department's explicit authority under the statutes it administers and with rules promulgated by the department and federal standards that the department has explicit authority to enforce.

(b) The information, finding, or determination is based on sufficient facts or data.

SECTION 27. 30.025 (5) (title) of the statutes is repealed and recreated to read:

1 30.025 **(5)** (title) EXCEPTIONS.

2 **SECTION 28.** 30.025 (5) of the statutes is renumbered 30.025 (5) (a).

3 **SECTION 29.** 30.025 (5) (d) of the statutes is created to read:

4 30.025 **(5)** (d) This section does not apply to an applicant proposing to
5 undertake a utility project if a certificate is not required for the utility project unless
6 the applicant elects to proceed in the manner provided under this section.

7 **SECTION 30.** 30.12 (1mn) of the statutes is created to read:

8 30.12 **(1mn)** ELECTRIC UTILITY FACILITIES. (a) In this subsection:

9 1. "Construction" means installation, repair, replacement, removal, or
10 maintenance.

11 2. "Structure" includes a pole, support anchor, culvert, clear–span bridge, or
12 construction mat used to protect a wetland or land below the ordinary high–water
13 mark.

14 (b) An electric public utility or a wholesale electric cooperative, as defined in
15 s. 16.957 (1) (v), is exempt from the permit requirements under this section for any
16 of the following:

17 1. The temporary use or placement within an existing utility corridor of
18 equipment, a structure, or a vehicle on the bed of a navigable water for a purpose
19 associated with the construction of a facility used to transmit or distribute electricity.

20 2. The deposit of material on the bed of a navigable water if the material is
21 associated with the response to or cleanup of a release of drilling fluid associated with
22 directional boring, if the deposit does not affect more than one–tenth of one acre of
23 lake bed.

24 **SECTION 31.** 30.20 (1g) (d) of the statutes is created to read:

30.20 **(1g)** (d) The removal of material that is associated with the response to or cleanup of a release of drilling fluid associated with directional boring is exempt from the permit and contracts requirements under this section, if the removal does not affect more than one–tenth of one acre of lake bed.

SECTION 32. 59.692 (1n) of the statutes is created to read:

59.692 **(1n)** (a) In this subsection, "electric cooperative" means a cooperative association that is organized under ch. 185 for the purpose of providing electricity at wholesale or retail to its members only.

(b) This section and ordinances enacted under this section do not apply to a project for the construction or maintenance of electric, gas, telephone, water, or sewage collection, transmission, or distribution facilities conducted by a public utility, or to a project for the construction or maintenance of electric transmission or distribution facilities conducted by an electric cooperative, in a shoreland if one of the following applies:

1. The department has issued all permits required for the project.

2. No permits are required for the project and the person conducting the project employs best management practices related to storm water management.

SECTION 33. 196.491 (3) (a) 3. a. of the statutes ↑ as affected by 2013 Wisconsin Act 10 ↑ is amended to read:

196.491 **(3)** (a) 3. a. At least 60 days before a person files an application under subd. 1., the person shall provide the department with an engineering plan if the facility is a large electric generating facility. The engineering plan shall show the location of the facility, a description of the facility, including the major components of the facility that have a significant air, water or solid waste pollution potential, and a brief description of the anticipated effects of the facility on air quality, water quality, wetlands, solid waste disposal capacity, and other natural resources. Within

30 days after a person provides an engineering plan, the department shall provide the person with a listing of each department permit or approval, other than a permit as defined in s. 30.025 (1b) (b), which, on the basis of the information contained in the engineering plan, appears to be required for the construction or operation of the facility.

SECTION 34. 196.491 (3) (a) 3. b. of the statutes as affected by 2013 Wisconsin Acts 1 and 10 is amended to read:

196.491 **(3)** (a) 3. b. Except as provided under subd. 3. c., within 20 days after the department provides a listing specified in subd. 3. a. to a person, the person shall apply for the permits and approvals identified in the listing. The department shall determine whether an application under this subd. 3. b. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subd. 3. b. If the department fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete. ~~Except as provided in s. 30.025 (4), the~~ The department shall complete action on an application under this subd. 3. b. for any permit or approval that is required prior to construction of a facility within 120 days after the date on which the application is determined or considered to be complete.

SECTION 35. 196.492 of the statutes is created to read:

196.492 Siting of utility facilities. (1) In this section, "utility facility" has the meaning given in s. 30.025 (1b) (c).

1 **(2)** Subject to sub. (3), the commission shall have exclusive jurisdiction over the
2 approval of locations, sites, or routes for utility facilities that are subject to s. 196.49
3 or 196.491 (3).

4 **(3)** In an investigation or proceeding under s. 196.49 or 196.491 (3), the
5 commission shall consider the information provided by the department of natural
6 resources under s. 30.025 (2m) when determining the location, site, or route of a
7 utility facility for which an application is submitted to the department of natural
8 resources under s. 30.025.

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9 **(END)**

INSERT 13–4

(except 30.025 (3) (title))

SECTION 1. RA; 30.025 (3) (intro.) ~~of the statutes is amended to read:~~ ; 30.025 (3) (ag) (intro.)

30.025 **(3)** PERMIT ISSUANCE. (ag) (intro.) The department shall issue~~,~~ any individual permit or authorize proceeding under~~, the necessary permits~~ any general permit required for a proposed utility project if it finds that the applicant has shown that ~~the proposal~~ all of the following apply:

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167; 2013 a. 1, 20.

SECTION 2. RA; 30.025 (3) (a) ~~of the statutes is amended to read:~~ ; 30.025 (3) (ag) 1.

30.025 **(3)** (a) (ag) 1. ~~Complies~~ The proposed utility project is consistent with ~~environmental~~ statutes administered by the department and rules promulgated thereunder~~, and federal environmental standards which~~ that the department has authority to enforce.

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167; 2013 a. 1, 20.

SECTION 3. RA; 30.025 (3) (b) (intro.) ~~of the statutes is amended to read:~~ ; 30.025 (3) (ag) 2. (intro.)

30.025 **(3)** ~~(b) (intro.)~~ (ag) 2. (intro.) ~~Does~~ The proposed utility project does not unduly affect any of the following:

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167; 2013 a. 1, 20.

and 30.025 (3) (ag) 2. (intro.), as renumbered, is amended to read:

INSERT 18–8

1 **SECTION 1. Initial applicability.**

2 (1) This act first applies to utility projects for which an application under
3 section 30.025 of the statutes, as affected by this act, is submitted to the department
4 of natural resources on the effective date of this subsection.

5

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1884/2dn
RNK:.../:....
WLJ

Date

and instead renumbers it to be s. 30.025 (3)(aq),

As instructed, this redraft deletes the repeal of s. 30.025 (3) (b), stats. Because this draft no longer repeals s. 30.025 (3) (b), I have added a cross–reference to that provision in s. 30.025 (4m) (intro.), as created in this draft. Is this consistent with your intent?

Robin N. Kite
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–1884/2dn
RNK:wlj:jf

January 21, 2014

As instructed, this redraft deletes the repeal of s. 30.025 (3) (b), stats. Because this draft no longer repeals s. 30.025 (3) (b), and instead renumbers it to be s. 30.025 (3) (ag), I have added a cross–reference to that provision in s. 30.025 (4m) (intro.), as created in this draft. Is this consistent with your intent?

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Barman, Mike

From: Pulda, Matt
Sent: Monday, January 27, 2014 9:21 AM
To: LRB.Legal
Subject: Draft Review: LRB -1884/2 Topic: Navigable waters permit procedures for public utilities

Please Jacket LRB -1884/2 for the ASSEMBLY.