



State of Wisconsin
2013 - 2014 LEGISLATURE

RM
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P3

LRB-0226/P2
RNK:kjf:jf

DOA:.....Stinebrink, BB0098 - Commercial construction site erosion control
FOR 2013-2015 BUDGET - NOT READY FOR INTRODUCTION

In
2/1

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Under current law both DSPS and DNR administer laws with regard to erosion control at building sites. DSPS is required to establish standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment (commercial buildings) as well as for the construction of one-family and two-family dwellings. DNR is required to establish standards for erosion control at sites where the construction activities do not include the construction of a building, such as sites involving street or bridge construction. *with a land disturbance*

This bill transfers from DSPS to DNR the authority to administer erosion control laws for construction sites *of more than one acre in* area, regardless of whether the construction activity includes the construction of a building. Under the bill, DSPS retains authority to administer erosion control laws for construction sites *that are one acre or less in area* and that involve the construction of a commercial building or a one-family or two-family dwelling.

Current law requires DNR to prepare a model zoning ordinance for construction site erosion control at sites over which DNR has erosion control authority and to distribute a copy of the model ordinance to any county, city, village, or town that submits a request. The bill also requires DSPS to prepare and distribute a model zoning ordinance for construction site erosion control at sites over which it has erosion control authority.

With a land disturbance area of

than one acre

of one acre or more

Current law requires certain persons who discharge storm water from a discernible, confined, and discrete conveyance to obtain a storm water discharge permit. This bill specifies that this permit requirement applies to conveyances of storm water associated with a construction site, including a construction site ~~where~~ ^{for} the construction activity includes the construction of a building.

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) (b) of the statutes is amended to read:

2 30.025 (1b) (b) "Permit" means an individual permit, a general permit, an
3 approval, or a contract required under this subchapter or subch. II, a permit or an
4 approval required under ch. 31, a storm water discharge permit required under s.
5 283.33 (1) (a) or (am), or a wetland general permit or wetland individual permit
6 required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to
7 implement 33 USC 1341 (a).

8 **SECTION 2.** 30.025 (1e) (b) of the statutes is amended to read:

9 30.025 (1e) (b) This section does not apply to a proposal to construct a utility
10 facility if the only permit that the utility facility is required to obtain from the
11 department is a storm water discharge permit under s. 283.33 (1) (a) or (am).

12 **SECTION 3.** 59.69 (4c) of the statutes is amended to read:

13 59.69 (4c) CONSTRUCTION SITE ORDINANCE LIMITS. Except as provided in s.
14 101.1206 (5m), an ordinance that is enacted under sub. (4) may only include
15 provisions that are related to construction site erosion control if those provisions are
16 limited to sites ~~where the construction activities do not include the construction of~~
17 a building described in s. 281.33 (3) (a) 1. a. and b.

18 **SECTION 4.** 59.693 (2) of the statutes is amended to read:

1 **59.693 (2) AUTHORITY TO ENACT ORDINANCE.** To effect the purposes of s. 281.33
2 and to promote the public health, safety and general welfare, a county may enact a
3 zoning ordinance, that is applicable to all of its unincorporated area, except as
4 provided in s. 60.627 (2) (b), for construction site erosion control at sites ~~where the~~
5 ~~construction activities do not include the construction of a building~~ described in s.
6 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be
7 enacted separately from ordinances enacted under s. 59.69.

8 **SECTION 5.** 59.693 (7) of the statutes is amended to read:

9 **59.693 (7) APPLICABILITY OF LOCAL SUBDIVISION REGULATION.** All powers granted
10 to a county under s. 236.45 may be exercised by the county with respect to
11 construction site erosion control at sites ~~where the construction activities do not~~
12 ~~include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with
13 respect to storm water management regulation, if the county has or provides a
14 county planning agency as defined in s. 236.02 (1).

15 **SECTION 6.** 60.627 (2) (a) of the statutes is amended to read:

16 **60.627 (2) (a)** To effect the purposes of s. 281.33 and to promote the public
17 health, safety and general welfare, if a town board may enact zoning ordinances
18 under s. 60.62, the town board may enact a zoning ordinance, that is applicable to
19 all of its area, for construction site erosion control at sites ~~where the construction~~
20 ~~activities do not include the construction of a building~~ described in s. 281.33 (3) (a)
21 1. a. and b. and for storm water management. This ordinance may be enacted
22 separately from ordinances enacted under s. 60.62.

23 **SECTION 7.** 60.627 (4) (c) of the statutes is amended to read:

24 **60.627 (4) (c)** An ordinance enacted under this section supersedes all provisions
25 of an ordinance enacted under s. 60.62 that relate to construction site erosion control

1 at sites ~~where the construction activities do not include the construction of a building~~
2 described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

3 **SECTION 8.** 60.627 (6) of the statutes is amended to read:

4 60.627 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
5 to a town under s. 236.45 may be exercised by it with respect to construction site
6 erosion control at sites ~~where the construction activities do not include the~~
7 construction of a building described in s. 281.33 (3) (a) 1. a. and b. or with respect to
8 storm water management regulation, if the town has or provides a planning
9 commission or agency.

10 **SECTION 9.** 61.354 (2) of the statutes is amended to read:

11 61.354 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
12 and to promote the public health, safety and general welfare, a village may enact a
13 zoning ordinance, that is applicable to all of its incorporated area, for construction
14 site erosion control at sites ~~where the construction activities do not include the~~
15 construction of a building described in s. 281.33 (3) (a) 1. a. and b. and for storm water
16 management. This ordinance may be enacted separately from ordinances enacted
17 under s. 61.35.

18 **SECTION 10.** 61.354 (4) (c) of the statutes is amended to read:

19 61.354 (4) (c) An ordinance enacted under this section supersedes all provisions
20 of an ordinance enacted under s. 61.35 that relate to construction site erosion control
21 at sites ~~where the construction activities do not include the construction of a building~~
22 described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

23 **SECTION 11.** 61.354 (6) of the statutes is amended to read:

24 61.354 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
25 to a village under s. 236.45 may be exercised by it with respect to construction site

1 erosion control at sites ~~where the construction activities do not include the~~
2 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to
3 storm water management regulation, if the village has or provides a planning
4 commission or agency.

5 **SECTION 12.** 62.234 (2) of the statutes is amended to read:

6 62.234 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
7 and to promote the public health, safety and general welfare, a city may enact a
8 zoning ordinance, that is applicable to all of its incorporated area, for construction
9 site erosion control at sites ~~where the construction activities do not include the~~
10 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water
11 management. This ordinance may be enacted separately from ordinances enacted
12 under s. 62.23.

13 **SECTION 13.** 62.234 (4) (c) of the statutes is amended to read:

14 62.234 (4) (c) An ordinance enacted under this section supersedes all provisions
15 of an ordinance enacted under s. 62.23 that relate to construction site erosion control
16 at sites ~~where the construction activities do not include the construction of a building~~
17 described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

18 **SECTION 14.** 62.234 (6) of the statutes is amended to read:

19 62.234 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
20 to a city under s. 236.45 may be exercised by it with respect to construction site
21 erosion control at sites ~~where the construction activities do not include the~~
22 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to
23 storm water management regulation, if the city has or provides a planning
24 commission or agency.

25 **SECTION 15.** 101.1206 (1) of the statutes is amended to read:

SECTION 15

a land disturbance that is

1 101.1206 (1) The department shall establish statewide ~~performance~~ standards
2 for erosion control at building sites ~~that have an area of one acre or less~~ ^{than one acre in area} and that are
3 for the construction of public buildings, as defined in s. 101.01 (12), and buildings
4 that are places of employment, as defined in s. 101.01 (11).

5 **SECTION 16.** 101.1206 (4m) of the statutes is created to read:

6 ~~101.1206 (4m) The department shall prepare a model zoning ordinance for~~
7 ~~construction site erosion control at building sites described under sub. (1). The~~
8 ~~department shall distribute a copy of the model ordinance to any county, city, village,~~
9 ~~or town that submits a request.~~

10 **SECTION 17.** 101.1206 (5m) of the statutes is amended to read:

11 ~~101.1206 (5m) Notwithstanding subs. (1) and (5), a county, city, village, or town~~
12 ~~that has in effect on January 1, 1994, an ordinance that establishes standards for~~
13 ~~erosion control at building sites for the construction of public buildings and buildings~~
14 ~~that are places of employment may continue to administer and enforce that~~
15 ~~ordinance if the standards in the ordinance are more stringent than the performance~~
16 ~~standards established under sub. (1).~~

17 **SECTION 18.** 101.1206 (6) of the statutes is amended to read:

18 ~~101.1206 (6) The department, or a county, city, village, or town to which the~~
19 ~~department delegates the authority to act under this subsection, may issue a special~~
20 ~~order directing the immediate cessation of work on a construction site described in~~
21 ~~sub. (1) until any required plan approval is obtained or until the site complies with~~
22 ~~performance standards established by rules promulgated under this section.~~

23 **SECTION 19.** 101.653 (2m) of the statutes is amended to read:

24 101.653 (2m) RULES FOR ADMINISTRATION. The department shall promulgate
25 rules for the administration of construction site erosion control under this

1 subchapter by counties, cities, villages and towns, including provisions regarding the
2 issuance of building permits and the collection and distribution of fees.

3 SECTION 20. 101.653 (8) of the statutes is created to read:

4 101.653 (8) INAPPLICABILITY. This section does not apply to a construction site
5 that is ~~more than~~ ^{or more} one acre ^{in area.} ~~that is~~ ^{has a} ~~land disturbance~~ ^{land disturbance} ~~that is~~ ^{that is}

6 SECTION 21. 281.33 (3) (a) 1. of the statutes is ~~renumbered~~ 281.33 (3) (a) 1.
7 (intro.) and amended to read:

8 281.33 (3) (a) 1. (intro.) Except as restricted under subd. 2., the department
9 shall establish by rule minimum ~~performance~~ ^{standards} standards for activities all of the
10 following: ^{we have} ~~has~~ a land disturbance that is

11 a. Activities related to construction site erosion control at sites where the
12 construction activities do not include the construction of a building and to storm
13 water management ~~that are~~ ^{or more} ~~more than~~ one acre ^{in area.}

14 SECTION 22. 281.33 (3) (a) 1. b. of the statutes is created to read:

15 281.33 (3) (a) 1. b. Activities related to construction site erosion control at sites
16 ~~to which ss. 101.1206 and 101.653 do not apply.~~ ^{that have a land disturbance that is less than one} ~~acre in area~~ ^{and}

17 SECTION 23. 281.33 (3) (a) 1. c. of the statutes is created to read:

18 281.33 (3) (a) 1. c. Storm water management.

19 SECTION 24. 281.33 (3) (a) 2. of the statutes is amended to read:

20 281.33 (3) (a) 2. The department, in cooperation with the department of
21 transportation, shall establish by rule minimum performance standards for
22 activities related to construction site erosion control and storm water management
23 if those activities concern street, highway, road or bridge construction, enlargement,
24 relocation or reconstruction.

25 SECTION 25. 281.33 (3) (a) 3. of the statutes is amended to read:

1 281.33 (3) (a) 3. Minimum performance standards for storm water
 2 management established under this paragraph are applicable to the state plan
 3 under sub. (2). The department shall encourage a city, village, town or county to
 4 comply with minimum performance standards established under this paragraph for
 5 any construction site erosion control and storm water management zoning ordinance
 6 enacted under s. 59.693, 60.627, 61.354 or 62.234.

7 **SECTION 26.** 281.33 (3) (a) 4. of the statutes is amended to read:

8 281.33 (3) (a) 4. The department shall identify low-cost practices which would
 9 enable a person to comply with these minimum performance standards.

10 **SECTION 27.** 281.33 (3) (b) (intro.) of the statutes is amended to read:

11 281.33 (3) (b) (intro.) The minimum performance standards for construction
 12 site erosion control at sites ~~where the construction activities do not include the~~
 13 ~~construction of a building~~ described in par. (a) 1. a. and b. shall provide for the
 14 regulation of any construction activity, at such a site, that:

15 **SECTION 28.** 281.33 (3) (c) (intro.) of the statutes is amended to read:

16 281.33 (3) (c) (intro.) ~~The minimum performance~~ standards for storm water
 17 management shall provide for the regulation of any construction activity which:

18 **SECTION 29.** 281.33 (4) of the statutes is amended to read:

19 281.33 (4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall
 20 prepare a model zoning ordinance for construction site erosion control at sites where
 21 ~~the construction activities do not include the construction of a building~~ described in
 22 sub. (3) (a) 1. a. and b. and for storm water management in the form of an
 23 administrative rule. The model ordinance is subject to s. 227.19 and other provisions
 24 of ch. 227 in the same manner as other administrative rules. ~~Following the~~
 25 ~~promulgation of the model ordinance as a rule,~~ the department shall distribute a copy

no strike

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1 of the model ordinance to any city, village, town or county that submits a request.
2 The department shall distribute a copy of the state plan to any agency which submits
3 a request.

4 **SECTION 30.** 283.33 (1) (a) of the statutes is amended to read:

5 283.33 (1) (a) A discharge from a discernible, confined, and discrete conveyance
6 of storm water associated with an industrial activity, ~~including construction~~, that
7 meets criteria in rules promulgated by the department.

8 **SECTION 31.** 283.33 (1) (am) of the statutes is created to read:

9 283.33 (1) (am) A discharge from a discernible, confined, and discrete
10 conveyance of storm water associated with a construction site, including a
11 construction site where the construction activity includes the construction of a

12 *for a building* that meets criteria in rules promulgated by the department

13 **SECTION 32.** 283.33 (4) (a) (intro.) of the statutes is amended to read:

14 283.33 (4) (a) (intro.) In addition to obtaining a permit under this section, the
15 owner or operator of an industrial activity described in sub. (1) (a) or (am) that
16 discharges storm water through a municipal separate storm sewer system described
17 in sub. (1) (b) to (c) shall submit the following information to the owner or operator
18 of the municipal separate storm sewer system:

19 **SECTION 33.** 283.33 (5) of the statutes is amended to read:

20 283.33 (5) OTHER DISCHARGERS. A person who is required to obtain a permit
21 under sub. (1) (a), (am), or (d) may apply for an individual permit or request coverage
22 under a general permit issued by the department under s. 283.35.

23 **SECTION 34.** 283.33 (7) of the statutes is amended to read:

24 283.33 (7) PETITIONS. The owner or operator of a municipal separate storm
25 sewer system may petition the department to require a permit under this section for

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9-12

1 any discharge through the municipal separate storm sewer system. The department
2 may approve the petition only if a permit for the discharge is required under sub. (1)
3 (a), (am), or (d).

4 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
5 **Services.**

6 (1) CONSTRUCTION SITE EROSION CONTROL. (a) In this subsection:

7 1. "Dwelling" has the meaning given in section 101.61 (1) of the statutes.

8 2. "Large building site" means the construction site of a public building, a
9 building that is a place of employment, or a one-family or 2-family dwelling if the
10 construction site is more than one acre in area.

11 3. "Place of employment" has the meaning given in section 101.01 (11) of the
12 statutes.

13 4. "Public building" has the meaning given in section 101.01 (12) of the statutes.

14 (b) All rules promulgated by the department of safety and professional services
15 under section 101.1206, 2011 stats., or 101.653, 2011 stats., that relate to erosion
16 control for large building sites and that are in effect on the effective date of this
17 paragraph, as determined by the secretary of administration, remain in effect until
18 their specified expiration dates or until amended or repealed by the department of
19 natural resources. All orders issued by the department of safety and professional
20 services that are in effect on the effective date of this paragraph and that primarily
21 relate to erosion control for large building sites, as determined by the secretary of
22 administration, remain in effect until their specified expiration dates or until
23 modified or rescinded by the department of natural resources.

24 *no P* ~~(c)~~ Any matter pending with the department of safety and professional services
25 on the effective date of this paragraph *Subsection* that primarily relates to its erosion control

section

1) responsibilities under section 101.1206, 2011 stats., or 101.653, 2011 stats., for large
 2 ~~building sites~~ as determined by the secretary of administration, ~~is transferred to the~~
 3 department of natural resources and all materials submitted to or actions taken by
 4 the department of safety and professional services with respect to the pending
 5 matters are considered as having been submitted to or taken by the department of
 6 natural resources.

7 (d) Any delegation by the department of safety and professional services of its
 8 erosion control responsibilities for large building sites to a county, city, village, or
 9 town under section 101.1206, 2011 stats., or 101.653, 2011 stats., that is in effect on
 10 the effective date of this paragraph remains in effect until revoked by the department
 11 of natural resources.

(END)

3
remains the responsibility of the department of
safety and professional services

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0226/P3ins.
RNK:.....

INSERT 9-12

1 **SECTION 1.** 283.33 (3) (d) of the statutes is created to read:
2 283.33 (3) (d) If the department determines that rules promulgated under s.
3 281.16 (2) prescribe performance standards that meet the requirements for
4 establishing minimum standards under this subsection, the department's rules
5 under s. 281.16 (2) satisfy the rule-making requirements under this subsection and
6 shall apply as if they were promulgated under this subsection.

Kite, Robin

From: Stinebrink, Cory R - DOA <Cory.Stinebrink@wisconsin.gov>
Sent: Monday, February 04, 2013 3:15 PM
To: Kite, Robin
Subject: RE: 0226/P3

That all works by me. I just had difficulty answering questions asked on the draft by others so I needed to be sure I understood them all. Thanks. I am fine with this as is, once the cross reference and typo are fixed.

Cory

From: Kite, Robin [<mailto:Robin.Kite@legis.wisconsin.gov>]
Sent: Monday, February 04, 2013 3:11 PM
To: Stinebrink, Cory R - DOA
Subject: RE: 0226/P3

Cory:

Section 5:

This appears to be an error in current law. The cross-reference should be to s. 236.02 (3). I can amend it in the draft.

Section 16:

The instructions were to make this change. As I understand it, DNR was concerned that the use of the term permit without clarification might suggest that a local unit of government could issue storm water discharge permits and they wanted this provision to make clear that the provision is intended only to refer to building permits.

Section 23-24:

DNR wanted to make clear that their responsibility to issue a storm water discharge permit concerns operators who discharge storm water from an industrial activity and those who discharge storm water from a construction activity. Current law implies that construction activity is a type of industrial activity when in fact these may be two different kinds of activities. DNR felt that this clarification was necessary. And I'll fix the typo.

Section 25:

Section 281.16 (2) requires, in current law, that DNR promulgate **performance** standards.

Section 26:

I struck "industrial" because the draft requires permits for industrial activities and construction activities. So instead of adding "and construction" I just left "activities" because the cross references make the type of activities clear. But I can add "construction" if you want me to.

I will wait to hear from you before fixing the typo and the cross-reference error in current law in s. 59.693 (7).

Thanks.

Robin

From: Stinebrink, Cory R - DOA [<mailto:Cory.Stinebrink@wisconsin.gov>]
Sent: Monday, February 04, 2013 2:23 PM
To: Kite, Robin
Subject: 0226/P3

Robin-

This is mostly questions of clarification for me and (hopefully) not necessitating any redrafting. But if you get a chance, here are a few questions I have from the site erosion draft:

Section 5

This isn't a change made, but current law in this section references 236.02(1). But that reference is to the definition of "alley". Is that correct?

Section 16:

What was the rationale for specifying "building" permits?

Section 23-24:

Why did you make these 2 parts separate? What difference is there with current law? Also, there appears to be a typo on line 23. "promulgates".

Section 25:

This creates and appropriation that mentions performance standards. I know that we were generally trying to avoid referencing performance standards, but if that's not possible here I would be interested in hearing why.

Section 26:

Why did you strike "industrial"?

Leah, my team leader, was interested in knowing why there wasn't any reference to rules transfers or anything in the non stats. I tried to explain to her my understanding of it, but if there is anything from your discussions with DNR that could help make this clearer I'd appreciate it.

Thanks,

Cory Stinebrink
Executive Policy and Budget Analyst
State Budget Office
(608)266-1103



State of Wisconsin
2013 - 2014 LEGISLATURE



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LRB-0226/P3
RNK:kjf:rs

DOA:.....Stinebrink, BB0098 – Commercial construction site erosion control

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

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ENVIRONMENT

WATER QUALITY

Under current law both DSPS and DNR administer laws with regard to erosion control at building sites. DSPS is required to establish standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment (commercial buildings) as well as for the construction of one-family and two-family dwellings. DNR is required to establish standards for erosion control at sites where the construction activities do not include the construction of a building, such as sites involving street or bridge construction.

This bill transfers from DSPS to DNR the authority to administer erosion control laws for construction sites with a land disturbance area of one or more, regardless of whether the construction activity includes the construction of a building. Under the bill, DSPS retains authority to administer erosion control laws for construction sites with a land disturbance area of less than one acre and that involve the construction of a commercial building or a one-family or two-family dwelling.

Current law requires certain persons who discharge storm water from a discernible, confined, and discrete conveyance to obtain a storm water discharge permit. This bill specifies that this permit requirement applies to conveyances of storm water associated with a construction site, including a construction site for a building.

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) (b) of the statutes is amended to read:

2 30.025 (1b) (b) “Permit” means an individual permit, a general permit, an
3 approval, or a contract required under this subchapter or subch. II, a permit or an
4 approval required under ch. 31, a storm water discharge permit required under s.
5 283.33 (1) (a) or (am), or a wetland general permit or wetland individual permit
6 required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to
7 implement 33 USC 1341 (a).

8 **SECTION 2.** 30.025 (1e) (b) of the statutes is amended to read:

9 30.025 (1e) (b) This section does not apply to a proposal to construct a utility
10 facility if the only permit that the utility facility is required to obtain from the
11 department is a storm water discharge permit under s. 283.33 (1) (a) or (am).

12 **SECTION 3.** 59.69 (4c) of the statutes is amended to read:

13 59.69 (4c) CONSTRUCTION SITE ORDINANCE LIMITS. Except as provided in s.
14 101.1206 (5m), an ordinance that is enacted under sub. (4) may only include
15 provisions that are related to construction site erosion control if those provisions are
16 limited to sites ~~where the construction activities do not include the construction of~~
17 a building described in s. 281.33 (3) (a) 1. a. and b.

18 **SECTION 4.** 59.693 (2) of the statutes is amended to read:

19 59.693 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
20 and to promote the public health, safety and general welfare, a county may enact a
21 zoning ordinance, that is applicable to all of its unincorporated area, except as

1 provided in s. 60.627 (2) (b), for construction site erosion control at sites ~~where the~~
2 ~~construction activities do not include the construction of a building~~ described in s.
3 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be
4 enacted separately from ordinances enacted under s. 59.69.

5 **SECTION 5.** 59.693 (7) of the statutes is amended to read:

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7 to a county under s. 236.45 may be exercised by the county with respect to
8 construction site erosion control at sites ~~where the construction activities do not~~
9 ~~include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with
10 respect to storm water management regulation, if the county has or provides a
11 county planning agency as defined in s. 236.02 ~~(1)~~ (3)

12 **SECTION 6.** 60.627 (2) (a) of the statutes is amended to read:

13 60.627 (2) (a) To effect the purposes of s. 281.33 and to promote the public
14 health, safety and general welfare, if a town board may enact zoning ordinances
15 under s. 60.62, the town board may enact a zoning ordinance, that is applicable to
16 all of its area, for construction site erosion control at sites ~~where the construction~~
17 ~~activities do not include the construction of a building~~ described in s. 281.33 (3) (a)
18 1. a. and b. and for storm water management. This ordinance may be enacted
19 separately from ordinances enacted under s. 60.62.

20 **SECTION 7.** 60.627 (4) (c) of the statutes is amended to read:

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4 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to
5 storm water management regulation, if the town has or provides a planning
6 commission or agency.

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8 61.354 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
9 and to promote the public health, safety and general welfare, a village may enact a
10 zoning ordinance, that is applicable to all of its incorporated area, for construction
11 site erosion control at sites ~~where the construction activities do not include the~~
12 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water
13 management. This ordinance may be enacted separately from ordinances enacted
14 under s. 61.35.

15 **SECTION 10.** 61.354 (4) (c) of the statutes is amended to read:

16 61.354 (4) (c) An ordinance enacted under this section supersedes all provisions
17 of an ordinance enacted under s. 61.35 that relate to construction site erosion control
18 at sites ~~where the construction activities do not include the construction of a building~~
19 described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

20 **SECTION 11.** 61.354 (6) of the statutes is amended to read:

21 61.354 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
22 to a village under s. 236.45 may be exercised by it with respect to construction site
23 erosion control at sites ~~where the construction activities do not include the~~
24 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to

1 storm water management regulation, if the village has or provides a planning
2 commission or agency.

3 **SECTION 12.** 62.234 (2) of the statutes is amended to read:

4 62.234 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
5 and to promote the public health, safety and general welfare, a city may enact a
6 zoning ordinance, that is applicable to all of its incorporated area, for construction
7 site erosion control at sites ~~where the construction activities do not include the~~
8 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water
9 management. This ordinance may be enacted separately from ordinances enacted
10 under s. 62.23.

11 **SECTION 13.** 62.234 (4) (c) of the statutes is amended to read:

12 62.234 (4) (c) An ordinance enacted under this section supersedes all provisions
13 of an ordinance enacted under s. 62.23 that relate to construction site erosion control
14 at sites ~~where the construction activities do not include the construction of a building~~
15 described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

16 **SECTION 14.** 62.234 (6) of the statutes is amended to read:

17 62.234 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
18 to a city under s. 236.45 may be exercised by it with respect to construction site
19 erosion control at sites ~~where the construction activities do not include the~~
20 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to
21 storm water management regulation, if the city has or provides a planning
22 commission or agency.

23 **SECTION 15.** 101.1206 (1) of the statutes is amended to read:

24 101.1206 (1) The department shall establish statewide standards for erosion
25 control at building sites that have a land disturbance that is less than one acre in area

1 and that are for the construction of public buildings, ~~as defined in s. 101.01 (12),~~ and
2 buildings that are places of employment, ~~as defined in s. 101.01 (11).~~

3 **SECTION 16.** 101.653 (2m) of the statutes is amended to read:

4 101.653 (2m) RULES FOR ADMINISTRATION. The department shall promulgate
5 rules for the administration of construction site erosion control under this
6 subchapter by counties, cities, villages and towns, including provisions regarding the
7 issuance of building permits and the collection and distribution of fees.

8 **SECTION 17.** 101.653 (8) of the statutes is created to read:

9 101.653 (8) INAPPLICABILITY. This section does not apply to a construction site
10 that has a land disturbance area that is one acre or more in area.

11 **SECTION 18.** 281.33 (3) (a) 1. of the statutes is renumbered 281.33 (3) (a) 1.
12 (intro.) and amended to read:

13 281.33 (3) (a) 1. (intro.) Except as restricted under subd. 2., the department
14 shall establish by rule minimum standards for ~~activities~~ all of the following:

15 a. Activities related to construction site erosion control at sites ~~where the~~
16 ~~construction activities do not include the construction of a building and to storm~~
17 ~~water management~~ that have a land disturbance that is one acre or more in area.

18 **SECTION 19.** 281.33 (3) (a) 1. b. of the statutes is created to read:

19 281.33 (3) (a) 1. b. Activities related to construction site erosion control at sites
20 that have a land disturbance that is less than one acre and to which ss. 101.1206 and
21 101.653 do not apply.

22 **SECTION 20.** 281.33 (3) (a) 1. c. of the statutes is created to read:

23 281.33 (3) (a) 1. c. Storm water management.

24 **SECTION 21.** 281.33 (3) (b) (intro.) of the statutes is amended to read:

1 281.33 (3) (b) (intro.) The minimum standards for construction site erosion
2 control at sites ~~where the construction activities do not include the construction of~~
3 ~~a building described in par. (a) 1. a. and b.~~ shall provide for the regulation of any
4 construction activity, at such a site, that:

5 **SECTION 22.** 281.33 (4) of the statutes is amended to read:

6 281.33 (4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall
7 prepare a model zoning ordinance for construction site erosion control at sites ~~where~~
8 ~~the construction activities do not include the construction of a building described in~~
9 ~~sub. (3) (a) 1. a. and b.~~ and for storm water management in the form of an
10 administrative rule. The model ordinance is subject to s. 227.19 and other provisions
11 of ch. 227 in the same manner as other administrative rules. Following the
12 promulgation of the model ordinance as a rule, the department shall distribute a copy
13 of the model ordinance to any city, village, town or county that submits a request.
14 The department shall distribute a copy of the state plan to any agency which submits
15 a request.

16 **SECTION 23.** 283.33 (1) (a) of the statutes is amended to read:

17 283.33 (1) (a) A discharge from a discernible, confined, and discrete conveyance
18 of storm water associated with an industrial activity, ~~including construction~~, that
19 meets criteria in rules promulgated by the department.

20 **SECTION 24.** 283.33 (1) (am) of the statutes is created to read:

21 283.33 (1) (am) A discharge from a discernible, confined, and discrete
22 conveyance of storm water associated with a construction site, including a
23 construction site for a building, that meets criteria in rules [✓] promulgated ^d by the
24 department.

25 **SECTION 25.** 283.33 (3) (d) of the statutes is created to read:

1 283.33 (3) (d) If the department determines that rules promulgated under s.
2 281.16 (2) prescribe performance standards that meet the requirements for
3 establishing minimum standards under this subsection, the department's rules
4 under s. 281.16 (2) satisfy the rule-making requirements under this subsection and
5 shall apply as if they were promulgated under this subsection.

6 **SECTION 26.** 283.33 (4) (a) (intro.) of the statutes is amended to read:

7 283.33 (4) (a) (intro.) In addition to obtaining a permit under this section, the
8 owner or operator of an ~~industrial~~ activity described in sub. (1) (a) or (am) that
9 discharges storm water through a municipal separate storm sewer system described
10 in sub. (1) (b) to (cr) shall submit the following information to the owner or operator
11 of the municipal separate storm sewer system:

12 **SECTION 27.** 283.33 (5) of the statutes is amended to read:

13 283.33 (5) OTHER DISCHARGERS. A person who is required to obtain a permit
14 under sub. (1) (a), (am), or (d) may apply for an individual permit or request coverage
15 under a general permit issued by the department under s. 283.35.

16 **SECTION 28.** 283.33 (7) of the statutes is amended to read:

17 283.33 (7) PETITIONS. The owner or operator of a municipal separate storm
18 sewer system may petition the department to require a permit under this section for
19 any discharge through the municipal separate storm sewer system. The department
20 may approve the petition only if a permit for the discharge is required under sub. (1)
21 (a), (am), or (d).

22 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
23 **Services.**

24 (1) CONSTRUCTION SITE EROSION CONTROL. Any matter pending with the
25 department of safety and professional services on the effective date of this subsection

1 that primarily relates to its erosion control responsibilities under section 101.1206,
2 2011 stats., or section 101.653, 2011 stats., as determined by the secretary of
3 administration, remains the responsibility of the department of safety and
4 professional services.

5 (END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0226/1
RNK:kjf:jf

DOA:.....Stinebrink, BB0098 - Commercial construction site erosion control

FOR 2013-2015 BUDGET - NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

WATER QUALITY

Under current law both DSPS and DNR administer laws with regard to erosion control at building sites. DSPS is required to establish standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment (commercial buildings) as well as for the construction of one-family and two-family dwellings. DNR is required to establish standards for erosion control at sites where the construction activities do not include the construction of a building, such as sites involving street or bridge construction.

This bill transfers from DSPS to DNR the authority to administer erosion control laws for construction sites with a land disturbance area of one or more, regardless of whether the construction activity includes the construction of a building. Under the bill, DSPS retains authority to administer erosion control laws for construction sites with a land disturbance area of less than one acre and that involve the construction of a commercial building or a one-family or two-family dwelling.

Current law requires certain persons who discharge storm water from a discernible, confined, and discrete conveyance to obtain a storm water discharge permit. This bill specifies that this permit requirement applies to conveyances of storm water associated with a construction site, including a construction site for a building.

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) (b) of the statutes is amended to read:

2 30.025 (1b) (b) “Permit” means an individual permit, a general permit, an
3 approval, or a contract required under this subchapter or subch. II, a permit or an
4 approval required under ch. 31, a storm water discharge permit required under s.
5 283.33 (1) (a) or (am), or a wetland general permit or wetland individual permit
6 required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to
7 implement 33 USC 1341 (a).

8 **SECTION 2.** 30.025 (1e) (b) of the statutes is amended to read:

9 30.025 (1e) (b) This section does not apply to a proposal to construct a utility
10 facility if the only permit that the utility facility is required to obtain from the
11 department is a storm water discharge permit under s. 283.33 (1) (a) or (am).

12 **SECTION 3.** 59.69 (4c) of the statutes is amended to read:

13 59.69 (4c) CONSTRUCTION SITE ORDINANCE LIMITS. Except as provided in s.
14 101.1206 (5m), an ordinance that is enacted under sub. (4) may only include
15 provisions that are related to construction site erosion control if those provisions are
16 limited to sites ~~where the construction activities do not include the construction of~~
17 ~~a building~~ described in s. 281.33 (3) (a) 1. a. and b.

18 **SECTION 4.** 59.693 (2) of the statutes is amended to read:

19 59.693 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
20 and to promote the public health, safety and general welfare, a county may enact a
21 zoning ordinance, that is applicable to all of its unincorporated area, except as

1 provided in s. 60.627 (2) (b), for construction site erosion control at sites ~~where the~~
2 ~~construction activities do not include the construction of a building described in s.~~
3 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be
4 enacted separately from ordinances enacted under s. 59.69.

5 **SECTION 5.** 59.693 (7) of the statutes is amended to read:

6 59.693 (7) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
7 to a county under s. 236.45 may be exercised by the county with respect to
8 construction site erosion control at sites ~~where the construction activities do not~~
9 ~~include the construction of a building described in s. 281.33 (3) (a) 1. a. and b.~~ or with
10 respect to storm water management regulation, if the county has or provides a
11 county planning agency as defined in s. 236.02 ~~(1) (3)~~.

12 **SECTION 6.** 60.627 (2) (a) of the statutes is amended to read:

13 60.627 (2) (a) To effect the purposes of s. 281.33 and to promote the public
14 health, safety and general welfare, if a town board may enact zoning ordinances
15 under s. 60.62, the town board may enact a zoning ordinance, that is applicable to
16 all of its area, for construction site erosion control at sites ~~where the construction~~
17 ~~activities do not include the construction of a building described in s. 281.33 (3) (a)~~
18 1. a. and b. and for storm water management. This ordinance may be enacted
19 separately from ordinances enacted under s. 60.62.

20 **SECTION 7.** 60.627 (4) (c) of the statutes is amended to read:

21 60.627 (4) (c) An ordinance enacted under this section supersedes all provisions
22 of an ordinance enacted under s. 60.62 that relate to construction site erosion control
23 at sites ~~where the construction activities do not include the construction of a building~~
24 described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

25 **SECTION 8.** 60.627 (6) of the statutes is amended to read:

1 60.627 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
2 to a town under s. 236.45 may be exercised by it with respect to construction site
3 erosion control at sites ~~where the construction activities do not include the~~
4 ~~construction of a building described in s. 281.33 (3) (a) 1. a. and b.~~ or with respect to
5 storm water management regulation, if the town has or provides a planning
6 commission or agency.

7 **SECTION 9.** 61.354 (2) of the statutes is amended to read:

8 61.354 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
9 and to promote the public health, safety and general welfare, a village may enact a
10 zoning ordinance, that is applicable to all of its incorporated area, for construction
11 site erosion control at sites ~~where the construction activities do not include the~~
12 ~~construction of a building described in s. 281.33 (3) (a) 1. a. and b.~~ and for storm water
13 management. This ordinance may be enacted separately from ordinances enacted
14 under s. 61.35.

15 **SECTION 10.** 61.354 (4) (c) of the statutes is amended to read:

16 61.354 (4) (c) An ordinance enacted under this section supersedes all provisions
17 of an ordinance enacted under s. 61.35 that relate to construction site erosion control
18 at sites ~~where the construction activities do not include the construction of a building~~
19 ~~described in s. 281.33 (3) (a) 1. a. and b.~~ or to storm water management regulation.

20 **SECTION 11.** 61.354 (6) of the statutes is amended to read:

21 61.354 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
22 to a village under s. 236.45 may be exercised by it with respect to construction site
23 erosion control at sites ~~where the construction activities do not include the~~
24 ~~construction of a building described in s. 281.33 (3) (a) 1. a. and b.~~ or with respect to

1 storm water management regulation, if the village has or provides a planning
2 commission or agency.

3 **SECTION 12.** 62.234 (2) of the statutes is amended to read:

4 62.234 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33
5 and to promote the public health, safety and general welfare, a city may enact a
6 zoning ordinance, that is applicable to all of its incorporated area, for construction
7 site erosion control at sites ~~where the construction activities do not include the~~
8 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water
9 management. This ordinance may be enacted separately from ordinances enacted
10 under s. 62.23.

11 **SECTION 13.** 62.234 (4) (c) of the statutes is amended to read:

12 62.234 (4) (c) An ordinance enacted under this section supersedes all provisions
13 of an ordinance enacted under s. 62.23 that relate to construction site erosion control
14 at sites ~~where the construction activities do not include the construction of a building~~
15 described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

16 **SECTION 14.** 62.234 (6) of the statutes is amended to read:

17 62.234 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted
18 to a city under s. 236.45 may be exercised by it with respect to construction site
19 erosion control at sites ~~where the construction activities do not include the~~
20 ~~construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to
21 storm water management regulation, if the city has or provides a planning
22 commission or agency.

23 **SECTION 15.** 101.1206 (1) of the statutes is amended to read:

24 101.1206 (1) The department shall establish statewide standards for erosion
25 control at building sites that have a land disturbance that is less than one acre in area

1 ~~and that are for the construction of public buildings, as defined in s. 101.01 (12), and~~
2 ~~buildings that are places of employment, as defined in s. 101.01 (11).~~

3 **SECTION 16.** 101.653 (2m) of the statutes is amended to read:

4 101.653 (2m) RULES FOR ADMINISTRATION. The department shall promulgate
5 rules for the administration of construction site erosion control under this
6 subchapter by counties, cities, villages and towns, including provisions regarding the
7 issuance of building permits and the collection and distribution of fees.

8 **SECTION 17.** 101.653 (8) of the statutes is created to read:

9 101.653 (8) INAPPLICABILITY. This section does not apply to a construction site
10 that has a land disturbance area that is one acre or more in area.

11 **SECTION 18.** 281.33 (3) (a) 1. of the statutes is renumbered 281.33 (3) (a) 1.
12 (intro.) and amended to read:

13 281.33 (3) (a) 1. (intro.) Except as restricted under subd. 2., the department
14 shall establish by rule minimum standards for activities all of the following:

15 a. Activities related to construction site erosion control at sites where the
16 construction activities do not include the construction of a building and to storm
17 water management that have a land disturbance that is one acre or more in area.

18 **SECTION 19.** 281.33 (3) (a) 1. b. of the statutes is created to read:

19 281.33 (3) (a) 1. b. Activities related to construction site erosion control at sites
20 that have a land disturbance that is less than one acre and to which ss. 101.1206 and
21 101.653 do not apply.

22 **SECTION 20.** 281.33 (3) (a) 1. c. of the statutes is created to read:

23 281.33 (3) (a) 1. c. Storm water management.

24 **SECTION 21.** 281.33 (3) (b) (intro.) of the statutes is amended to read:

1 281.33 (3) (b) (intro.) The minimum standards for construction site erosion
2 control at sites ~~where the construction activities do not include the construction of~~
3 ~~a building described in par. (a) 1. a. and b.~~ shall provide for the regulation of any
4 construction activity, at such a site, that:

5 **SECTION 22.** 281.33 (4) of the statutes is amended to read:

6 281.33 (4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall
7 prepare a model zoning ordinance for construction site erosion control at sites ~~where~~
8 ~~the construction activities do not include the construction of a building described in~~
9 ~~sub. (3) (a) 1. a. and b.~~ and for storm water management in the form of an
10 administrative rule. The model ordinance is subject to s. 227.19 and other provisions
11 of ch. 227 in the same manner as other administrative rules. Following the
12 promulgation of the model ordinance as a rule, the department shall distribute a copy
13 of the model ordinance to any city, village, town or county that submits a request.
14 The department shall distribute a copy of the state plan to any agency which submits
15 a request.

16 **SECTION 23.** 283.33 (1) (a) of the statutes is amended to read:

17 283.33 (1) (a) A discharge from a discernible, confined, and discrete conveyance
18 of storm water associated with an industrial activity, ~~including construction,~~ that
19 meets criteria in rules promulgated by the department.

20 **SECTION 24.** 283.33 (1) (am) of the statutes is created to read:

21 283.33 (1) (am) A discharge from a discernible, confined, and discrete
22 conveyance of storm water associated with a construction site, including a
23 construction site for a building, that meets criteria in rules promulgated by the
24 department.

25 **SECTION 25.** 283.33 (3) (d) of the statutes is created to read:

1 283.33 (3) (d) If the department determines that rules promulgated under s.
2 281.16 (2) prescribe performance standards that meet the requirements for
3 establishing minimum standards under this subsection, the department's rules
4 under s. 281.16 (2) satisfy the rule-making requirements under this subsection and
5 shall apply as if they were promulgated under this subsection.

6 **SECTION 26.** 283.33 (4) (a) (intro.) of the statutes is amended to read:

7 283.33 (4) (a) (intro.) In addition to obtaining a permit under this section, the
8 owner or operator of an ~~industrial~~ activity described in sub. (1) (a) or (am) that
9 discharges storm water through a municipal separate storm sewer system described
10 in sub. (1) (b) to (c) shall submit the following information to the owner or operator
11 of the municipal separate storm sewer system:

12 **SECTION 27.** 283.33 (5) of the statutes is amended to read:

13 283.33 (5) OTHER DISCHARGERS. A person who is required to obtain a permit
14 under sub. (1) (a), (am), or (d) may apply for an individual permit or request coverage
15 under a general permit issued by the department under s. 283.35.

16 **SECTION 28.** 283.33 (7) of the statutes is amended to read:

17 283.33 (7) PETITIONS. The owner or operator of a municipal separate storm
18 sewer system may petition the department to require a permit under this section for
19 any discharge through the municipal separate storm sewer system. The department
20 may approve the petition only if a permit for the discharge is required under sub. (1)
21 (a), (am), or (d).

22 **SECTION 9138. Nonstatutory provisions; Safety and Professional**
23 **Services.**

24 (1) CONSTRUCTION SITE EROSION CONTROL. Any matter pending with the
25 department of safety and professional services on the effective date of this subsection

1 that primarily relates to its erosion control responsibilities under section 101.1206,
2 2011 stats., or section 101.653, 2011 stats., as determined by the secretary of
3 administration, remains the responsibility of the department of safety and
4 professional services.

5

(END)