



## 2013 ASSEMBLY BILL 859

March 10, 2014 - Introduced by Representatives JACQUE, A. OTT, BERNIER, TITTL, SPIROS, SANFELIPPO, THIESFELDT, KULP, CZAJA, SKOWRONSKI, BROOKS, SWEARINGEN, KRUG, SCHRAA and WILLIAMS, cosponsored by Senators LASEE, TIFFANY, GROTHMAN and SCHULTZ. Referred to Committee on Environment and Forestry.

1     **AN ACT to repeal** 30.123 (6) (intro.) (except title), 30.123 (6) (e) and 30.123 (7)  
2           (b); **to amend** 30.123 (6) (b), 30.123 (6) (d), 30.123 (6m) (intro.), 30.123 (6r) (a),  
3           30.123 (6s) (a) (intro.) and 30.123 (6s) (b); and **to create** 30.123 (6) (dg), 30.123  
4           (6) (dr), 30.123 (6) (f) and 30.123 (9) of the statutes; **relating to:** replacement  
5           and maintenance of existing culverts and design and engineering work for the  
6           construction and placement of certain culverts.

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### ***Analysis by the Legislative Reference Bureau***

Current law generally prohibits any person from constructing, placing, or maintaining a culvert in or over a navigable water without being issued an individual permit by the Department of Natural Resources (DNR) or without receiving authorization to proceed under a statewide general permit issued by DNR. Under current law, a culvert is exempt from these permitting requirements if it is replacing an existing culvert and it either does not have an inside diameter that exceeds 24 inches or it is in compliance with the conditions imposed by the applicable permit.

This bill adds an exemption for a culvert that is replacing an existing culvert that is not authorized by an individual or a general permit. Under the bill, the replacement culvert is exempt if it is the same length, diameter, and size as the existing culvert, if it will not have a lower the flow rate capacity than the existing culvert, and it will be at the same location and have the same slope as the existing permit.

**ASSEMBLY BILL 859**

Under the bill, a replacement culvert may not have an inside diameter that exceeds 48 inches in diameter if it is being constructed or placed on a navigable water that is identified by DNR as an outstanding or exceptional resource water.

Also, the bill exempts from the individual and general permitting requirements the maintenance of a culvert if the flow rate capacity will not be decreased as a result of the maintenance.

Under the bill, DNR must be responsible for the design and engineering costs in determining whether the construction or placement of a culvert is exempt from or subject to the general or individual permitting process that applies to culverts.

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

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

1           **SECTION 1.** 30.123 (6) (intro.) (except title) of the statutes is repealed.

2           **SECTION 2.** 30.123 (6) (b) of the statutes is amended to read:

3           30.123 (6) (b) The construction and maintenance of bridges by the department  
4 of transportation in accordance with s. 30.2022 are exempt from the permitting  
5 requirements under this section.

6           **SECTION 3.** 30.123 (6) (d) of the statutes is amended to read:

7           30.123 (6) (d) The Subject to par. (dr), the construction or placement and the  
8 maintenance of a new culvert ~~to replace a~~ that replaces an existing culvert that is  
9 authorized under a permit issued under s. 30.12 or ~~30.123~~, this section is exempt  
10 from the permitting requirements under this section if the construction, placement,  
11 and maintenance will comply with the same conditions of the permit.

12           **SECTION 4.** 30.123 (6) (dg) of the statutes is created to read:

13           30.123 (6) (dg) Subject to par. (dr), the construction or placement and the  
14 maintenance of a new culvert that replaces an existing culvert that is not authorized  
15 under a permit issued under s. 30.12 or this section is exempt from the permitting  
16 requirements under this section if all of the following apply:

**ASSEMBLY BILL 859**

1           1. The culvert that is being constructed or placed will not have a flow rate  
2 capacity that is less than the flow rate capacity of the existing culvert.

3           2. Both culverts are the same length and have the same inside diameter.

4           3. Both culverts are otherwise the same in size and area.

5           4. The replacement culvert is made out of a material that is comparable to the  
6 material of which the existing culvert is made.

7           5. The replacement culvert will be at the same location and at the same  
8 elevation and will have the same slope as the existing culvert.

9           **SECTION 5.** 30.123 (6) (dr) of the statutes is created to read:

10           30.123 **(6)** (dr) A replacement culvert that is on a navigable water that is  
11 identified as an outstanding or exceptional resource water under s. 281.15 is exempt  
12 under par. (d) or (dg) only if the culvert has an inside diameter that does not exceed  
13 48 inches.

14           **SECTION 6.** 30.123 (6) (e) of the statutes is repealed.

15           **SECTION 7.** 30.123 (6) (f) of the statutes is created to read:

16           30.123 **(6)** (f) The maintenance of a culvert is exempt from the permitting  
17 requirements under this section if the the flow rate capacity will not be decreased as  
18 a result of the maintenance.

19           **SECTION 8.** 30.123 (6m) (intro.) of the statutes is amended to read:

20           30.123 **(6m)** PERMITS IN LIEU OF EXEMPTIONS. (intro.) The department may  
21 decide to require that a person engaged in an activity that is exempt under sub. (6)  
22 (d) ~~or (e)~~ to (dr) apply for an individual permit or seek authorization under a general  
23 permit if the department has conducted an investigation and visited the site of the  
24 activity and has determined that conditions specific to the site require restrictions  
25 on the activity in order to prevent any of the following:

