



2005 ASSEMBLY BILL 601

August 9, 2005 - Introduced by Representatives ALBERS and MUSSER. Referred to
Committee on Property Rights and Land Management.

1 **AN ACT** *to repeal* 30.2095 (2); *to renumber* 30.2095 (1) (b); *to renumber and*
2 *amend* 30.2095 (1) (a); *to amend* 30.772 (3) (d) 3. and 4., 101.12 (2), 101.12 (3)
3 (a), 101.12 (3) (am) 1., 2. and 4., 101.12 (3) (b), 101.12 (3) (br), 101.12 (3) (h) and
4 283.53 (2) (a) (intro.); and *to create* 30.2097, 30.437, 30.772 (4m), 31.045 (3),
5 59.69 (16), 60.61 (7), 62.23 (7) (j), 84.25 (14), 101.12 (4), 101.1205 (6m), 281.38
6 and 283.53 (2r) of the statutes; **relating to:** revoking, modifying, or imposing
7 conditions on certain approvals.

Analysis by the Legislative Reference Bureau

This bill places limits on the situations in which political subdivisions and certain state agencies may revoke or change some types of approvals that they issue.

Political subdivisions

Generally, under current law, a political subdivision (a city, village, town, or county) is authorized to enact zoning ordinances. A zoning ordinance may determine, establish, regulate, and restrict land use in various ways, including specifying the following: the areas within which certain activities may be conducted, the location of roads and schools, building setback lines, and the percentage of a lot which may be occupied.

Under this bill, a political subdivision may not revoke or modify a permit or approval that has been granted to a person, that relates to a zoning ordinance, unless

ASSEMBLY BILL 601

the permit recipient consents, the recipient provided inaccurate information relating to the permit, the recipient violates a condition of the permit, or, if the political subdivision issues the permit in error, the political subdivision compensates the recipient for the costs incurred in reliance on the permit. If the permit was issued in error, the bill also authorizes a political subdivision, instead of providing compensation, to grant a special exception or variance of any requirement violated by the activity for which the permit was issued.

Water quality certification

Under current law, the Department of Natural Resources (DNR) issues water quality certifications to persons who wish to engage in activities that may result in discharges to lakes, rivers, or wetlands.

This bill provides that DNR may generally not revoke or modify a water quality certification unless the recipient of the certification consents, the recipient provided inaccurate information related to the certification, or, if DNR issued the certification in error, DNR compensates the recipient for the costs incurred in reliance on the certification. If DNR issues a water quality certification in error, the bill authorizes DNR to validate the certification, rather than providing compensation and modifying or revoking it, by granting a waiver of the requirement that would be violated by the activity for which the certification was granted, unless a waiver would violate the federal Water Pollution Control Act.

Construction site storm water discharge permit

Under current law, DNR issues permits for storm water discharges from certain construction sites. Current law authorizes DNR to revoke, suspend, or modify a storm water discharge permit that covers a construction site for cause.

This bill provides that DNR may generally not revoke, suspend, or modify a storm water discharge permit that covers a construction site for a cause other than a violation of the permit or providing inaccurate information related to the permit, unless DNR compensates the recipient for the costs incurred in reliance on the permit. If DNR issues a construction site storm water discharge permit in error, the bill authorizes DNR to validate the permit, rather than providing compensation and revoking, suspending, or modifying it, by granting a waiver of the requirement that would be violated by the activity for which the certification was granted, unless a waiver would violate the federal Water Pollution Control Act.

Individual permits and contracts affecting activities in or near navigable waters

Under current law, DNR issues individual permits for the placement of structures in navigable waters and for other activities related to navigable waters and enters into contracts for the removal of material from the beds of navigable waters. Current law authorizes DNR to modify or revoke any such contract or permit for good cause.

This bill provides that DNR may generally not revoke or modify such a permit or contract unless the recipient of the permit or contract consents, provided inaccurate information related to the permit or contract, violates the permit or contract, or is compensated by DNR for costs incurred in relying on the permit or contract in the case where DNR in error issued the permit or entered into the

ASSEMBLY BILL 601

contract. If DNR does issue a permit or enter into a contract in error, the bill authorizes DNR to validate the permit or contract, rather than providing the compensation and revoking the permit or contract, by granting a waiver of the requirement that would be violated by the activity subject to the permit or contract. Under the bill, similar provisions apply to permits issued either by the DNR or a municipality for the placement of moorings in navigable waters and to permits issued by DNR and approved by drainage boards for dams that affect the water levels in drainage districts.

Under current law, special provisions for revocations of permits for the diversion of water from lakes and streams apply. These provisions are not affected by the bill.

Under current law, the Lower Wisconsin Riverway Board (Riverway Board) issues permits relating to structures, forestry activities, mining activities, and utility facilities in the Lower Wisconsin State Riverway, which is an area designated by along the Wisconsin State Riverway downstream from Prairie du Sac. With very limited exceptions, this bill imposes the same limitations described above on the Riverway Board in revoking and conditioning these permits as are imposed on DNR for activities affecting navigable waters.

Approval of plans and variances for public buildings and places of employment

Current law generally requires that the Department of Commerce (Commerce) promulgate rules regulating the construction of public buildings (buildings that are used by the public or by three or more tenants) and buildings that are places of employment. These rules cover such things as the building's proposed heating, ventilation, and air conditioning systems, fire detection systems, and elevator systems. With certain exceptions, current law requires Commerce to review plans for the construction of these buildings to ensure that the proposed construction complies with Commerce's rules and to review certain variances for these construction projects that are issued by certain municipalities.

Current law also requires Commerce, in conjunction with DNR, to promulgate rules creating statewide standards for erosion control at building sites for the public buildings and buildings that are places of employment. With certain exceptions, current law requires approvals of erosion control plans by either Commerce or by a municipality to which Commerce has delegated this approval authority.

This bill provides that Commerce or a municipality may generally not revoke or modify an approval of a construction or erosion control plan or a variance unless the recipient of the approval consents, provided inaccurate information related to the plan approval or variance, violates a requirement under the plan or variance, or is compensated by Commerce for costs incurred in relying on the plan or variance in the case where Commerce or the municipality acted in error. If Commerce or the municipality did act in error, the bill authorizes Commerce or the municipality to validate the plans or variance, rather than providing the compensation and revoking the approval for the plans or variance, by granting a waiver of the requirement that would be violated.

ASSEMBLY BILL 601***Approval of connections to and crossings of controlled-access highways***

Under current law, the Department of Transportation (DOT) may, with restrictions, designate certain highways as controlled-access highways, which are highways to which access points (entrances and exits) are limited based upon traffic volume and public safety concerns. No driveway, street, or highway may be connected with a controlled-access highway without prior approval by DOT in writing, which approval may only be given if it is in the public interest. Also, if property owned by one person is severed by a controlled-access highway, DOT may permit a crossing of the controlled-access highway at a designated location, to be used solely for travel between the severed parcels under common ownership.

This bill provides that DOT may generally not revoke or modify an approval or permit related to a controlled-access highway connection or crossing unless the recipient of the approval or permit consents, the recipient provided inaccurate information to DOT in obtaining the approval or permit, the recipient violated a term or condition of the approval or permit, or, if DOT gave the approval or granted the permit in error, DOT compensates the recipient for the costs incurred in reliance on having obtained the approval or permit. If DOT gave the approval or granted the permit in error, DOT must either provide such compensation or waive any requirement for the approval or permit that was not satisfied by the person who received the approval or permit in error.

For further information see the ***state and local*** 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.** 30.2095 (1) (a) of the statutes is renumbered 30.2095 (1) and
2 amended to read:

3 30.2095 (1) Except as provided in ~~par. (b)~~ sub. (2m), every permit or contract
4 issued under ss. 30.01 to 30.29 for which a time limit is not provided by s. 30.20 (2)
5 is void unless the activity or project is completed within 3 years after the permit or
6 contract was issued.

7 **SECTION 2.** 30.2095 (1) (b) of the statutes is renumbered 30.2095 (2m).

8 **SECTION 3.** 30.2095 (2) of the statutes is repealed.

9 **SECTION 4.** 30.2097 of the statutes is created to read:

ASSEMBLY BILL 601**1 30.2097 Revoking or modifying individual permits and contracts. (1)**

2 DEFINITION. In this section, "recipient" means any person who has received a permit
3 or contract under this subchapter.

4 **(2) LIMITATION ON MODIFICATIONS AND REVOCATIONS.** The department may not
5 modify or revoke an individual permit issued under this subchapter or a contract
6 entered into under this subchapter unless one of the following applies:

7 (a) The recipient consents to the modification or revocation of the permit or the
8 contract.

9 (b) The recipient provided inaccurate information related to the permit or
10 contract.

11 (c) The recipient violates a requirement or condition contained in the permit
12 or the contract.

13 (d) The department compensates the recipient for the costs incurred in reliance
14 on the permit or contract, if the department issued the permit in error or entered into
15 the contract in error.

16 (e) The recipient submits an application to modify the permit or contract under
17 s. 30.208 or 30.209.

18 (f) The department revokes an individual permit under s. 30.18 (6m).

19 **(3) DEPARTMENT AUTHORITY TO VALIDATE ERRONEOUS PERMITS OR CONTRACTS.** If the
20 department issued a permit in error or entered into a contract in error under this
21 subchapter, the department may validate the permit or contract by granting a waiver
22 of any condition or requirement violated by the activity for which the permit or
23 contract was received instead of providing compensation under sub. (2) (d).

24 **SECTION 5.** 30.437 of the statutes is created to read:

ASSEMBLY BILL 601**SECTION 5**

1 **30.437 Revoking and conditioning permits. (1) LIMITATION.** The board
2 may not revoke or impose additional conditions on a permit issued under this
3 subchapter unless one of the following applies:

4 (a) The permit holder consents to the revocation or the additional conditions.

5 (b) The permit holder provided inaccurate information relating to the permit.

6 (c) The permit holder violates a performance standard or an existing condition
7 applicable to the permit.

8 (d) The board compensates the permit holder for the costs incurred in reliance
9 on the permit if the board issued the permit in error.

10 (e) The board revokes the permit under s. 30.44 (10) (a) or 30.445 (6).

11 **(2) BOARD AUTHORITY TO VALIDATE ERRONEOUS PERMITS.** If the board issued a
12 permit under this subchapter in error, the board may validate the permit by granting
13 a waiver of any condition or performance standard violated by the activity for which
14 the permit was issued instead of providing compensation under sub. (1) (d).

15 **SECTION 6.** 30.772 (3) (d) 3. and 4. of the statutes are amended to read:

16 30.772 (3) (d) 3. After a mooring permit is issued, the governing body of a
17 municipality may revoke the mooring permit subject to sub. (4m), if the mooring
18 subsequently violates any provision of this section or any local regulation adopted
19 under this section.

20 4. The Except as provided in sub. (4m), the provisions and procedures of ch. 68
21 shall apply to the grant issuance, denial, or revocation of a mooring permit by a
22 municipality.

23 **SECTION 7.** 30.772 (4m) of the statutes is created to read:

24 30.772 (4m) **RESTRICTIONS ON REVOKING AND CONDITIONING PERMITS.** (a) The
25 department or the governing body of a municipality may not revoke, withdraw its

ASSEMBLY BILL 601

1 approval, or place an additional restriction or condition on a mooring permit under
2 this section unless one of the following applies:

3 1. The permit holder consents to the revocation or additional condition or
4 restriction.

5 2. The permit holder provided inaccurate information relating to the permit.

6 3. The permit holder violates a requirement or existing condition applicable to
7 the permit.

8 4. The department or the governing body compensates the permit holder for the
9 costs incurred in reliance on the permit if the department issued the permit in error.

10 (b) If the department or a governing body of a municipality issued a mooring
11 permit under this section in error, the department or the governing body may
12 validate the permit by granting a waiver of any requirement or condition violated by
13 the mooring for which the permit was issued instead of providing compensation
14 under par. (a) 4.

15 **SECTION 8.** 31.045 (3) of the statutes is created to read:

16 31.045 (3) (a) The department or a drainage board may not revoke, withdraw
17 its approval, or place an additional restriction or condition on a permit issued for a
18 dam that is subject to this section, unless one of the following applies:

19 1. The permit holder consents to the revocation or additional condition or
20 restriction.

21 2. The permit holder provided inaccurate information relating to the permit.

22 3. The permit holder violates a requirement or existing condition or restriction
23 applicable to the permit.

24 4. The department or the drainage board compensates the permit holder for the
25 costs incurred in reliance on the permit if the department issued the permit in error.

ASSEMBLY BILL 601**SECTION 8**

1 (b) If the department issued, or the drainage board approved, a permit for a
2 dam subject to this section in error, the department may validate the permit by
3 granting a waiver of any requirement or condition violated by the dam construction,
4 raising, or enlarging for which the permit was issued instead of providing
5 compensation under par. (a) 4.

6 **SECTION 9.** 59.69 (16) of the statutes is created to read:

7 **59.69 (16) REVOKING OR MODIFYING PERMITS OR WRITTEN APPROVALS.** (a) In this
8 subsection:

9 1. “Permit” means any written permit or approval granted to a recipient that
10 relates to a zoning ordinance enacted under this section.

11 2. “Recipient” means any person who has received a permit.

12 (b) A county may not revoke or modify a permit unless one of the following
13 applies:

14 1. The recipient consents to the revocation or modification of the permit.

15 2. The recipient provided inaccurate information in applying for or obtaining
16 the permit.

17 3. The recipient violates a condition in the permit.

18 4. The county compensates the recipient for the costs incurred in reliance on
19 the permit if the county issued the permit in error.

20 (c) If the county issued the permit in error, the county may grant a special
21 exception or variance, under s. 59.694, of any requirement violated by the activity
22 for which the permit was issued instead of providing compensation under par. (b) 4.

23 **SECTION 10.** 60.61 (7) of the statutes is created to read:

24 **60.61 (7) REVOKING OR MODIFYING PERMITS OR WRITTEN APPROVALS.** (a) In this
25 subsection:

ASSEMBLY BILL 601

1 1. "Permit" means any written permit or approval granted to a recipient that
2 relates to a zoning ordinance enacted under this section.

3 2. "Recipient" means any person who has received a permit.

4 (b) A town may not revoke or modify a permit unless one of the following
5 applies:

6 1. The recipient consents to the revocation or modification of the permit.

7 2. The recipient provided inaccurate information in applying for or obtaining
8 the permit.

9 3. The recipient violates a condition in the permit.

10 4. The town compensates the recipient for the costs incurred in reliance on the
11 permit if the town issued the permit in error.

12 (c) If the town issued the permit in error, the town may grant a special exception
13 or variance, using the standards described in s. 59.694 (7), of any requirement
14 violated by the activity for which the permit was issued instead of providing
15 compensation under par. (b) 4.

16 **SECTION 11.** 62.23 (7) (j) of the statutes is created to read:

17 62.23 (7) (j) *Revoking or modifying permits or written approvals.* 1. In this
18 paragraph:

19 a. "Permit" means any written permit or approval granted to a recipient that
20 relates to a zoning ordinance enacted under this section.

21 b. "Recipient" means any person who has received a permit.

22 2. A city may not revoke or modify a permit unless one of the following applies:

23 a. The recipient consents to the revocation or modification of the permit.

24 b. The recipient provided inaccurate information in applying for or obtaining
25 the permit.

ASSEMBLY BILL 601**SECTION 11**

1 c. The recipient violates a condition in the permit.

2 d. The city compensates the recipient for the costs incurred in reliance on the
3 permit if the city issued the permit in error.

4 3. If the city issued the permit in error, the city may grant a special exception
5 or variance, under par. (e), of any requirement violated by the activity for which the
6 permit was issued instead of providing compensation under subd. 2. d.

7 **SECTION 12.** 84.25 (14) of the statutes is created to read:

8 84.25 (14) REVOKING OR MODIFYING A PERMIT OR APPROVAL. (a) Except as provided
9 in par. (b), after an approval is given under sub. (4) or a permit is granted under sub.
10 (7), the department may not revoke or modify the approval or permit unless the
11 person receiving the approval or permit consents to the revocation or modification,
12 provided inaccurate information to the department in obtaining the approval or
13 permit, or has violated a term or condition of the approval or permit.

14 (b) The department may revoke or modify an approval given under sub. (4) or
15 a permit granted under sub. (7) if the department gave the approval or granted the
16 permit in error and the department compensates the person receiving the approval
17 or permit for the costs incurred by the person in reliance on having obtained the
18 approval or permit. Unless the department provides compensation under this
19 paragraph, the department shall waive any requirement that was not satisfied by
20 a person receiving an approval or permit in error and that would have prevented the
21 department from giving the approval or granting the permit absent the department's
22 error.

23 **SECTION 13.** 101.12 (2) of the statutes is amended to read:

24 101.12 (2) Plans of said buildings, structures, and components shall be
25 examined for compliance with the rules of the department, and a statement of the

ASSEMBLY BILL 601

1 examination and approval shall be returned to the designer and owner before
2 construction is started. Nothing in this section shall relieve the designer of the
3 responsibility for designing a safe building, structure, or component.

4 **SECTION 14.** 101.12 (3) (a) of the statutes is amended to read:

5 101.12 (3) (a) Accept the examination and approval of essential drawings,
6 calculations, and specifications in accordance with sub. (1) performed by cities of the
7 1st class provided the same are examined and approved in a manner approved by the
8 department.

9 **SECTION 15.** 101.12 (3) (am) 1., 2. and 4. of the statutes are amended to read:

10 101.12 (3) (am) 1. Accept the examination and approval of essential drawings,
11 calculations, and specifications in accordance with sub. (1) performed by a 2nd class
12 city in conformity with the requirements of this paragraph.

13 2. The department shall promulgate rules for the administration of a program
14 to certify 2nd class cities to perform the examination and approval of essential
15 drawings, calculations, and specifications in accordance with sub. (1).

16 4. ~~Owners~~ An owner within the 2nd class city may obtain ~~examinations a~~
17 statement of examination and approval from the city or the department.

18 **SECTION 16.** 101.12 (3) (b) of the statutes is amended to read:

19 101.12 (3) (b) Accept the examination and approval of essential drawings,
20 calculations, and specifications in accordance with sub. (1) for buildings containing
21 less than 50,000 cubic feet of volume and alterations to buildings containing less
22 than 100,000 cubic feet of volume performed by cities, villages, towns or counties,
23 provided the same are examined and approved in a manner approved by the
24 department. The department shall determine and certify the competency of all such
25 examiners.

ASSEMBLY BILL 601**SECTION 17**

1 **SECTION 17.** 101.12 (3) (br) of the statutes is amended to read:

2 101.12 (3) (br) Accept the review and determination on variances for buildings
3 containing less than 50,000 cubic feet of volume and alterations to buildings
4 containing less than 100,000 cubic feet of volume performed by certified
5 municipalities if the department has certified the competency of a municipality to
6 issue variances and if the variances are reviewed and decided on in a manner
7 approved by the department. Owners may submit variances to the municipality or
8 the department.

9 **SECTION 18.** 101.12 (3) (h) of the statutes is amended to read:

10 101.12 (3) (h) Require all local officers not authorized by the department to
11 grant approvals as provided in pars. (a) and (b) to deny permits or licenses for
12 construction or use of public buildings, public structures, and places of employment
13 until the required essential drawings and, calculations, and specifications have been
14 examined and approved by the department.

15 **SECTION 19.** 101.12 (4) of the statutes is created to read:

16 101.12 (4) (a) In this subsection:

- 17 1. “Local governmental unit” means a city, village, town, or county.
18 2. “Plans” means essential drawings, calculations, and specifications.
19 3. “Recipient” means a person who has received approval of plans in accordance
20 with sub. (1) or a variance in accordance with sub. (3) (bm) or (br).

21 (b) The department or a local governmental unit may not modify or revoke an
22 approval of plans or a variance it granted under this section unless one of the
23 following applies:

- 24 1. The recipient consents to the modification or revocation of the plans or the
25 variance.

ASSEMBLY BILL 601

1 2. The recipient provided inaccurate information related to the plans or
2 variance.

3 3. The recipient violates a requirement or condition imposed on the plans or on
4 the variance.

5 4. The department or the local governmental unit compensates the recipient
6 for the costs incurred in reliance on the plans or variance, if the department or the
7 local governmental unit approved the plans or variance in error.

8 (c) If the department or local governmental unit approved plans or a variance
9 under this section in error, the department or local governmental unit may validate
10 the plans or variance by granting a waiver of any condition or requirement in the
11 plans or variance that was violated by the activity for which the plans or variance
12 were approved, instead of providing compensation under par. (b) 4.

13 **SECTION 20.** 101.1205 (6m) of the statutes is created to read:

14 101.1205 (6m) (a) In this subsection:

15 1. “Local governmental unit” means a city, village, town, or county.

16 2. “Recipient” means a person who has received approval of plans submitted
17 under sub. (2)

18 (b) The department or a local governmental unit may not modify or revoke an
19 approval of plans it granted under this section unless one of the following applies:

20 1. The recipient consents to the modification or revocation of the plans.

21 2. The recipient provided inaccurate information related to the plans.

22 3. The recipient violates a requirement or condition imposed on the plans.

23 4. The department or the local governmental unit compensates the recipient
24 for the costs incurred in reliance on the plans, if the department or the local
25 governmental unit approved the plans in error.

ASSEMBLY BILL 601

1 (c) If the department or local governmental unit approved plans under this
2 section in error, the department or local governmental unit may validate the plans
3 by granting a waiver of any condition or requirement in the plans that was violated
4 by the activity for which the plans were approved, instead of providing compensation
5 under par. (b) 4.

6 **SECTION 21.** 281.38 of the statutes is created to read:

7 **281.38 Revoking or modifying water quality certifications.** (1) In this
8 section, “water quality certification” means a water quality certification required
9 under s. 281.36 or under rules promulgated under subch. II of this chapter to
10 implement 33 USC 1341 (a).

11 (2) (a) Except as provided in par. (c), the department may not revoke or modify
12 a water quality certification unless one of the following applies:

13 1. The recipient consents to the revocation or modification of the water quality
14 certification.

15 2. The recipient provided inaccurate information related to the water quality
16 certification.

17 3. The recipient violates a condition in the water quality certification.

18 4. If the department issued the water quality certification in error, the
19 department compensates the recipient for the costs incurred in reliance on the water
20 quality certification.

21 (b) If the department issued a water quality certification in error, the
22 department may validate the water quality certification by granting a waiver of any
23 requirement that would be violated by the activity for which the water quality
24 certification was issued instead of providing compensation under par. (a) 4., unless
25 a waiver would violate 33 USC 1341.

ASSEMBLY BILL 601

1 (c) The department may revoke or modify a general water quality certification
2 issued under s. 281.36 (8) as provided in s. 281.36 (8) (bn) 2. or (c).

3 **SECTION 22.** 283.53 (2) (a) (intro.) of the statutes is amended to read:

4 283.53 (2) (a) (intro.) ~~Any~~ Subject to sub. (2r), any permit issued by the
5 department under s. 283.31 or 283.33 may, after an opportunity for hearing, be
6 modified, suspended or revoked, in whole or in part, for cause, including but not
7 limited to:

8 **SECTION 23.** 283.53 (2r) of the statutes is created to read:

9 283.53 (2r) (a) The department may not revoke, suspend, or modify a permit
10 issued under s. 283.33 for a construction site without the consent of the permittee for
11 any cause other than a cause described in sub. (2) (a) 1. or 2., unless the department
12 compensates the recipient for the costs incurred in reliance on the permit.

13 (b) If the department issued a permit under s. 283.33 for a construction site in
14 error, the department may validate the permit by granting a waiver of any
15 requirement that would be violated by the activity for which the permit was granted
16 instead of providing compensation under par. (a), unless a waiver would violate the
17 Federal Water Pollution Control Act, 33 USC 1251 to 1387.

18

(END)