forth in 29.61, 59.15 (2) (c) and 59.16. 49 Atty. Gen. 180.

29.62 History: 1917 c. 668 s. 3; 1917 c. 676 s. 3; Stats. 1917 s. 29.62; 1919 c. 436; 1919 c. 625 s. 2; 1921 c. 321; 1923 c. 54; 1925 c. 90, 282, 301, 339; 1925 c. 454 s. 4; 1927 c. 221; 1929 c. 99; 1933 c. 18, 92, 156; 1933 c. 491 s. 2; 1933 c. 496; 1935 c. 211; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (4).

The conservation commission has power to issue permits for seining of carp over lands which have been submerged by erection of a dam. 13 Atty. Gen. 578.

The provisions of 29.30, Stats. 1923, requiring the securing of a license and displaying of a flag upon nets used to take rough fish, do not apply to taking of rough fish when authorized by the conservation commission under 29.62. 14 Atty. Gen. 80.

29.623 History: 1957 c. 243; Stats. 1957 s. 29.623; 1969 c. 276 s. 588 (4).

29.625 History: 1925 c. 74; Stats. 1925 s. 29.625; 1935 c. 412; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (4).

Provisions of 29.625, Stats. 1925, were construed in 14 Atty. Gen. 484.

29.626 History: 1929 c. 165; Stats. 1929 s. 29.626.

29.63 History: 1917 c. 668 s. 3; Stats. 1917 s. 29.63; 1919 c. 696 s. 1; 1925 c. 352 s. 1, 2; 1927 c. 130; 1931 c. 429 s. 1; 1933 c. 329 s. 2; 1935 c. 498 s. 2; Stats. 1935 s. 29.33 (20), 29.63; 1939 c. 502; 1943 c. 345; 1945 c. 216; 1947 c. 27, 185; 1949 c. 182, 394, 583; Stats. 1949 s. 29.63; 1951 c. 487; 1953 c. 556 s. 32; 1955 c. 10, 175, 696 s. 10, 11; 1959 c. 561; 1965 c. 84; 1967 c. 26 s. 94; 1967 c. 29 s. 5; 1969 c. 276 s. 588 (4).

An applicant for a hunting license who makes a false affidavit that he has not been convicted of any violation of game laws during the previous year, if an affidavit is required by the conservation commission to be made as a condition to obtain such license, can be punished under provisions of 29.63 (1) (d), Stats. 1927. 18 Atty. Gen. 54.

A licensee of a muskrat farm forfeits all rights to muskrats in case his license is revoked. 18 Atty. Gen. 707.

The penalty prescribed in 29.63 (1) (d), Stats. 1929, does not apply to one using an untagged trap under 29.13 (1), as seizure and forfeiture of said trap is a penalty in contemplation of the game laws. 19 Atty. Gen. 212.

Where a fur farm license is granted to a partnership and one of the partners is convicted of violation of game laws, the license is revoked. 19 Atty. Gen. 548.

One who paddles a boat and holds a light for another illegally fishing may be convicted as a principal. 22 Atty. Gen. 381.

Violations of conservation commission orders issued under ch. 29 cannot be punished by penalties provided for violations of ch. 23. 25 Atty. Gen. 292.

A plea of nolo contendere may in the court's discretion be rejected. If received, the court's docket should show the plea and the court's adjudication of guilt (as well as other proceedings) as in any other case. The court should adjudge defendant guilty on his plea before imposing sentence. 33 Atty. Gen. 99.

29.635 History: 1949 c. 583; Stats. 1949 s. 29.635; 1953 c. 556 s. 33; 1957 c. 308; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (4).

See note to 973.12, citing State v. Meyer, 258 W 326, 46 NW (2d) 341.

All violations of the conservation laws after the effective date of ch. 583, Laws 1949, are subject to the penalties therein prescribed, regardless of the date of prior conviction. 39 Atty. Gen. 93.

29.64 History: 1931 c. 278 s. 2; Stats. 1931 s. 29.64.

29.641 History: 1905 c. 404 s. 1; Supl. 1906 s. 1498b—1; 1909 c. 525; 1913 c. 772 s. 50; 1915 c. 594 s. 75; 1915 c. 634 s. 5; Stats. 1919 s. 4562a; 1925 c. 4; Stats. 1925 s. 348.381; 1955 c. 696 s. 257; Stats. 1955 s. 29.641; 1969 c. 276.

29.642 History: 1897 c. 221 s. 13; Stats. 1898 s. 4562c; 1919 c. 696 s. 1; 1925 c. 4; Stats. 1925 s. 348.383; 1927 c. 182; 1947 c. 102; 1951 c. 93; 1953 c. 93; 1955 c. 696 s. 259; Stats. 1955 s. 29.642.

A nonresident who, by a false statement concerning his residence, obtains a resident hunting license violates this section. 14 Atty. Gen. 404.

29.643 History: 1897 c. 221 s. 12; Stats. 1898 s. 4562b; 1919 c. 696 s. 1; 1925 c. 4; Stats. 1925 s. 348.382; 1953 c. 93; 1955 c. 696 s. 258; Stats. 1955 s. 29.643; 1961 c. 389.

29.644 History: 1917 c. 668 s. 5; Stats. 1917 s. 4562d; 1925 c. 4; Stats. 1925 s. 348.384; 1955 c. 696 s. 260; Stats. 1955 s. 29.644; 1967 c. 26 s. 94; 1969 c. 276 s. 588 (4).

29.645 History: 1961 c. 389; Stats. 1961 s. 29.645.

29.65 History: 1933 c. 389; Stats. 1933 s. 29.65; 1953 c. 319; 1965 c. 249; 1967 c. 26 s. 94; 1967 c. 29 s. 2; 1969 c. 276 ss. 218, 588 (4).

29.66 History: 1961 c. 389; Stats. 1961 s. 29.66; 1967 c. 26 s. 94; 1969 c. 255; 1969 c. 276 s. 588 (4); 1969 c. 394.

29.68 History: 1963 c. 89; Stats. 1963 s. 29.68; 1965 c. 190; 1969 c. 394.

Liability of landowner to persons entering for recreational purposes. Lehmann, 1964 WLR 705.

CHAPTER 30.

Navigable Waters, Harbors and Navigation.

Editor's Notes: (1) Ch. 30 was repealed and recreated by ch. 441, Laws 1959 (Bill 1-A); the new ch. 30 consisting of restatements from the old ch. 30 and new provisions; and provisions from ch. 31 (which was otherwise changed); 66.073; ch. 138, which was repealed, and some provisions from ch. 762, Laws 1913. The cross reference table is designed to assist in tracing the various provisions of the old law into the sections of this bill. It does not show (except in the case of complete repeals) what specifically happened to a particular provision of the

old law, i.e., whether it was substantially changed or restated without change. To find that information, turn to the new section and the note appended thereto. Changes in ss. 67.04 and 195.40 were also made by said ch. 441.

(2) 30.45 to 30.50, created by ch. 441, and 30.50 to 30.80, created by ch. 505, Laws 1959, relate to the same general subject matter, the regulation of water craft. Since 30.50 to 30.80 were enacted later, they supersede 30.45 to 30.50 and, therefore, the reference in the table to the latter and to the sections of the 1957 Stats. from which derived, have been deleted from the table. Said 30.45 to 30.50 were subsequently repealed by ch. 660 s. 33, Laws 1959.

CONVERSION TABLE

Stats. 1957			Stats. 1959
30.01	(1)		30.10 (1)
	(2)		30.10 (2)
	(3)		30.10 (3)
	(4)(a)		30.10 (4)(a)
	(4)(b)		30.01 (1)
	(4)(c)		30.10 (4)(b)
30.02	(1)(a)	(1st sentence)	30.11 (1)
			30.13 (3)
			30.05 (last 2 sentences)
			30.11 (2)
			30.13 (3)
	(1)(b)	(1st sentence)	30.12 (1), (2)(a)
		(2nd sentence)	30.14 (2)
	(1)(ba)		30.12 (2)(b)
	(1)(c)	(1st sentence)	30.13 (4)
		(2nd sentence)	30.14 (2)
	(1)(d)		30.13 (2)
	(1)(e)		30.11 (3)
			30.13 (3)
	(1)(f)		30.11 (4)
	(1)(g)		30.14 (1)
	(2)	(1st sentence)	30.30 (1), (2)
		(2nd sentence)	30.30 (6), 30.31 (2)
	(3)	(1st sentence)	30.31 (1)
		(2nd sentence)	30.30 (5)
			30.31 (4)
		(3rd sentence)	30.34 (5)
	(4)		30.16 (1)
	(5)		30.16 (2)
	(6)		30.31 (1)
	(7)		30.30 (3), (4)
			30.31 (6)
	(8)(a)		30.30 (3), (4)
			30.31 (1)
	(8)(b) to (f)		30.31 (6)
	(8)(g)		30.32 (8)
	(8)(h)		30.34 (2)
	(8)(i) to (l)		30.31 (6)
30.03	(1)	(1st sentence)	30.30 (4)
		(2nd sentence)	30.31 (6)
	(2)		30.30 (7)
			30.34 (5)
30.04	(1) to (7)		30.30 (5), (6)
	(8)		30.31 (3)
30.05	(1)		30.30 (3)
			31.38 (1)
	(2)		30.31 (2)
			31.38 (2)
	(3)		30.30 (5)
			31.38 (3)
	(4) to (6)		30.30 (4)
			30.31 (6)
			30.34 (2)
			31.38 (4)
	(7)	(1st sentence)	30.30 (3)
		(2nd sentence)	30.31 (5)
			31.38 (5)
30.065			30.17
30.07			Repealed
30.08			Repealed
30.083			Repealed
30.085	(1)		30.37 (1), (2)
	(2)(a)		30.37 (2), (3)
	(2)(b)		30.37 (3)
			17.22 to 17.25
	(2)(c)		30.37 (4)
	(3)		30.37 (5)
	(4)		30.38 (2)
30.085	(5)		30.38 (5)
	(6)(a)		30.32 (1), (2), (3)
	(6)(b)		30.32 (5)
	(6)(c)		30.32 (6)
	(6)(d)	(1st sentence)	30.32 (7)
		(2nd sentence)	30.32 (8)
	(6)(e)		30.32 (9)
	(6)(f)		30.32 (4)
	(6)(g)		30.34 (4)
	(7)(a)		30.38 (1)(b), (5), (7), (8)
	(7)(b)		30.38 (8)(e), (9)
	(7a)		30.38 (11)
	(8)	(1st & 4th sent.)	30.38 (9)
		(2nd & 3rd sent.)	30.38 (6)
	(9)(a)		30.30 (5)
	(9)(b)		30.31 (4)
	(9)(c)		30.31 (4)
	(10)		30.34 (5)
	(11)(a)		30.38 (1)(b), (c)
	(11)(b)	(1st sentence)	30.31 (7)
		(2nd sentence)	30.38 (8)(f)
	(11)(c)		30.13 (3)
	(11)(d)		30.30 (6)
	(12)(a)		30.34 (3)(a)
	(12)(b)		30.34 (3)(a)
	(12)(c)		30.34 (3)(b)
	(12)(d)		30.34 (3)(c)
	(12)(e)		30.34 (3)(b)
	(12)(f) 1.	(1st sentence)	Repealed
		(2nd to 5th sent.)	30.35 (1)
		(6th sentence)	30.35 (5)
		(7th & 8th sent.)	30.35 (4)
		(last sentence)	30.35 (5)
	(12)(f) 2.	(1st sentence)	30.35 (2a)
		(remainder)	30.35 (2)
	(12)(f) 3.		30.34 (1)
	(12)(f) 4.		30.35 (6)
	(12)(f) 5.		30.35 (1)
	(12)(f) 6.		30.35 (3)
	(12)(f) 7.		30.35 (5)
	(12)(f) 8.		30.38 (6)
	(12)(f) 9.		30.01 (3)
	(12)(f) 10.		30.35 (7), (8)

Stats. 1957	Stats. 1959
30.086	Repealed
30.087	30.21
30.09	Repealed
30.19	30.33 (1)
30.20	30.33 (1)
30.21	30.33 (2)
30.22	30.22
30.23	30.23
31.02 (5)	30.20 (2)
(6)	30.20 (2)
(7)	30.20 (1)(a), (b)
31.14	30.18
31.23 (1)	30.15 (1), (2), (3) 31.23 (1)
31.24	30.03
31.25	30.15 (4), 31.25
31.40	30.24
31.50	30.02
66.073	30.13 (2), (3) 30.30 (8)
138.01	Repealed
138.02	30.37 (2), (3)
138.03	30.37 (4)
138.04	30.38 (12)
138.05 (1st sentence)	30.38 (1)(b), (7)
(2nd sentence)	Repealed
138.06	30.38 (9)
138.07 (1st sentence)	30.38 (6)
(remainder)	Repealed
138.08	30.30 (6)
138.09	30.13 (3)
138.10	30.31 (7)
138.11	30.38 (8)(d), (f)
138.12	30.37 (5)
138.13	Repealed
138.14 (1st sentence)	30.38 (2)
(2nd sentence)	30.37 (5)
(3rd sentence)	30.38 (2)
(4th sentence)	30.32
138.15	30.38 (12)
138.16	30.38 (14)
138.17	30.38 (14)
138.18	Repealed
138.19	30.38 (13)
138.20	30.38 (15)
138.21	30.38 (13)(c)
138.22	30.38 (1)(a)
Ch. 762, laws of 1913	
959-78k	30.37 (1)
78L	30.37 (2), (3), (4)
78m 1.	30.38 (5)
78m 2.	Repealed
78m 3.	30.38 (5), (6), (7)
78m 4.	30.38 (1), (8), (9)
78m 5.	30.32 30.38 (3)
78m 6.	30.31 (7) 30.38 (8)(d)
78m 7.	30.38 (9)
78m 8.	Repealed
78m 9.	30.37 (5)
78m 10.	30.34 (3) 30.35
78m 11.	30.35 (2)
78m 12.	30.38 (14)
78m 13.	30.38 (13)

30.01 History: 1959 c. 441; Stats. 1959 s. 30.01; 1969 c. 276.

Legislative Council Note, 1959: The definition of "municipality" is a restatement of s. 30.01 (4) (b) of the statutes. The term is used in a broader sense than its ordinary meaning in that it includes counties.

The remainder of the definitions are new. They are designed to clarify as well as contribute to the brevity of the statutes. The definition of "harbor facility" is based principally upon s. 30.085 (12) (f) 9. of the statutes but also covers numerous other lengthy statutory enumerations of different types of harbor facilities. [Bill 1-A]

30.02 History: 1959 c. 441; Stats. 1959 s. 30.02; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: Restates s. 31.50 of the statutes. [Bill 1-A]

30.03 History: 1959 c. 441; 1959 c. 660 s. 29; Stats. 1959 s. 30.03; 1961 c. 148; 1963 c. 313; 1965 c. 199; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: Restates s. 31.24 of the statutes [Bill 1-A]

Where the circuit court in an enforcement proceeding denied the petition of the public service commission, this was an appealable order. The defendant was not required to ask for a rehearing under 196.405 nor for judicial review under 196.41. The circuit court could not take additional evidence; it could only remand to the commission for further proceedings. On remand by the supreme court the circuit court may still refer the case to the commission to take further testimony. State v. Lamping, 36 W (2d) 328, 153 NW (2d) 23.

30.04 History: 1959 c. 441; Stats. 1959 s. 30.04.

Legislative Council Note, 1959: In this bill [1, A], the lines previously called "shore lines" and "dock lines" are called "bulkhead lines" and "pierhead lines" respectively. This section is designed to make clear that the validity of the old shore and dock lines is unimpaired and that it is unnecessary for municipalities to go through the formality of reestablishing them as bulkhead and pierhead lines. [Bill 1-A]

30.05 History: 1959 c. 441; Stats. 1959 s. 30.05.

Legislative Council Note, 1959: This section is new but merely is intended to restate and clarify present law and practice. Substantial tracts of submerged lands in Lake Michigan have been granted from time to time by the legislature to the city or county of Milwaukee for public park, highway or harbor development purposes. The public service commission has construed such grants to mean that the state no longer has any interest in and the commission no longer has jurisdiction over such lands or the water above them, insofar as shore or dock lines (now bulkhead and pier-

head lines) or deposits or structures or removal of materials are concerned. It is probable that this also is the intent of that part of present s. 30.02 (1) (a) which states that "every municipality, except counties and cities having a population of three hundred thousand or more, may, subject to the approval of the public service commission, by ordinance establish both a shore and a dock or pier line . . ." The new section, however, is not intended to deprive the commission of jurisdiction over the operation and facilities of public utilities, such as referred to in s. 30.21.

Following are acts which have conveyed title to submerged lands to the city of Milwaukee: Chs. 197 and 206, laws 1893; chs. 191 and 200, laws 1897; ch. 608, laws 1907; chs. 358, 359 and 360, laws 1909; ch. 198, laws 1911; chs. 183 and 254, laws 1913; ch. 389, laws 1915; chs. 307, 309 and 560, laws 1921; chs. 284 and 285, laws 1923; ch. 415, laws 1925; chs. 150, 151 and 516 (sec. 15), laws 1929; chs. 265 and 381, laws 1931; ch. 261, laws 1933; and ch. 297, laws 1937. Similar grants were made to Milwaukee county by ch. 178, laws 1933 and ch. 194, laws 1935. [Bill 1-A]

30.06 History: 1959 c. 441; Stats. 1959 s. 30.06; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: This section is new. It was drafted as the result of complaints and suggestions received at the public hearings held by the ports and navigation committee of the legislative council. The complaints and suggestions referred to the difficulty of determining whether the state or the federal government, or both, have jurisdiction over certain navigable waters and to the burden of obtaining permits from both jurisdictions. The new section does not itself waive any of the requirements of the state law but would authorize the public service commission to do so under certain circumstances. [Bill 1-A]

30.10 History: 1959 c. 441; Stats. 1959 s. 30.10.

Legislative Council Note, 1959: This section restates s. 30.01 of the statutes, with the exception of sub. (4) (b) thereof. Subsection (4) (b) of the present section—the definition of "municipality"—has been restated in new s. 30.01.

Certain verbal changes have been made for the purpose of clarifying the law and eliminating obsolete or unnecessary language.

1. The reference in present s. 30.01 (1) and (2) to lakes and streams meandered and returned as navigable in the original United States government survey has been omitted for the reason that the real issue in every case is navigability in fact and this generally can be proved without difficulty, under the liberal test of navigability used in Wisconsin, in all lakes and streams large enough to have been meandered. The meander line also is meaningless from the standpoint of establishing respective rights of riparian owners and the public; it is the ordinary high water line that controls.

2. In sub. (2), the phrase "permission of the state" was substituted for "permission of the legislature" on the ground that the former phrase more accurately reflects current practice. At one time the legislature itself granted permission for structures in navigable waters but most of these functions now have been delegated to state agencies. The word "rivers" was omitted from sub. (2) on the ground that it is covered by the term "streams".

3. In sub. (4) (b) the provision relative to title to lands bordering erroneously meandered lakes and streams has been clarified by substituting "United States government" for "original grantor". That the United States government is the "original grantor" referred to in present s. 30.01 (4) (c) is clearly brought out in the history of that provision (drafting record of ch. 154, laws 1931 in the Wis. Legislative Reference Library — particularly the brief by O'Melia and Kaye entitled "The Status of Title to Lands Bordering on Erroneously Meandered Lakes"). [Bill 1-A]

On taking private property for public use see notes to sec. 13, art. I; on legislative power generally see notes to sec. 1, art. IV; on internal improvements see notes to sec. 10, art. VIII; and on navigable waters see notes to sec. 1, art. IX.

1. Navigable waters.
2. Riparian rights.

1. Navigable Waters.

It is the settled law of this state that streams of sufficient capacity to float logs to market are navigable; and it is not essential to the public easement that this capacity be continuous throughout the year, but it is sufficient that the stream have periods of navigable capacity ordinarily recurring from year to year, and continuing long enough to make it useful as a highway. Olson v. Merrill, 42 W 203. See also: Cohn v. Wausau Boom Co. 47 W 314, 2 NW 546; Weatherby v. Meiklejohn, 56 W 73, 18 NW 697; A. C. Conn Co. v. Little Suamico Lumber Mfg. Co. 74 W 652, 43 NW 660; Falls Mfg. Co. v. Oconto R. Imp. Co. 87 W 134, 58 NW 257; Willow River Club v. Wade, 100 W 86, 76 NW 273; and Bloomer v. Bloomer, 128 W 297, 107 NW 974.

Sec. 1607a, Stats. 1911, providing that lakes which have been meandered and returned as navigable by the U. S. government surveyors, and also those which have been meandered and are navigable in fact, are declared to be navigable and public waters, is not to be construed as a declaration that nonmeandered lakes are nonnavigable. Bixby v. Parish, 148 W 421, 134 NW 838.

Whether a given body of water is navigable within the meaning of ch. 410, Laws 1923, conferring authority upon the railroad commission to permit persons to take marl from the beds of navigable lakes, is, in the absence of express legislative declaration, one of fact. Angelo v. Railroad Comm. 194 W 543, 217 NW 570. See also: Nekoosa-Edwards Paper Co. v. Railroad Comm. 201 W 40, 228 NW 144, 229 NW 631; Wausaukee v. Lauerman, 240 W 320, 3 NW (2d) 362; and 17 Atty. Gen. 52.

Since 1911, when the first water power act was enacted, it has not been necessary, in determining navigability of streams, to establish a past history of floating of logs, or other use for commercial transportation, because any stream is "navigable in fact" which is capable of floating any boat, skiff or canoe of

the shallowest draft used for recreational purposes. Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

When construction of a dam creates a 54-acre lake which is used by the public for a number of years, the conservation department would be justified in considering the lake navigable and subject to state regulations. 51 Atty. Gen. 190.

Wisconsin law of waters. Kanneberg, 1946 WLR 345.

Judicial criteria of navigability in federal cases. Laurent, 1953 WLR 8.

2. Riparian Rights.

Raftsmen on navigable streams have no right to moor their rafts in such manner as to deprive wharf owners of access to their wharves. Harrington v. Edwards, 17 W 586.

The right of a city gas light company to lay its pipes across the bed of a navigable river within a city is subordinate to the right of vessels to the free navigation of such river. Milwaukee G. L. Co. v. Schooner "Gamecock," 23 W 144.

"Riparian rights proper are held to rest upon title to the bank of the water, and not upon the title to the soil under the water; riparian rights proper being the same, whether the riparian owner owns the soil under the water or not." Diedrich v. Northwestern Union R. Co. 46 W 248, 262.

A riparian owner on navigable water (whether or not the owner of the soil under the water), may construct in front of his land, in shoal water, proper wharves, piers and booms, in aid of navigation, at his peril of obstructing it, far enough to reach actually navigable water; but this right is subordinate to the public use of the water and may be regulated or prohibited by law. Cohn v. Wausau Boom Co. 47 W 314, 2 NW 546.

The owner of the bank of a navigable stream by purchase from the United States is conclusively presumed to be the owner of the stream to the middle or thread thereof. The same presumption arises in favor of the owner of the bank, regardless of how his title was acquired; but if not directly obtained from the government it is not conclusive. Norcross v. Griffiths, 65 W 599, 27 NW 606.

A riparian owner is entitled to compensation for land taken by the state for the improvement of a navigable stream, so far as it is taken for the dam itself or the embankments, or for the overflow, or so far as water is diverted from its natural course, or from the uses to which he would otherwise be entitled to devote it. Green Bay & M. C. Co. v. Kaukauna W. P. Co. 90 W 370, 61 NW 1121.

Although the title to the bed of a navigable stream is in the riparian owners, yet the right to fish in such a stream is a right common to the public, and one who keeps within the limits of the stream may exercise such right without being guilty of trespass. Willow River Club v. Wade, 100 W 86, 76 NW 273.

Although a patent from the United States purporting to convey certain types of lands cannot be impeached in an action at law, much less collaterally, yet the Interior department is not authorized to dispose of any lake or any section or fraction of a lake, by patent or otherwise; and a patent which purports to cover any portion of a navigable lake is to that extent inoperative and void, though it may be valid insofar as it covers dry land. The title to and absolute dominion over all lakes within its borders is conceded to the state, subject to the constitution, statutes and treaties of the United States and subject to certain limitations on the power of the state. In Wisconsin the riparian proprietor upon navigable lakes takes title only to the water's edge. Mendota Club v. Anderson, 101 W 479, 78 NW 185. See also Illinois Steel Co. v. Bilot, 109 W 418, 84 NW 855, 85 NW 402.

The mere ownership of the shore of a lake, where title stops at the water's edge by reason of the public character of such water, does not entitle one to maintain ejectment to obtain possession of land (formed by artificial filling) beyond the water's edge. Illinois Steel Co. v. Bilot, 109 W 418, 84 NW 855, 85 NW 402.

"This state, by judicial authority so long acquiesced in as to become a rule of property, quite early established as its policy the doctrine that the title to a riparian proprietor upon a navigable stream goes not by force of his patent, whether received from the government or from the state, but by the mere favor or concession of the state to the center of the stream, subject to all those public rights which were intended to be preserved for the enjoyment of the whole people by vesting the title to the beds of such streams in it in trust for their use." Franzini v. Layland, 120 W 72, 81, 97 NW 499, 502.

Riparian owners on navigable streams have only a qualified title to the beds of such streams, which title is entirely subordinated to, and not inconsistent with, the right of the state to secure and preserve to the people the full enjoyment of navigation and the rights incident thereto. The right of the public to hunt on the navigable streams of the state is, like the right to fish in such streams, an incident of the right of navigation. Hunting on navigable waters is lawful when it is confined strictly to such waters while they are in a navigable stage and between the boundaries of ordinary high water marks. Diana Shooting Club v. Husting, 156 W 261, 145 NW 816.

The owner of an upper dam has the right to withhold and store up the waters of the stream at certain periods in order that he may more properly and efficiently carry out the purpose to which he, as riparian owner, may put such waters; but this right, like all other rights which a riparian owner, as such, acquires to the waters of the stream, is restricted always to a reasonable detention or a reasonable use measured and determined with reference to the capacity of the stream, the uses to which it is and has been put, and the rights of other riparian owners. This right to reasonably detain and use flowing water seems to spring from riparian titles; not from the law regulating milldams and water powers. Apfelbacher v. State, 167 W 233, 167 NW 244.

Where a considerable part of the expanse enclosed by a dike was navigable water for 20 years or more before enclosure, no ripar-

ian owner or his predecessor in title had a legal right to destroy or impair the public easement therein by establishing or operating a drainage system. A riparian owner's rights to construct embankments are limited; he may, to protect his banks against navigable waters, at the peril of obstructing the public use, intrude into such waters as far as necessity requires. Any other extension upon the bed of such waters is wrongful and vests no right to continue the same. Land submerged by a raising of the waters of a lake, in consequence of the construction of a dam, becomes a part of the lake bed and title thereto vests in the state. Attorney General ex rel. Becker v. Bay Boom W. R. & F. Co. 172 W 363, 178 NW 569.

The public has no lawful right to enter and travel upon that portion of the shore of an inland navigable meandered lake lying between the ordinary high and low water marks; and upon such an entry the riparian owner may maintain an action of trespass. Doemel v. Jantz, 180 W 225, 193 NW 393.

The riparian rights of the property owner are subject to the public rights in a navigable stream, and until a dam has been lawfully built in such a stream there is no vested property right to obstruct navigation by building a dam therein, it being a matter within legislative control as to the extent and manner in which the riparian owner may obstruct such a stream, limited, however, by the state and federal constitutions. Nekoosa-Edwards Paper Co. v. Railroad Comm. 201 W 40, 228 NW 144, 229 NW 631.

The right of a riparian owner in the bed of a navigable stream is subject to the public easement of navigation, and any right to erect a structure therein is subordinate to the state's right to improve the stream in aid of navigation. (Janesville v. Carpenter, 77 W 288, and State v. Sutherland, 166 W 511, distinguished.) S. S. Kresge Co. v. Railroad Comm. 204 W 479, 235 NW 4, 236 NW 667.

Where the owner of land creates an artificial body of water upon his own premises, he may permit the public to enjoy the ordinary use of such waters, and, it may be, that by the lapse of time such enjoyment will ripen into a dedication which he will not be permitted to destroy; but such a use of the waters does not amount to an adverse possession in favor of the state. Haase v. Kingston Co-op. Cr. Asso. 212 W 585, 250 NW 444.

The title to the bed of every navigable lake within the state is in the state whether the lake has been meandered or not. Any natural waters that are usable for rowing or canoeing, even though constituting only a shallow lake or marsh, are navigable, and as such are open to the public for fishing or hunting. One may not prevent the use of navigable waters by the public for fishing. Baker v. Voss, 217 W 415, 259 NW 413.

"In Wisconsin the owner of the banks of the stream is the owner of the bed, regardless of whether the stream is navigable or nonnavigable. The owner of the submerged soil of a running stream does not own the running water, but he does have certain exclusive rights to make a reasonable use of the water as it passes over or along his land. . . . It is not within the power of the state to deprive the owner of submerged land of the right to make use of the water which passes over his land, or to grant the use of it to a nonriparian. The riparian's exclusive right to use the water arises directly from the fact that nonriparians have no access to the stream without trespass upon riparian lands." Munninghoff v. Conservation Comm. 255 W 252, 259, 38 NW (2d) 712, 715.

The state holds the beds underlying navigable waters in trust for all of its citizens, subject only to the qualification that a riparian owner on the bank of a navigable stream has a qualified title in the stream bed to the center thereof. The trust doctrine extends only to land underlying a navigable stream so long as such land constitutes part of the bed of the stream, and if the course of the stream is changed so that such land is no longer part of the river bed, it ceases to be impressed with the public trust. Muench v. Public Service Comm. 261 W 492, 53 NW (2d) 514.

The riparian owners along a lake have a right to the use of the shore line of their property; and they also have a right to the reasonable use of the water of the lake, which latter right, like the former, is a property right, and it carries with it the privilege to use the lake for bathing, swimming, and boating purposes. Bino v. Hurley, 273 W 10, 76 NW (2d) 571.

A defendant, who acquired part of a tract of land abutting on an artificial lake by deed describing the lake front boundary as running along the easterly bank, could not successfully assert that he had been accorded riparian rights to use the lake for recreational purposes as against the claim of the owners of the remainder of the tract who also had title to the submerged land, since he acquired only what was granted by the words of his conveyance—property rights to the water's edge—and had no ownership rights in the bed of the lake and hence no rights in the waters above. Mayer v. Grueber, 29 W (2d) 168, 138 NW (2d) 197.

The effect of accretion (defined as the increase in land caused by the gradual deposit by water of material on the shores, which deposit replaces the water at this location with dry land) is to vest title to the accreted soil in the riparian owner. A change in a water course by avulsion (defined as a sudden change of course in a stream so that the stream shifts from its old channel to a new channel in a very short time) does not result in a change to the title of land so affected. Baldwin v. Anderson, 40 W (2d) 33, 161 NW (2d) 553.

The public has the right to trap muskrat in navigable waters when trapping is confined strictly to such waters while they are in navigable stage and between boundaries of ordinary high water marks. 16 Atty. Gen. 728. Accord: 26 Atty. Gen. 113 and 29 Atty. Gen. 203.

Title to artificially made lands above waters of navigable lakes is in the state; the title to such lands does not arise out of any grant from the federal government; and the lands do not belong to the common school fund. The state may alienate title to lands submerged by the lake, for public park purposes, where to do so does not substan-

tially interfere with commerce or navigation. 26 Atty. Gen. 551.

Where recession of water on lands bordering on Sturgeon Bay resulted in a new shore line, each riparian owner along the old shore line became entitled to his proportionate share of the new shore line. 27 Atty. Gen. 14.

"It is the settled law of Wisconsin, announced in repeated decisions of its Supreme Court, that the ownership of riparian proprietors extends to the center or thread of the stream, subject if such stream be navigable, to the right of the public to its use as a public highway for the passage of vessels." Kaukauna W. P. Co. v. Green Bay & Miss. Canal Co. 142 US 254, 271 (1891). See also Blask v. Sowl, 309 F Supp. 909, 912 (W. D. Wis., 1967).

The nature and extent of the rights of the state and of riparian owners in navigable waters within the state, and to the soil beneath, are matters of state law to be determined by the statutes and judicial decisions of the state. (Fox River Paper Co. v. Railroad Comm. 189 W 626, 208 NW 266, affirmed.) Fox River Paper Co. v. Railroad Comm. 274 US 651.

Present and proposed legal control of water resources in Wisconsin. Coates, 1953 WLR 256.

Public rights to use and have access to navigable waters. Waite, 1958 WLR 335.

Riparian water law; lakeshore developments. Gleasner, 1966 WLR 172.

Are water rights marketable in Wisconsin? St. Peter, 1966 WLR 942.

Some observations on the law of water allocation as a variable in industrial site location. Plager, 1968 WLR 673.

Legal aspects of thermal pollution. Jost, 1969 WLR 253.

Beneficial use of water in a riparian jurisdiction. Waite, 1969 WLR 364.

30.11 History: 1959 c. 441; Stats. 1959 s. 30.11; 1961 c. 535; 1965 c. 252; 1965 c. 614 s. 57 (2g); 1969 c. 276 ss. 220, 588 (2), (5); 1969 c. 366 s. 117 (2) (a).

Legislative Council Note, 1959: This is a restatement of that part of s. 30.02 (1) (a), (e) and (f) which relates to establishing shore lines, with the following clarifications:

1. The terminology has been changed from "shore" line to "bulkhead" line so as to conform to terminology used by the federal government.

2. The requirement that copies of the ordinance establishing the bulkhead line must be filed with the public service commission is not stated in the present law, but it has been the practice of the commission to require copies of the ordinance to be filed along with copies of the map.

3. The statement that riparian proprietors may place solid structures or fill up to a bulkhead line is not in the present statutes but conforms to the general understanding of the effect of "shore lines" or "bulkhead lines".

In addition to the clarifications noted above, the new section incorporates a substantive change in that it grants to counties the right to establish bulkhead lines. Such power may be useful in those cases where the county operates the public harbor.

The new section also may change the law in that it omits the exclusion found in present s. 30.02 (1) (a) relative to municipalities having a population of 300,000 or more. New s. 30.05, however, will assure Milwaukee of full control over the submerged lands to which it has been granted title by the state. [Bill 1-A]

Since the enactment of ch. 455, Laws 1933, it has been clear that dock lines established under the statutory provision created by that section, 30.02 (1), were a limitation upon the right of a riparian owner to extend a wharf or pier into navigable waters. Madison v. State, 1 W (2d) 252, 83 NW (2d) 674.

Judicial review of a determination of the public service commission, denying the application of a town to establish a bulkhead line in the Fox river was not precluded on the theory that the trust doctrine, that the state holds title to the beds of navigable waters in trust for all its citizens, makes the granting or denying of the right to invade the bed of a navigable water an irrefutable matter of legislative grace. The phrase "as nearly as practicable" in 30.11 (2) is not solely a geographical standard and, instead, the statutory standard contemplates an evaluation of many other factors in determining whether a proposed bulkhead line conforms "as nearly as practicable to the existing shores." Ashwaubenon v. Public Service Comm. 22 W (2d) 38, 125 NW (2d) 647, 126 NW (2d) 567.

30.12 History: 1959 c. 441; Stats. 1959 s. 30.12; 1961 c. 366; 1965 c. 28; 1965 c. 614 s. 57 (2g); 1969 c. 276 ss. 221, 588 (5).

Legislative Council Note, 1959: Subsection (2) (b) is a restatement of s. 30.02 (1) (ba) of the statutes. Subsections (1) and (2) (a) restate the first sentence of s. 30.02 (1) (b) with the following clarifications:

1. "Bulkhead line" has been substituted for "shore line"; this is merely a change in terminology, not in substance.

2. The reference in sub. (2) (a) to notice and hearing is new but merely makes the law conform to practice. The word "right" has been changed to "permit". This is intended to make the statute conform to an attorney general's opinion to the effect that the public service commission has no power to grant an irrevocable right to place structures in navigable waters. 39 Op. Atty. Gen. 230 (1950).

3. The reference in the introductory paragraph of sub. (1) to structures or deposits otherwise authorized by the legislature is new, but it is considered to be a clarification of, rather than a change in, the law. The legislature from time to time has passed many special acts as well as statutory provisions authorizing structures or deposits in navigable waters and the general prohibition in s. 30.02 (1) (b) of the present statutes clearly was not intended to make such structures and deposits unlawful. [Bill 1-A]

Editor's Note: Ch. 285, Laws 1923, ceded to the city of Milwaukee certain submerged lands in Lake Michigan and authorized the filling in and reclaiming of certain portions thereof and the conveyance to the owners of the shore land adjacent thereto, in order that the city might acquire certain other properties to be used in the construction of a municipal harbor. The statute was held valid

in Milwaukee v. State, 193 W 423, 214 NW 820. Ch. 282, Laws 1953, authorized the city of Madison to fill and dredge certain portions of Lake Wingra adjacent to a city park and to use the area for parks, lagoons, recreational facilities and parking areas, subject to the approval of the public service commission. The statute was considered in State v. Public Service Comm. 275 W 112, 81 NW(2d) 71. Ch. 485, Laws 1927, as amended by ch. 301, Laws 1931, established a dock line on Lake Monona along a substantial portion of its boundaries and authorized the city of Madison to construct and maintain on, in or over such lake, but not beyond the established dock line, parks, playgrounds, bathing beaches, municipal boathouses, piers, wharves, public buildings, highways, streets, pleasure drives, and boulevards. Ch. 485, as amended, was considered in Madison v. State, 1 W (2d) 252, 83 NW (2d) 674.

A complaint against a city for the death of a boy who was playing on a snow pile and was drowned when an overhanging shelf of ice or snow gave way and dropped him into a river, alleging that snow was deposited by the city on city property and extended over the water, but not alleging that anything was deposited on the river bed, or that the river was navigable or that navigation was obstructed, or that the deposit was unlawful or without a permit granted by the state, did not state facts sufficient to show that the city had violated 30.02 (1) (b) and 31.25, Stats. 1951, and thereby created and maintained a public nuisance. Flamingo v. Waukesha, 262 W 219, 55 NW (2d) 24.

Maintenance of a water ski jump without a permit does not support a cause of action for attractive nuisance where a child was injured in falling from it. Mazurkiewicz v. Pawinski, 32 W (2d) 211, 145 NW (2d) 186.

30.12, Stats. 1963, and its antecedents, prohibiting the deposit of any material or the placing of any structure upon the bed of any navigable water where no shoreline has been established or beyond an established shoreline, are declaratory of the pre-existing common law of Wisconsin. Hixon v. Public Service Comm. 32 W (2d) 608, 146 NW (2d) 577.

The function of the public service commission in granting or denying a permit under this section is legislative. Since a hearing is required a contested case is presented. Hixon v. Public Service Comm. 32 W (2d) 608, 146 NW (2d) 577.

The term "bed of any navigable water" for both rivers and lakes, as used in 30.02, Stats. 1949, means the area bounded by an ordinary high water line. 39 Atty. Gen. 195.

30.125 History: 1967 c. 185; Stats. 1967 s. 30.125.

30.13 History: 1959 c. 441; Stats. 1959 s. 30.13; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: Subsection (1) is designed to clarify the law by incorporating into the statutes the common law rights of riparian proprietors to build wharves and piers in aid of navigation.

The first sentence of sub. (2) restates s. 30.02 (1) (d). The terminology has been changed so that "pierhead line" means the same as the previous "dock line". The last sentence of sub. (2) restates part of s. 66.073 and broadens it to apply to all municipalities. The present provision applies only to cities.

The first sentence in sub. (3) is based upon s. 30.02 (1) and upon s. 30.085 (11) (c) and s. 138.09. The 2 latter provisions require dock lines (i.e., pierhead lines) to be approved by the municipality's board of harbor commissioners. Since the authority and procedure relative to establishing bulkhead lines is incorporated by reference, this section will make the same clarifications and changes with respect to establishing pierhead lines as s. 30.11 makes relative to establishing bulkhead lines—that is, counties will have the right to establish pierhead lines, the ordinances establishing the pierhead line will have to be filed as well as the map, and the exception relative to cities having a population of 300,000 or more will be omitted.

The last sentence of sub. (3) is a substitute for the "public interest" standard used in s. 30.02 (1) (a) and is designed to provide a somewhat better guide to the establishment of pierhead lines. "Public rights in navigable waters" is a phrase which has taken on definite meaning through judicial construction. It was thought unnecessary to repeat here the prohibition found in s. 30.02 (1) (f) relative to abridging the riparian rights of riparian owners since such rights apparently are property rights and the owner has constitutional protection against deprivation or unreasonable restriction thereof.

Subsection (4) represents a change in the present law insofar as the effect of dock lines (pierhead lines) is concerned. Present s. 30.02 (1) (c) states that "it shall be unlawful for any riparian proprietor to extend his wharf or pier into navigable water beyond the dock line as established, *if such extension materially interferes with, or obstructs navigation.*" The italicized part was added by amendment in 1949 (ch. 335), apparently because it became evident in an attempt to enforce the law on certain lakes that a strict enforcement of the law as written prior to 1949 would work great hardship on lake cottage owners, many of whom had piers extending beyond dock lines. The 1949 amendment, however, makes dock lines (pierhead lines) practically meaningless, for it becomes necessary to determine in each case whether a wharf or pier materially interferes with or obstructs navigation and a wharf or pier which does this would be unlawful even in the absence of a dock (pierhead) line. The new subsection attempts to give meaning to pierhead lines and at the same time not work undue hardship on riparian proprietors whose wharves or piers extend beyond such lines. The general rule will be that wharves and piers extending beyond lawfully established pierhead lines are unlawful, but the public service commission will be able to grant permits legalizing such structures if they do not materially obstruct navigation or reduce the effective flood flow capacity of a stream and are not detrimental to the public interest.

A wharf or pier existing in violation of sub. (4) constitutes an unlawful obstruction of navigable waters and, as such, would be a nuisance subject to abatement under s. 30.15

(4) and the owner would be subject to forfeiture under s. 30.15. [Bill 1-A]

30.14 History: 1959 c. 441; Stats. 1959 s. 30.14; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: Subsection (1) is a restatement of s. 30.02 (1) (g) of the statutes. Subsection (2) is a consolidation and restatement of the last sentence of s. 30.02 (1) (b) and the last sentence of s. 30.02 (1) (c) of the statutes. [Bill 1-A]

30.15 History: 1959 c. 441; Stats. 1959 s. 30.15; 1961 c. 151; 1969 c. 276 s. 588 (4).

Legislative Council Note, 1959: Subsections (1), (2) and (3) restate parts of s. 31.23 (1) of the statutes. Subsection (4) restates part of s. 31.25. Those parts of ss. 31.23 and 31.25 which pertain to unlawful obstructions by dams and bridges will be retained in ch. 31. The word "unlawfully" in sub. (1) (a) and (b) is new but conforms to the supreme court's interpretation of the statute in the case of Bond v. Wojahn, 269 W 235, 69 NW (2d) 258 (1955) in which it was said that the obstructions referred to are obstructions which are unlawful in the sense that they actually interfere with navigation and the rights incident thereto. See s. 30.03 for the procedure to be followed in enforcement of forfeitures and abatement of nuisances under this section. [Bill 1-A]

On forfeitures for unlawful obstruction of navigable waters see notes to 31.23; and on abatement of nuisances see notes to 31.25.

The following decisions dealt with alleged nuisances existing as the result of the placing of structures or the deposit of materials in navigable waters of the state: Walker v. Shepardson, 2 W 384; Barnes v. Racine, 4 W 454; Enos v. Hamilton, 27 W 566; Wisconsin River I. Co. v. Lyons, 30 W 61; In re F. S. Eldred, 46 W 530, 1 NW 175; Neff v. Wolf River B. Co. 50 W 585, 7 NW 436; A. C. Conn Co. v. Little Suamico L. & M. Co. 55 W 580, 13 NW 464; Larson v. Furlong, 63 W 323, 23 NW 584; Gates v. Northern P. R. Co. 64 W 64, 24 NW 494; Union Mill Co. v. Shores, 66 W 476, 29 NW 243; A. C. Conn Co. v. Little Suamico L. M. Co. 74 W 652, 43 NW 660; Allaby v. Mauston Elec. Service Co. 135 W 345, 116 NW 4; Milwaukee-Western F. Co. v. Milwaukee, 152 W 247, 139 NW 540; Breese v. Wagner, 187 W 109, 203 NW 764; Bond v. Wojahn, 269 W 235, 69 NW (2d) 258; and Colson v. Salzman, 272 W 397, 75 NW (2d) 421. See also Yates v. Judd, 18 W 118, and Yates v. Milwaukee, 10 Wall. (71 U. S.) 497.

30.16 History: 1959 c. 441; Stats. 1959 s. 30.16.

Legislative Council Note, 1959: This is a restatement of s. 30.02 (4) and (5) of the statutes, with the exception that the new section will apply to counties as well as to cities and villages. Present law mentions only cities and villages. Since counties sometimes operate harbors, it seemed desirable to also grant this power to counties. [Bill 1-A]

30.17 History: 1959 c. 441; Stats. 1959 s. 30.17.

Legislative Council Note, 1959: This is a restatement of s. 30.065 of the statutes, with the following changes:

1. The word "vessel" was changed to "watercraft" so as to make clear that the section applies to all types of "watercraft" as defined in s. 30.01.

2. The reference to "other governmental authority" was added to make this section apply to all official buoys or beacons.

3. The reference to damaging or destroying was deleted on the ground that such conduct is adequately covered by the criminal code (s. 943.01). [Bill 1-A]

30.18 History: 1935 c. 287; Stats. 1935 s. 31.14; 1943 c. 375 s. 5; 1957 c. 436, 523; 1959 c. 126; 1959 c. 441 s. 5; 1959 c. 641 s. 6; 1961 c. 134, 366; 1963 c. 32; 1965 c. 125, 252; 1965 c. 614 ss. 6, 57 (2g); 1969 c. 276 ss. 222, 588 (5).

This section does not grant jurisdiction to the public service commission to determine or adjust the rights of riparian owners injured because of a proposed diversion of nonsurplus water from a navigable stream but, instead, the power of the commission is limited to granting permits for the diversion of surplus water and, in the case of waters determined by the commission to be nonsurplus, only for agricultural and irrigation purposes when the riparian owners beneficially using such nonsurplus water have consented to such diversion. This section contemplates that a beneficial user is damaged or injured by the diversion of nonsurplus water, and when the public service commission has determined that the flow of water in a stream is not surplus water because it is being beneficially used by riparian owners, it follows that any diversion of such nonsurplus water as a matter of law would injure the riparian owners beneficially using such water and their consent to such diversion must be obtained. Nekoosa-Edwards Paper Co. v. Public Service Comm. 8 W (2d) 582, 99 NW (2d) 821.

A reduction in the volume of stream flow is not per se an injury to public rights or to riparian owners. Riparians whose consent to a diversion must be obtained are those owning land between the point of diversion and the point where the stream flows into a larger stream and loses its identity. The commission can in no case authorize a diversion if public rights are injured. The commission has continuing jurisdiction over the amount of water which may be diverted. The commission may not issue a permit for diversion to a nonriparian owner. The common law governing the use of water by riparian owners continues in force subject to the control of the commission under 31.14, Stats. 1949. Diversion of water from a lake which reduces the flow in the outlet stream is a diversion from that stream. 39 Atty. Gen. 564.

State agencies authorized by statute to engage in operations requiring the use of water need not secure a permit for diversion from the public service commission. 46 Atty. Gen. 209.

See note to 94.26, citing 54 Atty. Gen. 24.

Wisconsin's water diversion law: a study of administrative case law. Modjeska, 1959 WLR 279.

Prescriptive water rights in Wisconsin. Harnsberger, 1961 WLR 47.

Diffused surface water and riparian rights: legal doctrines in conflict. Dolson, 1966 WLR 58.

30.19 History: 1961 c. 284; Stats. 1961 s. 30.19; 1963 c. 313; 1965 c. 148; 1965 c. 614 s. 57 (2g); 1969 c. 276 ss. 223, 588 (5); 1969 c. 366 s. 117 (2) (a).

Riparian water law; lakeshore developments. Glesner, 1966 WLR 172.

30.195 History: 1961 c. 454, 622; Stats. 1961 s. 30.195; 1965 c. 614 s. 57 (2g); 1969 c. 276; 1969 c. 392 s. 87 (21).

30.20 History: 1959 c. 441; Stats. 1959 s. 30.20; 1961 c. 632; 1965 c. 614 ss. 7, 8 and 57 (2g); 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: Subsection (1) (a) and (b) is a restatement of s. 31.02 (7) of the statutes. Subsection (1) (c) is based upon s. 31.23 (2), the penalty provision applicable under the present law. Subsection (2) is a consolidation and restatement of s. 31.02 (5) and (6) of the statutes. Subsection (3) is new but is designed to clarify rather than change the law. [Bill 1-A]

The determination by the railroad commission of the amount of compensation to be paid to the state is a prerequisite in any contract for the removal of marl from the bed of any navigable lake. The words "compensation to be paid," as used in 31.02 (5), Stats. 1927, created by ch. 410, Laws 1923, clearly connote the use of money. Angelo v. Railroad Comm. 194 W 543, 217 NW 570.

As to lakes and streams of the state, the term "public interest", employed in 30.20 (2), Stats. 1967, involves the use by the public for all the incidents of navigable waters (i. e., sailing, rowing, canoeing, bathing, fishing, hunting, skating, and other public purposes) most, if not all of which, are rendered less useful or otherwise adversely affected by polluted waters. Reuter v. Dept. of Nat. Resources, 43 W (2d) 272, 168 NW (2d) 860.

As to ownership of sunken logs, see 24 Atty. Gen. 430.

30.205 History: 1963 c. 359; Stats. 1963 s. 30.205; 1965 c. 252; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

30.21 History: 1959 c. 441; Stats. 1959 s. 30.21; 1963 c. 444, 501; 1965 c. 614; 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: This is a restatement of s. 30.087 of the statutes. The reference to rules or orders of the public service commission issued pursuant to chs. 196 and 197 is new, but it is designed to clarify rather than change the law. [Bill 1-A]

30.24 History: 1955 c. 431; Stats. 1955 s. 31.40; 1957 c. 596; 1959 c. 56; 1959 c. 441 s. 10; Stats. 1959 s. 30.24; 1965 c. 298; 1965 c. 433 s. 121; 1967 c. 110; 1967 c. 291 s. 14; 1969 c. 55, 152; 1969 c. 276 s. 588 (4).

30.25 History: 1963 c. 253; Stats. 1963 s. 30.25.

30.251 History: 1965 c. 623; Stats. 1965 s. 30.251; 1967 c. 291 s. 14; 1969 c. 276 ss. 226, 588 (4); 1969 c. 313; 1969 c. 392 s. 84g.

30.26 History: 1965 c. 363; Stats. 1965 s. 30.26; 1969 c. 276 s. 588 (4).

30.30 History: 1959 c. 441; 1959 c. 660 s. 32; Stats. 1959 s. 30.30; 1961 c. 458; 1963 c. 311.

Legislative Council Note, 1959: This section brings together the scattered provisions of the present statutes relative to municipal authority to make harbor improvements.

Subsections (1) and (2) restate the first sentence of s. 30.02 (2) of the statutes.

Subsection (3) is a consolidation and clarification of part of s. 30.02 (8) (a), part of s. 30.05 (1) and the first sentence of s. 30.05 (7). The reference in present s. 30.02 (8) (a) to "docks along the banks of any navigable river or other waterway" and in s. 30.05 (1) to "breakwaters and protection piers along the shore of . . . any lake or stream" have been changed to "dock walls or shore protection walls along the shore of any waterway". The present law has been criticized as ambiguous (42 Op. Atty. Gen. 154 (1953)) and the new language is intended to remove the ambiguity. The reference in the present law to construction of dams has been restated in s. 31.38, created by Section 9 of this bill.

Subsection (4) consolidates and restates part of s. 30.02 (8) (a), s. 30.03 (1) and part of s. 30.05 (6) of the statutes. Procedure in special assessment cases is dealt with in s. 30.31 (6).

Subsection (5) consolidates and restates those portions of s. 30.02 (3), 30.04 (6), 30.05 (3) and s. 30.085 (9) of the statutes relating to the power of municipalities to acquire land for harbor purposes. "Acquire" includes the power to acquire by purchase, grant, gift or bequest. See s. 990.01 (2) of the statutes.

Subsection (6) replaces the rather detailed provisions of s. 30.04 (1) to (7) of the statutes. The detail was considered unnecessary in view of the fact that the conditions imposed by the federal government will be controlling in any event.

Subsection (7) is based upon s. 30.03 (2) of the statutes which is limited to the work of dredging and refers only to cities. There does not seem to be any good reason for such a limited statement of the principle expressed in the above subsection.

Subsection (8) is based upon s. 66.073 of the statutes but is not entirely a restatement thereof. Section 66.073 authorizes any city council by ordinance to "regulate the construction of piers and wharves extending into any lake or navigable waters, prescribe and control the prices to be charged for pierage or wharfage thereon, prescribe and regulate the prices to be charged for dockage and storage in the city, and lease the wharfing privileges of the rivers and navigable waters at the ends of streets, giving preference to owners of adjoining land." This provision has existed in practically the same form for almost 70 years. It appears to confer upon cities the authority to regulate the fees to be charged for public use of privately-owned harbor facilities. New sub. (8) is narrower in that it is limited to the regulation of wharfage at the ends of streets. [Bill 1-A]

When a contemplated improvement of a river is such a one as is provided for by 926-108 to 926-113, Stats. 1913, the provisions of the section must be complied with. The words in 926-108, "a complete system of waterways, canals, slips, revetments, docks, and bridges intended to be constructed or improved,"

were not intended to leave the question of the completeness of the system to be determined by a court or jury, but they mean a system completely outlined and agreed upon between the city and the federal government. Whatever general power of condemnation the city of Milwaukee may have, it is restrained, limited and qualified by this section, when it is exercised for the purposes therein provided. The changes required by 926-110 to meet the approval of the federal government are to be made before the establishment of the permanent dock lines. And the provisions of the agreed plan or system are substantial and not merely directory, and the riparian owners may insist that the commands of the statute respecting those provisions be followed. State ex rel. Thomas F. Co. v. Milwaukee, 156 W 549, 146 NW 775.

In providing funds for shore protective works, under 30.05, Stats. 1919, the real property of public utilities is subject to special assessment, the same as though it were privately owned. 8 Atty. Gen. 441.

A municipality has no power under 30.05, Stats. 1953, to erect a breakwater or protection pier extending any substantial distance into a navigable water, and cannot delegate to any other person its power to construct breakwaters and protection piers. 42 Atty. Gen. 154.

Counties have authority under 30.30 and 67.04, Stats. 1961, to dredge and improve navigable waterways and to borrow money therefor. 50 Atty. Gen. 91.

30.31 History: 1959 c. 441; Stats. 1959 s. 30.31; 1963 c. 2; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (5).

Legislative Council Note, 1959: This section brings together various scattered provisions of the law which pertain to procedural and other requirements which must be followed in making harbor improvements.

The first sentence of sub. (1) is a restatement of the first sentence of s. 30.02 (3) of the statutes. The last 2 sentences of sub. (1) consolidate and clarify s. 30.02 (6) and part of s. 30.02 (8) (a) of the statutes. The provision authorizing a board of harbor commissioners to delegate its function under this section was added at the suggestion of some of the smaller municipalities whose harbor boards may not be equipped to supervise harbor improvement work.

Subsection (2) covers parts of s. 30.02 (2) and s. 30.05 (2) of the statutes.

Subsection (3) restates s. 30.04 (8) of the statutes. The reference in the present law to "inner" harbors has been stricken on the ground that it serves no useful purpose.

The first sentence of sub. (4) is a consolidation and restatement of s. 30.085 (9) (c) and part of s. 30.02 (3) of the statutes. The last sentence of sub. (4) restates s. 30.085 (9) (b) of the statutes, but makes it applicable to all municipalities, rather than only to cities and counties, and removes the limitation to the effect that the land contract may not run for more than 10 years and at not more than 6 per cent interest per annum.

Subsection (5) restates part of the last sentence of s. 30.05 (7) of the statutes, and in addition makes an express reference to the general provision (s. 66.30) prescribing the powers of municipalities when engaged in some joint venture.

Subsection (6) covers s. 30.02 (8) (b) to (f) and (i) to (l) and s. 30.05 (4) and (5). The new provision eliminates the special procedure set forth in s. 30.02 (8), applicable only to Milwaukee, and substitutes in lieu thereof the new uniform special assessment procedure set forth in s. 66.60. The procedure set forth in s. 30.02 (8) and s. 66.60 of the statutes are quite similar, though they differ as to minor details. That part of present s. 30.02 (8) which permits a property owner to erect his own dock walls or shore protection walls has been retained.

Subsection (7) is new insofar as municipalities having established a board of harbor commissioners under present s. 30.085 are concerned. Subsection (7) is based in part upon s. 138.10 of the statutes, which applies only to cities having established a harbor commission under that chapter, and upon s. 959-78m 6. in ch. 762, laws 1913, which applies to towns, cities and villages which have established dock and harbor boards. [Bill 1-A]

When a city makes a public improvement, it owes to a property owner, assessed for benefits, an obligation to see that the improvement is so constructed that the property owner receives the benefit contemplated in the improvement; and if the city fails in its obligation, by accepting from the contractor an improvement so defective as to constitute a substantial failure of performance, the property owner is entitled to redress, as for fraud. Marine Ex. Bank v. Milwaukee, 246 W 1, 16 NW (2d) 381.

30.32 History: 1959 c. 441; Stats. 1959 s. 30.32.

Legislative Council Note, 1959: This section is based largely uopn s. 30.085 (6) of the statutes but also covers part of s. 30.03 (2), part of s. 138.14, and s. 959-78m 5. of ch. 762, laws 1913. The section provides a uniform contract procedure for harbor work, regardless of whether the municipality is a town, county, city or village and regardless of whether the municipality has established a board of harbor commissioners. This section involves a change in the law, then, insofar as municipalities not having boards of harbor commissioners are concerned. One of the principal differences is in the amount of work exempt from the competitive bidding requirement. The limit usually is $1,000 for cities and counties and villages (ss. 62.15, 59.08, 61.55 and 61.56) and $500 for towns (s. 60.29 (1m)).

Subsection (1) is based upon the first part of s. 30.085 (6) (a) of the statutes and states the general principle that other laws relative to competitive bidding for public work are applicable except as modified by this section. Such laws are found in s. 62.15 (cities); s. 59.08 and 66.29 (counties); s. 61.54 to 61.56 and s. 66.29 (villages); and s. 60.29 (1m) and s. 66.29 (towns).

Subsection (2) is based upon s. 30.085 (6) (a) of the statutes, but the rule stated in this subsection also is implicit in s. 138.14 of the statutes and in s. 959—78m 5. of ch. 762, laws 1913. The provision authorizing the board of harbor commissioners to delegate its functions under this section was added at the suggestion of some of the smaller municipalities whose

harbor boards may not be equipped to handle the contracting formalities required under this section.

Subsections (3) and (4) list the various exceptions to the competitive bidding requirement. Those listed in sub. (3) (a) to (c) are from s. 30.085 (6) (a) of the statutes. The exception referred to in sub. (3) (d) and dealt with in sub. (4) is a restatement of s. 30.085 (6) (f) of the statutes. An exception for emergency repairs also appears in s. 959-78m 5. of ch. 762, laws 1913.

Subsections (5), (6), (7), (8) and (9) are restatements, respectively, of s. 30.085 (6) (c), s. 30.085 (6) (d) (first sentence), s. 30.085 (6) (d) (second sentence), and s. 30.085 (6) (e). In each case the scope of the restated provisions has been broadened so as to apply to all municipalities and harbor boards rather than only to boards of harbor commissioners established under present s. 30.085. The reference to "wages" has been stricken from sub. (9) since it appears, by virtue of s. 66.293, that the wage scale to be paid by the contractor is a mandatory rather than an optional part of the contract.

Subsection (10) is based upon s. 138.14 of the statutes. Its scope has been broadened to apply to all contracts for harbor work. [Bill 1-A]

30.33 History: 1959 c. 441; Stats. 1959 s. 30.33.

Legislative Council Note, 1959: Subsection (1) is principally a consolidation and restatement of ss. 30.19 and 30.20 of the statutes, but makes the following changes and clarifications:

1. The present sections mention only cities while the new provision applies to all municipalities operating public harbors.

2. The new provision makes clear that the belt line must be constructed, maintained and operated under the supervision of the board of harbor commissioners. The present law is vague on this point.

3. The new provision is a clear grant of authority to construct, maintain and operate harbor belt lines. The present section (30.19) commences with the phrase "whenever any city, under any law of this state, is authorized to construct, maintain or operate any railway tracks or harbor belt line . . .". This apparently makes it necessary to look elsewhere for the actual authority.

Subsection (2) is a restatement of s. 30.21 of the statutes, with the following change:

1. The new provision requires the consent of the board of harbor commissioners to the creation of a corporation or subscription to stock in a corporation which would be in charge of the belt line. The present law is silent on this point. The change in the law is consistent with other parts of this bill which seek to place the operation of public harbor facilities under the control of the board of harbor commissioners. [Bill 1-A]

30.34 History: 1959 c. 441; Stats. 1959 s. 30.34.

Legislative Council Note, 1959: This section brings together various scattered statutory provisions relating to the financing of harbor development and operation.

Subsection (1) requires the creation of a revolving "harbor fund" in the municipal treasury and authorizes the appropriation of money to such fund. By virtue of s. 30.38 (13), this fund is in effect a segregated fund. This represents a change in the law. While the present law in various places mentions harbor funds (ss. 30.02 (3), 30.03 (2) and 30.086 (3)), there is nothing which expressly states that these are segregated funds.

Subsection (2) is a consolidation of s. 30.02 (8) (h) and part of s. 30.05 (6), with the more detailed provisions of s. 30.02 (8) (h) being made applicable to all municipalities rather than to cities of the first class only. The maximum period for paying off the bonds has been changed from 5 years to 10 years so as to provide greater flexibility in financing arrangements.

Subsection (3) is largely a restatement of s. 30.085 (12) (a) to (e) of the statutes. The definition of "harbor facility" in new s. 30.01 takes the place of the enumeration of harbor facilities contained in s. 30.085 (12) (a) of the statutes. While s. 30.085 (12) (d) of the statutes incorporates by reference the procedure contained in s. 66.066 for issuance of revenue bonds, the provisions of new s. 30.35 are considerably clearer with respect to that subject than are the provisions of s. 66.066 of the statutes. The procedure set forth in s. 66.066 therefore has been made applicable only to the issuance of mortgage certificates and assignments of net profits, as to which its provisions are clear, and the procedure set forth in new s. 30.35 has been made applicable to the issuance of revenue bonds.

Subsection (4) is a restatement of s. 30.085 (6) (g) of the statutes, its scope having been broadened to encompass all municipalities which have established a board of harbor commissioners. Present law applies only to cities and counties.

Subsection (5) merely is intended to make clear what should perhaps need no clarification, except for the fact that several provisions in the present law authorizing municipalities to raise and spend money for harbor improvements are repealed by this bill. These include parts of ss. 30.02 (3), 30.03 (2) and 30.085 (10). There is nothing to prevent a municipality from making harbor improvements, such as by dredging or constructing shore protection walls, without establishing a board of harbor commissioners and this necessarily implies that municipal funds may be spent for such purposes. [Bill 1-A]

30.35 History: 1959 c. 441; Stats. 1959 s. 30.35; 1965 c. 252.

Legislative Council Note, 1959: This section restates the revenue bond procedure set forth in s. 30.085 (12) (f) of the statutes, but makes it applicable to all municipalities. The present law applies only to cities of the first class. [Bill 1-A]

30.37 History: 1959 c. 441; Stats. 1959 s. 30.37.

Legislative Council Note, 1959: This section consolidates the various provisions of the present law relative to creation of harbor boards. Present law provides for 4 different types of harbor boards, as follows:

1. *Board of harbor commissioners.* Section 30.085 of the present statutes authorizes any city or county, situated on a navigable water-

way, except Milwaukee county, to create such a board. Most of the present harbor boards are operating under this section.

2. *Harbor commission.* Chapter 138 of the statutes authorizes cities located on a harbor which is partly in this state and partly in another state to create a harbor commission. Only Superior and Marinette qualify and only Marinette has a commission created pursuant to ch. 138.

3. *City and village dock and harbor boards.* Ch. 762, Laws 1913, authorizes cities and villages situated on a navigable waterway to create such boards. Apparently none of the present harbor boards is operating under this chapter.

4. *Town dock and harbor board.* Section 30.086 of the statutes authorizes towns situated on a navigable waterway to constitute its town board a "dock and harbor board" with most of the powers of city and village dock and harbor boards. Apparently the Town of Bayfield is operating under this section.

Subsections (1) to (5) of the new section set up a single procedure for all towns, counties, cities and villages to follow in creating harbor boards. They are basically a consolidation of ss. 30.085 (1) to (3), 30.086, and 138.01 to 138.03 of the statutes and ss. 959-78k and 959-781 of ch. 762, laws 1913, with the following changes:

1. In sub. (1), the provision prohibiting a county from creating a board of harbor commissioners if there exists an active town, village or city board within the county is new. Present law contains such a prohibition only with respect to Milwaukee county.

2. The special provision authorizing a town to constitute its town board a dock and harbor board is repealed by this bill. Under the new provisions, towns will operate under the same law with respect to harbor boards as counties, cities and villages.

3. In sub. (2), the requirement that the board must consist of 3, 5, 7 or 9 members is new. Present law calls for "not less than 3 nor more than 9 members." The new language is designed to prohibit a board with an even number of members.

4. Insofar as harbor commissions under ch. 138 of the present statutes are concerned, sub. (2) makes a change in the law in that it eliminates the requirement that terms of members of an original board must commence on July 1 and also in that it eliminates the requirement that the secretary of state must be notified of the creation of the board. These requirements never were applicable to boards created under s. 30.085 or ch. 762, laws 1913.

5. In sub. (3), the provision stating that not more than one member of the governing body is eligible for appointment to the board is new.

6. Insofar as harbor commissions under ch. 138 of the present statutes are concerned, sub. (3) makes a change in the law in that it provides for 3-year terms rather than 6-year terms, requires 3-year residency rather than mere residency, eliminates the requirement that appointments be made only with reference to ability and fitness for office, and eliminates the requirement of the taking of the official oath.

7. Insofar as harbor boards under s. 30.085 of the present statutes are concerned, sub. (3) possibly makes a change in the law in that it provides that members shall be reimbursed for actual and necessary expenses while the present law is silent on this point.

8. Insofar as harbor commissions under ch. 138 of the present statutes are concerned, sub. (5) changes the law in that it requires appointments to be made pursuant to the civil service law of the municipality, if any, while present ch. 138 makes no mention of civil service.

9. In sub. (5), the express reference to employment of a harbor master is new and probably represents a change in the law, though it has been the practice for many years in Milwaukee for the board of harbor commissioners to handle employment of harbor masters. The board is required to employ a secretary but of course this does not require employment of a person on a full-time basis if the workload does not warrant it.

Subsection (6) is new. Its purpose is to make clear the effect of this revision on existing harbor boards. If any such boards are operating merely as advisory bodies at present and the municipality does not engage in the operation of a harbor as a commercial enterprise, within the meaning of s. 30.38 (1) (b), the municipality's remedy would be to abolish the board and recreate it as an advisory body.

The new section does not mention resignations and the filling of vacancies for the reason that those subjects are adequately covered by ch. 17 of the statutes. [Bill 1-A]

A board of harbor commissioners established under 30.085 (1), Stats. 1955, is the exclusive agent of the county or city for maintaining charge and control over the harbor. The ultimate control of the harbor is vested in the common council of the city or county board of the county concerned. 46 Atty. Gen. 49.

30.38 History: 1959 c. 441; Stats. 1959 s. 30.38; 1963 c. 454.

Legislative Council Note, 1959: This section consolidates the various provisions of the present law (ss. 30.085 (4), (5) and (7) to (11), 30.086, 138.04 to 138.22 of the statutes and s. 959-78m as created by ch. 762, laws of 1913) relating to the powers and duties of harbor boards. As explained in the NOTE appended to s. 30.37, present law authorizes 4 different types of harbor boards, each having somewhat different powers relative to its principal function of supervising harbor activities and operations. The consolidation, then, necessarily results in changes in the law. Perhaps the principal change results from the omission of the provisions which granted harbor commissions under ch. 138 the power of eminent domain and the power to borrow money and acquire property in its own name. A harbor board which has such powers theoretically can achieve a substantial degree of independence from the municipal governing body which creates it. Under new s. 30.38, all harbor boards will have the same powers. In general, they conform to powers now granted to harbor boards operating under present s. 30.085. Specific changes are discussed below.

Subsection (1) (a) is based upon ss. 138.05 and 138.22 of the statutes. While the provision is new insofar as harbor boards operating under s. 30.085 are concerned, it is considered to be a clarification of rather than a change

in the law because the provisions of the present law requiring the governing body's consent to such things as making harbor improvements, fixing fees and making leases of land are retained.

Subsection (1) (b) is designed to clarify the line of demarcation between the functions of the municipal governing body and the functions of the board of harbor commissioners. While it is not expressly stated in this form in the present law, it is considered to be a clarification of rather than a change in the present law, particularly in view of the recent case of *Paper Makers Importing Co. v. City of Milwaukee,* 165 F Supp. 491 (E. D., Wis., 1958).

Subsection (1) (c) replaces the enumeration of reserved powers contained in s. 30.085 (11) (a) of the statutes. These powers relate to the governmental aspects of the harbor and involve the exercise of the municipal police power.

Subsection (2) is based upon s. 30.085 (4) and 138.14. The provision authorizing a municipal officer or agency to refuse assistance if the budget of the officer or agency will be substantially affected is new but appears to conform to current practice. The provision making the governing body the arbiter in disputes between the harbor board and the municipal officer or agency from which it requests assistance is new insofar as harbor boards organized under ch. 138 are concerned.

Subsection (3) consolidates parts of ss. 30.085 (4), 138.14 and 959-78m 5. It involves a change in the law insofar as harbor commissions organized under ch. 138 of the present statutes are concerned. Present law requires such commissions to let only construction and repair contracts by competitive bidding while sub. (3) also applies to contracts for purchase of materials and supplies. On the other hand, the contract procedures referred to in sub. (3) exempt contracts involving an expenditure of less than $2,500 while present s. 138.14 contains only a $500 exemption.

Subsection (4) represents a change in the law insofar as harbor boards organized under ch. 138 are concerned. Such boards have corporate powers and therefor could acquire title to property. In practice, however, this power apparently has not been exercised.

Subsection (5) is based largely upon s. 30.085 (5). It has been made clear that the planning activities of the board must be coordinated with the overall planning activities of the general municipal agency.

Subsection (6) restates part of s. 30.085 (8). It also replaces s. 138.07 and involves some change in the law insofar as harbor commissions under ch. 138 are concerned in that s. 138.07 contains no limitations on the purposes for which harbor lands may be leased.

Subsection (7) consolidates parts of ss. 30.085 (7) (a), 138.05 and 959-78m 3. The last sentence of sub. (7) is not expressly stated in the present law but is considered to be a clarification of rather than a change in the law, except that boards of harbor commissioners operating under s. 30.085 of the present law have no control over unappropriated harbor revenues.

Subsection (8) is a consolidation of ss. 30.085 (7) (a) and (b) and (11) (b), 138.11, and 959-78m 4. and 6. It is primarily a clarification of rather than a change in the law. The enumeration of functions in sub. (8) (a) is new and is intended to emphasize and clarify the board's control over the commercial aspects of the harbor, as distinguished from governmental functions relating to public health, order and safety. The latter functions are reserved to the municipal governing body by sub. (1). The present law also gives the board of harbor commissioners exclusive control over airport facilities abutting on or adjacent to harbor lands, but sub. (8) (b) of the new section makes this optional with the municipal governing body. Sub. (8) (c) is based upon s. 30.085 (7) (b) and (8). Sub. (8) (d) is not expressly stated in present s. 30.085 but somewhat similar provisions are found in ss. 138.11 and 959-78m 6. Sub. (8) (e) is from s. 30.085 (7) (b). Sub. (8) (f) is from s. 30.085 (11) (b).

Subsection (9) is a consolidation of parts of ss. 30.085 (7) (b) and (8), 138.06 and 959-78m 4. and 7. Harbor boards under ch. 138 and s. 959-78m do not need to obtain the municipal governing body's approval for the fee schedule and to this extent the law is changed.

Subsection (10) is new but merely requires what is sound business practice in any event.

Subsection (11) is a restatement and clarification of s. 30.085 (7a).

Subsection (12) is based upon ss. 138.04 and 138.15 and may possibly involve a change in the law insofar as boards of harbor commissioners under present s. 30.085 are concerned. Under present law, the power to act jointly with a harbor board in another state is conferred, in express terms, only upon harbor commissions created under ch. 138.

Subsection (13) is largely new insofar as harbor boards operating under present s. 30.085 are concerned. There is nothing in present ch. 30 which expressly provides for a segregated harbor fund or which permits the board of harbor commissioners to use harbor revenues collected during the year. In actual practice, however, the budgetary control of the municipality will remain largely intact because the municipal governing body must approve the board's total budget for each fiscal year. The municipal governing body also will retain control over any expenditures for harbor improvements, including construction or acquisition of new harbor facilities, since the expenditure of moneys in the harbor fund is "subject to the limitations and conditions otherwise expressed in this section." This is a change in the law insofar as harbor commissions under present ch. 138 are concerned, since such commissions may use harbor revenues for making harbor improvements without the consent of the municipal governing body.

Subsections (14) and (15) are based upon ss. 138.16, 138.17, 138.20 and 959-78m 12. They are new insofar as boards of harbor commissioners organized under present s. 30.085 are concerned. [Bill 1-A]

A city operating harbor and dock facilities is a general wharfinger and has legal duties and obligations similar to those of a common carrier, and is thereby engaged in a proprietary function. The city could delegate power to the harbor commission to contract in regard

to loading and unloading of boats, and fixing rates for handling commodities not included in published tariff. The harbor commissioners could in turn delegate to the port director authority to manage and operate the harbor including making contracts for loading or discharging ships' cargoes. Paper Makers Importing Co. v. Milwaukee, 165 F Supp. 491.

30.50 History: 1959 c. 505; Stats. 1959 s. 30.50; 1969 c. 276.

Comment of Interim Boating Committee, 1959: In general these definitions conform to the ones used in the Federal Boating Act of 1958 and the Model State Boat Act of the Council of State Governments. [Bill 172-S]

On exercises of police power see notes to sec. 1, art. I; and on jurisdiction on rivers and lakes see notes to sec. 1, art. IX.

30.501 History: 1965 c. 212, 433; Stats. 1965 s. 30.501; 1969 c. 276 s. 588 (4).

30.51 History: 1959 c. 505; Stats. 1959 s. 30.51; 1961 c. 87,133; 1969 c. 276 s. 588 (4).

Comment of Interim Boating Committee, 1959: This section sets the general scope of the boating numbering law. After the effective date of this section, it will be unlawful to operate an unnumbered motorboat on the waters of this state, subject to the specific exceptions in subs. (2) and (3). The definition of motorboat is pertinent. For example, a sailboat propelled partly by sail and partly by an auxiliary motor still is a motorboat within the definition in s. 30.50 and therefore must be numbered.

The exemption in sub. (2) (a) is required by the Federal Boating Act. The purpose of the exemption in sub. (2) (b) is to provide a grace period for a person who has applied for a certificate of number but has not yet received it. This may be particularly helpful in the case of a person who has just purchased a boat and wants to operate it immediately. The exemptions provided in sub. (2) (d) to (f) are identical to exemptions contained in the Federal Boating Act of 1958.

Subsection (3) is a companion provision to a provision of the Federal Boating Act of 1958 which authorizes the Secretary of the Treasury by rule to exempt certain boats from numbering. The purpose of the provision in the federal law is to provide a certain degree of administrative flexibility so that unusual boats which would be difficult or impractical to number can be exempted. To date, only boats used exclusively for racing have been so exempted by federal rule. The only boats which the conservation commission presently could exempt under sub. (3) therefore would be motorboats used exclusively for racing. [Bill 172-S]

30.52 History: 1959 c. 505; Stats. 1959 s. 30.52; 1965 c. 387; 1969 c. 276 s. 588 (4).

Comment of Interim Boating Committee, 1959: This section outlines the procedure for numbering of motorboats in this state. The numbering system will be administered by the conservation department. It is well to keep in mind that a state's boat numbering system must meet certain conditions set forth in the Federal Boating Act of 1958. These include the requirements: (a) that the system of numbering be in accordance with the over-all system established by the federal government, (b) that the numbering period not exceed 3 years, (c) that the certificate of number be pocket size, and (d) that a state must recognize the validity of numbers awarded by the federal government or under the federally-approved numbering system of another state for a period of 90 days.

Subsection (1) follows the general principle of the federal law that a boat shall be numbered in the state of principal use, regardless of the residence of the owner.

Subsection (2) provides for 3-year numbering periods, the maximum allowable under the federal law.

The fees provided in sub. (3) are designed to provide sufficient money to cover the cost of administration of the numbering law with some left over to be used for enforcement of the boating law. The general principle upon which the fees are based is that the full $3 fee should be paid for renewals of certificates of number, regardless of the time which has elapsed since the last certificate expired. A person who buys a new boat or a boat numbered in another state gets a reduced fee if at least one year of the numbering period has elapsed. A person who buys a boat currently numbered in this state pays a fee of $1 to help cover administrative costs involved in issuing a new certificate of number. A boat livery operator has the option of paying the fee provided in par. (c), which will be to his advantage in almost all cases.

Subsection (4) provides for the issuance of a certificate of number which will serve to identify the owner and the boat as well as providing evidence of the payment of the fee for the current numbering period. Section 30.53 provides that the certificate of number must be available for inspection at all times when the boat is in use. A specific number will be awarded to a specific boat and may be used only on that boat, except in the case of a manufacturer or dealer.

The purpose of sub. (5) is to assure that the system of identification numbers used by the state will always be in conformity with the system prescribed by the federal government. As a condition of giving up its numbering of boats, the federal government is requiring that the states adopt a system which follows a national pattern. All Wisconsin numbers, for example, will carry the letters "WS" to identify the state in which the boat is numbered. A typical number might be WS-932-AA. [Bill 172-S]

30.53 History: 1959 c. 505; Stats. 1959 s. 30.53; 1961 c. 590; 1965 c. 387; 1969 c. 276 s. 588 (4).

30.54 History: 1959 c. 505; Stats. 1959 s. 30.54; 1961 c. 87; 1969 c. 276 s. 588 (4).

30.55 History: 1959 c. 505; Stats. 1959 s. 30.55; 1969 c. 276 s. 588 (4).

30.60 History: 1959 c. 505; Stats. 1959 s. 30.60.

Comment of Interim Boating Committee, 1959: This section classifies motorboats for the purposes of the sections relating to equipment requirements. The classification is the same as is used in the federal law. [Bill 172-S]

30.61 History: 1959 c. 505; Stats. 1959 s. 30.61.

Comment of Interim Boating Committee, 1959: The lighting requirements which this section prescribes for motorboats are the same as those prescribed by the Motorboat Act of 1940, the applicable federal law. While the provisions may appear to be somewhat more detailed than necessary, the committee considered uniformity with the federal law to be very important in view of the great mobility of the boating public and the difficulty of telling where the federal navigable waters end and the waters exclusively under state jurisdiction begin. Actually, the requirements are not very onerous. Anyone with a class A or class 1 boat who installs a coast guard-approved combination running light and a stern light can be fairly safe in assuming he has complied with this section. It is only when a boat is under way from sunset to sunrise that lights are needed.

The requirements of this section replace the present motorboat lighting requirements contained in s. 30.06 (1) and (2) of the statutes. Present law also requires the red and green running lights and white stern light but the specifications for such lights are out of date. Present law also makes a searchlight mandatory under certain circumstances. Searchlights are optional under the new section.

Subsection (5) specifies certain minimum safety requirements for sailboats and rowboats when under way at night. As far as equipment is concerned, a good flashlight will suffice.

Subsection (7) is identical to a provision of the Federal Motorboat Act. The regulations referred to in sub. (7) are mandatory only for vessels operating upon the high seas. Subsection (7) therefore is of no practical importance in Wisconsin except insofar as it may prevent a seagoing vessel on Lake Michigan or Lake Superior from being in technical violation of the other provisions of this section. [Bill 172-S]

30.62 History: 1959 c. 505; Stats. 1959 s. 30.62; 1961 c. 87, 590; 1967 c. 163; 1969 c. 276 s. 588 (4).

30.64 History: 1959 c. 505; Stats. 1959 s. 30.64.

30.65 History: 1959 c. 505; Stats. 1959 s. 30.65; 1969 c. 276 s. 588 (4).

30.66 History: 1959 c. 505; 1959 c. 670; Stats. 1959 s. 30.66.

Comment of Interim Boating Committee, 1959: Subsection (1) is new. It follows the language of a comparable provision in the motor vehicle laws. [Bill 172-S]

30.67 History: 1959 c. 505; 1959 c. 660 s. 34; Stats. 1959 s. 30.67; 1969 c. 276 s. 588 (4).

Comment of Interim Boating Committee, 1959: This section places substantially the same duties upon a person involved in a boating accident as the motor vehicle laws place upon a person involved in an auto accident. The operator of a boat involved in a boating accident has a duty both to stop and render aid and to report the accident to state and local authorities.

This section meets one of the mandatory standards of the Federal Motorboat Act of 1958. That act provides that if a state wishes to number boats, one of the conditions it must meet is that it require reports of boating accidents to be made to a state agency and that such state agency compile statistics on such accidents and transmit such statistics to the appropriate federal agency. On the basis of such statistics the coast guard plans to publish quarterly reports on boating accidents covering the country as a whole.

This section replaces part of s. 30.10 of the present statutes. That section is a limited accident reporting statute applicable only to foreign watercraft involved in accidents in this state. [Bill 172-S]

30.675 History: 1963 c. 538; Stats. 1963 s. 30.675.

30.68 History: 1959 c. 505; Stats. 1959 s. 30.68; 1961 c. 87, 590; 1965 c. 116, 249; 1969 c. 336 s. 176.

Comment of Interim Boating Committee, 1959: Subsection (1) is a new provision. It prohibits operation of a boat while under the influence of an intoxicant or a narcotic or dangerous drug in substantially the same language as the motor vehicle laws prohibit operation of a motor vehicle while under such influence. Operating a boat under such circumstances can be equally as dangerous as operating an automobile.

Subsection (2) restates s. 30.06 (10) of the present statutes. A more serious version of this offense is defined in s. 940.01 of the statutes.

The remaining subsections of this section are new. Most of them are basically specific acts of reckless boat operation. They are based upon provisions presently found in many local ordinances relating to boating, in boat regulation laws of other states, and in various model boat regulation acts. [Bill 172-S]

30.69 History: 1959 c. 505; Stats. 1959 s. 30.69.

30.70 History: 1959 c. 505; Stats. 1959 s. 30.70; 1963 c. 330.

30.71 History: 1959 c. 505; 1959 c. 638; Stats. 1959 s. 30.71; 1963 c. 576; 1965 c. 565; 1969 c. 366 s. 117 (2) (a); 1969 c. 471.

30.74 History: 1959 c. 505; 1959 c. 660 s. 35; Stats. 1959 s. 30.74; 1965 c. 116; 1969 c. 276 s. 588 (4).

30.75 History: 1959 c. 505; Stats. 1959 s. 30.75.

Comment of Interim Boating Committee, 1959: Since more and more nonresident boaters are likely to be using the waters of the state, it is important to have a provision for service of process in actions for damages which may be caused by such nonresident boaters. Statutes authorizing service of process by registered mail are common in the motor vehicle field. The lengthy recitations commonly found in such statutes relative to the appointment of an agent in the state are unnecessary because personal jurisdiction over a nonresident tortfeasor is based on his contact with the state through use of its public facilities and the injury he inflicts and such jurisdiction

may be exercised without the intermediation of a fictitious agent. *Steffen v. Little*, 2 Wis. (2d) 350 (1957). [Bill 172-S]

30.76 History: 1959 c. 505; Stats. 1959 s. 30.76; 1961 c. 495; 1965 c. 617; 1967 c. 276 s. 39; 1969 c. 255 s. 65.

30.77 History: 1959 c. 505; 1959 c. 641 s. 7; Stats. 1959 s. 30.77; 1961 c. 87; 1969 c. 276 s. 588 (4).

Editor's Note: Ch. 505, Laws 1959, repealed 30.06, on safety regulations for boats; subsection (7) of that section was applied in Madison v. Tolzmann, 7 W (2d) 570, 97 NW (2d) 513.

30.78 History: 1959 c. 505; Stats. 1959 s. 30.78.

Comment of Interim Boating Committee, 1959: Restates 30.061 of the statutes. [Bill 172-S]

The failure of a town board to hold a public hearing prior to adoption of an ordinance under authority of 30.061 (1), Stats. 1947, is jurisdictional, and an ordinance so adopted is void. 38 Atty. Gen. 519.

30.79 History: 1959 c. 505; Stats. 1959 s. 30.79; 1961 c. 455; 1969 c. 276 s. 588 (4).

30.80 History: 1959 c. 505; Stats. 1959 s. 30.80.

30.81 History: 1961 c. 8; Stats. 1961 s. 30.81; 1969 c. 394.

30.90 History: 1961 c. 66; Stats. 1961 s. 30.90; 1969 c. 276 s. 588 (4).

CHAPTER 31.

Regulation of Dams and Bridges Affecting Navigable Waters.

Editor's Note: For changes made in ch. 31 by ch. 441 (Bill 1-A), Laws 1959, see preface to ch. 30, which shows the conversion table annexed to Bill 1-A.

31.01 History: 1915 c. 380 s. 3; Stats. 1915 s. 1596—1; 1917 c. 474 s. 2; Stats. 1917 s. 31.01; 1961 c. 568; 1965 c. 614 s. 57 (2g); 1969 c. 276 s. 588 (6).

On taking private property for public use see notes to sec. 13, art. I; on legislative power generally and on delegation of power see notes to sec. 1, art. IV; on internal improvements see notes to sec. 10, art. VIII; and on navigable waters see notes to sec. 1, art. IX, and notes to 30.10.

Wisconsin law of waters. Kanneberg, 1946 WLR 345.

Judicial criteria of navigability in federal cases. Laurent, 1953 WLR 8.

31.02 History: 1915 c. 380 s. 3; Stats. 1915 s. 1596—2; 1917 c. 474 s. 3; Stats. 1917 s. 31.02; 1923 c. 410; 1935 c. 198; 1937 c. 379; Stats. 1937 ss. 31.02, 31.36 (6), (8), (9), (11); 1939 c. 368; 1941 c. 219; 1949 c. 125; 1951 c. 712; 1957 c. 528; 1959 c. 441 s. 4; 1961 c. 35, 191; 1965 c. 163; 1965 c. 614 ss. 10, 18, 57 (2g) and (2r); Stats. 1965 s. 31.02; 1969 c. 276 ss. 228, 229, 230, 588 (4), (5).

Editor's Note: In Water Power Cases, 148 W 124, 134 NW 330, the supreme court awarded a writ of injunction restraining the railroad commission, the attorney general and others from acting under or attempting to enforce the provisions (with one exception) of ch. 652, Laws 1911, on the ground that it was in conflict with the constitution.

Ch. 380, Laws 1915, announces a general policy applicable to all the navigable waters of the state, and grants ample and broad powers to the railroad commission to regulate and control such waters and fix maximum and minimum levels. The powers so granted are administrative, not legislative, and the act granting them was valid. Chippewa & Flambeau I. Co. v. Railroad Comm. 164 W 105, 159 NW 739.

The commission's power to control reservoirs must be exercised to accomplish both the purpose of maintaining uniform flow and the purpose of improving navigation for log driving under the provisions of ch. 640, Laws 1911, the act under which the Chippewa and Flambeau Improvement Company was organized. The court is not authorized to determine the quantity of water reasonably necessary for log driving, or the proper times for releasing water from the reservoirs. As against power owners, lumbermen are entitled to sufficient quantities of water to make the river navigable for driving logs, but this right should be exercised reasonably so as not to unnecessarily injure the power industry. Flambeau River L. Co. v. Railroad Comm. 204 W 524, 236 NW 671.

"Property", as used in 31.02, does not include property that would be damaged by normal flowage resulting from ordinary operation of such dam, but means property that would be damaged by failure of such dam or by flooding of cities or villages. New Lisbon v. Harebo, 224 W 66, 271 NW 659.

This section authorizes the commission to regulate the level and flow of water by requiring the power company to operate the Prairie du Sac dam in a specified manner, even though this dam was built before enactment of the section and under special legislation. Private persons may petition for such regulation. Wisconsin P. & L. Co. v. Public Service Comm. 5 W (2d) 167, 92 NW (2d) 241.

The public service commission has power under this section to make an order changing the minimum water level to be maintained by a reservoir storage dam at Rest Lake. 27 Atty. Gen. 424.

The public service commission has power under this section to establish a higher minimum pond elevation for Big Eau Pleine water storage reservoir than the minimum fixed by ch. 478, Laws 1933, in order to preserve the fish therein. 29 Atty. Gen. 472.

31.04 History: 1915 c. 380 s. 3; Stats. 1915 s. 1596—4, 1596—5; 1917 c. 474 s. 5; Stats. 1917 s. 31.04; 1925 c. 222.

The meaning of the term "dam", as used in 31.04 and 31.34, Stats. 1953, is not limited to the structure directly across the river bed, but includes a canal which carries the water through the generating plant and back to the river bed; and the public service commission may grant a permit to construct a dam which includes such a canal. Luening v. Public Service Comm. 267 W 537, 66 NW (2d) 190.

See note to 94.26, citing 45 Atty. Gen. 36.