

CHAPTER 30

NAVIGABLE WATERS, HARBORS AND NAVIGATION

	GENERAL PROVISIONS		
30 01	Definitions	30 32	Contracts; competitive bidding; exceptions
30 02	General provision for notice and hearing	30 33	Harbor railway belt lines.
30 025	Optional permit procedure for certain electric generating facilities and high-voltage transmission lines.	30 34	Financing harbor improvements and operations generally
30 03	Enforcement of forfeitures; abatement of nuisances; infringement of public rights.	30 35	Financing harbor improvements through revenue bonds
30 04	Shore and dock lines not invalidated.	30 37	Boards of harbor commissioners authorized
30 05	Applicability of chapter to municipally-owned submerged shore lands	30 38	Powers and duties of boards of harbor commissioners
30 06	Waiver of certain provisions of this chapter		REGULATION OF BOATING
	NAVIGABLE WATERS AND NAVIGATION IN GENERAL	30 50	Definitions.
30 10	Declarations of navigability	30 501	Capacity plates on boats
30 11	Establishment of bulkhead lines	30 51	Operation of unnumbered boats prohibited; exemptions
30 12	Structures and deposits in navigable waters prohibited; exceptions; penalty	30 52	Certificates of number; applications; issuance; renewals; fees
30 121	Regulation of boathouses and houseboats	30 53	Identification number to be displayed on boat; certificate to be carried.
30 122	Unauthorized structures	30 54	Transfer of ownership of numbered boat
30 123	Municipal bridge construction	30 55	Notice of abandonment or destruction of boat or change of address.
30 125	Cutting weeds in navigable waters a nuisance; penalty	30 60	Classification of motorboats
30 13	Regulation of wharves and piers; establishment of pierhead lines.	30 61	Lighting equipment
30 14	Reports of and hearings on violations.	30 62	Other equipment
30 15	Penalty for unlawful obstruction of navigable waters.	30 63	Sale and use of certain outboard motors restricted.
30 16	Removal of obstructions to navigation.	30 635	Motorboat prohibition.
30 17	Interfering with buoy or beacon	30 64	Patrol boats
30 18	Diversion of water from lakes and streams	30 65	Traffic rules.
30 19	Enlargement and protection of waterways	30 66	Speed restrictions
30 195	Changing of stream courses	30 67	Accidents and accident reports.
30 20	Removal of material from beds of navigable waters.	30 675	Distress signal flag.
30 205	Zoning for certain lake bed removals	30 68	Prohibited operation
30 21	Use of beds of Great Lakes by public utilities	30 69	Water skiing
30 24	Transfer of Fox river facilities.	30 70	Skin diving
30 25	Wolf river protection.	30 71	Boats equipped with toilets.
30 26	Wild rivers.	30 72	Watercraft use regulations, lower St. Croix river.
30 27	Lower St. Croix river preservation	30 74	Additional functions of department
30 28	Fee for permits and approvals.	30 75	Service of process on nonresident.
	DEVELOPMENT AND OPERATION OF HARBORS	30 77	Local regulation of boating.
30 30	Municipal authority to make harbor improvements	30 78	Municipal regulation of seaplanes.
30 31	Procedural and other requirements to be followed in making harbor improvements	30 79	Municipal water safety patrols; state aids
		30 80	Penalties.
		30 81	Local regulations on icebound inland waters.
		30 90	Public access to Lake Lions
		30 92	Recreational boating facilities
		30 99	Parties to a violation.

GENERAL PROVISIONS

30.01 Definitions. In this chapter:

(1) "Municipality" means any town, village, city or county in this state.

(2) "Governing body" means, with reference to a town, the town board, with reference to a village, the village board of trustees, with reference to a city, the city council, and with reference to a county, the county board.

(3) "Harbor facility" means every facility useful in the maintenance or operation of a harbor, including transportation facilities of all types, terminal and storage facilities of all types, wharves, piers, slips, basins, ferries, docks, bulkheads and dock walls, and floating and handling equipment, power stations, transmission lines

and other facilities necessary for the maintenance and operation of such harbor facilities.

(4) "Pier" means any structure extending channelward from the shore with water on both sides, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from watercraft.

(5) "Wharf" means any structure extending along the shore and generally connected with the uplands throughout its length, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from watercraft.

(6) "Watercraft" means any contrivance used or designed for navigation on water.

(7) "Department" means the department of natural resources.

(8) "Secretary" means the secretary of natural resources.

30.02 General provision for notice and hearing. In any proceeding under ch. 30 or 31 where a hearing by the department is required and there is no specific provision as to the time and manner of giving notice thereof, the department shall follow the procedures set forth in s. 31.06.

History: 1973 c. 90.

30.025 Optional permit procedure for certain electric generating facilities and high-voltage transmission lines. (1) Any electric utility, as defined in s. 196.491 (1), proposing to construct a facility, as defined in s. 196.491 (1), which facility is to be located adjacent to a waterway in such a manner as to require one or more permits to be issued under this chapter and ch. 31 may, in lieu of separate application for permits under those chapters, submit an engineering plan together with any additional information required by the department. Such plan shall be filed with the department within 20 days after an application for a certificate of public convenience and necessity is filed with the public service commission under s. 196.491 (3). The department may require supplemental information to be furnished thereafter.

(2) Once electric utilities have met the requirements of sub. (1), the department shall schedule the matter for public hearing. Notice of the hearing shall be given to the applicant and shall be published as a class 1 notice under ch. 985. The department may give such further notice as it deems proper, and shall give notice to persons requesting same. One copy of the application shall be available for public inspection at the office of the department, at least one copy in the district office of the department and at least one copy at the main public library of the area affected.

(3) The department shall grant the necessary permits if, after hearing, it finds that the applicant has shown that the proposal:

(a) Complies with environmental statutes administered by the department and rules adopted thereunder, and federal environmental standards which the department has authority to enforce.

(b) Does not unduly affect:

1. Public rights and interests in navigable waterways;
2. The effective flood flow capacity of a stream;

3. The rights of other riparian owners; or

4. Water quality.

(4) The permit may be issued upon stated conditions deemed necessary to assure compliance with the criteria designated under sub. (3). The department shall grant or deny the application within the time limit applicable under s. 196.491 (3) (f).

History: 1975 c. 68.

30.03 Enforcement of forfeitures; abatement of nuisances; infringement of public rights. (1) The department shall report to the governor every forfeiture incurred under and every nuisance committed in violation of ch. 30 or 31.

(2) The attorney general, when so requested by the governor, or a person authorized by the governor to act instead of the attorney general, and otherwise the district attorney of the proper county, shall institute proceedings to recover any forfeiture incurred or abate any nuisance committed under ch. 30 or 31.

(3) All forfeitures shall be recovered by civil action as provided in ch. 778 and when collected shall be paid directly into the state treasury.

(4) (a) Whenever there comes to the attention of the department a possible violation of the statutes relating to navigable waters, or a possible infringement of the public rights therein, and it appears to the department that the public interest may not be adequately served by imposition of penalty or forfeiture, the department may proceed as follows, either in lieu of or in addition to such other relief as may be provided by law. The department may, upon at least 10 days' notice, conduct a hearing respecting such violation or infringement, pursuant to ch. 227 and issue an order directing the parties responsible therefor to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the interests of the public in the navigable waters. If any person fails or neglects to obey such an order while the same is in effect, the department may request the attorney general to institute proceedings for the enforcement of the department's order and it is the duty of the attorney general to conduct such proceedings in the name of the state. Such proceedings shall be brought in the manner and with the effect of proceedings under s. 111.07 (7).

(b) No penalty may be imposed for violation of an order of the department under this subsection, but violation of a judgment enforcing the order may be punished as contempt of court.

History: 1979 c. 32 s. 92 (8); 1979 c. 257.

30.04 Shore and dock lines not invalidated. A shore line lawfully established prior to January 1, 1960 is deemed to be a lawfully

established bulkhead line subsequent to such date. A dock line lawfully established prior to January 1, 1960 is deemed to be a lawfully established pierhead line subsequent to such date.

30.05 Applicability of chapter to municipally-owned submerged shore lands. Nothing in this chapter relative to the establishment of bulkhead or pierhead lines or the placing of structures or deposits in navigable waters or the removal of materials from the beds of navigable waters is applicable to submerged shore lands in Lake Michigan, the title to which has been granted by the state to a municipality.

30.06 Waiver of certain provisions of this chapter. The department, by rule, may waive the applicability to specified navigable waters of the United States of all or part of those provisions of ch. 30 which relate to the establishment of bulkhead or pierhead lines or the placing of structures or deposits in navigable waters or the removal of materials from the beds of navigable waters. The department may adopt such rule only after it has entered into an agreement with the appropriate federal agency wherein it is agreed that the comparable federal law will be enforced on the waters in question in lieu of the state law which is being waived. The objective of such agreement shall be to avoid duplication of administration with respect to navigable waters over which this state and the U.S. government have concurrent jurisdiction, in those situations wherein administration by a single governmental agency will tend to avoid confusion and the necessity of obtaining permits from both the state and federal governments by those who are subject to the law and at the same time will adequately protect the public interest. The agreement may contain such further provisions as are designed to achieve this objective.

NAVIGABLE WATERS AND NAVIGATION IN GENERAL

30.10 Declarations of navigability. (1) LAKES. All lakes wholly or partly within this state which are navigable in fact are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters.

(2) STREAMS. Except as provided under sub. (4) (c), all streams, sloughs, bayous and marsh outlets, which are navigable in fact for any purpose whatsoever, are declared navigable to the extent that no dam, bridge or other obstruction shall be made in or over the same without the permission of the state.

(3) ENLARGEMENTS OR IMPROVEMENTS IN NAVIGABLE WATERS. All inner harbors, turning basins, waterways, slips and canals created by any municipality to be used by the public for purposes of navigation, and all outer harbors connecting interior navigation with lake navigation, are declared navigable waters and are subject to the same control and regulation that navigable streams are subjected to as regards improvement, use and bridging.

(4) INTERPRETATION. (a) This section does not impair the powers granted by law under s. 30.123 or by other law to municipalities to construct highway bridges, arches or culverts over streams.

(b) The boundaries of lands adjoining waters and the rights of the state and of individuals with respect to all such lands and waters shall be determined in conformity to the common law so far as applicable, but in the case of a lake or stream erroneously meandered in the original U.S. government survey, the owner of title to lands adjoining the meandered lake or stream, as shown on such original survey, is conclusively presumed to own to the actual shore lines unless it is first established in a suit in equity, brought by the U.S. government for that purpose, that the government was in fact defrauded by such survey. If the proper claims of adjacent owners of riparian lots of lands between meander and actual shore lines conflict, each shall have his proportion of such shore lands.

(c) Notwithstanding any other provision of law, farm drainage ditches in drainage districts established under ch. 88 are not navigable within the meaning of this section except where it is shown that the ditches were navigable streams before ditching or had a previous stream history. For purposes of this paragraph, "farm drainage ditch" means any artificial channel which drains water from lands which are used for agricultural purposes.

History: 1977 c. 190, 272, 418.

Where there are 2 owners of land adjacent to a disputed parcel erroneously meandered under (4) the judge is to divide the parcel proportionately on an equitable, but not necessarily equal, basis. *Kind v. Vilas County*, 56 W (2d) 269, 201 NW (2d) 881.

The DNR properly considered the existence of beaver dams and ponds and the periods of high water caused by spring runoffs in determining the navigability of the creek, since the dams and ponds were normal and natural to the stream, and the periods of high water were of a regularly recurring annual nature. *DeGayner & Co. v. DNR*, 70 W (2d) 936, 236 NW (2d) 217.

Where error in survey results in lot on meandered lake being divided by lake, common law rule that owner of land on meandered lake takes only to the actual shoreline controls. Thus, owner does not have "proper claim" to the isolated parcel, making (4) (b) inapplicable. Parcels separated by lake are not "adjacent" under (4) (b). *Com'rs. of Bd. of Public Lands v. Thiel*, 82 W (2d) 276, 262 NW (2d) 522.

This chapter applies to navigable ditches that were originally navigable streams. If a navigable ditch was originally nonnavigable or had no previous stream history, the department's jurisdiction depends upon the facts of each situation. 63 Atty. Gen. 493.

Erroneously meandered lakeshore - the status of the law as it affects title and distribution. 61 MLR 515.

The Muench case: A better test of navigability. Edwards, 1957 WLR 486.

30.11 Establishment of bulkhead lines.

(1) WHO MAY ESTABLISH. Any municipality may, subject to the approval of the department, by ordinance establish a bulkhead line and from time to time reestablish the same along any section of the shore of any navigable waters within its boundaries.

(2) STANDARDS FOR ESTABLISHING. Bulkhead lines shall be established in the public interest and shall conform as nearly as practicable to the existing shores, except that in the case of leases under sub. (5) and s. 24.39 (4) bulkhead lines may be approved farther from the existing shoreline if they are consistent with and a part of any lease executed by the board of commissioners of public lands.

(3) HOW ESTABLISHED. Whenever any municipality proposes to establish a bulkhead line or to reestablish such a line already in existence, the municipality shall indicate both the existing shore and such proposed bulkhead line upon a map and shall file with the department for its approval 3 copies thereof together with 3 copies of the ordinance establishing the bulkhead line. Such map shall use a scale of not less than 100 feet to an inch or such other scale as may be required by the department. Upon approval by the department, the municipality shall file the copies of the map and ordinance as follows: one in the office of the department, one in the office of the clerk of the municipality, and one in the office of the register of deeds of the county in which the waters lie. No such lines are legally established until such copies of the map and ordinance have been so approved and filed.

(4) RIPARIAN RIGHTS PRESERVED. Establishment of a bulkhead line shall not abridge the riparian rights of riparian proprietors. Riparian proprietors may place solid structures or fill up to such line.

(5) FINDING OF PUBLIC INTEREST. (a) Prior to the execution of any lease by the board of commissioners of public lands of rights to submerged lands or rights to fill in submerged lands held in trust for the public under s. 24.39, the department of natural resources shall determine either with or without a public hearing whether or not the proposed physical changes in the area contemplated as a result of the execution of such lease are consistent with the public interest. Thirty days before determining whether such finding should or should not be made the department of natural resources shall notify in writing the clerk of the county and clerk of the city, village or town in which such changes are contemplated, the department of health and social

services, and the U.S. Army Corps of Engineers, of the application for the lease. In making its finding the department of natural resources shall give consideration to all reports submitted to it. For leases applied for under s. 24.39 (4) (a) 2, the department shall not approve the lease if it appears to threaten excessive destruction of wildlife habitat.

(b) When considering leases to allow certain initial improvements such as, but not restricted to, filling on submerged lands to create sites for further facilities, the department may determine whether such initial improvements are consistent with the public interest in the navigable waters involved even though the exact final use to which these improvements will be put is not known. The department, at the time it finds that a proposed lease would be consistent with the public interest in the navigable waters involved, may include in its findings such limitations upon the use of improvements as it considers necessary to confine their use to functions primarily related to water transportation or otherwise of public benefit. The board of commissioners of public lands shall include in the lease such limitations on final use as is determined by the department.

(c) Upon the complaint of any person to the department that current use made of rights leased under s. 24.39 (4) is inconsistent with both 1. its original findings, and 2. the public interest, the department shall hold a public hearing thereon after the publication of a class 2 notice, under ch. 985. If the department finds that the present use conforms neither to its original finding nor to the present public interest, it shall submit its findings to the governor, and the governor may cause the attorney general or the district attorney of the proper county to bring action in the name of the state in a court of competent jurisdiction to declare the lease terminated and to institute appropriate action for removal of structures or cessation of practices in violation of such lease.

A bulkhead line is not merely the natural shoreline but one legislatively established by a municipality, hence it may differ from the existing shoreline and is also distinguishable from the low- and high-water marks as heretofore judicially defined. *State v. McFarren*, 62 W. (2d) 492, 215 NW (2d) 459.

Where a bulkhead line has been established, a riparian owner must nonetheless obtain a permit or contract pursuant to 30.20 prior to removing material from the bed of a navigable water landward of the bulkhead line, but within the original ordinary high water mark. 63 Atty. Gen. 445.

A bulkhead line is not legally established until filing requirements of (3) are met. A bulkhead line established by a town on lands subsequently annexed to a municipality which has not established such line, remains in effect. 64 Atty. Gen. 112.

30.12 Structures and deposits in navigable waters prohibited; exceptions; penalty.

(1) GENERAL PROHIBITION. Except as provided under sub. (4), unless a permit has been granted

30.12 NAVIGABLE WATERS, HARBORS AND NAVIGATION

740

by the department pursuant to statute or the legislature has otherwise authorized structures or deposits in navigable waters, it is unlawful:

- (a) To deposit any material or to place any structure upon the bed of any navigable water where no bulkhead line has been established; or
- (b) To deposit any material or to place any structure upon the bed of any navigable water beyond a lawfully established bulkhead line.

(2) PERMITS TO PLACE STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS. (a) The department may, upon application and after notice and hearing, grant to any riparian owner a permit to build or maintain for his own use a structure otherwise prohibited by statute, provided such structure does not materially obstruct navigation or reduce the effective flood flow capacity of a stream and is not detrimental to the public interest.

(b) A riparian owner may place a layer of sand or other similar material on the bed of a lake adjacent to his property for the purpose of improving recreational use upon obtaining approval as stated in this paragraph. An application for approval to put sand or other similar material on the bed of a lake for such purpose shall be made to the department. Thereupon the department shall inspect such proposal and the location involved. The department may disapprove such application if it finds the proposed work will materially impair navigation or be detrimental to the public interest. The applicant shall be notified by mail as to the disposition of his application.

(c) A riparian owner may place a fish crib or other similar device on the bed of a lake for the purpose of improving fish habitat upon obtaining approval as stated in this paragraph. An application for approval to put a fish crib or other similar device on the bed of a lake for such purpose shall be made to the department. Thereupon the department shall inspect such proposal and the location involved. The department may disapprove such application if it finds the proposed work will materially impair navigation or be detrimental to the public interest. The applicant shall be notified by mail as to the disposition of the application.

(d) A riparian owner may place riprap or other similar material on the bed and bank of navigable waters adjacent to the owner's property for the purpose of protecting the stream bank or lake shore and adjacent land from erosion upon obtaining approval as stated in this paragraph. An application for approval to put riprap or other similar material on the bed of navigable waters for such purpose shall be made to the department. Thereupon the department shall inspect such proposal and the location involved. The department may disapprove such

application if it finds the proposed work will materially impair navigation or be detrimental to the public interest. The applicant shall be notified by mail as to the disposition of the application.

(3) PENALTY. Any person violating this section or any term or condition of a permit issued pursuant thereto shall be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(4) DEPARTMENT OF TRANSPORTATION ACTIVITIES; EXEMPTION; INTERDEPARTMENTAL COORDINATION OF ENVIRONMENTAL PROTECTION MEASURES. (a) Activities affecting waters of the state as defined in s. 144.01 that are carried out under the direction and supervision of the department of transportation in connection with highway and bridge design, location, construction, reconstruction, maintenance and repair are not subject to the prohibitions or permit or approval requirements specified under s. 29.29, 30.11, 30.12, 30.195, 30.20, 59.971, 87.30 or ch. 144 or 147. However, at the earliest practical time prior to the commencement of such activities, the department of transportation shall notify the department of the location, nature and extent of the proposed work that may affect the waters of the state.

(b) The exemption under par. (a) does not apply unless the activity is accomplished in accordance with interdepartmental liaison procedures established by the department and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity.

(c) If the department determines that there is reasonable cause to believe that an activity being carried out under this subsection is not in compliance with the environmental protection requirements developed through interdepartmental liaison procedures, it shall notify the department of transportation. If the secretary and the secretary of transportation are unable to agree upon the methods or time schedules to be used to correct the alleged noncompliance, the secretary, notwithstanding the exemption provided in this subsection, may proceed with enforcement actions as the secretary deems appropriate.

(d) The department of transportation and the department shall exchange information and cooperate in the planning and carrying out of such activities in order to alleviate, to the extent practical under the circumstances, any potential detrimental encroachment on the waters of the state.

(e) Except as may be required otherwise under s. 1.11, no public notice or hearing is required in connection with any interdepart-

mental consultation and cooperation under this subsection.

History: 1975 c. 250, 421; 1977 c. 130, 447.

In a state proceeding to enforce a department order requiring an owner of land abutting a navigable lake to remove a quantity of fill, the burden of proof is on the state to establish the nonexistence of a bulkhead line. *State v. McFarren*, 62 W (2d) 492, 215 NW (2d) 459.

Sub. (1) (a) was not intended to apply to conduct which only indirectly and unintentionally results in deposits on lake beds. *State v. Deetz*, 66 W (2d) 1, 224 NW (2d) 407.

Where DNR decision prohibited structure under this section and riparian owner did not seek review under 227.20, trial court had no jurisdiction to hear action by owner seeking declaration that structure was a permitted "pier" under 30.13. *Kosmatka v. DNR*, 77 W (2d) 558, 253 NW (2d) 887.

See note to 30.11, citing 63 Atty. Gen. 445.

30.121 Regulation of boathouses and houseboats. (1) DEFINITIONS. In this section:

(a) "Boathouse" means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of structural parts.

(b) "Fixed houseboat" means a structure not actually used for navigation which extends beyond the ordinary highwater mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

(2) PROHIBITIONS. After December 16, 1979 no boathouse or fixed houseboat may be constructed or placed beyond the ordinary highwater mark of any navigable waterway.

(3) MAINTENANCE. After December 16, 1979, the owners of any boathouse or fixed houseboat extending beyond the ordinary highwater mark of any navigable waterway may repair and maintain the boathouse or fixed houseboat:

(a) If the cost of the repair or maintenance does not exceed 50% of the equalized assessed value of the boathouse or fixed houseboat or, if the boathouse or fixed houseboat is not subject to assessment, if the cost of the repair or maintenance does not exceed 50% of the current fair market value; and

(b) If the repair or maintenance does not consist of constructing a boathouse over an authorized boatslip.

(4) MAJOR REPAIR, ABANDONED STRUCTURES AND OBSTRUCTIONS TO NAVIGATION. The owner of a boathouse or a fixed houseboat which extends beyond the ordinary highwater mark of any navigable waterway and which is in a major state of disrepair or is a material obstruction to navigation may be ordered by the department to remove the structure from the waterway. The department shall follow the procedures set forth in s. 30.03 (4) (a) for ordering removal of a structure. If such a structure is abandoned and

the department, after due diligence, cannot locate the owner, the department shall utilize the procedures set forth in s. 29.04 (1) for removing the abandoned structure.

(5) APPLICABILITY. Boathouses or fixed houseboats owned by the state or by local units of government shall comply with this section. This section does not apply to any structure designated as a national, state or local historical landmark.

(6) RULES. The department may promulgate rules deemed necessary to carry out the purposes of this section.

(7) PENALTIES. Any person who constructs, owns or maintains a boathouse or fixed houseboat in violation of this section or in violation of any order issued under this section shall forfeit not less than \$10 nor more than \$50 for each offense. Each day a structure exists in violation of this section constitutes a separate offense.

History: 1979 c. 101.

30.122 Unauthorized structures. All permanent alterations, deposits or structures affecting navigable waters, other than boathouses, which were constructed before December 9, 1977 and which did not require a permit at the time of construction, shall be presumed in conformity with the law, unless a written complaint is filed within 180 days of December 9, 1977. Upon the filing of a complaint, the department shall proceed with an action to enforce the applicable statutes.

History: 1977 c. 189.

30.123 Municipal bridge construction.

Municipalities which construct or reconstruct highway bridges, arches or culverts shall not be required to obtain permits under s. 30.10, 30.12 or 31.23 for such construction or reconstruction. All municipal highway bridges, arches or culverts shall be constructed in accordance with standards developed under s. 84.01 (23).

History: 1977 c. 190, 272.

30.125 Cutting weeds in navigable waters a nuisance; penalty. (1) REMOVAL OF WEEDS.

Cutting weeds in navigable waters and not removing such weeds is a nuisance. Any person cutting weeds in navigable waters shall remove such weeds from the water.

(2) EXCEPTION. This section shall not apply to lakes where the lake property owners have incorporated under ch. 180 and operate under s. 779.70 when a majority of the members decide at the annual meeting that every lake property owner shall remove the weeds floating to his shore.

30.125 NAVIGABLE WATERS, HARBORS AND NAVIGATION

742

(3) PENALTY. Any person violating this section may be fined not more than \$100 or imprisoned not more than 3 months or both.

History: 1979 c. 32 s. 92 (9).

30.13 Regulation of wharves and piers; establishment of pierhead lines. (1)

RIGHTS OF RIPARIAN PROPRIETORS. Riparian proprietors may construct wharves or piers in navigable water in aid of navigation without obtaining a permit under s. 30.12, provided such wharves or piers do not interfere with public rights in navigable waters or with rights of other riparian proprietors, and subject to any pierhead line which may have been established and to the regulations contained in sub. (2) and in any ordinances enacted pursuant thereto. Except as otherwise expressly provided, any wharf or pier which does not comply with this subsection constitutes an unlawful obstruction of navigable waters.

(2) WHARVES AND PIERS REGULATED. All wharves and piers extending beyond the natural shore or established bulkhead line shall be so constructed as to allow the free movement of water underneath and in such manner as will not cause the formation of land upon the bed of the water. A municipality may enact ordinances not inconsistent with this section regulating the construction of wharves and piers located within, or attached to land within, such municipality.

(3) ESTABLISHMENT OF PIERHEAD LINES. Any municipality authorized by s. 30.11 to establish a bulkhead line may also establish a pierhead line in the same manner as it is authorized to establish a bulkhead line, except that if such municipality has created a board of harbor commissioners, the municipality must obtain the approval of such board to the establishment of the pierhead line in addition to the approval of the department. Any pierhead line established by a municipality shall be established in the interest of the preservation and protection of its harbor or of public rights in navigable waters.

(4) WHARVES AND PIERS BEYOND PIERHEAD LINES PROHIBITED; EXCEPTIONS. Any wharf or pier extending into navigable water beyond a lawfully established pierhead line constitutes an unlawful obstruction of navigable water unless a permit for such wharf or pier has been obtained pursuant to s. 30.12 (2).

See note to 30.12, citing *Kosmatka v. DNR*, 77 W (2d) 558, 253 NW (2d) 887.

30.14 Reports of and hearings on violations. (1) MUNICIPALITIES TO REPORT VIOLATIONS. The governing body of each municipality shall promptly report to the department every violation of s. 30.12 or 30.13 which occurs or

which it has reason to believe is likely to occur within the municipal boundaries.

(2) HEARINGS BY DEPARTMENT. Upon complaint by any person to the department that any wharf, pier or other structure exists in navigable water in violation of s. 30.12 or s. 30.13 or that any wharf, pier or other structure proposed to be built in navigable water will violate s. 30.12 or 30.13, the department shall hold a hearing thereon to determine whether such structure is or will be in violation of those sections.

30.15 Penalty for unlawful obstruction of navigable waters. (1)

OBSTRUCTIONS PENALIZED. Any person who does any of the following shall forfeit not more than \$50 for each offense:

(a) Unlawfully obstructs any navigable waters and thereby impairs the free navigation thereof.

(b) Unlawfully places in navigable waters or in any tributary thereof any substance that may float into and obstruct any such waters or impede their free navigation.

(c) Constructs or maintains in navigable waters, or aids in the construction or maintenance therein, of any boom not authorized by law.

(d) Constructs or places any structure or deposits any material in navigable waters in violation of s. 30.12 or 30.13.

(2) EXCEPTIONS. Subsection (1) does not apply to the floating or movement of logs or timber in navigable waters, or the necessary use of temporary booms in the course of such floating or movement or the cutting of weeds in such waters with the consent of the department.

(3) EACH DAY A SEPARATE VIOLATION. Each day during which an obstruction exists in violation of sub. (1) is a separate offense.

(4) OBSTRUCTIONS ARE PUBLIC NUISANCES. Every obstruction constructed or maintained in or over any navigable waters of this state in violation of this chapter and every violation of s. 30.12 or 30.13 is declared to be a public nuisance, and the construction thereof may be enjoined and the maintenance thereof may be abated by action at the suit of the state or any citizen thereof.

Where bridge obstructing navigation was necessary, reasonable, and existing before plaintiff moved into area, defendant city need not abate the nuisance. *Capt. Soma Boat Line v. Wisconsin Dells*, 79 W (2d) 10, 255 NW (2d) 441.

If the unattended and anchored boat is left on navigable water for an unreasonable length of time, it constitutes a violation. 63 Atty. Gen. 601.

30.16 Removal of obstructions to navigation. (1) REMOVAL. The governing body of any city, village or county in this state may cause to be removed to a convenient and safe place any watercraft or float obstructing or interfering

with the free navigation of any river, canal, water channel or slip within its harbor after having given reasonable notice to the master or owner or his agent, if known and a resident of this state, or to the person in charge thereof, to so remove such watercraft or float. The governing body of such city, village or county by ordinance or resolution may authorize any harbor master or other public officer over whom it has jurisdiction to remove such obstruction, and may prescribe his duties with respect thereto and the mode of carrying them into effect and may prescribe penalties for violation of such ordinance or resolution.

(2) COSTS OF REMOVAL. All costs, charges and expenses of such removal are a first lien on such watercraft or float, which lien may be enforced in the manner provided by law. The owner of any such watercraft or float is also personally liable for such costs, charges and expenses, to be recovered by such city, village or county by a personal action.

30.17 Interfering with buoy or beacon.

Any person who intentionally removes any buoy or beacon placed in the waters of this state by authority of the United States or this state or other governmental authority or who moors or attaches any watercraft to any such buoy or beacon shall be fined not more than \$50 or imprisoned not more than 90 days or both.

30.18 Diversion of water from lakes and streams. (1) WHEN DIVERSION LAWFUL.

(a) It is lawful to temporarily divert the surplus water of any stream for the purpose of bringing back or maintaining the normal level of any navigable lake or for maintaining the normal flow of water in any navigable stream, regardless of whether such navigable lake or stream is located within the watershed of the stream from which the surplus water is diverted.

(b) Water other than surplus water may be diverted with the consent of riparian owners damaged thereby for the purpose of agriculture or irrigation but no water shall be so diverted to the injury of public rights in the stream or to the injury of any riparian located on the stream, unless such riparians consent thereto.

(2) SURPLUS WATER DEFINED. "Surplus water" as used in this section means any water of a stream which is not being beneficially used. The department may determine how much of the flowing water at any point in a stream is surplus water.

(3) APPLICATION FOR PERMIT. (a) It is unlawful for any person to divert water for the purposes set forth in sub. (1) without a permit. The applicant shall file an application with the

department setting forth the name and post-office address of the applicant, the name of the stream, the point in the stream from which it is proposed to divert the surplus water, the name of the navigable lake or navigable stream or lands to which such water is to be diverted, the location and description of the canal, tunnel or pipes and other works through which the water is to be diverted, the amount of water to be diverted, the periods of time when it is proposed to divert such water, and the time required for the completion of the canal and other structures necessary for the completed project, which shall not be greater than 2 years from the filing of the application.

(b) A map shall accompany the application on a scale of not less than 4 inches to the mile, showing the land topography and the course of the proposed diversion canal and other works, and the ownership of all lands upon which will be located the canal and all other works for the completed project.

(c) Plans in duplicate showing cross sections and profiles for the canal, showing all tunnels, pipes or other diversion works, the dam and control works at the point of diversion and at the point of discharge, must accompany the application.

(d) The department may require such additional information as may be pertinent.

(4) NOTICE OF HEARING ON APPLICATION.

(a) On the receipt of the application, the department shall set the application for a public hearing, notice of which shall be given by publication and by mailing a copy of the notice, as provided in s. 31.06, to every person upon whose land any part of the canal or other structures will be located, to the clerk of the town, village or city and county in which the diversion will take place, the clerk of the town next downstream, and the clerk of any village or city through which the stream runs and which is adjacent to said municipalities in which the diversion takes place.

(b) If a hearing on the application for a permit is conducted as a part of a hearing under s. 144.836, the notice and hearing provisions in that section supersede the notice and hearing provisions of par. (a).

(5) ISSUANCE OF PERMIT. At the conclusion of the hearing, if it appears that the water to be diverted is surplus water, or if not surplus water the riparians injured by such diversion have consented thereto, the department shall so find and shall issue a permit for the diversion of such water. No new permit shall issue for diversion of water from any trout stream designated as such by the department in publication 213-57 and subsequent revisions of said publication without prior written approval by the department. The department shall determine and fix the quantity

of water to be diverted and the time when such water may be diverted. When it is determined that a riparian permittee is authorized to withdraw a stated flow of water, he may use that water on any other land contiguous to his riparian land, but he may not withdraw more water than he did prior to August 1, 1957. The department shall annually review all permits to divert water issued since August 1, 1957. Upon making such annual review, the department may revoke any permit upon finding that the withdrawal is detrimental to other riparians or to the stream or lake and shall revoke any permit issued for diversion of water from any trout stream designated as aforesaid when it is deemed desirable to do so for conservation purposes.

(6) DEPARTMENT TO HAVE CONTINUING JURISDICTION. The quantity of water to be taken and the time or times when it may be taken shall be under the control of the department, to the end that only surplus water be diverted from its natural channel, and that when any water in a stream ceases to be surplus water, the diversion of such water shall cease except that the department may permit the diversion of other than surplus water with the consent of the riparian owners damaged thereby.

(7) PREREQUISITES TO PROJECT CONSTRUCTION. After an application under this section has been filed with the department, the applicant may enter any land through which it is proposed to divert the water for the purposes of making any surveys required for drafting the plans for the project, but no work shall be commenced on the canal, headworks or other structures necessary for the project until the plans for the same have been approved by the department. Any person having received a permit to divert water under this section may construct upon the land of another the canal and other works authorized by the permit after the damage which will be sustained by the owner or owners of such land has been satisfied, or has been determined as provided for in ch. 32, and after the final sum so determined and all costs have been paid to the persons entitled thereto or to the clerk of the circuit court on their account.

(8) STATE PERMIT. When after due examination and investigation, the department determines it to be necessary for conservation purposes that water elevations in any navigable stream or lake be raised, the department may, whenever it has funds available from any source other than license fees, determine and fix the elevations to which the water may be raised or maintained, but such water elevation shall in no case be fixed below the normal elevation except when so stated in the permit. If any lands are

damaged by the raising of the water levels above normal, pursuant to the permit, and the department cannot acquire the right to flow such lands by agreement with the owner, it may acquire such lands or the right to flow the same by condemnation under ch. 32.

(9) JUDICIAL REVIEW. Any order or determination made by the department is subject to judicial review as prescribed in ch. 227.

(10) PENALTY. Any person violating this section or any term or condition of a permit issued pursuant thereto shall be fined not more than \$1,000 or imprisoned not more than 6 months, or both.

History: 1979 c. 221.

Note: "Publication 213-57" referred to in sub. (5) is a publication of the department of natural resources entitled "Wisconsin Trout Streams".

This section is to be strictly construed and any diversion of water lawful at common law is permitted without a permit unless it is for irrigation, agriculture or to maintain normal water levels. State ex rel. Chain O'Lakes P. Asso. v. Moses, 53 W (2d) 579, 193 NW (2d) 708.

The statute applies to diversions from nonnavigable as well as from navigable streams. Omernik v. State, 64 W (2d) 6, 218 NW (2d) 734.

Legislature abrogated common law riparian right of irrigation and substituted permit procedure under (3). Omernick v. DNR, 71 W (2d) 370, 238 NW (2d) 114.

Section 94.26 exempts cranberry growers from permit requirements of 30.18. State v. Zawistowski, 95 W (2d) 250, 290 NW (2d) 303 (1980).

30.19 Enlargement and protection of waterways. (1) PERMITS REQUIRED. Unless a permit has been granted by the department or authorization has been granted by the legislature, it is unlawful:

(a) To construct, dredge, commence or do any work with respect to any artificial waterway, canal, channel, ditch, lagoon, pond, lake or similar waterway where the purpose is ultimate connection with an existing navigable stream, lake or other body of navigable water, or where any part of such artificial waterway is located within 500 feet of the ordinary high-water mark of an existing navigable stream, lake or other body of navigable water.

(b) To connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake or similar waterway with an existing body of navigable water, for navigation or any other purpose.

(c) To grade or otherwise remove top soil from the bank of any navigable stream, lake or other body of navigable water where the area exposed by such grading or removal will exceed 10,000 square feet.

(d) This section shall not apply to the construction and repair of public highways or to any agricultural uses of land, nor to any navigable body of water located wholly or partly in any county having a population of 500,000 or more.

(2) PERMITS FOR WORK OR TO ENLARGE WATERWAYS. Before any work or connection speci-

fied in sub. (1) is undertaken the applicant shall file an application with the department setting forth the following:

- (a) The name and address of the applicant.
- (b) The legal description of the lands included in the project.
- (c) A summary statement of the purpose of the project.
- (d) A map or diagram showing the proposal on an adequate scale with contours and cross-section profiles of the waterways to be constructed or grading to be undertaken.
- (e) The name and address of the secretary of any property owners' association pertaining to the bodies of water affected by the project or if there is no such association, the names and addresses of at least 5 persons who own real property located adjacent to the bodies of water. If fewer than 5 persons own real property located adjacent to the bodies of water, the names and addresses of such persons that own real estate so located shall be given.

(f) Such other information that may be required by the department.

(3) NOTICE OF HEARING. (a) Upon receipt of the application the department shall mail copies to the department of health and social services, clerks of the municipality and county in which the project or bodies of water affected are located, and to the other persons named in sub. (2) (e), accompanied by a statement that unless written objection is filed with the department of natural resources within 30 days after the mailing of the application, the department may take action to grant the application without public hearing. If the application affects the Milwaukee river, the Menomonee river, the Kinnickinnic river, the Root river or any of the tributaries thereof, notice shall also be given to the metropolitan sewerage district of the county of Milwaukee. If timely objection is filed, the department shall set the application for public hearing. Notice of such hearing shall be given by publication and by mailing a copy of the notice, as provided in s. 31.06, to the persons named in this subsection.

(b) If a hearing on the application for a permit is conducted as a part of a hearing under s. 144.836, the notice, comment and hearing provisions in that section supersede the notice, comment and hearing provisions of par. (a).

(4) ISSUANCE OF PERMIT. If the department finds that the project will not injure public rights or interest, including fish and game habitat, that the project will not cause environmental pollution as defined in s. 144.01 (3), that the project conforms to the requirement of laws for the platting of land and for sanitation and that no material injury to the rights of any riparian owners on any body of water affected will result,

the department shall issue a permit authorizing the enlargement of the waterways affected.

(5) CONDITIONS OF PERMIT. The permit shall provide that all artificial waterways constructed under this section shall be public waterways. The department may impose such further conditions in the permit that it finds reasonably necessary to protect public health, safety, welfare, rights and interest and to protect private rights and property.

(6) PENALTY. Any person violating this section or any term or condition of a permit issued pursuant thereto shall forfeit not more than \$1,000.

History: 1971 c. 273; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221

See note to 88 21, citing 63 Atty. Gen. 355

See note to 30.11, citing 63 Atty. Gen. 445.

30.195 Changing of stream courses. (1)

PERMIT REQUIRED. No person shall change the course of or straighten a navigable stream without a permit therefor having been granted pursuant to this section or without otherwise being expressly authorized by statute to do so. Any person violating this section shall be fined not more than \$1,000 or imprisoned not more than 6 months, or both.

(2) APPLICATIONS. Applications for permits required by this section shall be made to the department of natural resources upon forms prescribed by it. Applications shall contain such information as the department reasonably requires to enable it to act on the application.

(3) GRANTING OF PERMIT. Upon application therefor, the department shall grant a permit to the owner of any land to change the course of or straighten a navigable stream on such land, if such change or straightening will improve the economic or aesthetic value of the owner's land and will not adversely affect the flood flow capacity of the stream or otherwise be detrimental to public rights or to the rights of other riparians located on the stream. If the department finds that the rights of such riparians will be adversely affected, it may grant the permit only with their consent. Such permit may be granted on the department's own motion after its own investigation or after public hearing and after giving prior notice of such investigation or hearing.

(4) LIABILITY FOR NEGLIGENCE. No common law liability, and no statutory liability which may be provided elsewhere in these statutes, for damages resulting from the changing of the course of or from the straightening of a stream is in any manner affected by this section, nor does this section create any liability on the part of the state for any such damages, but a person who changes the course of a stream or

30.195 NAVIGABLE WATERS, HARBORS AND NAVIGATION

746

straightens a stream in accordance with a permit granted pursuant to this section is presumed to have exercised due care in such changing or straightening.

(5) RESTORATION OF UNLAWFULLY STRAIGHTENED STREAM. The department of natural resources, upon its own finding that the course of a stream has been changed or the stream straightened in violation of this section and that it is in the public interest to restore such stream to its former course, may order the person who straightened or changed the course of the stream in violation of this section to restore such stream to its former course. If the person fails to comply, or in good faith to begin to comply, with such order within the time specified therein, or in the case of appeal, within 20 days after final judgment, he is subject to a forfeiture of not more than \$25 for each day such failure to comply, or begin to comply, continues.

(6) CEASE AND DESIST ORDER. The department may order any person violating or threatening to violate this section to cease and desist from such violation or threatened violation. If such person fails to comply with such order within 5 days after issuance thereof, the department may cause an action for injunction to be commenced in a court of competent jurisdiction to have such order enforced. Such order is not reviewable under ch. 227.

(7) APPLICATION OF SECTION. This section shall not apply to municipal or county-owned lands in counties having a population of 500,000 or more.

Elements of proof required for conviction under (1) discussed 67 Atty Gen 265.

30.20 Removal of material from beds of navigable waters. (1) UNLAWFUL REMOVAL.

(a) No person shall remove any material from the bed of any navigable lake or from the bed of any outlying waters of this state without first obtaining a contract therefor as provided in sub. (2).

(b) No person shall remove any material from the bed of any lake or stream not mentioned in par. (a) without first obtaining a permit from the department under sub. (2)(c).

(c) Any person violating this section shall forfeit not more than \$1,000 for each such violation.

(2) CONTRACTS FOR REMOVAL. (a) The department, whenever consistent with public rights, may enter into contracts on behalf of the state for the removal of any material from the bed of any navigable lake or any of the outlying waters, and for the lease or sale of the material. Every contract shall contain such conditions as may be necessary for the protection of the public

interest and the interests of the state and shall fix the compensation to be paid to the state for material so removed, except that no compensation may be paid for the material if the contract is with a municipality as defined in s. 144.01 (6) and the material is to be used for a municipal purpose and not for resale. No contract entered into under this paragraph may run for a longer period than 5 years.

(b) The department, whenever consistent with public rights, may enter into contracts on behalf of the state for the removal of any mineral, ore and material from beneath the bed of navigable lakes and waters, where the waters would not be disturbed in the removal operation and for the lease and sale of such mineral, material and ore and provide the necessary regulations for all acts incident thereto. Every such contract shall contain such conditions as may be necessary for the protection of the public interest and the interests of the state, and shall fix the compensation to be paid to the state for the material, mineral and ore so removed. No contract entered into, pursuant to this paragraph, shall run for a longer period than 75 years. Should any doubt exist as to whether the state, in fact, owns such lake bed or stream bed such contract or lease shall be for such interests, if any, as the state may own. Title to the royalties to be paid when mining operations are begun shall be determined at such future time as royalties for ores so sold are paid or are due and payable.

(c) A permit to remove material from the bed of any lake or stream not included in sub. (1)(a) may be issued by the department if it finds that the issuance of such a permit will be consistent with the public interest in the water involved. The department may adopt rules to enable it to administer this section.

(3) OUTLYING WATERS DEFINED. In this section, "outlying waters" has the meaning designated in s. 29.01 (4).

History: 1977 c. 391; 1979 c. 34 s. 2102 (39) (g).

Before proceeding under 88 90 (3), one must obtain permit under 30.20. State v. Dwyer, 91 W (2d) 440, 283 NW (2d) 448 (Ct. App. 1979).

See note to 30.11, citing 63 Atty Gen. 445.

30.205 Zoning for certain lake bed removals. (1)

When any lake area, either through siltation or because of a lowered water level, becomes unfit for recreational use, the department may establish zones within which the owners of developed riparian lands adjacent thereto may at their own expense remove material from the lake bed to restore the area to recreational use. Once the zone is established, s. 30.20 (1) (a) shall not apply.

(2) Upon application by a riparian owner for the establishment of a zone under this section or

on its own motion, the department shall hold a hearing on the question of establishing the zone. The zone shall be established by the department only if it finds that the interests of the general public or of other riparian owners will not be adversely affected by such establishment. If the department determines to establish a zone, it shall fix the zone's boundaries, determine the amount of material which may be removed and issue orders governing such removal.

(3) The department may establish such rules and procedures as are necessary to implement this section and all actions by the department under this section are reviewable under ch. 227.

(4) This section applies only to outlying waters as defined in s. 29.01.

History: 1973 c. 90.

See note to 30.11, citing 63 Atty. Gen. 445.

30.21 Use of beds of Great Lakes by public utilities. (1) WATER INTAKE FACILITIES.

Upon compliance with such applicable regulations as may be imposed by the government of the United States and subject to chs. 196 and 197 and rules and orders of the public service commission issued pursuant thereto, any public utility may, pursuant to permit granted by resolution of the governing body of any city, village or town situated on any waters of Lake Michigan or Lake Superior or in the Great Lakes basin, construct, maintain and operate, upon and under the bed thereof adjoining such city, village or town, all cribs, intakes, basins, pipes and tunnels necessary or convenient for securing an adequate supply of water suitable for the purposes of such utility, provided only, that concurrently with the construction of facilities for the withdrawal of water from the lakes, the city, town or village must construct sewage treatment and disposal works adequate to treat completely all sewage of the municipality and to return the purified effluent to the Great Lakes basin. Any city, village or town, the limits of which are within 50 miles of any such waters and any public utility serving the same shall be deemed to be situated on such waters within the meaning of this section and such municipality or public utility serving the same shall, subject to this section, have authority to acquire and own or lease sufficient real estate, not to exceed 50 miles beyond the corporate limits of such municipality, for the purpose of constructing, maintaining and operating thereon or thereunder, transmission facilities and structures, including cribs, intakes, basins, pipes and tunnels, necessary or convenient for securing an adequate supply of water suitable for the purposes of such municipality or utility. Such facilities shall be so constructed, maintained and operated as to avoid material obstruction to existing navigation

or the use of private property not owned by such utility.

(2) **HARBOR FACILITIES; PUBLIC UTILITY STRUCTURES.** Pursuant to the authority and conditions specified in sub. (1), any such utility may also:

(a) Improve the navigability of any of the waters specified in sub. (1) and construct upon the shore and the adjoining bed of such waters, harbor facilities adapted for the reception, docking, unloading and loading of vessels carrying supplies required for the operation of such utility.

(b) Place any public utility structure, including all or part of any plant for the generation of electricity and the appurtenances, upon the bed of any of the waters specified in sub. (1), provided the utility first obtains approval under this chapter and obtains the approval of the public service commission as required by s. 196.49 or rules or orders of the public service commission issued pursuant thereto, and also obtains the approval of the department to the making of any payment to be made to the municipality with respect to the erection of such structure.

30.24 Transfer of Fox river facilities. (1)

The state of Wisconsin hereby accepts the transfer of the federal project structures, appurtenances and real property on the upper Fox river pursuant to P. L. 85-500, when the department determines that said structures, appurtenances and real property have been put in condition by the federal government as set forth in and in accordance with the work plan agreed upon between the United States army corps of engineers and the department dated September 8, 1958.

30.25 Wolf river protection. No effort to improve the navigation on the Wolf river north of the southern boundary of Shawano county shall be made nor shall any dam be authorized in that portion of the Wolf river. Any permit issued or in effect by virtue of or under authority of any order or law authorizing the construction of any dam in the Wolf river in Langlade county is hereby set aside and declared void. This declaration shall not affect the operation or maintenance of any existing dam.

30.26 Wild rivers. (1) LEGISLATIVE INTENT.

In order to afford the people of this state an opportunity to enjoy natural streams, to attract out-of-state visitors and assure the well-being of our tourist industry, it is in the interest of this state to preserve some rivers in a free flowing condition and to protect them from develop-

30.26 NAVIGABLE WATERS, HARBORS AND NAVIGATION

748

ment; and for this purpose a system of wild rivers is established, but no river shall be designated as wild without legislative act.

(2) **DESIGNATION.** The Pike river in Marinette county, and the Pine river and its tributary Popple river in Florence and Forest counties are designated as wild rivers and shall receive special management to assure their preservation, protection and enhancement of their natural beauty, unique recreational and other inherent values in accordance with guidelines outlined in this section.

(3) **DUTIES OF DEPARTMENT.** The department in connection with wild rivers shall:

(a) Provide active leadership in the development of a practical management policy.

(b) Consult other state agencies and planning committees.

(c) Collaborate with county and town boards and local development committees or boards in producing a mutually acceptable program for the preservation, protection and enhancement of the rivers.

(d) Administer the management program.

(e) Seek the co-operation of the U.S. forest service, timber companies, county foresters and private landowners in implementing land use practices to accomplish the objectives of the management policy.

(f) Act as co-ordinator under this subsection.

30.27 Lower St. Croix river preservation.

(1) **PURPOSE.** The lower St. Croix river, between the dam near St. Croix Falls and its confluence with the Mississippi river, constitutes a relatively undeveloped scenic and recreational asset. The preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of Wisconsin. The state of Wisconsin is therefore determined that the lower St. Croix river be included in the national wild and scenic rivers system under the wild and scenic rivers act, as amended (Title 16 USC 1271 et seq.) and the lower St. Croix river act of 1972 (Pub. L. No. 92-560). The purpose of this section is to ensure the continued eligibility of the lower St. Croix river for inclusion in the national wild and scenic rivers system and to guarantee the protection of the wild, scenic and recreational qualities of the river for present and future generations.

(2) **ZONING GUIDELINES.** As soon as possible after May 7, 1974, the department shall adopt, by rule, guidelines and specific standards for local zoning ordinances which apply to the banks, bluffs and bluff tops of the lower St. Croix river. The guidelines shall designate the boundaries of the areas to which they apply. In

drafting such guidelines and standards, the department shall consult with appropriate officials of counties, cities, villages and towns lying within the affected area. The standards specified in the guidelines shall include, but not be limited to: a) the prohibition of new residential, commercial and industrial uses, and the issuance of building permits therefor, where such uses are inconsistent with the purposes of this section, and b) the establishment of acreage, frontage and setback requirements where compliance with such requirements will result in residential, commercial or industrial uses which are consistent with the purposes of this section. Such standards shall be consistent with but may be more restrictive than any pertinent guidelines and standards promulgated by the secretary of the interior under the wild and scenic rivers act. If it appears to the department that the purposes of this section may be thwarted or the wild, scenic or recreational values of the river adversely affected prior to the implementation of rules under this section, the department may exercise its emergency rule-making authority under s. 227.027, and such rules shall be effective and implemented and enforced under sub. (3) until permanent rules are implemented under sub. (3).

(3) **IMPLEMENTATION.** Counties, cities, villages and towns lying, in whole or in part, within the areas affected by the guidelines adopted under sub. (2) are empowered to and shall adopt zoning ordinances complying with the guidelines and standards adopted under sub. (2) within 30 days after their effective date. If any county, city, village or town does not adopt an ordinance within the time limit prescribed, or if the department determines that an adopted ordinance does not satisfy the requirements of the guidelines and standards, the department shall immediately adopt such an ordinance. An ordinance adopted by the department shall be of the same effect as if adopted by the county, city, village or town, and the local authorities shall administer and enforce the ordinance in the same manner as if the county, city, village or town had adopted it. No zoning ordinance so adopted may be modified nor may any variance therefrom be granted by the county, city, village or town without the written consent of the department, except nothing in this section shall be construed to prohibit a county, city, village or town from adopting an ordinance more restrictive than that adopted by the department.

History: 1973 c. 197.

30.28 Fee for permits and approvals. (1)

The department shall charge a permit or approval fee for carrying out its duties and responsibilities under ss. 30.10 to 30.27. The permit or

approval fee shall accompany the permit application or request for approval and shall be refunded if the permit or approval is not granted.

(2) The basic fee charged for permits and approvals shall be \$10 plus a supplemental fee based upon the estimated project cost as follows:

(a) Five dollars for projects from \$1 to \$500 in value.

(b) Ten dollars for projects from \$501 to \$2,000 in value.

(c) Twenty dollars for projects from \$2,001 to \$5,000 in value.

(d) Fifty dollars for projects from \$5,001 to \$10,000 in value.

(e) Sixty-five dollars for projects in excess of \$10,000 in value.

(3) This section does not apply to any federal agency, state agency, county, city, village, town, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district, soil and water conservation district or federally recognized Native American tribal governing body.

History: 1977 c. 29; 1979 c. 221.

DEVELOPMENT AND OPERATION OF HARBORS

30.30 Municipal authority to make harbor improvements. Every municipality having navigable waters within or adjoining its boundaries may exercise the following powers:

(1) **HARBOR IMPROVEMENT.** By proper filling or excavating or dredging and docking, create or improve any inner or outer harbor and such turning basins, slips, canals and other waterways within its boundaries as it determines are necessary.

(2) **REPAIRS AND ALTERATIONS.** Keep in repair and from time to time alter, extend, enlarge or discontinue any improvement mentioned in sub. (1).

(3) **DOCK WALLS AND SHORE PROTECTION WALLS.** (a) Either by itself or in conjunction with another municipality, construct, maintain or repair suitable dock walls or shore protection walls along the shore of any waterway adjoining or within the limits of such municipality, exclusive of privately owned slips. Such structures may be located within or without the municipal limits.

(b) Whenever an improvement, alteration, repair or extension of a dock wall or shore protection wall along the bank or shore of any waterway adjoining or within the limits of a municipality is required in order to eliminate menaces to navigation, or to promote the public health, safety or welfare, or to eliminate dilapidation, blight or obsolescence of such dock wall

or shore protection wall, the board of harbor commissioners, if such board has been established within the municipality, or the local legislative body if no such board has been created, shall make a determination by resolution that it is essential that such dock wall or shore protection wall be improved, altered, repaired or extended. A certified copy of such resolution shall be served on the owners of the property of which such dock wall or shore protection wall is a part, by either forwarding such certified copy of the resolution by registered mail to the owners or by serving a certified copy of such resolution personally upon such owners if they can be found within the municipality. The resolution shall also specify a period of 90 days within which the owners shall be required to commence work for the improvement, alteration, repair or extension of the dock wall or shore protection wall.

(c) In the event the owners of the property on which such dock wall or shore protection wall is located fail to notify the board of harbor commissioners or the local legislative body, as the case may be, within such 90-day period that such work will be commenced as specified in the resolution, the board of harbor commissioners or the local legislative body shall request the city attorney, district attorney or corporation counsel for the commencement of an action in the circuit court in the county in which such property is located for determination of whether or not such improvement, alteration, repair or extension of the dock wall or shore protection wall is required and for the fixing of the time by the court within which time the work must be commenced and completed. The action shall be entitled in the name of the state and the municipality, and the attorney general shall participate on behalf of the state. The complaint shall recite the type of improvement, alteration, repair or extension which is required, the approximate cost thereof, the need for such work as related to the reasons stated in par. (b), and such other allegations as may be pertinent. The owners of the property within which such dock wall or shore protection wall is located shall be named defendants; they shall be permitted to plead as provided for in civil actions. The action shall be brought to trial in the circuit court as promptly as possible. If the circuit court determines that the work shall be performed, it shall make a finding to that effect and enter an order directing the owners of the property to commence the work and to complete it within a period of time fixed by the court in such order, or in the alternative provide that the municipality may complete such work and charge the cost thereof to the owners of the property. The cost of such work in the event it is performed by the municipality shall be recovered from the owners of the

30.30 NAVIGABLE WATERS, HARBORS AND NAVIGATION

750

property as special assessments for benefits to lands provided for in s. 66.60. Either party to the action may appeal from the determination of the circuit court within 30 days following the entry of the order. The appeal to the court of appeals shall be perfected in the same manner as are other civil actions and shall be given precedence. Only such portion of the cost of the work shall be assessed against the owners which is of benefit to their lands.

(4) SPECIAL ASSESSMENTS. Make special assessments for benefits to lands on account of any of the improvements specified in sub. (3) and also in those cases where the owners of the property to be benefited by improvements in navigable waters consent in advance to such assessments, and in no other case, but the cost of protecting the ends of public streets and highways and other public grounds shall be paid wholly by the municipality.

(5) ACQUISITION OF LAND. Acquire such lands or interests therein as it deems necessary for properly carrying out its powers under this chapter, including such lands outside the municipal limits as are necessary to protect its property or to carry out its powers under sub. (3). Such acquisition may be by condemnation proceedings.

(6) CO-OPERATION WITH FEDERAL GOVERNMENT IN HARBOR IMPROVEMENTS. Prepare the necessary plats and otherwise co-operate with the federal government when it indicates its intention to aid in the improvement of any harbor over which the municipality has jurisdiction, including the authority granted by s. 66.45. If the municipality has established a board of harbor commissioners, such board shall have charge of the preparation of the plats and other necessary co-operation. The title to any lands acquired for the purpose of such harbor improvement may be transferred to the U.S. government for use in improving the harbor of the municipality.

(7) DOING OF WORK. Contract for the doing of the work authorized by this section or purchase the necessary equipment for the doing of the work itself, but if the municipality has established a board of harbor commissioners such board shall have charge of the letting of contracts and shall supervise the doing of the work, except as provided in ss. 30.31 (1) and 30.32 (2).

(8) LEASE OF WHARFING PRIVILEGES. Lease the wharfing privileges of navigable waters at the ends of streets, giving preference to owners of adjoining land, and prescribe or regulate the fees to be charged for wharfrage at such places. No buildings shall be erected on the ends of streets, and a free passage over the same for all

persons with their baggage shall be reserved; but nothing herein shall be construed to prohibit the erection of public buildings by a municipality within a filled in area of a lake or river where such municipality has been granted specific authority therefor by the legislature, or in conjunction therewith, in any street end or approaches thereto. No such construction on any street end or approaches shall prevent access to the navigable water. If the municipality has established a board of harbor commissioners, the municipality may delegate to such board the powers conferred by this subsection.

History: 1977 c 187 s 134

30.31 Procedural and other requirements to be followed in making harbor improvements.

(1) SUPERVISION OF WORK. In exercising the powers granted by s. 30.30 (1) to (3) a municipality shall be governed by the law governing the laying out, improvement and repair of streets and bridges in such municipality, so far as applicable, except that no petition of property owners for doing any such work is necessary. If the municipality has established a board of harbor commissioners, such board shall be in charge of the work unless the board determines that it is not equipped to supervise the work and by resolution delegates such function to the agency which ordinarily performs such function for the municipality. If the municipality does not have a board of harbor commissioners, the municipality's board of public works or, in the event there is no such board, the municipality's governing body shall be in charge of the work.

(2) WORK REQUIRING APPROVAL OF STATE OR FEDERAL GOVERNMENT. No work for which the approval of the department or of the United States is required shall be commenced unless the plans and specifications for such work have been submitted to and approved by the department or the proper officer of the United States, as the case may be. When the plans and specifications have been so approved, the work shall be done only in accordance with such plans and specifications.

(3) GOVERNMENT AID IN DREDGING OF HARBOR CHANNELS AND FLOOD CONTROL PROJECTS. Whenever the U.S. government indicates its intention to aid in any flood control project or in the improvement of any harbor by dredging of harbor channels at federal expense, subject to the proviso that the local interests save the federal government harmless from all liability and claims for damages resulting from such project or dredging, the governing body of such municipality may, by resolution, assume liability for and on behalf of both public and private ownership adjacent to, within, under and over the channels, land area and construction works

in flood control projects, involved in such federal projects. Such municipality may provide adequate insurance coverage, indemnifying such municipality for all damage resulting from such project or dredging.

(4) ACQUISITION OF LAND. In acquiring land by condemnation for any of the purposes specified in this chapter, a municipality shall be governed by the law relating to condemnation of land for public grounds or street purposes. Whenever land is acquired through a land contract arrangement, such contract may create a lien on such lands for the purchase price and interest thereon but shall not create any liability therefor on the part of the municipality.

(5) CO-OPERATION AMONG MUNICIPALITIES. Whenever 2 or more municipalities propose to co-operate in erecting, maintaining or repairing a dock wall or shore protection wall, their governing bodies shall first meet and adopt a method of proceeding and a plan of apportioning to each its share of the entire cost. Such method of proceeding and plan of apportionment shall be embodied in a resolution adopted by the governing bodies of the co-operating municipalities acting jointly and later such resolution shall be adopted by each of the governing bodies acting separately. Municipalities acting under this section shall have the powers conferred by s. 66.30.

(6) SPECIAL ASSESSMENTS. Special assessments for benefits to lands, when authorized by s. 30.30 (4), shall be made and enforced as provided by s. 66.60, except that at any time within the 90-day period immediately following the publication of the final resolution as required by s. 66.60 (8) (d), the owner of any property along which such improvement is to be made may elect to make the improvement along his property at his own expense in accordance with the approved plans and specifications or in a manner which conforms to good engineering practice and which provides for materials and designs which, with respect to strength and permanence, are at least equal to the requirements of the approved plans and specifications. If such owner makes such improvement at his own expense, no assessment of benefits shall be made therefor. If such owner fails to commence the work within the 90-day period specified herein or fails to carry on and complete the work with due diligence, the work may be done or completed by the municipality and assessment of benefits made therefor.

(7) BUILDING PERMITS FOR MARINE SHIPPING STRUCTURES. Before any permit for building or improving any structure directly affecting marine shipping is issued by a municipality or any of its departments, the plans therefor shall

be submitted to the municipality's board of harbor commissioners, if any. If the board finds that the location or design of the structure will adversely affect the orderly development of the harbor or the orderly movement of traffic to or within the harbor, the board may disapprove the plans, giving its specific reasons for such disapproval. No permit for building or improving any such structure shall be issued until the plans therefor have been approved by the board of harbor commissioners. The governing body of the municipality may delegate to the board of harbor commissioners the power to issue permits for construction of dock walls.

30.32 Contracts; competitive bidding; exceptions. (1) COMPETITIVE BIDDING REQUIRED. Except as otherwise provided in this section, all work to be let relative to the construction, repair or maintenance of a harbor or harbor facility and all purchases of equipment, supplies or materials relative to carrying out the purposes of the statutes relating to harbors shall be by contract awarded to the lowest competent and reliable bidder in accordance with the laws of this state and ordinances then applicable to such municipality with reference to the letting of public work.

(2) BOARD OF HARBOR COMMISSIONERS TO HAVE CHARGE OF LETTING CONTRACTS. If a municipality has established a board of harbor commissioners, such board shall be in charge of the letting of contracts relative to construction, repair or maintenance of a harbor or harbor facility or the purchase of equipment, supplies or materials relative to carrying out the purposes of the statutes relating to harbors, in lieu of the officer or agency which otherwise would be in charge of the letting of public work, except that if the board determines that it is not equipped to handle the contracting formalities required under this section, it may by resolution delegate all or part of its functions under this section to the agency which ordinarily performs such functions for the municipality.

(3) EXCEPTIONS TO COMPETITIVE BIDDING. Subsection (1) does not apply in any of the following cases, and work to be done or equipment, supplies or materials to be acquired may be contracted for or acquired without competitive bidding and in such manner as the officer or agency in charge of the work or acquisition may direct:

(a) The work to be done or equipment, supplies or materials to be acquired will cost less than \$2,500.

(b) The work to be done or equipment, supplies or materials to be acquired involve marine construction or repair work requiring the

30.32 NAVIGABLE WATERS, HARBORS AND NAVIGATION

752

use of floating scows, pile drivers or other floating equipment and will involve an expenditure of less than \$5,000.

(c) The equipment, supplies or materials to be acquired is a patented article or process or an article or process made by one party only.

(d) The work to be done or equipment, supplies or materials to be acquired involves an emergency repair as set forth in sub. (4).

(4) EMERGENCY REPAIRS. Whenever repairs become necessary to any harbor facility which, in the judgment of the official having executive charge of such facility, constitutes an emergency in that it interrupts the ordinary use and operation of such facility, such official may order such repairs to be made by some competent party without compliance with sub. (1) or the intervention of a formal contract. In all cases of such emergency repairs the official causing the repairs to be made shall report the circumstances thereof, including the agreed price or estimated costs of the repairs, to the officer or agency in charge of the operation of the harbor and shall also forthwith send a copy of such report to the clerk of the municipality or, in the case of a city, to the chief auditing officer. Whenever any party is liable, under a lease or otherwise, to reimburse such municipality for repairs or cost of maintenance of such harbor facility, the official causing the repairs to be made shall also send a copy of such report to the party so liable.

(5) COMPETENCY AND RELIABILITY OF BIDDERS. Whenever any bidder for any work to be let by an officer or agency in charge of a harbor is, in the judgment of such officer or agency, incompetent or otherwise unreliable for the performance of the work for which he bids, the officer or agency may accept the bid of the person who, in its judgment, is the lowest competent and reliable bidder for such work, stating its reasons therefor, or may relet the same anew. Such officer or agency may permit a sum of money or a certified check payable to its order to be filed with any bid or proposal in such an amount as in its judgment will save the municipality from any loss if the bidder fails to execute a contract pursuant to law, in case his bid is accepted and the contract awarded to him.

(6) CONTRACTS TO PROVIDE FOR LIQUIDATED DAMAGES. Every contract executed pursuant to sub. (1) shall contain either of the following agreements on the part of the contractor and his sureties:

(a) An agreement that in case such contractor fails to fully and completely perform his contract within the time therein limited for the performance thereof, the contractor shall pay to the municipality as liquidated damages for such

default, a fixed sum to be named in the contract, which shall be such a sum as in the judgment of the officer or agency in charge of letting the contract will save the municipality harmless on account of such default and insure the prompt completion of the contract; or

(b) An agreement that in case such contractor fails to fully and completely perform his part of the contract within the time therein limited for the performance thereof, the contractor shall pay to the municipality as liquidated damages for such default, a definite sum to be named in the contract for each day's delay in completing such contract after the time therein limited for its completion, which daily sum shall be such an amount as in the judgment of the officer or agency in charge of letting the contract will save the municipality harmless on account of such default and insure the prompt completion of the contract.

(7) CONTRACTS TO BE EXECUTED BY SURETIES. Every contract executed pursuant to sub. (1) shall also be executed by at least 2 sufficient sureties, or a surety company, to be approved by the officer or agency letting the contract. Such sureties or surety company shall guarantee the full performance of the contract by the contractor to the satisfaction of such officer or agency, according to the plans and specifications of such officer or agency, and shall be liable for such performance of the contract, as sureties, in an amount equal to such officer's or agency's estimate of the aggregate cost of the work.

(8) PAYMENT BEFORE COMPLETION OF CONTRACT. When a contractor proceeds properly and with due diligence to perform a contract, the officer or agency which let the contract may, in its discretion, from time to time as the work progresses, grant to the contractor an estimate of the amount already earned for the work done, withholding in all cases until final completion and acceptance of the contract 15% of such estimate when such estimate is less than \$100,000, and 10% of such estimate when such estimate is \$100,000 or over, which shall entitle the contractor to receive such estimate less the amount withheld.

(9) OPTIONAL CONTRACT PROVISIONS. The officer or agency in charge of negotiating the contract may insert in the specifications of the work reasonable and lawful conditions as to hours of labor and the residence and character of workers to be employed by the contractor and especially, so far as is practicable in the judgment of such officer or agency, such reasonable and lawful conditions as will tend to confine employment on such work, in whole or in part, to permanent and bona fide residents of this state. The officer or agency may do any part of such

work by day labor under such conditions as it prescribes. The officer or agency may demand of such bidders and contractors that all contracts shall be let subject to chs. 101, 102 and 105, to the end that the officer or agency and municipality shall be held harmless. The officer or agency may reject any or all bids or parts thereof for any such work or supplies or materials.

(10) CONFLICTS WITH FEDERAL REGULATIONS. Contracts for projects involving federal funds shall be let under such regulations and conditions as are prescribed by the federal agency controlling such funds, so far as such regulations and conditions conflict with this section.

History: 1979 c. 89.

30.33 Harbor railway belt lines. (1) BOARD TO HAVE POWERS OF RAILROAD CORPORATION. Any municipality operating a public harbor through a board of harbor commissioners may, through such board, construct, maintain or operate railway facilities or a harbor belt line connecting various harbor facilities with one another or with other railroads within the municipality or its vicinity. The board of harbor commissioners is granted all the rights, powers and privileges conferred upon railroad corporations by s. 190.02, except such rights, powers and privileges as are conferred upon railroad corporations by s. 190.02 (9). Such facilities or belt line may be constructed, maintained or operated partly outside the corporate limits of the municipality. In constructing, maintaining or operating such facilities or belt line, the board of harbor commissioners has the powers and privileges of railroad corporations and shall be subject to the same restrictions as railroad corporations and to the supervision of the transportation commission, except as to the system of accounting and the payment of wages to employees.

(2) MUNICIPALITY MAY ORGANIZE HARBOR RAILWAY CORPORATION. Any municipality mentioned in sub. (1) may, with the consent of its board of harbor commissioners, organize a railroad corporation for the purpose of constructing, maintaining or operating a harbor belt line or may subscribe for stock in an existing railroad corporation organized for such purpose. If the municipality decides to organize a railroad corporation for such purpose, the governing body thereof may, by resolution, authorize the chief executive officer or presiding officer of such municipality to act, together with 4 citizens to be designated by the officer, as incorporators of such company. Such incorporators shall proceed to incorporate the railroad corporation in accordance with chs. 190 to 192,

so far as applicable. Such harbor railroad corporation is subject to the supervisory and regulatory powers of the transportation commission to the same extent as other railroad corporations. The municipality may subscribe to the stock of such harbor railroad corporation and may pay for such stock out of any funds it may lawfully have available for that purpose, including the proceeds of harbor improvement bonds.

History: 1977 c. 29 s. 1654 (9) (f); 1977 c. 273

30.34 Financing harbor improvements and operations generally. (1) HARBOR FUND TO BE CREATED. All municipalities operating a public harbor through a board of harbor commissioners shall establish in the municipal treasury a revolving fund to be known as the "harbor fund". Moneys for such fund may be raised by appropriation from the general fund or by taxation or loan as other moneys in the general fund are raised. Moneys in such fund may be expended only as provided in s. 30.38 (13).

(2) FINANCING DOCK WALLS AND SHORE PROTECTION WALLS. A municipality may pay either or both the assessable and nonassessable parts of the cost of the construction, maintenance or repair of any dock wall or shore protection wall, authorized by s. 30.30 (3), out of its general fund or other available funds, or it may finance such work through the issuance of its negotiable bonds as provided in ch. 67, except that it is not necessary to include such bonds in the municipal budget or to submit the question of their issuance to a referendum vote of the electors. The bonds shall be serial bonds, payable at any time within 10 years and shall bear interest payable either annually or semiannually as the governing body determines. The bonds shall be a direct obligation of the municipality and the full faith and credit of the municipality shall be pledged for their payment. No such bonds shall be issued unless at or before the time of their issuance the governing body levies a direct annual tax sufficient to pay the principal and interest thereon as they fall due.

(3) FINANCING BY MEANS OF REVENUE BONDS, MORTGAGE CERTIFICATES OR ASSIGNMENTS OF NET PROFITS. (a) Any municipality may, with the consent of its board of harbor commissioners, finance the cost of acquisition, construction, alteration or repair of any harbor facility by issuing evidences of indebtedness payable only out of the revenue obtained from the public harbor facilities. Such evidences of indebtedness may be revenue bonds issued under s. 30.35 or may be mortgage certificates or pledges or assignments of net profits, issued pursuant to s. 66.066 (3) or (4) as if the harbor facility were a public utility.

30.34 NAVIGABLE WATERS, HARBORS AND NAVIGATION

754

(b) The moneys received from the sale of such evidences of indebtedness shall be used solely for the specific purpose for which they were issued. The municipality issuing them shall not be deemed obligated or indebted thereon, and no funds or money of such municipality, except the revenues from the public harbor facilities, shall ever be used for payment or redemption of the evidences of indebtedness, except that the municipality issuing such evidences of indebtedness may at any time, with the consent of its auditing officer or committee, and by a vote of two-thirds of its governing body, assume the obligation of paying the principal and interest of such evidences of indebtedness as are then outstanding. Thereafter, such evidences shall in every respect be held to be outstanding indebtedness of such municipality. The governing body of any municipality assuming an indebtedness under this paragraph shall levy an annual irrevocable tax to pay interest thereon and discharge the principal thereof as required by Article XI, section 3, Wisconsin constitution.

(c) The holders of evidences of indebtedness issued as authorized by this subsection shall have the rights accorded by s. 66.066 (2) (b) to holders of mortgage bonds issued pursuant to s. 66.066, but in case of sale by order of any court, there shall be sold only the facility itself without the land on which it is erected. The purchaser at such sale may either remove such facility or may continue to operate the same and collect the revenue thereof, in a fair and businesslike manner, under the supervision of the court, until the outstanding evidences of indebtedness, together with interest until payment, have been paid, together with all costs and charges as determined by the court.

(4) **EMERGENCY REPAIR FUND.** Any municipality having established a board of harbor commissioners to operate its harbor facilities may create a contingent fund for the purpose of permitting the secretary of the board to pay for repairs to harbor facilities which constitute emergency repairs within the meaning of s. 30.32 (4). The secretary may pay for such repairs out of such fund on his signature alone.

(5) **OTHER FINANCING.** Nothing in this section is intended to prevent a municipality not operating its harbor as a commercial enterprise from raising and appropriating funds for improvement, alteration or repair of its harbor and harbor facilities in the same manner as it may raise and appropriate funds for other legitimate municipal purposes.

History: 1973 c. 172

30.35 Financing harbor improvements through revenue bonds. (1) ISSUANCE OF

BONDS TO BE AUTHORIZED BY ORDINANCE. Whenever the governing body of a municipality, after having obtained the consent of the board of harbor commissioners, determines to finance the acquisition, construction, alteration or repair of a harbor facility through revenue bonds, the governing body shall proceed by ordinance to authorize the issuance and sale of such bonds. The ordinance shall set forth the purposes for which the revenue bonds are to be issued and shall state either the amount of such issue or an amount which such issue shall not exceed. The ordinance shall be offered and read at a regular meeting of the governing body and a notice of the amount and purposes of such bonds shall be published as a class 1 notice, under ch. 985, not less than 10 days prior to the meeting at which such ordinance is to be considered for final passage. The ordinance is not valid unless supported by the affirmative vote of at least three-fourths of all of the members of the governing body taken at a regular meeting held after such publication. No referendum is required before such revenue bonds are issued.

(2) **CONTENTS OF ORDINANCE AUTHORIZING BOND ISSUE.** The ordinance authorizing the issuance of revenue bonds constitutes a contract with the holder of such bonds and shall include covenants and provisions for the security of the bondholders and the payment of the bonds as the governing body deems necessary or desirable for the security of the bondholders, including, but not limited to, provisions for the establishment of adequate rates or charges for the use of the public harbor facilities, insurance against loss and covenants against the sale or alienation of such facilities and establishment of budgets relating to operation of such facilities. Any such ordinance shall contain provisions for:

(a) Maintenance and operation of the public harbor facilities.

(b) The establishment of a debt amortization and interest fund sufficient to provide for the payment of interest on the principal of the bonds authorized by the ordinance.

(c) The establishment of a reserve fund into which shall be paid annually such percentage of the amounts required to be paid into the debt amortization and interest fund as shall be determined by the ordinance. Such reserve fund shall be used for the purpose of making good depreciation of the public harbor facilities, the purchase or redemption of bonds authorized by the ordinance and, subject to any covenant made with the holders of bonds issued thereunder, any other lawful purpose.

(2a) **MUNICIPALITY TO FIX ADEQUATE RATES.** The municipality shall fix rates and charges for the use of the harbor facilities sufficient for the payment of the cost of operation

and maintenance of such facilities, for the payment of principal of and interest on any indebtedness incurred for such harbor facilities, and to provide revenues sufficient to comply with any covenants or agreements made by the municipality in any ordinance providing for the issuance of obligations to pay the cost of the acquisition, construction, alteration or repair of such harbor facilities.

(3) FORM OF THE BONDS. Revenue bonds shall be in the form designated by the governing body and shall be signed by those persons who regularly execute instruments of indebtedness on behalf of the municipality. Any of such signatures may be in facsimile form, except that at least one shall be a manual signature.

(4) BONDS NOT AN OBLIGATION OF THE MUNICIPALITY. Bonds issued pursuant to this section shall not be the general obligation of the municipality and shall expressly so state on their face. Any indebtedness created pursuant to this section is deemed to be incurred for a public utility, and shall not be included in indebtedness subject to any debt limitation.

(5) SALE OF THE BONDS. The governing body may authorize the purchase of a part or all of such revenue bonds out of moneys accruing to or held in the debt amortization fund or any other municipal funds not immediately needed, and such funds may be invested in such bonds. If the municipality does not purchase such bonds, as authorized by this subsection, or determines to sell such bonds after having so purchased them, the bonds shall be offered at public sale after advertising as provided in ch. 67. In cities of the 1st class, such bonds shall be sold under the direction of the public debt commission.

(6) BONDHOLDERS HAVE LIEN. Title to all of the harbor facilities for which revenue bonds are issued remains in the municipality, but a statutory lien exists in favor of the bondholders against the facilities which have been constructed, altered or remodeled and the cost of which has been financed with funds obtained through the issuance of such revenue bonds.

(7) BONDS MAY BE PURCHASED BY FIDUCIARIES. Bonds issued pursuant to this section are hereby made securities in which any of the following may legally invest any funds, including capital, belonging to them or within their control:

- (a) State and municipal officers and bodies.
- (b) Banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business.
- (d) Administrators, executors, guardians, trustees and other fiduciaries.

(e) Persons authorized to invest in bonds or other obligations of the state.

(8) BONDS MAY BE ACCEPTED BY STATE OR MUNICIPAL OFFICER. The bonds issued pursuant to this section are made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency for which the deposit of bonds or other obligations of the state is authorized.

History: 1973 c 172; 1979 c 279

30.37 Boards of harbor commissioners authorized.

(1) WHO MAY CREATE. Any municipality situated on a navigable waterway may create a board of harbor commissioners to exercise the powers and perform the duties conferred upon such boards by law, except that a county may not create a board of harbor commissioners if there exists an active town, village or city board of harbor commissioners within the county.

(2) HOW CREATED. Boards of harbor commissioners shall be created by resolution of the governing body of the municipality. Such resolution shall state whether the board is to be composed of 3, 5, 7 or 9 members and shall fix the date of commencement of the original term of office. Such resolution also shall state the length of the term of each member of the first board to be appointed, so that the term of one or more will expire in one year, one or more in 2 years, and one or more in 3 years.

(3) APPOINTMENTS, TERMS, QUALIFICATION AND COMPENSATION OF MEMBERS. As soon as possible after the passage of the resolution creating such board, the chief executive officer of the municipality, in the case of a city or village board of harbor commissioners, or the chairman of the town or county board, in the case of a town or county board of harbor commissioners, shall appoint the members of the board and designate the length of the term of each member thereof in accordance with the resolution creating the board. Thereafter, at the expiration of the term of any member, he shall appoint a successor for a 3-year term. All appointments are subject to confirmation by the governing body of the municipality. No person shall be appointed to the board unless he is a qualified elector of the municipality which created the board and has been a resident of the municipality for at least 3 years. Not more than one member of the governing body of such municipality is eligible for appointment to the board. A person appointed to the board shall serve until his successor has been appointed and qualifies. Members of the board shall receive no compensation for their services but they shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

30.37 NAVIGABLE WATERS, HARBORS AND NAVIGATION

756

(4) **ORGANIZATION; OFFICERS.** As soon as possible after the appointment and confirmation of the members of the board, they shall meet and organize by electing from among their members a president and a vice president. The board shall hold meetings at such times and places as it determines and may adopt such bylaws consistent with law as seem practicable for its government.

(5) **EMPLOYES.** The board shall employ a secretary, not a member of the board, and fix his salary, and may employ such other persons, including a harbor master, as it deems necessary for the proper performance of its functions, and fix their duties and compensation. If the municipality which created the board has a civil service system for its employes, all appointments shall be made pursuant to such system.

(6) **EFFECT OF REVISION ON EXISTING HARBOR BOARDS.** Boards of harbor commissioners, harbor commissions or dock and harbor boards in existence on January 1, 1960 are deemed to be valid boards of harbor commissioners as if created pursuant to this section and are vested with all the powers and duties conferred upon boards of harbor commissioners by this chapter. The members of such boards may continue to hold office until their terms expire, notwithstanding any provision of this section which would otherwise disqualify them, but appointments made after January 1, 1960 shall be made only in accordance with this section. Nothing in this subsection is intended to prevent a municipality by resolution from abolishing its board of harbor commissioners, harbor commission or dock and harbor board.

30.38 Powers and duties of boards of harbor commissioners. (1) **RELATIONSHIP TO MUNICIPALITY'S GOVERNING BODY.** (a) Except as otherwise expressly provided, a board of harbor commissioners may exercise its powers and perform its duties without first obtaining the consent of the governing body of the municipality which created it, but in no event is the board empowered to financially obligate in any manner this state without the consent of the state legislature, or the municipality in which it operates without the consent of the governing body of such municipality.

(b) It is the public policy of this state that, so far as possible, the board of harbor commissioners shall have exclusive control of the commercial aspects of the day-to-day operation of the public harbor and public harbor facilities, as set forth in sub. (8), and the governing body of the municipality shall have exclusive control of the governmental aspects relating to public health, order and safety. No municipality may exercise

the powers set forth in subs. (8) (a) or (9), except through a board of harbor commissioners.

(c) Insofar as consistent with the principle set forth in par. (b), all powers not expressly conferred upon the board of harbor commissioners are reserved to the governing body of the municipality.

(2) **MUNICIPAL DEPARTMENTS TO ASSIST BOARD OF HARBOR COMMISSIONERS.** A board of harbor commissioners may make written requests to any other officer or agency of the municipality for assistance in the performance of its duties and such officer or agency shall comply with such request if the requested assistance involves the type of work normally performed by such officer or agency and the assistance will not substantially affect the budget of such officer or agency. If a difference arises between the officer or agency and the board as to whether such officer or agency is required to render the requested assistance, the ruling of the governing body of the municipality with respect thereto shall be final.

(3) **CONTRACT PROCEDURES.** In the letting of work relative to the construction, repair or maintenance of a harbor or harbor facility or in the purchase of equipment, supplies or materials relative to carrying out its powers and duties, a board of harbor commissioners shall be governed by the procedures and requirements set forth in s. 30.32.

(4) **TITLE TO LANDS AND FACILITIES.** Title to harbor lands and facilities shall vest in the municipality.

(5) **PLANNING AND EFFECTUATING HARBOR IMPROVEMENTS.** A board of harbor commissioners shall make such plans as it deems necessary for the improvement of the harbor over which it has jurisdiction, so as to adequately provide for the needs of commerce and shipping, including the efficient handling of freight and passenger traffic between the waterways of the harbor and air and land transportation terminals. Among other things, such planning may include plans for the acquisition of land for harbor purposes, including industrial sites; plans for laying out service roads; plans for the construction and acquisition of harbor facilities designed to enlarge or improve harbor operations, and plans for the improvement of publicly-owned harbor facilities. In planning for service roads the board shall seek the advice and co-operation of the local highway authorities and in all cases shall seek the advice and co-operation of the municipal planning agency, if any. The board shall not carry out any such plans until they have been submitted to and approved by the governing body of the municipality. When such

plans have been so approved, either as submitted or in modified form, the board shall be in charge of carrying such plans into effect.

(6) LEASING HARBOR LANDS AND FACILITIES. A board of harbor commissioners may lease to any party, either for exclusive or common use, such parcels of publicly-owned harbor lands or such publicly-owned harbor facilities as it deems expedient, provided such lease is for any purpose or use requiring, involving or connected with the construction, operation, maintenance or use of any harbor facility. Such board may also lease, for revenue purposes, any of the publicly-owned harbor lands under its jurisdiction, not actually in use for harbor purposes, to be used for any purpose deemed satisfactory to the board. No leases of municipally-owned harbor lands or harbor facilities made pursuant to this subsection are valid until approved by the governing body of the municipality, unless such governing body has authorized the board to make such leases without its approval.

(7) MAINTENANCE OF HARBOR FACILITIES. The board of harbor commissioners shall be in charge of the maintenance of the public harbor facilities. To the extent that funds, including revenue from harbor operations, are available for such purpose, the board may make repairs to harbor facilities without first obtaining the consent of the governing body of the municipality.

(8) HARBOR OPERATION. (a) A board of harbor commissioners shall have exclusive control over the commercial aspects of the day-to-day operation of the public harbor and public harbor facilities. Among other things the board may:

1. Operate publicly-owned or leased wharf and terminal facilities and handling equipment.
2. Operate publicly-owned railroad bellines or other essential railroad facilities, or lease railroad facilities.
3. Assign berths at publicly-owned or leased harbor facilities.
4. Maintain guards at publicly-owned or leased harbor facilities.

(b) When so authorized by the municipal governing body, a board of harbor commissioners also may:

1. Operate airport facilities owned or leased by the municipality and located on or contiguous to the harbor lands.
2. Operate municipal harbor craft, such as fireboats, tugs, dredges, barges, lighters and inspection boats.

(c) In lieu of operating the publicly-owned harbor facilities, a board of harbor commissioners may lease such facilities for operation by the lessee, but the board shall retain such control over the lessee as will enable it to make certain

that the harbor is operated in accordance with the public policy set forth in par. (e). No lease of municipally-owned facilities is valid until approved by the governing body of the municipality, unless such governing body has authorized the board to make such lease without its approval.

(d) A board of harbor commissioners may adopt rules to facilitate the exercise of its powers and duties under this subsection. Copies of such rules shall be made available to interested persons upon request.

(e) In exercising its powers under this subsection, a board of harbor commissioners shall be guided by a policy designed to maintain the operation of the harbor in a continuous, peaceful and efficient manner and shall maintain its services so as to effectuate this policy and shall handle without discrimination, any valid and legitimate cargo. But nothing in this subsection shall prevent the board or its lessees from adopting reasonable rules regarding noxious cargo or explosives.

(f) A board of harbor commissioners shall have no jurisdiction over public bridges.

(9) FIXING FEES. A board of harbor commissioners shall fix and regulate all fees and charges for use of the publicly-owned and operated harbor facilities and for other services rendered. All such fees and charges are subject to the approval of the governing body of the municipality. Equal fees shall be charged for equal services. Copies of the schedule of fees and charges shall be made available to interested persons upon request.

(10) ACCOUNTS AND STATISTICS. A board of harbor commissioners shall maintain an adequate system of accounts with respect to its operations, which system of accounts shall be in conformity with the system used by the municipality. The board also shall maintain statistics with respect to the traffic and finances of the port.

(11) PROMOTION ACTIVITIES. A board of harbor commissioners may engage in activities designed to promote trade and traffic through the port and for this purpose may, among other things, make representations before official public bodies and intervene in rate case proceedings.

(12) RESPONSIBILITIES RELATIVE TO JOINT HARBORS. If a board of harbor commissioners is in charge of a harbor which lies partly in this state and partly in another state, the board shall be the official body representing the interests of the Wisconsin part of such joint harbor and its harbor facilities and shipping interests. The board shall study the needs of the harbor and its harbor facilities and shipping interests, with

30.38 NAVIGABLE WATERS, HARBORS AND NAVIGATION

758

reference to both its separate Wisconsin aspects and its joint aspects, and from time to time shall make such recommendations to the proper authorities for the proper maintenance, improvement and betterment of the harbor, and especially the Wisconsin part of such joint harbor and its harbor facilities and shipping interests, as seems needful and practical. The board may take steps within its power as seem practicable to cause such recommendations to be carried into effect. The board may also meet and act jointly with the agency having charge of the operation of that part of the joint harbor located in the other state, on matters of common interest and which affect the joint harbor and its harbor facilities. It may join with such agency in adopting a general plan for the development of the joint harbor and in making such other recommendations as seem advisable and may act jointly with such agency in doing all things within its power to cause such plans and recommendations to be carried into effect.

(13) FUNDS; DISBURSEMENTS; NET REVENUE.

(a) All moneys appropriated to a board of harbor commissioners, all revenues derived from the operation of the public harbor except (in the case of a joint harbor) revenue from joint improvements before division thereof, and all other revenues of the board shall be paid into the municipal treasury and credited to the harbor fund.

(b) Subject to the limitations and conditions otherwise expressed in this section and to a budget approved by the municipal governing body, moneys in the harbor fund may be used for the acquisition, construction, improvement, repair, maintenance, operation and administration of the public harbor and harbor facilities. Except as provided in s. 30.34 (4), such moneys shall be paid out of the harbor fund only on orders signed by the president and secretary of the board, or some other official authorized by the board, after the allowance of claims by the board or on orders entered in the minutes of the board. Disbursements from the harbor fund shall be audited as other municipal disbursements are audited; however, the board may determine on some other procedure it deems appropriate for the consideration of claims and the reporting thereof notwithstanding the provisions of this paragraph. If a procedure other than that set forth in this paragraph is prescribed by the board, the approval of the chief auditing officer shall be obtained.

(c) At the end of each fiscal year, the board shall compute its net revenue, if any, after paying the costs of operating, maintaining and improving the harbor. Thereupon, the board shall certify the amount of such net revenue, if any, to the municipal treasurer who shall cause

such amount to be transferred from the harbor fund to the general fund of the municipality.

(14) REPORTS OF EXPENDITURES. A board of harbor commissioners shall, on or before October 1 of each year, file with the clerk of the municipality which created the board, a detailed statement of the amount of money that will be required to meet its expenses and needs for the ensuing year, and the clerk shall place such statement before the governing body in due course so that it may levy such taxes and make such appropriations as it deems practical to defray the expenses and meet the needs and requirements of the board in the performance of its functions.

(15) ANNUAL REPORTS. A board of harbor commissioners shall make a report annually to the governing body of the municipality which created it, giving an account of its activities and an account of its revenues and expenditures in the preceding calendar year. Such report may contain such other matters as the board deems of interest, including such recommendations as it deems to be for the best interest of the municipality and its harbor, harbor facilities and shipping interests.

REGULATION OF BOATING**30.50 Definitions.** In ss. 30.50 to 30.80:

(1) "Boat" or "vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) "Motorboat" means any boat equipped with propulsion machinery, whether or not the machinery is the principal source of propulsion.

(3) "Owner" means the person who has lawful possession of a boat by virtue of legal title or equitable interest therein which entitles him to such possession.

(4) "Waters of this state" means any waters within the territorial limits of this state, including the Wisconsin portion of boundary waters.

(5) "Operate" or "use" when used with reference to a motorboat, boat or vessel means to navigate or otherwise employ.

(6) "Employ" means to make use of for any purpose other than maintenance.

(7) "Associated equipment" means any system, part or component of a boat as originally manufactured or any similar system, part or component manufactured or sold for replacement, repair or improvement of the system, part or component; any accessory or equipment for, or appurtenance to, a boat and any marine safety article, accessory or equipment intended for or used by a person on board a boat except radio equipment.

(8) "Manufacturer" means any person engaged in the manufacture, construction or assembly of boats or associated equipment; the manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly and the importation into this state for sale of boats, associated equipment or components for boats.

(9) "State of principal use" means the state where the boat is used or is to be used most during the year.

(10) "Slow-no-wake" means that speed at which a boat moves as slowly as possible while still maintaining steerage control.

History: 1979 c. 275.

Recreational boating law in Wisconsin. Whipple. 61 MLR 425.

30.501 Capacity plates on boats. (1)

Every vessel less than 26 feet in length designed to carry 2 or more persons and to be propelled by machinery as its principal source of power or designed to be propelled by oars shall, if manufactured or offered for sale in this state, have affixed permanently thereto by the manufacturer a capacity plate as required by this section. As used in this section "manufacture" means to construct or assemble a vessel or alter a vessel so as to change its weight capacity.

(2) A capacity plate shall bear the following information permanently marked thereon so as to be clearly visible and legible from the position designed or normally intended to be occupied by the operator of the vessel when under way:

(a) For all vessels designed for or represented by the manufacturer as being suitable for use with outboard motor:

1. The total weight of persons, motor, gear and other articles placed aboard which the vessel is capable of carrying with safety under normal conditions.

2. The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall such presumed weight per person be less than 150 pounds.

3. Clear notice that the information appearing on the capacity plate is applicable under normal conditions and that the weight of the outboard motor and associated equipment is considered to be part of total weight capacity.

4. The maximum horsepower of the motor the vessel is designed or intended to accommodate.

(b) For all other vessels to which this section applies:

1. The total weight of persons, gear and other articles placed aboard which the vessel is capable of carrying with safety under normal conditions.

2. The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall such presumed weight per person be less than 150 pounds.

3. Clear notice that the information appearing on the capacity plate is applicable under normal conditions.

(3) The information relating to maximum capacity required to appear on capacity plates by sub. (2) shall be determined in accordance with such methods and formulas as are prescribed by rule adopted by the department. In prescribing such methods and formulas, the department shall be guided by and give due regard to the necessity for uniformity in methods and formulas lawful for use in determining small vessel capacity in the several states and to any methods and formulas which may be recognized or recommended by the U.S. coast guard.

(4) Any vessel to which this section applies not having a capacity plate, meeting the requirements of law, affixed thereto by the manufacturer thereof may have such affixed by any other person in accordance with such rules as the department prescribes, and may thereafter be offered for sale in this state, but no action taken pursuant to this subsection, or as described herein, shall relieve any manufacturer from liability for failure to comply with this section.

(5) The information appearing on a capacity plate shall be deemed to warrant that the manufacturer, or the person affixing the capacity plate as permitted by sub. (4), has correctly and faithfully employed a method and formula for the calculation of maximum weight capacity prescribed by the department and that the information appearing on the capacity plate with respect to maximum weight capacity and recommended number of persons is the result of the application of such method and formula, and with respect to information concerning horsepower limitations that such information is not a deliberate or negligent misrepresentation.

(6) If any vessel required by this section to have a capacity plate affixed thereto is of such design or construction as to make it impracticable or undesirable to affix such plate, the manufacturer, or other person having the responsibility for affixing the plate, may represent such impracticability or undesirability to the department in writing. Upon determination by the department that such representation has merit and that a proper and effective substitute for the capacity plate which will serve the same purpose is feasible, the department may authorize such alternative compliance and such alternative compliance shall thereafter be deemed compli-

30.501 NAVIGABLE WATERS, HARBORS AND NAVIGATION

760

ance with the capacity plate requirements of this section.

(7) The department may by rule exempt from the requirements of this section vessels which it finds to be of such unconventional design or construction that the information required on capacity plates would not assist in promoting safety or is not reasonably obtainable.

(8) The department may issue rules to carry out the purposes of this section, but rules on vessel capacity requirements shall conform with appropriate federal regulations.

(9) This section applies to vessels manufactured after January 1, 1966 and prior to November 1, 1972. All vessels manufactured after November 1, 1972, shall comply with appropriate federal regulations and the capacity information shall be displayed as required.

History: 1979 c 275

30.51 Operation of unnumbered boats prohibited; exemptions. (1) CERTIFICATE OF NUMBER REQUIRED. No person may operate, and no owner may give permission for the operation of, any boat on the waters of this state unless the boat is covered by a valid certificate of number issued under this chapter or is exempt from the numbering requirements of this chapter.

(2) EXEMPTIONS. A boat is exempt from the numbering requirements of this chapter if it is:

(a) Manually propelled and is not equipped with propulsion machinery or sail.

(b) A sailboat 12 feet in length or less.

(c) Covered by a valid certificate of number issued under federal law or a federally approved numbering system of another state, with the identification number properly displayed on each side of the forward half, but this exemption does not apply if the boat has been within this state for a period in excess of 60 consecutive days or if this state is the state of principal use of the boat.

(d) Operated within a period of 15 days after application for a certificate of number has been made and the required fee has been paid, if proof of application is carried on board.

(e) From a country other than the United States temporarily using the waters of this state.

(f) A military or public boat of the United States, except recreational-type public vessels.

(g) A boat whose owner is a state or subdivision of a state, which is used principally for governmental purposes, and which is clearly identifiable.

(h) A ship's lifeboat.

(i) Present in this state, for a period of not to exceed 10 days, for the express purpose of competing in a race conducted under a permit

from a municipality or an authorized agency of the U.S. government.

History: 1973 c. 302; 1979 c. 275.

See note to Art. IX, sec. 1, citing State v. Jackman, 60 W (2d) 700, 211 NW (2d) 480

30.52 Certificates of number; applications; issuance; renewals; fees. (1) WHAT BOATS TO BE NUMBERED IN THIS STATE. Any boat required to be numbered under this chapter and principally used in this state shall be numbered in this state under this section. If a boat otherwise subject to the numbering requirements of this chapter covered by a valid certificate of number issued under federal law or the federally approved numbering system of another state is used in this state in excess of 60 consecutive days or to the extent that this state becomes the state of principal use, the owner of the boat shall immediately apply for a certificate of number under this section.

(2) NUMBERING PERIODS. Numbering periods shall run for 2 years, commencing April 1 of the year in which the certificate is issued and, unless sooner terminated or discontinued in accordance with this chapter, expiring on March 31 of the 2nd year thereafter.

(3) FEES. (a) A fee shall be paid to the department for the issuance of a certificate of number or renewal of such a certificate valid for the whole or any part of a numbering period. Except as provided under pars. (b) and (c), the fee is \$5.

(b) For issuance of a certificate of number to the new owner upon transfer of ownership of a boat numbered in this state, the fee shall be \$2 if the certificate is issued for the remainder of the numbering period for which the previous certificate was issued.

(c) A person owning or otherwise holding 3 or more boats ready for hire generally or ready to let in connection with the operation of resort facilities or guide services may, at the person's option, pay a flat fee of \$7.50 plus \$1.50 per boat for obtaining or renewing certificates of number for such boats in lieu of the fee which otherwise would be payable.

(4) ISSUANCE OF CERTIFICATE OF NUMBERS.

(a) Upon receipt of a proper application accompanied by the required fee and payment of the sales and use tax due under s. 77.61 (1), the department shall issue to the applicant a certificate of number stating the number awarded, the name and address of the owner and other information the department deems necessary. The certificate of number shall be pocket size and of durable water resistant material. A number shall be awarded to a particular boat unless the owner is a manufacturer of or dealer in boats, motors or trailers, and desires to use the number

on his or her boats only while being tested or demonstrated or while being used for the purpose of testing or demonstrating a motor or trailer.

(b) The department shall issue 2 registration stickers or decals per boat except that only one sticker or decal shall be issued per sailboat. Such stickers or decals shall bear the year of expiration of the current numbering period.

(5) **NUMBERING SYSTEM TO CONFORM TO FEDERAL SYSTEM.** The numbering system employed by the department shall be in conformity with the over-all system of identification numbering for motorboats established by the U.S. government. The department shall adopt such rules as are necessary to bring the state numbering system into conformity with such federal system.

(6) **DUPLICATE CERTIFICATES.** If a certificate of number or sticker or decal is lost or destroyed the owner may apply for a duplicate. Such application shall be made upon a form designated by the department and shall be accompanied by a fee of \$2.00 for each duplicate certificate of number or sticker or decal applied for. Upon receipt of a proper application and the required fee, the department shall issue a duplicate certificate or a sticker or decal to the owner.

(7) **DEPARTMENT TO DISTRIBUTE SAFETY PAMPHLETS.** The department shall furnish to each person obtaining a certificate of number a copy of the state laws pertaining to operation of boats or informational material based on such laws.

(8) **SALES AND USE TAXES.** The department shall collect sales and use taxes due under s. 77.61 (1) on any boat for which a certificate of number is issued. The department shall use collection and accounting methods approved by the department of revenue.

History: 1971 c. 215; 1973 c. 302; 1977 c. 29, 418; 1979 c. 34, 221, 275.

30.53 Identification number to be displayed on boat; certificate to be carried.

(1) **DISPLAY OF IDENTIFICATION NUMBER.** Upon being issued a certificate of number and stickers or decals under this chapter, the owner of the boat shall paint on or attach the identification number and attach or affix the stickers or decals to each side of the forward half in the manner prescribed by rules of the department in order that they may be clearly visible and shall maintain the number and stickers or decals in legible condition at all times. The department shall furnish the owner with instructions relative to painting or attaching the awarded number and stickers or decals to the boat. A manufacturer or dealer in boats, motors or trailers may

have the awarded number printed upon or attached to removable signs to be temporarily but firmly mounted upon or attached to the boat while being tested or demonstrated or while being used in connection with the testing or demonstrating of a motor or trailer. No number other than the number awarded and no stickers or decals other than those provided by the department or granted reciprocity under this chapter may be painted, attached, or otherwise displayed on either side of the forward half of a boat.

(2) **CERTIFICATE OF NUMBER TO BE AVAILABLE FOR INSPECTION.** The certificate of number required under this chapter shall be available at all times for inspection on the boat for which issued, whenever the boat is in use, unless the department determines the boat is of the use, size or type as to make the retention of the certificate of number on the boat impractical.

History: 1973 c. 302; 1979 c. 275

30.54 Transfer of ownership of numbered boat.

(1) **DUTY OF SELLER.** If the owner of a boat covered by a valid or expired certificate of number issued by this state transfers all or any part of his or her interest in the boat, other than by the creation of a security interest, he or she shall notify the department of the transfer and shall at the same time return the certificate of number to the department.

(2) **DUTY OF PURCHASER.** Transfer of the ownership of a boat terminates the certificate of number for the boat, except in the case of a transfer of a part interest which does not affect the transferor's right to operate the boat. The transferee shall make application for a new certificate of number as prescribed by the department. Upon receipt of the application accompanied by the required fee, the department shall issue a new certificate for the boat but shall not assign a new number to the boat unless compliance with federal numbering regulations require otherwise.

History: 1979 c. 275.

30.55 Notice of abandonment or destruction of boat or change of address.

(1) **DESTRUCTION OR ABANDONMENT.** If a boat covered by a certificate of number issued by this state is destroyed or abandoned, the owner shall notify the department of such fact within 15 days after the destruction or abandonment and shall at the same time return the certificate of number to the department for cancellation.

(2) **CHANGE OF ADDRESS.** Whenever any person, after applying for or receiving a certificate of number, moves from the address given in such application or certificate, he shall within 15 days

30.55 NAVIGABLE WATERS, HARBORS AND NAVIGATION

762

thereafter notify the department in writing of both his old and new address and of the numbers awarded by any certificates held by him.

History: 1973 c 302

30.60 Classification of motorboats. For the purposes of ss. 30.61 and 30.62, motorboats are divided on the basis of their length into 4 classes as follows:

- (1) Class A—those less than 16 feet.
- (2) Class 1—those 16 feet or over but less than 26 feet.
- (3) Class 2—those 26 feet or over but less than 40 feet.
- (4) Class 3—those 40 feet or over.

30.61 Lighting equipment. (1) WHEN LIGHTS REQUIRED; PROHIBITED LIGHTS. (a) No person shall operate any motorboat at any time from sunset to sunrise unless such motorboat carries the lighting equipment required by this section and unless such equipment is lighted when and as required by this section.

(b) No owner shall give permission for the operation of a motorboat at any time from sunset to sunrise unless such motorboat is equipped as required by this section.

(c) No person shall exhibit from or on any motorboat when under way at any time from sunset to sunrise any light which may be mistaken for those required by this section.

(2) LIGHTS FOR MOTORBOATS OF CLASSES A AND 1. All motorboats of classes A and 1 when under way at any time from sunset to sunrise shall carry and have lighted the following lamps:

(a) One lamp aft showing a bright white light all around the horizon.

(b) One combined lamp in the fore part of the motorboat and lower than the white light aft, showing green to starboard and red to port and so fixed that each side of the combined lamp throws a light from directly ahead to 2 points abaft the beam on its respective side.

(3) LIGHTS FOR MOTORBOATS OF CLASSES 2 AND 3. All motorboats of classes 2 and 3 when under way at any time from sunset to sunrise shall carry and have lighted the following lamps:

(a) One lamp in the fore part of the boat as near the stem as practicable, so constructed as to show an unbroken bright white light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light from directly ahead to 2 points abaft the beam on either side.

(b) One lamp aft showing a bright white light all around the horizon and higher than the white light forward.

(c) On the starboard side, one lamp showing a green light, and on the port side, one lamp showing a red light, both fitted with inboard

screens of sufficient height and so set as to prevent these lights from being seen across the bow. Each such side lamp shall be so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and shall be so fixed as to throw the light from directly ahead to 2 points abaft the beam on its respective side.

(4) SAILBOATS WITH MOTORS. Sailboats equipped with motors and being propelled in whole or in part by such motor must comply with sub. (2) or (3), whichever is applicable. Whenever such a sailboat is being propelled entirely by sail at any time from sunset to sunrise, it shall have lighted the lamps showing the colored lights specified in sub. (2) or (3), but not the lamps showing the white lights, and shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(5) SAILBOATS WITHOUT MOTORS AND ROWBOATS. (a) Every boat propelled by muscular power and every sailboat not equipped with a motor, when under way at any time from sunset to sunrise, shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(b) Moored, anchored and drifting boats and other fixed and floating structures, except duck blinds constructed in emergent vegetation, outside of designated anchorages or beyond 200 feet from the shoreline shall be lighted from sunset to sunrise by a white light visible all around the horizon. "Designated anchorage" means that area of water established and marked as an anchorage by lawful authority.

(6) PERFORMANCE SPECIFICATIONS FOR LAMPS. Every white light prescribed by this section shall be of such character as to be visible at a distance of at least 2 miles on a dark night with clear atmosphere. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile on a dark night with clear atmosphere.

(7) OPTIONAL LIGHTING REQUIREMENTS. Any boat may carry and exhibit the lights required by the federal regulations for preventing collisions at sea, 1948, federal act of October 11, 1951, (33 USC 143-147d) as amended, in lieu of the lights required by subs. (2) and (3).

(8) DEPARTMENT TO ADOPT RULES. The department shall adopt rules modifying or supplementing the lighting requirements of this section as may be necessary to keep those requirements in conformity with the lighting rules adopted by the U.S. coast guard.

History: 1973 c. 302; 1979 c. 275.

30.62 Other equipment. (1) WHEN EQUIPMENT REQUIRED. No person shall operate any

boat on the waters of this state unless such boat is equipped as required by this section and the rules of the department issued pursuant thereto. No owner of a boat shall rent such boat to any other person for use upon the waters of this state unless such boat is equipped at the time of rental as required by this section and the rules of the department issued pursuant thereto. If such boat is properly equipped at the time of rental for conditions then existing, the responsibility of the owner under this section is met, notwithstanding a subsequent change in the number of passengers or a change in time from daylight to dark.

(2) MUFFLERS. The engine of every motorboat propelled by an internal combustion engine shall be equipped with a muffler which is so constructed and kept in constant operation that it prevents excessive or unusual noise at all times while the engine is in operation.

(3) PERSONAL FLOATATION DEVICES. Every boat shall carry at least one personal floatation device prescribed by federal regulations for each person on board or being attended by the boat, so placed as to be readily accessible and available to the persons.

(4) FIRE EXTINGUISHERS. Every motorboat, except outboards of open construction, shall be provided with such number, size and type of fire extinguishers, capable of promptly and effectively extinguishing burning gasoline, as prescribed by rules of the department. Such fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible. "Open construction" means construction which will not permit the entrapment of explosive or flammable gases or vapors.

(5) BACKFIRE FLAME ARRESTERS. Every boat equipped with an inboard motor using gasoline as a fuel shall have the carburetors of every inboard gasoline motor fitted with an efficient device for arresting backfire flames. The device shall meet the specifications prescribed by federal regulations.

(6) BILGE, ENGINE AND FUEL COMPARTMENT VENTILATORS. Every boat, except open boats, using as fuel any liquid of a volatile nature, shall be provided with an efficient natural or mechanical ventilation system which is capable of removing resulting inflammable or explosive gases.

(7) EXCEPTIONS. Subsections (2) and (4) do not apply to a motorboat while competing in a race conducted pursuant to a permit from a town, village or city or from an authorized agency of the U.S. government, nor does it apply to a boat designed and intended solely for rac-

ing, while such boat is operated incidentally to the tuning up of the boat and engine for the race.

(8) BATTERY COVER. Every motorboat equipped with storage batteries shall be provided with suitable supports and secured against shifting with the motion of the boat. Such storage batteries shall be equipped with a non-conductive shielding means to prevent accidental shorting of battery terminals.

(9) DEPARTMENT MAY ADOPT RULES. The department shall adopt such rules modifying or supplementing the associated equipment requirements of this section as are necessary to keep those requirements in conformity with federal regulations.

History: 1973 c. 302; 1979 c. 275

30.63 Sale and use of certain outboard motors restricted. **(1) SALE.** Beginning January 1, 1976, no person may sell any new outboard motor for use in the waters of this state unless such motor is equipped with a crankcase effectively sealed to prevent the drainage of raw fuel into the waters in which the motor is operated.

(2) USE. Beginning January 1, 1990, no person may operate an outboard motor in the waters of this state unless such motor is equipped with a crankcase effectively sealed to prevent the drainage of raw fuel into the waters in which such motor is operated.

History: 1973 c. 125

30.635 Motorboat prohibition. On lakes 50 acres or less having public access, motorboats may not be operated in excess of slow-no-wake speed, except when such lakes serve as thoroughfares between 2 or more navigable lakes. The department by rule may modify or waive the requirements of this section as to particular lakes, if it finds that public safety is not impaired by such modification or waiver.

History: 1973 c. 302, 336

30.64 Patrol boats. **(1)** The operator of a duly authorized patrol boat, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law, need not comply with state or local regulations fixing maximum speed limits when a siren is being sounded and if due regard is given to the safety of other persons in the vicinity. If a light is used in conjunction with a siren it shall be the oscillating or flashing type and be fitted with a blue lens.

(2) Upon the approach of a duly authorized patrol boat giving an audio or visual signal the operator of a boat shall reduce the boat speed to that speed necessary to maintain steerage con-

30.64 NAVIGABLE WATERS, HARBORS AND NAVIGATION

764

trol and yield the right-of-way to the patrol boat until it has passed.

(3) No person operating a boat may refuse to stop after being requested or signaled to do so by a law enforcement officer.

History: 1979 c. 275.

30.65 Traffic rules. (1) MEETING; OVERTAKING; RIGHT OF WAY. Every person operating a boat shall comply with the following traffic rules, except when deviation therefrom is necessary to comply with federal pilot rules while operating on the navigable waters of the United States:

(a) When 2 motorboats are approaching each other "head and head," or so nearly so as to involve risk of collision, each boat shall bear to the right and pass the other boat on its left side.

(b) When 2 motorboats are approaching each other obliquely or at right angles, the boat which has the other on her right shall yield the right of way to the other. "Right" means from dead ahead, clockwise to 2 points abaft the starboard beam.

(d) When a motorboat and a boat propelled entirely by sail or muscular power are proceeding in such a direction as to involve risk of collision, the motorboat shall yield the right of way to the other boat.

(e) A boat may overtake and pass another boat on either side if it can be done with safety but the boat doing the overtaking shall yield the right of way to the boat being overtaken, notwithstanding any other rule in this section to the contrary.

(f) A boat granted the right of way by this section shall maintain her course and speed, unless to do so would probably result in a collision.

(2) **ADDITIONAL TRAFFIC RULES.** The department may adopt such additional traffic rules as it deems necessary in the interest of public safety. Such rules shall conform as nearly as possible to the federal pilot rules.

30.66 Speed restrictions. (1) SPEED TO BE REASONABLE AND PRUDENT. No person shall operate a motorboat at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a motorboat shall be so controlled as to avoid colliding with any object lawfully in or on the water or with any person, boat or other conveyance in or on the water in compliance with legal requirements and exercising due care.

(2) **FIXED LIMITS.** In addition to complying with sub. (1), no person shall operate a motorboat at a speed in excess of the following:

(a) Eight miles per hour on the Brule river or any of its tributaries in Douglas county.

(b) Posted notice as established by regulatory markers.

(3) **PROHIBITED OPERATION.** Except under s. 30.69 (3), no person may operate a motorboat within 100 feet of any dock, raft, pier or buoyed restricted area on any lake at a speed in excess of slow-no-wake speed.

History: 1973 c. 302.

30.67 Accidents and accident reports.

(1) **DUTY TO RENDER AID.** Insofar as he can do so without serious danger to his own boat or to persons on board, the operator of a boat involved in a boating accident shall stop his boat and shall render to other persons affected thereby such assistance as may be practicable and necessary to save them from or minimize any danger caused by the accident and shall give his name and address and identification of his boat to any person injured and to the owner of any property damaged in the accident.

(2) **DUTY TO REPORT.** (a) If a boating accident results in death or injury to any person, the disappearance of any person from a boat under circumstances indicating death or injury, or property damage, every operator of a boat involved in an accident shall, without delay and by the quickest means available, give notice of the accident to a conservation warden or local law enforcement officer and shall file a written report with the department on the form prescribed by it. The department shall adopt rules necessary to keep accident reporting requirements in conformity with rules adopted by the U.S. coast guard.

(b) If the operator of a boat is physically incapable of making the report required by this subsection and there was another occupant in the boat at the time of the accident capable of making the report he shall make such report.

(3) **TERMS DEFINED.** In this section:

(a) "Boating accident" means a collision, accident or other casualty involving a boat.

(b) "Injury" means any injury of a physical nature resulting in medical treatment, disability for more than 24 hours or loss of consciousness.

(c) "Total property damage" means the sum total cost of putting the property damaged in the condition it was in before the accident, if repair thereof is practical, and if not practical, the sum total cost of replacing the property.

(4) **REPORTS CONFIDENTIAL.** No report required by this section to be filed with the department shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any person who has or claims to have made such a report, or upon demand of any court, a

certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made.

(5) TRANSMITTAL OF INFORMATION TO FEDERAL AND STATE AUTHORITIES. If any request for information available on the basis of reports filed pursuant to this section is duly made by an authorized official or agency of the U.S. government or of the state which registered the boat involved or the state where the accident occurred, the department shall compile and furnish such information in accordance with such request.

(6) CORONERS AND MEDICAL EXAMINERS TO REPORT; REQUIRE BLOOD SPECIMEN. (a) Every coroner or medical examiner shall on or before the 10th day of each month report in writing to the department the death of any person within his or her jurisdiction during the preceding calendar month as the result of an accident involving a boat and the circumstances of the accident.

(b) In cases of death involving a boat in which the person died within 6 hours of the time of the accident, a blood specimen of at least 10 cc. shall be withdrawn from the body of the decedent within 12 hours after his or her death, by the coroner or medical examiner or by a physician so designated by the coroner or medical examiner or by a qualified person at the direction of the physician. All morticians shall obtain a release from the coroner or medical examiner prior to proceeding with embalming any body coming under the scope of this section. The blood so drawn shall be forwarded to a laboratory approved by the state health officer for analysis of the alcoholic content of the blood specimen. The coroner or medical examiner causing the blood to be withdrawn shall be notified of the results of each analysis made and shall forward the results of each analysis to the state health officer. The state health officer shall keep a record of all examinations to be used for statistical purposes only. The cumulative results of the examinations, without identifying the individuals involved, shall be disseminated and made public by the state health officer. The department shall reimburse coroners and medical examiners for the costs incurred in submitting reports and taking blood specimens and laboratories for the costs incurred in analyzing blood specimens under this section.

History: 1973 c. 302; 1979 c. 275

30.675 Distress signal flag. The display on a boat or by a person of an orange flag approximately 18 by 30 inches in size shall indicate that such boat or person is in need of help.

(1) Insofar as is possible without serious danger to his own boat or persons on board, the operator of a boat observing such distress signal shall render to the boat or person displaying the signal such assistance as may be practicable and necessary to save the boat or person or to minimize any danger to them.

(2) No person shall display a flag like that described in sub. (1) unless such person is in need of assistance to prevent bodily injury or destruction of property.

30.68 Prohibited operation. (1) INTOXICATED OPERATION. No person may operate a boat upon the waters of this state or use water skis, an aquaplane or a similar device while under the influence of an intoxicant or a controlled substance as defined in s. 161.01 (4).

(2) NEGLIGENCE OPERATION. No person may operate or use any boat, or manipulate any water skis, aquaplane or similar device upon the waters of this state in a careless, negligent or reckless manner so as to endanger his life, property or person or the life, property or person of another.

(3) OPERATION BY INCAPACITATED PERSON OR MINOR. (a) No person in charge or control of a boat shall authorize or knowingly permit the boat to be operated by any person who by reason of physical or mental disability is incapable of operating such boat under the prevailing circumstances.

(b) No person under the age of 10 years may operate a motorboat. Persons at least 10 and less than 12 years of age may operate a motorboat only if they are either accompanied in the boat by a parent or guardian or a person at least 18 years of age designated by a parent or guardian. Persons at least 12 and less than 16 years of age may operate a motor of any horsepower, but only if they are either accompanied by a parent or guardian or a person at least 18 years of age designated by a parent or guardian, or in possession of a certificate issued under s. 30.74 (1). Violations of this paragraph done with the knowledge of a parent or guardian shall be deemed a violation by the parent or guardian, and punishable under s. 30.80.

(4) CREATING HAZARDOUS WAKE OR WASH. (a) No person shall operate a motorboat so as to approach or pass another boat in such a manner as to create a hazardous wake or wash.

(b) An operator of a motorboat is liable for any damage caused to the person or property of another by the wake or wash from such motorboat unless the negligence of such other person was the primary cause of the damage.

(5) OPERATING IN CIRCULAR COURSE. No person may operate a motorboat repeatedly in a

30.68 NAVIGABLE WATERS, HARBORS AND NAVIGATION

766

circuitous course around any other boat, or around any person who is swimming, if such circuitous course is within 200 feet of such boat or swimmer; nor shall any boat or water skier operate or approach closer than 100 feet to any skin diver's flag or any swimmer unless the boat is part of the skin diving operation or is accompanying the swimmer, or unless physical conditions make compliance impossible.

(6) RIDING ON DECKS AND GUNWALES. No person operating a motorboat shall allow any person to ride or sit on the gunwales, tops of seat backs or sides or on the decking over the bow of the boat while under way, unless such person is inboard of guards or railings provided on the boat to prevent passengers from being lost overboard. Nothing in this section shall be construed to prohibit entry upon the decking over the bow of the boat for the purpose of anchoring, mooring or casting off or other necessary purpose.

(7) RESTRICTED AREAS. No person shall operate a boat within a water area which has been clearly marked by buoys or some other distinguishing device as a bathing or swimming area; nor operate a boat in restricted use areas contrary to regulatory notice pursuant to s. 30.74 (2). This subsection does not apply in the case of an emergency, or to patrol or rescue craft.

(8) ANCHORING IN TRAFFIC LANES. No person may anchor, place, affix or abandon any unattended boat, raft, float or similar structure in the traveled portion of any river or channel or in any traffic lane established and legally marked, so as to prevent, impede or interfere with the safe passage of any other boat through the same.

(9) OVERLOADING. No boat shall be loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other existing operating conditions.

(10) OVERPOWERING. No boat shall be equipped with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

(11) UNNECESSARILY SOUNDING WHISLES. No person shall unnecessarily sound a horn, whistle or other sound-producing device on any boat while at anchor or under way. The use of a siren on any except duly authorized patrol boats on patrol or rescue duty is prohibited.

(12) MOLESTING OR DESTROYING AIDS TO NAVIGATION AND REGULATORY MARKERS. No unauthorized person shall move, remove, molest, tamper with, destroy or attempt to destroy, or moor or fasten a boat (except to mooring buoys) to any navigation aids or regulatory

markers, signs or other devices established and maintained to aid boaters.

History: 1971 c. 40 s 93; 1971 c. 219; 1973 c. 302; 1975 c. 22, 39.

30.69 Water skiing. (1) PROHIBITED AT CERTAIN TIMES; EXCEPTIONS. (a) Except as provided in par. (b), no person may operate a motorboat towing a person on water skis, aquaplane or similar device unless there is in the boat a competent person in addition to the operator in a position to observe the progress of the person being towed. An observer shall be considered competent if he can in fact observe the person being towed and relay any signals to the operator. This observer requirement does not apply to motorboats classified as Class A motorboats by the department actually operated by the persons being towed and so constructed as to be incapable of carrying the operator in or on the motorboat. No person may engage in water skiing, aquaplaning or similar activity, at any time from sunset to sunrise. This restriction of the hours of water skiing does not prevent restrictions of the hours of water skiing between sunrise and sunset by local ordinances enacted pursuant to s. 30.77 (3).

(b) Paragraph (a) does not apply to duly authorized water ski tournaments, competitions, exhibitions or trials therefor, where adequate lighting is provided.

(2) CAREFUL AND PRUDENT OPERATION. A person operating a motorboat having in tow a person on water skis, aquaplane or similar device shall operate such boat in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(3) RESTRICTION. No boat towing persons engaged in water skiing, aquaplaning or similar activity on any lake shall engage in such activity within 100 feet of any occupied anchored boat or marked swimming area or public boat landing, except where pickup and drop areas are established and marked with regulatory markers.

History: 1973 c. 302

30.70 Skin diving. No person may engage in underwater diving or swimming with the use of swimming fins or skin diving in waters other than marked swimming areas or within 150 feet of shoreline, and no person may engage in underwater diving or swimming with the use of self-contained underwater breathing apparatus in waters other than marked swimming areas, unless the location of such diving or swimming is distinctly marked by diver's flag, not less than 12 inches high and 15 inches long, displaying one diagonal white stripe 3 inches wide on a red background, and of height above the water so as

to be clearly apparent at a distance of 100 yards under normal conditions, and so designed and displayed as to be visible from any point on the horizon. Except in case of emergency, anyone engaging in such diving or swimming shall not rise to the surface outside of a radius of 50 feet from such flag. No person engaged in such diving or swimming shall interfere with the operation of anyone fishing nor engage in such diving or swimming in established traffic lanes; nor shall any such person alone or with another, intentionally or unintentionally, block or obstruct any boat in any manner from proceeding to its destination where a reasonable alternative is unavailable. A reasonable alternative route is available when the otherwise unobstructed boat can proceed to its destination without reducing its lawful speed, by passing to the right or to the left of a marked diving operation.

History: 1973 c. 302

30.71 Boats equipped with toilets. No person may, while maintaining or operating any boat equipped with toilets on inland waters or outlying waters of this state, as defined in s. 29.01 (4), dispose of any toilet wastes in any manner into the inland or outlying waters of this state. The department of industry, labor and human relations may adopt rules necessary to carry out the purposes of this section.

History: 1977 c. 395; 1979 c. 221

Mississippi River is an inland water of Wisconsin and the boat toilet law may be enforced on the entire width of the Mississippi bordering Minnesota and up to the center of the main channel bordering Iowa. 61 Atty. Gen. 167.

30.72 Watercraft use regulations, lower St. Croix river. (1) WATER SURFACE USE RULES. (a) The department shall promulgate rules to govern the operation of boats on the lower St. Croix river. The regulations may restrict any or all of the following:

1. The type of boats which may be used on the waters affected by the regulations;
2. The areas of water which may be used by boats;
3. Speed of boats; or
4. The hours during which boating is permitted.

(b) In promulgating the rules required under par. (a), the department shall consider the physical characteristics of the waters affected, their historical uses, shoreland uses and classification, the classification of river segments under the lower St. Croix national scenic riverway master plan, and any other features unique to the lower St. Croix river, as well as the views of appropriate officials of counties, cities, villages and towns lying within the affected area, and of appropriate officials of agencies of the federal government and the state of Minnesota which

have jurisdiction over the waters of the lower St. Croix river.

(2) CONCURRENT REGULATIONS REQUIRED. Rules promulgated under this section are effective upon adoption of laws, rules or regulations providing for similar limitations or prohibitions on the operation and use of boats on the same segments of the lower St. Croix river by the state of Minnesota or its agencies. In exercising the authority granted by this section, the department may enter into necessary agreements with the federal government and its agencies, or with the state of Minnesota and its agencies under s. 66.30 (5).

(3) ENFORCEMENT. In addition to the enforcement powers granted to the department under s. 30.74 (3), the rules promulgated under this section may be enforceable by officers of municipal water patrols having jurisdiction on waters of the lower St. Croix river under s. 30.79 (3). All officers so empowered by this section may exercise reciprocal powers which may be conferred upon them by the state of Minnesota or its agencies or political subdivisions relating to enforcement of regulations governing the use or operation of boats on the lower St. Croix river.

History: 1975 c. 208

Note: Chapter 208, laws of 1975, which created this section, contains a statement of legislative purpose in section 1. See the 1975 session law volume.

30.74 Additional functions of department. In addition to other powers and duties conferred upon the department relative to boating safety and the regulation of boating, the department shall:

(1) BOATING SAFETY PROGRAMS. (a) Create comprehensive courses on boating safety and operation. These courses shall be offered in cooperation with schools, private clubs and organizations, and may be offered by the department in areas where requested and where other sponsorship is unavailable. The department shall issue certificates to persons 10 years of age or older successfully completing such courses.

(b) The department shall prescribe the course content, the form of the certificate and may collect \$2 from each person who enrolls in the course. The department may authorize instructors conducting such courses meeting standards established by it to retain \$1 of the fee to defray expenses incurred locally to operate the program. The remaining \$1 of the fee shall be retained by the department for the purpose of defraying a part of its expenses incurred to operate the program.

(c) Valid certificates issued by other states or provinces held by persons between the ages of 10 and 16 years will be honored if the course

30.74 NAVIGABLE WATERS, HARBORS AND NAVIGATION

768

content substantially meets that established by the department.

(d) The department shall also prepare and disseminate information on water safety to the public, including the informational pamphlets specified in s. 30.52 (7).

(2) **UNIFORM NAVIGATION AIDS.** (a) By rule establish uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers. Such rules shall establish a marking system compatible with the system of aids to navigation prescribed by the U.S. coast guard and shall give due regard to the system of uniform waterway markers approved by the advisory panel of state officials to the merchant marine council, U.S. coast guard. After January 1, 1968, no municipality or person shall mark the waters of this state in any manner in conflict with the marking system prescribed by the department. Any marker which does not comply with such marking system by January 1, 1968, is deemed an unlawful obstruction to navigable waters and may be removed in accordance with law.

(b) For purposes of this section "aids to navigation" means buoys, beacons and other fixed objects in the water which are used to mark obstructions to navigation or to direct navigation through safe channels; "regulatory markers" means any anchored or fixed marker in the water or anchored platform on the surface of the water, other than aids to navigation, and shall include but not be limited to bathing beach markers, speed zone markers, information markers, mooring buoys, fishing buoys and restricted activity area markers.

(3) **ENFORCEMENT.** Assist in the enforcement of ss. 30.50 to 30.80 and in connection therewith maintain patrol boats and operate such patrol boats at such times and places as the department deems necessary in the interest of boating safety and the effective enforcement of boating laws.

History: 1973 c 302.

30.75 Service of process on nonresident.

(1) **HOW SERVED.** Service of process upon a nonresident defendant in any action claiming injury to person or property arising out of the operation of a boat in this state may be either by personal service within or without this state or by registered mail as provided in sub. (2).

(2) **SERVICE BY REGISTERED MAIL.** If service of process is to be by registered mail, the original and necessary copies of the summons shall be left with the clerk of the court in which the action is to be brought, together with a sum of 75 cents to cover the cost of mailing. The clerk shall mail a copy to the defendant at his last address as known to the plaintiff or clerk, with

the return receipt signed by the addressee requested. Service of such summons is deemed completed when it is mailed. The clerk shall enter upon the docket the date when the summons is mailed and the name of the person to whom mailed.

30.77 Local regulation of boating. (1) LOCAL REGULATION PROHIBITED; EXCEPTIONS. Sections 30.50 to 30.71 shall be uniform in operation throughout the state. No municipality may:

(a) Enact any local regulation requiring local numbering, registration or licensing of boats or any local regulation charging fees for inspection, except as provided in sub. (3) (b); or

(b) Except as provided in subs. (2) and (3), enact any local regulation which in any manner excludes any boat from the free use of the waters of this state or which pertains to the use, operation or equipment of boats or which governs any activity regulated by ss. 30.50 to 30.71.

(2) **ORDINANCES CONFORMING TO STATE LAW.** Any municipality may enact ordinances which are in strict conformity with ss. 30.50 to 30.71 or rules of the department enacted pursuant thereto.

(3) **LOCAL REGULATIONS.** (a) Any town, village or city may, in the interest of public health, safety or welfare, adopt local regulations not contrary to or inconsistent with this chapter, relative to the equipment, use or operation of boats or relative to any activity regulated by ss. 30.60 to 30.71, but no such local regulation which in any manner pertains to the equipment, use or operation of a boat on an inland lake is valid unless all towns, cities and villages having jurisdiction on the waters of the lake have enacted an identical local regulation. If any county operates any marina development adjacent to any waters or lake, the authority conferred upon any town, village or city by this paragraph shall exclusively vest in said county in respect to adoption of such local regulations insofar as they relate to the development, operation and use of said facility and its adjoining waters. Local regulations pertaining to equipment, use or operation of boats on inland lakes shall be subject to advisory review by the department. Within 60 days after June 19, 1974, the clerk of each town, village or city which has enacted such regulations shall submit a copy of such local regulations to the department. Local regulations proposed subsequent to this date shall be submitted by the clerk to the department at least 60 days prior to final action thereon by the town, village or city governing body. Advisory reports as to town, village or city regulation of equipment, use or operation of

boats on inland lakes shall be based on consideration of the effect of the local regulation on the state from the standpoint of uniformity and enforcement and on the affected town, village or city in view of pertinent local conditions; shall state in what regard such regulations are deemed consistent or inconsistent with this chapter as to public health, safety or welfare; and shall be accompanied by suggested changes, if any. No later than one year after June 19, 1974 as to the town, village or city regulations in effect on this date and no later than 20 days after receipt by the department of local regulations proposed after this date, the department shall advise the town, village or city in writing, addressed to the clerk, as to the results of its advisory review hereunder.

(b) Notwithstanding the prohibition in sub. (1) against local regulations which exclude any boat from the free use of the waters of the state, any municipality may charge reasonable fees for the use of public boatlaunching facilities owned or operated by it and any town, village or city may regulate the operation, equipment, use and inspection of those boats carrying passengers for hire which operate from a base within its jurisdiction and charge reasonable fees for such inspection.

(4) **PUBLICIZING LOCAL REGULATIONS.** All local regulations adopted under sub. (3) shall be prominently posted by the local authority which enacted them at all public access points within the local authority's jurisdiction and also shall be filed with the department.

History: 1973 c. 302.

Sub. (3) is an exception to sub. (2). A local ordinance prohibiting operation of a motor boat on a lake on Sunday will not be held invalid pending determination of whether it is in the interest of public health or safety. *Menzer v. Elkhart Lake*, 51 W. (2d) 70, 186 NW (2d) 290.

Village was authorized under 30.77 (3) and 61.34 (1) to enact ordinance which granted exclusive temporary use of portion of lake for public water exhibition licensees. *State v. Village of Lake Delton*, 93 W. (2d) 78, 286 NW (2d) 622 (Ct. App. 1979).

See note to 29.50, citing 68 Atty. Gen. 233.

30.78 Municipal regulation of seaplanes.

(1) **REGULATION AUTHORIZED.** Any city, village or town adjoining or surrounding any waters may, after public hearing, by ordinance:

(a) Prescribe reasonable safety regulations relating to the operation on the surface of such waters of any aircraft capable of landing on water.

(b) Prescribe the areas which may be used as a landing and take-off strip for such aircraft or prohibit such use of the waters altogether. The department of transportation shall receive timely notice of the public hearing required under this subsection and shall have an opportunity to present testimony on the proposed ordinance. Any ordinance adopted under this para-

graph shall be filed with the department of transportation.

(c) Provide proper and reasonable penalties for the violation of any such ordinance.

(2) **MARKING OF REGULATED OR RESTRICTED AREAS.** Every such ordinance shall direct that the regulated or prohibited areas be designated by standard marking devices.

(3) **CONFLICT OF JURISDICTION.** Any conflict in jurisdiction arising from the enactment of ordinances by 2 or more municipalities shall be resolved under s. 66.32.

History: 1975 c. 269.

30.79 Municipal water safety patrols; state aids. (1) DEFINITIONS.

In this section:

(a) "State aid" means payment by the state to a municipality for or toward the cost of the operation or maintenance of a water safety patrol unit.

(b) "Water safety patrol unit" means a unit within an existing municipal law enforcement agency or a separate municipal agency, created by a municipality or by a number of municipalities riparian to a single body of water for the purpose of enforcing ss. 30.50 to 30.80 and any rules and ordinances enacted under ss. 30.50 to 30.80 and for conducting search and rescue operations.

(2) **STATE AID.** In order to protect public rights in navigable waters and to promote public health, safety and welfare and the prudent and equitable use of the navigable waters of the state, a system of state aids for local enforcement of ss. 30.50 to 30.80 and ordinances enacted under ss. 30.50 to 30.80 and for conducting search and rescue operations is established. Aid shall be granted under this section to those municipalities which establish, maintain and operate water safety patrol units in accordance with this chapter.

(3) **ENFORCEMENT POWERS.** Officers patrolling the waters as part of a water safety patrol unit may stop and board any boat for the purpose of enforcing ss. 30.50 to 30.80 or any rules or ordinances enacted under ss. 30.50 to 30.80 and for conducting search and rescue operations, if the officers have reasonable cause to believe there is a violation of the sections, rules or ordinances or the stopping and boarding of any boat is essential to conduct a search and rescue operation.

(4) **JURISDICTION.** Upon petition by any municipality or group of municipalities operating or intending to operate a water safety patrol unit, the department shall, if it finds that it is in the interest of efficient and effective enforcement to do so, by rule define the waters which may be patrolled by the unit, including waters

lying within the territorial jurisdiction of some other town, village or city if the town, village or city consents to the patrol of its waters. Such consent is not required if the petitioner is a municipality containing a population of 5,000 or more, bordering upon the waters to be affected by the rule in counties having a population of less than 500,000. Officers patrolling the waters as part of the water safety patrol unit shall have the powers of sheriff in enforcing ss. 30.50 to 30.80, or rules or ordinances enacted under ss. 30.50 to 30.80 and in conducting search and rescue operations, on any of the waters so defined, whether or not the waters are within the municipality's jurisdiction for other purposes.

(5) PAYMENT OF AIDS. On or before January 31 of the year following the year in which a municipality operated a water safety patrol unit, it shall file with the department on the forms prescribed by it a detailed statement of the costs incurred by the municipality in the operation of the water safety patrol unit during the past calendar year and of the receipts resulting from fines or forfeitures imposed upon persons convicted of violations of ordinances enacted under s. 30.77. The department shall audit the statement and determine the net costs, after deduction of any fines or forfeitures imposed upon persons convicted of violations of ordinances enacted under s. 30.77, which are directly attributable to the operation and maintenance of the water safety patrol unit, including a reasonable amount for depreciation of equipment. The department shall compute the state aids on the basis of 75% of the net costs directly attributable to the operation and maintenance of the water safety patrol unit and shall cause the aids to be paid on or before April 1 of the year in which the statements are filed. If the state aids payable to municipalities exceed the moneys available for such purpose, the department shall prorate the payments. No county or municipality shall receive state aid amounting to more than 20% of the funds available.

History: 1973 c. 302; 1977 c. 29, 274.

Water patrol officers in county patrol have sheriff's powers when directly enforcing 30.50 to 30.80; deputization of such officers by the sheriff is not necessary but desirable. 65 Atty. Gen. 169.

30.80 Penalties. (1) Any person violating any provision of ss. 30.50 to 30.80 for which a penalty is not provided by sub. (2), (3) or (4) shall forfeit not more than \$50 for the first offense and shall forfeit not more than \$100 upon conviction of the same offense a 2nd or subsequent time within one year.

(2) Any person violating s. 30.67 (1) or 30.68 (1) or (2) shall be fined not more than \$200 or imprisoned not more than 6 months or both. Any person violating s. 30.68 shall be

required to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1). Any person violating s. 30.67 (2) shall forfeit not more than \$200.

(3) Any person violating s. 30.71 or any rule promulgated under that section shall forfeit not more than \$100 for the first offense and shall forfeit not more than \$200 upon conviction of the same offense a 2nd or subsequent time within one year.

(4) Any person violating any provision of s. 30.72 or the rules adopted pursuant thereto shall be fined not more than \$100 or imprisoned for not more than 30 days, or both, for the first offense, and fined not more than \$200 or imprisoned for not more than 90 days, or both, upon conviction of the same offense a 2nd or subsequent time within one year.

History: 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3.

30.81 Local regulations on icebound inland waters. (1) LOCAL ORDINANCES. Any town, village or city may by ordinance, in the interest of public health or safety, adopt local regulations not inconsistent with this chapter, relative to the use or operation of boats and other craft, including snowmobiles and other motor vehicles, on icebound inland lakes, but no such local regulation is valid unless each town, village and city having jurisdiction over any portion of the lake has enacted an identical local regulation. When such identical local regulations have been enacted, the regulation of any individual town, village or city is in effect on the entire lake, and any law enforcement officer of any such town, village or city shall have the powers of sheriff in enforcing such regulation on any portion of the lake, whether or not such portion of the lake is within the municipality's jurisdiction for other purposes.

(2) COUNTY ORDINANCES. Any county may by ordinance, in the interest of public health or safety, adopt local regulations not inconsistent with this chapter, relative to the use or operation of boats and other craft, including snowmobiles and other motor vehicles, on any of the icebound inland waters over which it has jurisdiction, except inland icebound lakes which are regulated by valid local ordinances enacted pursuant to sub. (1).

(3) LIABILITY OF LOCAL GOVERNMENT. All traffic on icebound, inland waters shall be at the risk of the traveler. An ordinance by any municipality or county enacted under this section permitting traffic on icebound inland waters subject to regulations which may be imposed in accordance with this section shall not render the municipality or county adopting such ordinance liable for any accident to those en-

gaged in permitted traffic while said ordinance is in effect.

30.90 Public access to Lake Lions.

Neither the county or town may provide, nor shall any subdivider be required or permitted to provide, public access to Lions lake in the town of Alban, Portage county, if such public access will in any way interfere with the use of the lake as a recreational area for the physically handicapped as long as such use is continued. The department may stock said lake with fish as long as such use is continued, any provision in ch. 29 to the contrary notwithstanding. The town board of the town of Alban shall have jurisdiction over Lake Lions, and may enact and enforce such ordinances necessary to prevent any deterioration of the said waters or any nuisances which would adversely affect the health or safety of the people.

30.92 Recreational boating facilities. (1) DEFINITIONS. In this section:

(a) "Commission" means the Wisconsin waterways commission established under s. 15.345 (1).

(b) "Recreational boating facilities" means places where the public has access to the water by means of breakwaters and other similar physical structures, either naturally or artificially constructed, which provide safety and convenience for operators of recreational watercraft. Recreational boating facilities on the Great Lakes are commonly referred to as harbors of refuge. Recreational boating facilities on inland waters are commonly referred to as public accesses or launching ramps.

(2) STUDIES. (a) The commission may cause to be conducted appropriate studies, including feasibility studies, and inventories to aid in assessing the need for recreational boating facilities.

(b) Feasibility studies shall be used to determine whether the construction of recreational boating facilities is feasible from environmental, economic and engineering viewpoints. The commission may conduct feasibility studies or cooperate with other state agencies in conducting feasibility studies. Feasibility studies conducted by state agencies or private persons shall be reviewed by the commission to ensure that appropriate data have been collected and analyzed in detail to substantiate the recommendations made in the feasibility study.

(c) Feasibility studies may be conducted upon the request of the affected municipality. Feasibility studies shall be of sufficient detail to allow affected municipalities to decide if a recre-

ational boating facility construction project should be supported.

(d) The following factors shall be considered by the commission in assigning priorities for feasibility studies:

1. Estimated cost of the study.
2. Available funds.
3. Expression of municipality support.
4. Distance the area to be studied is from other recreational boating facilities.
5. Work previously completed.

(e) A municipality's decision to support a recreational boating facility feasibility study shall be made by a resolution indicating support for a more detailed inquiry into the engineering, environmental and economic feasibility of a project. Support of a recreational boating facility feasibility study does not commit the affected municipality to cost-sharing in the construction of a proposed facility.

(3) PROJECT PRIORITY LIST. (a) Only those proposed recreational boating facility projects found to be feasible and supported by the affected municipality and approved by the commission shall be placed on a priority list by the commission. The department shall maintain the list of priority projects. Annually, the department shall inform all affected municipalities of their position on the priority list.

(b) The following factors shall be considered in establishing priorities for projects:

1. Distance the proposed project is from other recreational boating facilities.
2. Demand for safe boating facilities.
3. Expression of municipality support.
4. Existing facilities.
5. Projects underway.
6. Commitment of funds.

(4) AIDS. (a) The department shall develop and administer, with the approval of the commission, a financial assistance program for municipalities in the construction and maintenance of capital improvements related to recreational boating facilities.

(b) The following standards shall apply to the state funding of all recreational boating facilities projects:

1. To the greatest extent possible, state funds shall be used to match other funding sources. Other funding sources may include, but are not limited to, the federal land and water conservation fund, the U.S. army corps of engineers, U.S. economic development administration, upper Great Lakes regional commission and general revenue sharing.
2. The department may cost-share, with the approval of the commission, with the affected municipality at a rate of up to 50% of the feasibility study or construction costs, or both, of the recreational boating facility. The depart-

30.92 NAVIGABLE WATERS, HARBORS AND NAVIGATION

772

ment may pay, with the approval of the commission, an additional 10% of the costs of the construction project where the municipality conducts a boating safety enforcement and education program approved by the department.

3. No more than 10% of the funds available under s. 20.370 (4) (bc) and (br) may be expended for feasibility studies in one year. No more than one percent of the funds available under s. 20.370 (4) (bc) and (br) may be expended for any one feasibility study in one year.

4. No funds may be used for the purchase of land or the construction of facilities commonly used to berth boats.

6. Thirty percent of the funds allocated under ss. 20.370 (4) (bc) and (br) and 20.866 (2) (tp) for recreational boating facilities shall be expended for Great Lakes (including Chequamegon Bay and Green Bay) projects. Thirty percent of the funds allocated under ss. 20.370 (4) (bc) and (br) and 20.866 (2) (tp) for recreational boating facilities shall be expended for inland waters, as classified under s. 29.01 (4), projects. Forty percent of the funds allocated under ss. 20.370 (4) (bc) and (br) and 20.866 (2) (tp) for recreational boating facilities shall be expended for projects deemed necessary by the commission without regard to location. Any moneys not obligated by the end of the 3rd quarter of the fiscal year for which they were allocated may be used by the department, with the approval of the commission, for purposes of funding other recreational boating facilities projects.

7. Boating facilities projects qualifying for funding under ss. 20.370 (4) (bc) and (br) and 20.866 (2) (tp) include, but are not limited to, construction and improvement of harbors of refuge on the Great Lakes; accommodation of motor-powered recreational watercraft; and construction and improvement of public access and related facilities on inland waters where motor-powered recreational watercraft are permitted.

(5) RULES. The commission shall recommend rules for promulgation by the department as necessary to implement the recreational boating facilities program under this section. The commission shall recommend rules relating to the type and content of studies to be conducted, cost-sharing arrangements for studies and capital improvements and liaison arrangements between the state and federal agencies, other state agencies, municipalities and other persons.

(6) COOPERATION AND ASSISTANCE. (a) The department shall provide municipalities with technical assistance in all phases of implementing the boating facilities program under this section. The department shall also coordinate the boating facilities program with all other related state and federal programs.

(b) The department shall assign staff to the commission for program management purposes. All staff activities, including but not limited to budgeting, program coordination and related administrative management functions, shall be consistent with the policies of the department and the natural resources board.

History: 1977 c. 274; 1979 c. 34 s. 2102 (39) (a); 1979 c. 154, 221.

30.99 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

- (a) Directly commits the violation;
- (b) Aids and abets the commission of it; or
- (c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

History: 1975 c. 365.