

CHAPTER 30

NAVIGABLE WATERS, HARBORS AND NAVIGATION

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SUBCHAPTER I

GENERAL PROVISIONS

30.01 Definitions. In this chapter:

(1b) "Authorized base level of water loss" has the meaning given under s. 144.026 (1) (b).

(1c) "Boat shelter" means a structure in navigable waters designed and constructed for the purpose of providing cover for a berth place for watercraft, which may have a roof but may not have walls or sides. Such a structure may include a boat hoist.

(1d) "Boathouse" means a structure used for the storage of watercraft and associated materials which has one or more walls or sides.

(1g) "Bridge" means a structure used to convey people, animals and vehicles over navigable waters and includes pipe arches and culverts.

(1j) "Department" means the department of natural resources.

(1m) "Designated mooring area" means a mooring area designated by a municipality under s. 30.773 (2) and (3), approved by the department and marked as a mooring area.

(1p) "Fishing raft" means any raft, float or structure, including a raft or float with a superstructure and including a structure located or extending below or beyond the ordinary high-water mark of a water, which is designed to be used or is normally used for fishing, which is not normally used as a means of transportation on water and which is normally retained in place by means of a permanent or semipermanent attachment to the shore or to the bed of the waterway. "Fishing raft" does not include a boathouse or fixed houseboat regulated under s. 30.121 nor a wharf or pier regulated under s. 30.13.

(1r) "Fixed houseboat" means a structure not actually used for navigation which extends beyond the ordinary high-water 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.

(1t) "Flotation device" means any device used to provide flotation for a fishing raft, including each individual barrel or styrofoam coffin.

(2) "Governing body" means a town board, a village board of trustees, a city council or a 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.

(3e) "Mooring" when used as a noun means a mooring anchor and mooring buoy together with attached chains, cables, ropes and pennants and related equipment, unless the term is qualified or restricted.

(3m) "Mooring anchor" means any anchor or weight which is designed to rest on the bed or to be buried in the bed of a navigable water, which is designed to be attached by a chain, cable, rope or other mechanism to a mooring buoy and which is designed to be left in position permanently or on a seasonal basis.

(3s) "Mooring buoy" means any float or marker which is attached to a mooring anchor and either is suitable for attachment to a boat through the use of a pennant or other device or facilitates the attachment of the boat to the mooring anchor.

(3w) "Motor vehicle" has the meaning designated under s. 340.01 (35) except that this term does not include snowmobiles.

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

(4m) "Navigable waters" or "navigable waterway" means any body of water which is navigable under the laws of this state.

(4r) "Outlying waters" has the meaning designated in s. 29.01 (11).

(5) "Pier" means any structure extending into navigable waters from the shore with water on both sides, built or

maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally.

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

(6b) "Substantive written objection" means a written statement giving specific reasons why a proposed project under ss. 30.02 to 30.38 may violate the statutory provisions applicable to the project and specifying that the person making the objection will appear and present information supporting the objection in a contested case hearing.

(6d) "Surplus water" means any water of a stream that is not being beneficially used, as determined by the department.

(6e) "Swimming raft" means a floating platform without railings, roof or walls that is adequately anchored to the bed of navigable waters and is designed for swimming, diving and related activities.

(7) "Watercraft" means any device used and designed for navigation on water.

(7m) "Water loss" has the meaning given under s. 144.026 (1) (L).

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

(9) "Withdrawal" has the meaning given under s. 144.026 (1) (m).

(10) "Wolf river municipality" means any city, village or town which adjoins or includes any part of the Wolf river or its stream tributaries from the Shawano dam downstream to Lake Poygan.

History: 1983 a. 189; 1985 a. 243, 332; 1987 a. 374 ss. 1 to 9, 25, 34, 35, 46 to 49, 70, 76; 1987 a. 403; 1989 a. 56.

30.02 General provision for notice and hearing. (1) In any proceeding under this chapter where public notice is required, the department shall follow the procedures in subs. (3) and (4).

(2) In any proceeding under this chapter where public notice is not required, the department shall follow the procedures in subs. (3) and (4) if it determines that substantial interests of any party may be adversely affected by the proceeding.

(3) Upon receipt of a complete permit application, the department shall either schedule a hearing or provide notice stating that it will proceed on the application without a hearing if no substantive written objection to issuance of the permit is received within 30 days after publication of the notice. The notice shall be provided to the clerk of each municipality in which the project is located and to any other person required by law to receive notice. The department may provide notice to other persons as it deems appropriate. The department shall provide a copy of the notice to the applicant, who shall publish it as a class 1 notice under ch. 985 in a newspaper designated by the department that is likely to give notice in the area affected. The applicant shall file proof of publication with the department.

(4) (a) If a public hearing is ordered, the division of hearings and appeals shall mail a written notice at least 10 days before the hearing to each person given notice under sub. (3) and to any person who submitted a substantive written objection to issuance of the permit.

(b) The applicant shall publish a class 1 notice under ch. 985 of the hearing in a newspaper designated by the department that is likely to give notice in the area affected. The

applicant shall file proof of publication under this paragraph with the hearing examiner at or prior to the hearing.

History: 1987 a. 374.

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 promulgated 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; 1985 a. 332 s. 251 (1).

30.027 Lower Wisconsin state riverway. For activities in the lower Wisconsin state riverway, as defined in s. 30.40 (15), no person obtaining a permit under subchs. I, II or V may start or engage in the activity for which the permit was issued unless the person obtains any permit that is required for the activity under s. 30.44 or 30.445.

History: 1989 a. 31.

30.03 Enforcement of forfeitures; abatement of nuisances; infringement of public rights. (2)

The district attorney of the appropriate county or, at the request of the department, the attorney general shall institute proceedings to recover any forfeiture imposed or to abate any nuisance committed under this chapter or ch. 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) If the department learns of a possible violation of the statutes relating to navigable waters or a possible infringement of the public rights relating to navigable waters, and the department determines that the public interest may not be

adequately served by imposition of a penalty or forfeiture, the department may proceed as provided in this paragraph, either in lieu of or in addition to any other relief provided by law. The department may order a hearing under ch. 227 concerning the possible violation or infringement, and may request the hearing examiner to issue an order directing the responsible parties to perform or refrain from performing acts in order to fully protect the interests of the public in the navigable waters. If any person fails or neglects to obey an order, the department may request the attorney general to institute proceedings for the enforcement of the department's order in the name of the state. The 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 a hearing examiner's order under this subsection, but violation of a judgment enforcing the order may be punished in civil contempt proceedings.

History: 1979 c. 32 s. 92 (8); 1979 c. 257; 1981 c. 390; 1983 a. 524; 1987 a. 374.

Initiation of proceedings under (4) discussed. *Omernick v. Dept. of Natural Resources*, 100 W (2d) 234, 301 NW (2d) 437 (1981).

Department of Natural Resources may enforce terms of lakebed grants under (4) (a) as long as such enforcement does not conflict with 30.05 OAG 21-89.

30.05 Applicability of chapter to municipally-owned submerged shorelands. 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 shorelands 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 this chapter 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 promulgate 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.

History: 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1).

30.07 Limits and conditions for permits and contracts. (1)

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

(b) The department may specify a time limit of less than 3 years for a permit or contract issued under ss. 30.01 to 30.29. For good cause, the department may extend the time limit for a permit or contract issued under ss. 30.01 to 30.29 for no longer than 2 years if the grantee requests an extension prior to expiration of the initial time limit.

(2) For good cause, the department may modify or rescind any permit or contract issued under ss. 30.01 to 30.29 before its expiration.

History: 1987 a. 374.

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 shorelines 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 shorelines conflict, each shall have his proportion of such shorelands.

(c) Notwithstanding any other provision of law, farm drainage ditches are not navigable within the meaning of this section unless it is shown that the ditches were navigable streams before ditching. 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; 1981 c. 339.

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.

See note to Art. I, sec. 13, citing *Zinn v. State*, 112 W (2d) 417, 334 NW (2d) 67 (1983).

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.

SUBCHAPTER II

NAVIGABLE WATERS AND NAVIGATION IN GENERAL

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 an existing bulkhead line, the municipality shall indicate both the existing shore and the proposed bulkhead line upon a map and shall file with the department for its approval 6 copies of the map and 6 copies of the ordinance establishing the bulkhead line. The map shall use a scale of not less than 100 feet to an inch or any other scale required by the department. The map and a metes and bounds description of the bulkhead line shall be prepared by a land surveyor registered in this state. The department may require the installation of permanent reference markers to the bulkhead line. Upon approval by the department, the municipality shall deliver the map, description and ordinance to the office of the register of deeds of the county in which the bulkhead line lies, to be recorded by the register of deeds.

(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 concerning rights to submerged lands or rights to fill in submerged lands held in trust for the public under s. 24.39, the department shall determine whether the proposed physical changes in the area as a result of the execution of the lease are consistent with the public interest. Thirty days before making its determination, the department shall notify, in writing, the clerk of the county and clerk of the city, village or town in which the changes are proposed and the U.S. Army Corps of Engineers of the application for the lease. In making its finding the department shall give consideration to all reports submitted to it. The department shall not approve a lease applied for under s. 24.39 (4) (a) 2 if the department determines that the lease may 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.

(6) SHORELINE NOT INVALIDATED. A shoreline lawfully established before January 1, 1960, is a lawfully established bulkhead line.

History: 1987 a 374.

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 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; GENERALLY. The department, upon application and after proceeding in accordance with s. 30.02 (3) and (4), may grant to any riparian owner a permit to build or maintain for the owner's use a structure otherwise prohibited under sub. (1), if the structure does not materially obstruct navigation or reduce the effective flood flow capacity of a stream and is not detrimental to the public interest. The procedures in this subsection do not apply to permits issued under sub. (3).

(3) PERMITS TO PLACE CERTAIN STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS. (a) The department, upon application, may grant to a riparian owner a permit to:

1. Place a layer of sand or similar material on the bed of a lake adjacent to the owner's property for the purpose of improving recreational use.

2. Place a fish crib, spawning reef, wing deflector or similar device on the bed of navigable waters for the purpose of improving fish habitat.

3. Place riprap or similar material on the bed and bank of navigable waters adjacent to an owner's property for the purpose of protecting the bank and adjacent land from erosion.

4. Place crushed rock or gravel, reinforced concrete planks, adequately secured treated timbers, cast in place concrete or similar material on the bed of a navigable stream for the purpose of developing a ford if an equal amount of material is removed from the stream bed.

5. Place crushed rock or gravel, reinforced concrete planks, cast in place concrete or similar material on the bed of navigable waters adjacent to the owner's property for the purpose of building a boat landing.

6. Place a permanent boat shelter adjacent to the owner's property for the purpose of storing or protecting watercraft and associated materials, except that no permit may be granted for a permanent boat shelter which is constructed after May 3, 1988, if the property on which the permanent boat shelter is to be located also contains a boathouse within 75 feet of the ordinary high-water mark of if there is a boathouse over navigable waters adjacent to the owner's property.

(b) A person who seeks to place structures or deposits under par. (a) shall apply to the department for a permit. The department may disapprove the application if it finds that the proposed structure or deposit will materially impair navigation or be detrimental to the public interest. The department shall issue the permit or notify the applicant in writing of the disposition of the application.

(c) The department may promulgate rules deemed necessary to carry out the purposes of par. (a) 6, including rules to establish minimum standards to govern the architectural and aesthetic features of boat shelters and the number of boat shelters that may be constructed adjacent to a parcel of land. The standards shall be designed to assure the structural soundness and durability of a boat shelter and to minimize the visual intrusiveness of a boat shelter with respect to the surrounding body of water and shoreline. A municipality may enact ordinances not inconsistent with this section or with rules promulgated under this section regulating the architectural and aesthetic features of boat shelters.

(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 this section or s. 29.29, 30.11, 30.123, 30.195, 30.20, 59.971, 61.351, 62.231, 87.30 or ch. 144 or 147. However, at the earliest practical time prior to the commencement of these 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

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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 interdepartmental consultation and cooperation under this subsection.

(f) This subsection does not apply to activities in the lower Wisconsin state riverway, as defined in s. 30.40 (15).

(5) **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: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31.

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, 1983 stats., [now 227.57], 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.

"Navigable waters" under this section are waters that are navigable in fact. Ski jump was "structure" under this section. Public trust doctrine discussed. *State v. Bleck*, 114 W (2d) 454, 338 NW (2d) 492 (1983).

See note to 66.24, citing *Cassidy v. Dept. of Natural Resources*, 132 W (2d) 153, 390 NW (2d) 81 (Ct. App. 1986).

Area need not be navigable to be lakebed. Ordinary high water mark was determinative. *State v. Trudeau*, 139 W (2d) 91, 408 NW (2d) 337 (1987).

Holder of easement doesn't qualify as riparian owner. *de Nava v. DNR*, 140 W (2d) 213, 409 NW (2d) 151 (Ct. App. 1987).

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

30.121 Regulation of boathouses and houseboats. (2)

PROHIBITIONS. After December 16, 1979 no boathouse or fixed houseboat may be constructed or placed beyond the ordinary high-water mark of any navigable waterway.

(3) **MAINTENANCE.** The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair and maintain the boathouse or fixed houseboat if the cost of the repair or maintenance does not exceed 50% of the equalized assessed value of the boathouse or fixed houseboat. If the boathouse or fixed houseboat is not subject to assessment, the owner may make repairs if the cost of the repair or maintenance does not exceed 50% of the current fair market value of the boathouse or fixed houseboat.

(3m) **EXCEPTION.** Notwithstanding subs. (2) and (3), a person may construct, repair or maintain a single-story boathouse over an authorized waterway enlargement if:

(a) The boathouse does not extend beyond the ordinary high-water mark as it existed prior to the creation of the enlargement;

(b) The boathouse covers the entire enlargement; and

(c) Living quarters or plumbing fixtures are not constructed in the boathouse.

(4) **MAJOR REPAIR, ABANDONED STRUCTURES AND OBSTRUCTIONS TO NAVIGATION.** The owner of a boathouse or a fixed houseboat which extends beyond the ordinary high-water 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. 31.187 (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 listed on the national register of historic places in Wisconsin or the state register of historic places.

(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; 1981 c. 117; 1983 a. 27 s. 2202 (38); 1987 a. 374, 395.

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 Bridge construction and maintenance; permit. (1)

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

(2) Except as provided in sub. (1) and 30.12 (4), no person may construct or maintain a bridge in, on or over navigable waters unless a permit has been issued by the department under this section. The application for a permit shall contain the applicant's name and address, the proposed location of the bridge, a cross section and plan view of the navigable waters and adjacent uplands, a description of materials to be used in construction of the bridge, plans for the proposed bridge, evidence of permission to construct the bridge from the riparian owners and any other information required by the department.

(3) Upon receipt of a complete application, the department shall follow the notice and hearing provisions of s. 30.02 (3) and (4), except that no notice or hearing is required for proposed bridges which would cross navigable waters less than 35 feet wide.

(4) The department shall review the plans for the proposed bridge to determine whether the proposed bridge will be an obstruction to navigation or will adversely affect the flood flow capacity of the stream. The department shall grant the permit if the proposed bridge will not materially obstruct navigation, reduce the effective flood flow capacity of a stream or be detrimental to the public interest.

(5) Any person who is issued a permit under this section respecting a bridge that may be used by the public shall construct and maintain the bridge in a safe condition at all times.

History: 1977 c. 190; Stats. 1977 s. 30 122; 1977 c. 272; Stats. 1977 s. 30 123; 1987 a. 374

30.124 Waterfowl habitat management. (1) Notwithstanding ss. 30.12, 30.125, 30.20, 30.44 and 30.45 and if the department finds that the activity will not adversely affect public or private rights or interests in fish and wildlife populations, navigation or waterway flood flow capacity and will not result in environmental pollution, as defined in s. 144.01 (3), the department may do all of the following on public lands or waters:

(a) Cut aquatic vegetation without removing the vegetation from the water, for the purpose of improving waterfowl nesting, brood and migration habitat.

(b) Develop nesting islands for the purpose of increasing waterfowl production.

(2) The department may use moneys available under s. 29.102 (2) (a) to engage in the activities described under sub. (1).

History: 1987 a. 294; 1989 a. 31.

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) EXCEPTIONS. This section does not apply to:

(a) Lakes where the lake property owners have incorporated under ch. 181 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 the owner's shore.

(b) Navigable waters where the shoreline is under one ownership or navigable waters where all affected property owners agree to remove the weeds floating to their shore or agree to allow the cut weeds to remain in the water, if such weeds are not detrimental to public rights or to the rights of other riparian owners located on any waterway.

History: 1979 c. 32 s. 92 (9); 1987 a. 374.

30.126 Regulation of fishing rafts. (2) PROHIBITION OF FISHING RAFTS. Except as provided under subs. (3) and (4), no person may construct or place a fishing raft on any navigable water.

(3) EXCEPTION FOR FISHING RAFTS ON THE MISSISSIPPI RIVER. A person may maintain any fishing raft located below and in close proximity to a lock or dam on the Mississippi river if the fishing raft is constructed or in place prior to December 4, 1983. A person may construct, place and maintain a fishing raft below and in proximity to a lock or dam on the Mississippi river if a permit is obtained for the fishing raft under s. 30.12.

(4) EXCEPTION FOR FISHING RAFTS ON THE WOLF RIVER. A person may construct, place and maintain a fishing raft on authorized portions of the Wolf river if the person complies with the restrictions under sub. (5). Authorized portions of the Wolf river consist of any part of the Wolf river or its stream tributaries from the Shawano dam downstream to Lake Poygan.

(5) RESTRICTIONS ON FISHING RAFTS ON THE WOLF RIVER. (a) *May not obstruct navigation or interfere with public rights.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river in a manner which materially obstructs navigation or which materially interferes with public rights in the navigable waters.

(b) *May not be located in channel.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river in the channel of the waterway.

(c) *May not block more than 25% of the waterway.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river if the raft alone or in combination with any other fishing rafts previously constructed and placed on the waterway results in the obstruction of more than 25% of the width of the waterway.

(d) *May not be located within 10 feet of another fishing raft.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river within 10 feet of any other fishing raft previously constructed and placed on the waterway.

(e) *May not affect riparian rights without permission of riparian owner.* No person who is not the riparian owner may construct, place or maintain a fishing raft which is attached or adjacent to property of a riparian owner or which otherwise affects the rights of a riparian owner unless the person receives the written permission of the riparian owner.

(f) *May not be used during certain times of the year.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river prior to March 1 of any year. Any person who constructs, places or maintains a fishing raft on authorized portions of the Wolf river shall remove or cause the removal of the fishing raft from the waterway on or before October 31 of each year.

(g) *May not have improper flotation devices.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river unless each flotation device used on the fishing raft is clean and uncontaminated, properly attached to the fishing raft and properly maintained in conformity with minimum standards established by the department by rule. The department shall establish minimum standards for the condition, attachment and maintenance of flotation devices used on fishing rafts.

(h) *May not have improper toilets.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river if the fishing raft is equipped with a toilet which permits toilet waste to be disposed of in the waterway. A toilet on a fishing raft shall comply with rules of the department of industry, labor and human relations as if the toilet were on a boat.

(i) *May not be abandoned.* No person who constructs or places a fishing raft on authorized portions of the Wolf river may abandon the fishing raft.

(j) *May not be improperly maintained.* No person who constructs or places a fishing raft on authorized portions of the Wolf river may fail to maintain the fishing raft in conformity with minimum standards established by the department by rule. After consulting with Wolf river municipalities, the department shall establish by rule minimum standards for the maintenance of fishing rafts to ensure proper repair, to promote maintenance in an aesthetically pleasing manner and to reduce the possibility that debris or litter from the fishing raft will be deposited in the waterway.

(k) *May not be used unless registered.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river unless the fishing raft is registered under the uniform registration system and unless the registration number is displayed on the raft and on each flotation device in 3-inch block letters.

(6) REGISTRATION OF FISHING RAFTS ON THE WOLF RIVER. (a) *Department to establish a uniform registration system.* The department shall establish by rule general standards for a uniform registration system for fishing rafts, on authorized portions of the Wolf river, which includes all the following:

1. A uniform numbering system for fishing rafts and flotation devices used on fishing rafts.

2. Provisions for the annual registration of all fishing rafts.

3. Provisions for the payment of an annual registration fee of \$5 for each fishing raft.

(b) *Municipal adoption, administration and enforcement of uniform registration system.* 1. A Wolf river municipality shall adopt by ordinance and administer and enforce a uniform registration system for fishing rafts consistent with the general standards established by the department.

2. A Wolf river municipality which adopts, administers and enforces a uniform registration system for fishing rafts and which adopts and enforces restrictions on fishing rafts

may retain all registration fees to administer and enforce the uniform registration system and the restrictions.

3. A Wolf river municipality which adopts a uniform registration system for fishing rafts shall transmit a complete list of all registered fishing rafts and their owners to the department on or before April 1 of each year.

(c) *Failure of municipality to adopt, administer or enforce the uniform registration system.* If a Wolf river municipality fails to adopt by ordinance a uniform registration system for fishing rafts within 120 days after the effective date of rules promulgated by the department under par. (a), or fails to adequately administer or enforce the uniform registration system for fishing rafts, the department, after providing notice and conducting a hearing on the matter, may adopt or administer and enforce the uniform registration system for fishing rafts in that municipality. If the department adopts, administers or enforces the uniform registration system for fishing rafts in a Wolf river municipality, the department may retain all registration fees for fishing rafts registered in that municipality.

(d) *Conflicts.* Any conflict in jurisdiction arising from the enactment of ordinances for the registration of fishing rafts on authorized portions of the Wolf river by 2 or more Wolf river municipalities shall be resolved under s. 66.32.

(7) **MUNICIPAL REGULATION OF FISHING RAFTS ON THE WOLF RIVER.** (a) *Municipal adoption and enforcement of restrictions on fishing rafts.* A Wolf river municipality shall adopt by ordinance and enforce restrictions on fishing rafts at least as restrictive as those under sub. (5).

(b) *Failure of a municipality to adopt and enforce restrictions on fishing rafts.* If a Wolf river municipality fails to adopt by ordinance restrictions on fishing rafts within 120 days after the effective date of rules promulgated by the department under subs. (5) (g) and (j) and (6) (a), or fails to adequately enforce the restrictions on fishing rafts, the department, after providing notice and conducting a hearing on the matter, may enforce restrictions on fishing rafts. If the department enforces restrictions on fishing rafts in a Wolf river municipality, the department may retain all registration fees for fishing rafts registered in that municipality.

(c) *Conflicts.* Any conflict in jurisdiction arising from the enactment of ordinances restricting fishing rafts on authorized portions of the Wolf river by 2 or more Wolf river municipalities shall be resolved under s. 66.32.

(8) **REMOVAL OF FISHING RAFTS.** (a) *Municipality may order removal.* A Wolf river municipality may order a person who is violating restrictions under sub. (5) or restrictions on fishing rafts adopted by ordinance to comply with the restrictions or to remove the fishing raft from authorized portions of the Wolf river.

(b) *Municipality may cause removal.* 1. If a person fails to comply with an order issued under par. (a) or if a Wolf river municipality is unable to issue an order under par. (a) because the fishing raft is not registered and the municipality cannot determine who constructed, placed or maintained the fishing raft on authorized portions of the Wolf river, the municipality may remove the fishing raft and dispose of it.

2. The owner or person responsible for the fishing raft shall reimburse a Wolf river municipality for all costs associated with the removal and disposal of the fishing raft under this paragraph.

(c) *Department authority to order removal.* 1. The department may order a person who is violating sub. (2) to remove the fishing raft from the navigable waters.

2. The department shall report any violation of sub. (5) to the Wolf river municipality where the violation occurred.

3. If the Wolf river municipality does not act under par. (b) 1 within 90 days after the department reports the violation, the department may order the person who is violating restrictions under sub. (5) to comply with the restrictions or to remove the fishing raft from authorized portions of the Wolf river.

(d) *Department authority to cause removal.* 1. If a person does not comply with an order issued under par. (c) 1 or if the department is unable to issue an order under par. (c) 1 because the department cannot determine who constructed, placed or maintained the fishing raft on the navigable waters, the department may remove the fishing raft and dispose of it.

2. If a person does not comply with an order issued under par. (c) 3, the department may remove the fishing raft and dispose of it.

3. If the department is unable to issue an order under par. (c) 3 because the fishing raft is not registered and the department cannot determine who constructed, placed or maintained the fishing raft on authorized portions of the Wolf river and if the Wolf river municipality does not act under par. (b) 1 within 120 days after the department reports the violation, the department may remove the fishing raft and dispose of it.

4. The owner or person responsible for the fishing raft shall reimburse the department for all costs associated with the removal and disposal of the fishing raft under this paragraph.

(9) **ENFORCEMENT.** (a) *Department and district attorney's authority to enforce.* The department or the district attorney for the county where the violation occurred may enforce this section, any rule promulgated under this section or any order issued by the department under this section. Before the department may enforce standards and rules promulgated under sub. (5) (j) with respect to a specific fishing raft and before the department may issue an order based on these standards or rules with respect to a specific fishing raft, the department shall notify and consult with the Wolf river municipality where the fishing raft is located.

(b) *Municipality's authority to enforce.* A Wolf river municipality may enforce any ordinance adopted or order issued by the municipality under this section.

(10) **PENALTIES.** (a) *Violation of statute, rule or department order.* A person who violates this section, any rule promulgated under this section or any order issued by the department under this section shall forfeit not less than \$10 nor more than \$250 for each offense. Each day of violation constitutes a separate offense.

(b) *Violation of municipal ordinance or order.* A person who violates any ordinance adopted or order issued by the municipality under this section is subject to the penalty established by ordinance. A Wolf river municipality may not establish this penalty at a level which is less severe than the penalty established under par. (a).

History: 1983 a. 100; 1987 a. 374.

30.13 Regulation of wharves, piers and swimming rafts; establishment of pierhead lines. (1) **CONSTRUCTION ALLOWED WITHOUT PERMIT UNDER CERTAIN CIRCUMSTANCES.** A riparian proprietor may construct a wharf or pier in a navigable waterway extending beyond the ordinary high-water mark or an established bulkhead line in aid of navigation without obtaining a permit under s. 30.12 if all of the following conditions are met:

(a) The wharf or pier does not interfere with public rights in navigable waters.

(b) The wharf or pier does not interfere with rights of other riparian proprietors.

(c) The wharf or pier does not extend beyond any pierhead line which is established under sub. (3).

(d) The wharf or pier does not violate any ordinances enacted under sub. (2).

(e) The wharf or pier is constructed to allow the free movement of water underneath and in a manner which will not cause the formation of land upon the bed of the waterway.

(1m) SWIMMING RAFTS ALLOWED WITHOUT PERMIT UNDER CERTAIN CIRCUMSTANCES. A riparian proprietor may place a swimming raft in a navigable waterway for swimming and diving purposes without obtaining a permit under s. 30.12 if all of the following conditions are met:

(a) The swimming raft does not interfere with public rights in navigable waters.

(b) The swimming raft does not interfere with rights of other riparian proprietors.

(c) The swimming raft is placed within 200 feet of shore.

(2) WHARVES, PIERS AND SWIMMING RAFTS REGULATED. A municipality may enact ordinances not inconsistent with this section regulating the construction and location of wharves, piers and swimming rafts located within or attached to land within that municipality.

(3) ESTABLISHMENT OF PIERHEAD LINES. (a) 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 a metes and bounds legal description is not required nor is the map required to be prepared by a registered land surveyor and except that if the municipality has created a board of harbor commissioners the municipality must obtain the approval of the board concerning the establishment of the pierhead line in addition to obtaining the approval of the department.

(b) 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) UNLAWFUL OBSTRUCTION. (a) *Interferes with public rights.* A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless a permit is issued for the wharf or pier under s. 30.12 or unless authorization for the wharf or pier is expressly provided.

(b) *Interferes with riparian rights.* A wharf or pier which interferes with rights of other riparian proprietors constitutes an unlawful obstruction of navigable waters unless a permit is issued for the wharf or pier under s. 30.12 or unless authorization for the wharf or pier is expressly provided.

(c) *Extends beyond pierhead line, exception.* A wharf or pier which extends into navigable waters beyond any pierhead line established under sub. (3) constitutes an unlawful obstruction of navigable waters unless a valid permit, license or authorization for the wharf or pier is granted or unless it is a permissible preexisting wharf or pier. A wharf or pier is a permissible preexisting wharf or pier if it existed prior to the establishment of the pierhead line, if it is not extended or expanded after that date and if the ownership of the land to which it is attached did not change after that date except that a wharf or pier continues its status as a permissible preexisting wharf or pier for one year after the date the change of ownership is recorded. The seasonal removal of a wharf or pier does not affect its status as a permissible preexisting wharf or pier if it is reestablished in substantially the same form. Status as a permissible preexisting wharf or pier does not imply that authorization for the wharf or pier is provided for the purposes of par. (a) or (b). The owner of a wharf or pier may submit evidence to the municipality that it is a permissible preexisting wharf or pier at any time after the municipality establishes the pierhead line.

(d) *Violates regulations.* A wharf or pier which violates the regulations contained in sub. (2) or in any ordinance enacted under sub. (2) constitutes an unlawful obstruction of navigable waters.

(5) REMOVAL OF WHARVES AND PIERS EXTENDING BEYOND PIERHEAD LINE. The governing body of a city, village or town may remove a wharf or pier which constitutes an unlawful obstruction of navigable waters under sub. (4) as provided under s. 66.0495.

(6) DOCK LINE NOT INVALIDATED. A dock line lawfully established before January 1, 1960, is a lawfully established pierhead line.

History: 1981 c. 252; 1987 a. 374.
See note to 30.12, citing *Kosmatka v. DNR*, 77 W (2d) 558, 253 NW (2d) 887.

30.131 Wharves and piers placed and maintained by persons other than riparian owners. A wharf or pier of the type which does not require a permit under ss. 30.12 (1) and 30.13 that abuts riparian land and that is placed in a navigable water by a person other than the owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

(1) The owner of the riparian land or the owner's predecessor in interest entered into a written easement that was recorded before December 31, 1986, and that authorizes access to the shore to a person who is not an owner of the riparian land.

(2) The person to whom the easement was granted or that person's successor in interest is the person who places and maintains the wharf or pier.

(3) The placement and maintenance of the wharf or pier is not prohibited by and is not inconsistent with the terms of the written easement.

(4) The wharf or pier has been placed seasonally in the same location at least once every 4 years since the written easement described in sub. (1) was recorded.

(5) The wharf or pier is substantially the same size and configuration as it was on April 28, 1990, or during its last placement before April 28, 1990, whichever is later.

(6) The placement of the wharf or pier complies with the provisions of this chapter, with any rules promulgated under this chapter and with any applicable municipal regulations or ordinances.

History: 1989 a. 217.

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 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 investigate and may hold a hearing to determine whether the wharf, pier, or other structure is or would be in violation of those sections. If no hearing is held, the complainant shall be informed of the results of the investigation.

History: 1987 a. 374.

30.15 Penalty for unlawful obstruction of navigable waters. (1) OBSTRUCTIONS PENALIZED. Any person who does any of the following shall forfeit not less than \$10 nor more than \$500 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.

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

History: 1987 a. 374.

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) WATERCRAFT AND FLOATS.

(a) *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.

(b) *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.

(2) REMOVAL OF OBSTRUCTIONS TO NAVIGATION; WHARVES AND PIERS; ALTERNATIVE. As an alternative to the procedure specified under sub. (1), the governing body of a city, village or town may remove that portion of a wharf or pier which constitutes an unlawful obstruction to navigation as provided under s. 66.0495.

History: 1981 c. 252.

30.18 Diversion of water from lakes and streams. (2) PERMIT REQUIRED.

(a) *Streams.* No person may divert water from a stream in this state without a permit under this section if the diversion meets either of the following conditions:

1. The diversion is for the purpose of maintaining or restoring the normal level of a navigable lake or the normal flow of a navigable stream, regardless of whether the navigable lake or navigable stream is located within the watershed of the stream from which the water is diverted.

2. The diversion is for the purpose of agriculture or irrigation.

(b) *Streams or lakes.* No person, except a person required to obtain an approval under s. 144.04, may divert water from any lake or stream in this state without a permit under this section if the diversion will result in a water loss averaging 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss.

(3) APPLICATION FOR PERMIT. (a) *Application; streams.* 1. Except as provided in par. (b), an applicant for a permit required under sub. (2) (a) shall file the application with the

department setting forth the name and post-office address of the applicant, the name of the stream from which the water will be diverted, the point in the stream from which it is proposed to divert the water, the name of the lake or stream or the location and riparian status of the land to which the 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, the time required for the completion of the canal and other structures necessary for the completed project and, if required by the department, 4 copies of plans showing cross sections and profiles for any canal, tunnel, pipes or other diversion works and any dam and control works at the point of diversion and at the point of discharge.

2. For a diversion under sub. (2) (a) 1, a map or maps shall accompany the application with a scale of not less than one inch per 2,000 feet, showing the land topography and the probable course of the proposed diversion canal and other works, and the ownership of all lands upon which will be located the canal, tunnel, pipes and all other works for the completed project.

3. For a diversion under sub. (2) (a) 2, the application shall include written statements of consent to the diversion from all riparian owners who are making beneficial use of the water proposed to be diverted.

4. The department may require such additional information as may be pertinent.

(b) *Application; streams or lakes.* An application for a permit required under sub. (2) (b) shall be submitted in the form required under s. 144.026 (5) (a). If the diversion also meets either condition specified under sub. (2) (a), the application shall also comply with par. (a).

(4) NOTICE OF HEARING ON APPLICATION. (a) Upon receipt of a complete application, the department shall follow the notice and hearing procedures under s. 30.02 (3) and (4). In addition to the notice requirements under s. 30.02 (3) and (4), the department shall mail a copy of the notice to every person upon whose land any part of the canal or any other structure will be located, to the clerk of the next town downstream, to the clerk of any village or city in which the lake or stream is located and which is adjacent to any municipality in which the diversion will take place and to each person specified in s. 144.026 (5) (b) or (6) (f), if applicable.

(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) APPROVAL OF APPLICATION. (a) *Streams.* The department shall approve an application for a permit required under sub. (2) (a) if the department determines both of the following:

1. That the proposed diversion will not injure any public rights in navigable waters.

2. That the water to be diverted is surplus water, or if it is not surplus water, that all riparians who may be adversely affected by the diversion have consented to the proposed diversion.

(b) *Streams or lakes.* The department shall approve an application for a permit required under sub. (2) (b) if the grounds for approval specified under s. 144.026 (5) (d) are met and, if the permit is also required under sub. (2) (a), if the department makes the determinations specified under par. (a).

(6) PERMITS; USE OF WATER; REPORTING; REVIEW. (a) *Consents of permit.* The department shall specify on each permit issued under this section the quantity of water that may be

diverted and the times during which water may be diverted. In addition, if the permit is one which is required under sub. (2) (b), the permit shall comply with s. 144.026 (6).

(b) *Use of water.* A person issued a permit for the purpose of irrigation or agriculture may use the water on any land contiguous to the permittee's riparian land, but may not withdraw more water than it did before August 1, 1957, without applying to the department for a modification of the permit.

(c) *Reporting required.* The department shall require each permittee under this section to report its volume and rate of withdrawal and its volume and rate of water loss, if any, in the form and at the times specified by the department.

(d) *Review of permits.* If the permit is one that is required under sub. (2) (a), but not under sub. (2) (b), and the permit was issued on or after August 1, 1957, the department shall review the permit at least once every 5 years. If the permit is one that is required under sub. (2) (b), the department shall review the permit as required under s. 144.026 (6) (b).

(6m) REVOCATION. (a) The department shall revoke a permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it finds any of the following:

1. That the water being diverted is no longer surplus water, except that the department may allow the diversion to continue if all riparians adversely affected by the diversion continue to consent to it.

2. If the diversion is from a stream designated by the department as a trout stream, that the revocation is desirable for conservation purposes.

(b) The department may revoke any permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it finds that the diversion is detrimental to the stream from which the water is diverted.

(c) The department may revoke a permit issued under sub. (5) (b) only as provided under s. 144.026 (6).

(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 required under sub. (2) (a) 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) DEPARTMENT MAY RAISE WATER ELEVATIONS. If after examination and investigation the department determines that it is necessary to raise water elevations in any navigable stream or lake for conservation purposes, the department may, if funds are available from any source other than license fees, determine and establish the elevations to which the water may be raised or maintained, but the water elevation may not be established below the normal elevation. If any lands are damaged by raising the water levels above normal and the department cannot acquire the right to flow the lands by agreement with the owner, the department may acquire the lands or the right to flow the lands 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.

History: 1979 c. 221; 1985 a. 60; 1987 a. 374.

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. Assn. v. Moses, 53 W (2d) 579, 193 NW (2d) 708.

The statute applies to diversions from nonnavigable as well as from navigable streams. Omernick 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 or enlarge 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 navigable waters, or where any part of the artificial waterway is located within 500 feet of the ordinary high-water mark of an existing navigable stream, lake or other navigable waters.

(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.

(1m) EXCEPTION. Subsection (1) does not apply to any of the following:

(a) The construction and repair of public highways.

(b) Any agricultural uses of land.

(c) Any navigable inland lake located wholly or partly in any county having a population of 750,000 or more.

(d) Those portions of navigable streams, Lake Michigan or Lake Superior within any county having a population of 750,000 or more.

(e) Any work required to maintain the original dimensions of an enlargement of a waterway authorized under sub. (1) (a) or (b).

(2) PERMITS FOR WORK OR TO ENLARGE WATERWAYS. Before any work or connection specified 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) Section 30.02 (3) and (4) applies to permit applications under sub. (1) (b) and (c). Notice shall be provided to the clerks of the county and municipality in

which the project or affected body of water is located and to the persons under sub. (2) (e). For any permit application which affects the Milwaukee river, the Menomonee river, the Kinnickinnic river, the Root river or any tributary of those rivers, special notice shall be given to the Milwaukee metropolitan sewerage district. The metropolitan sewerage district shall have 30 days to respond to the special notice.

(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 any enlargement connected to navigable waterways 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 affected waterways.

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

History: 1971 c. 273; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221; 1983 a. 36; 1987 a. 374.

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 may change the course of or straighten a navigable stream without a permit issued under this section or without otherwise being expressly authorized by statute to do so.

(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 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.

(7) **APPLICATION OF SECTION.** This section does not apply to municipal or county-owned lands in counties having a population of 750,000 or more.

History: 1987 a. 374.

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

30.196 Enclosure of navigable waters; issuance of permits to municipalities. A municipality may enclose navigable waters by directing, placing or restricting navigable waters into an enclosed drain, conduit, storm sewer or similar structure if the department grants the municipality a permit. The department may grant this permit to a municipality after following the notice and hearing requirements under s. 30.02 (3) and (4) if it finds that granting the permit:

- (1) Is in the public interest;
- (2) Will not violate public rights; and
- (3) Will not endanger life, health or property.

History: 1981 c. 19; 1987 a. 374.

30.20 Removal of material from beds of navigable waters.

(1) **UNLAWFUL REMOVAL.** (a) No person may 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 as provided in sub. (2).

(b) Except as provided under par. (c), no person may remove any material from the bed of any lake or stream not mentioned under par. (a) without first obtaining a permit from the department under sub. (2) (c).

(c) 1. Except as provided under subd. 2, a person may remove material from the bed of a farm drainage ditch which was not a navigable stream before ditching.

2. The department may require a permit under sub. (2) (c) for a removal under subd. 1 only if it finds the proposed removal may have a long-term adverse effect on cold-water fishery resources or may destroy fish spawning beds or nursery areas.

3. A person who proposes a removal under subd. 1 which may have an effect on cold-water fishery resources or may affect fish spawning beds or nursery areas shall notify the department at least 10 days prior to the removal.

(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. A permit or contract issued under this paragraph may be issued for up to 10 years if the applicant notifies the department at least 30 days before removing any material.

History: 1977 c. 391; 1979 c. 34 s. 2102 (39) (g); 1981 c. 330; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1); 1987 a. 374.

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.

30.202 Dredge disposal in and near the Mississippi, St. Croix and Black rivers by the U.S. corps of engineers. (1) MEMORANDUM OF UNDERSTANDING. The department may enter into a memorandum of understanding with the U.S. corps of engineers concerning the dredging of the Mississippi, St. Croix and Black rivers and the disposal of these dredge spoils. Any memorandum of understanding shall specify approved sites where dredge spoils may be deposited and shall specify conditions and standards which are required for use of an approved site. A memorandum of understanding may contain recommended or required dredge disposal methods, equipment and policies.

(2) **AUTHORIZATION FOR DREDGING AND DREDGE SPOIL DISPOSAL.** If the department enters into a memorandum of understanding with the U.S. corps of engineers under sub. (1), the U.S. corps of engineers may deposit dredge spoils from dredging the Mississippi, St. Croix and Black rivers at approved sites according to specified conditions and standards including any special conditions and standards established under sub. (4).

(3) **EXEMPTION FROM STATUTES AND RULES.** Dredge spoil disposal activities authorized under sub. (2) are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under ss. 29.29, 30.01 to 30.20, 30.21 to 30.99, 59.971 or 87.30 or ch. 144 or 147 or specified in any rule promulgated, order issued or ordinance adopted under those sections or chapters.

(4) **HAZARDOUS WASTE DREDGE SPOIL DISPOSAL.** In consultation with the U.S. corps of engineers, the department shall establish special conditions and standards for the disposal of dredge spoils which are hazardous waste, as defined under s. 144.61 (5). These special conditions and standards shall be established to ensure that public health and the environment are protected.

History: 1981 c. 240.

NOTE: Chapter 240, laws of 1981, which created this section, has "legislative findings" in section 1.

30.204 Lake acidification experiment. (1) AUTHORIZATION. Between May 15, 1984 and January 1, 1992, the department is authorized to conduct a lake acidification experiment on the lake specified under sub. (2).

(2) **LAKE SELECTION.** The department shall select Little Rock lake in the town of Arbor Vitae, Vilas county, township 41 north, range 6 east, for the lake acidification experiment.

(3) **EXPERIMENT.** In conducting the lake acidification experiment, the department shall deny access to and prohibit navigation on the lake by posted notice, may place a barrier or dyke across the lake, may place chemicals or other substances in the lake and may take other actions necessary for the experiment.

(4) **RESTORATION.** Prior to artificially acidifying the lake, the department shall establish an escrow account containing sufficient funds to restore the lake as provided under this subsection or to restore the lake in case of an unanticipated event which necessitates the restoration prior to completion of the experiment. At the conclusion of the lake acidification experiment, the department shall restore the lake's original acid level and reestablish aquatic life to the fullest extent possible given available technology.

(5) **EXEMPTION FROM CERTAIN STATUTES AND RULES.** Activities of the department in conducting the lake acidification experiment are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under ss. 29.29 (3), 30.01 to 30.03, 30.06 to 30.16, 30.18 to 30.29, 30.50 to 30.99, 59.971, 87.30, 144.01 to 144.27, 144.43 to 144.79, 144.96 to 144.99 or 159.81 or ch. 147 or specified in any rule promulgated, order issued or ordinance adopted under any of those sections or that chapter.

(6) **COMPLIANCE WITH ENVIRONMENTAL IMPACT STATUTE.** The department shall comply with the requirements under s. 1.11 in conducting the experiment authorized by this section. The department shall initiate compliance by preparing and reviewing, under the procedures it has established under s. 1.11, an environmental assessment for this experiment.

History: 1983 a. 421; 1985 a. 135 s. 85; 1989 a. 335.

NOTE: 1983 Wis. Act 421, which created this section, has "legislative findings" in section 1.

30.205 Water resources development projects. The department may cooperate with and enter into agreements with the appropriate federal agencies for the purpose of constructing, maintaining and operating water resources development projects. Such agreements may contain any indemnification provisions required by federal law.

History: 1987 a. 27.

30.206 General permits. (1) For activities which require a permit or approval under ss. 30.12 (3) (a) and 30.19 (1) (a), the department may issue a general permit authorizing a class of activities, according to rules promulgated by the department. Before issuing general permits, the department shall determine, after an environmental analysis and notice and hearing under ss. 227.17 and 227.18, that the cumulative adverse environmental impact of the class of activity is insignificant and that issuance of the general permit will not injure public rights or interest, cause environmental pollution, as defined in s. 144.01 (3), or result in material injury to the rights of any riparian owner.

(2) A general permit may include any conditions determined by the department to be reasonably necessary to prevent environmental pollution and to protect the public interest and public rights in navigable waters and the rights of other riparian owners.

(3) A person wishing to proceed with an activity authorized by a general permit shall apply to the department not less than 20 business days before commencing the activity authorized by a general permit. The department may request additional information from the applicant to determine whether the activity is within the scope of a general permit and shall inform the applicant in writing of its determination within 10 business days after receipt of adequate information.

(3m) The department may not authorize a person to proceed under a general permit if it determines under sub. (3) that the proposed activity may not comply with the criteria specified for general permits in sub. (1). Upon such a determination, the applicant may request an individual permit under the applicable provisions of this chapter or ch. 31.

(4) Upon receipt of the department's determination that the proposed activity is authorized by a general permit, the applicant may proceed without further notice, hearing, permit or approval if the activity is carried out in compliance with all conditions of the general permit.

(5) Failure of an applicant to follow the procedural requirements of this section may result in forfeiture but may not, by itself, result in abatement of the activity.

(6) A person proposing an activity for which a general permit has been issued may request an individual permit under the applicable provisions of this chapter or ch. 31 in lieu of seeking authorization under the general permit.

History: 1987 a 374.

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. 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.

(3) **COMPLIANCE WITH OTHER PERMIT REQUIREMENTS.** (a) Each public utility operating under a permit under this

section on January 1, 1986, shall comply with s. 144.026 (2), if applicable.

(b) On and after January 1, 1986, no city, village or town may issue a permit under sub. (1) unless the public utility applying for the permit complies with s. 30.18 (2) (b), if applicable.

History: 1985 a 60.

30.25 Wolf river protection. (1) Except as provided under sub. (2), no person may make any effort to improve the navigation on the Wolf river north of the southern boundary of Shawano county nor shall any dam be authorized for construction 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 void. This declaration does not affect permits for or the operation or maintenance of any dam in existence on August 24, 1963.

(2) A person may engage in a minor dredging project to improve access to or to improve the aesthetics of the Wolf river in Shawano county if a permit issued by the department under s. 30.20 authorizes the project.

History: 1987 a 374.

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 development; 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 cooperation 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 coordinator 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, 16 USC 1271 to 1287, and the lower St. Croix river act of 1972, 16 USC 1274 (a) (9). 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. 227.24, 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; 1983 a. 192; 1985 a. 182 s. 57.

30.275 Scenic urban waterways. (1) LEGISLATIVE INTENT. In order to afford the people of this state an opportunity to enjoy water-based recreational activities in close proximity to urban areas, to attract out-of-state visitors and to improve the status of the state's tourist industry, it is the intent of the legislature to improve some rivers and their watersheds. For this purpose a system of scenic urban waterways is established, but no river shall be designated as a scenic urban waterway without legislative act.

(2) **DESIGNATION.** The following waters are designated scenic urban waterways and shall receive special management as provided under this section:

(a) The Illinois Fox river and its watershed and the Fox river, extending from Lake Winnebago to Green Bay, and its watershed.

(b) The Rock river consisting of all of the following:

1. The river from the point that the river flows into the city of Watertown to the point that it flows out of the city of Watertown.

2. The river from the point it flows into the city of Jefferson to the point it flows out of the city of Fort Atkinson.

3. The river from the point it flows into the city of Janesville to the Illinois border.

NOTE: Subd. 3, as renumbered by 1989 Wis. Act 359, is created by 1989 Wis. Act 352, eff. 7-1-91.

(3) **DUTIES OF DEPARTMENT.** The department in connection with scenic urban waterways shall:

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

(b) Consult with other state agencies and planning committees and organizations.

(c) Collaborate with municipal governing bodies and their development committees or boards in producing a mutually acceptable program for the preservation, protection and enhancement of the rivers and watersheds.

(d) Administer the management program.

(e) Seek the cooperation of municipal officials and private landowners in implementing land use practices to accomplish the objectives of the management policy.

(f) Act as coordinator under this section.

(g) Develop the Wisconsin Fox river scenic urban waterway, as designated in sub. (2), as a historic and recreational site.

(4) **DEPARTMENT AUTHORITY.** The department in connection with scenic urban waterways may:

(a) Acquire and develop land for parks, open spaces, scenic easements, public access, automobile parking, fish and wildlife habitat, woodlands, wetlands and trails.

(b) Lay out and develop scenic drives.

(c) Undertake projects to improve surface water quality and surface water flow.

(d) Provide grants to municipalities and public inland lake protection and rehabilitation districts to undertake any of the activities under pars. (a) to (c).

(5) **USE OF WISCONSIN CONSERVATION CORPS.** To the greatest extent practicable, the department shall encourage and utilize the Wisconsin conservation corps for appropriate projects.

History: 1983 a. 410; 1985 a. 29; 1987 a. 399; 1989 a. 31, 336, 352, 359

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 except that the department may not charge a fee for an approval granted under s. 30.12 (3) (a) 3. 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 fee charged for permits and approvals shall be based on the estimated project cost as follows:

(a) Fifteen dollars for projects costing not more than \$500.

(b) Twenty dollars for projects costing from \$500.01 to \$2,000.

(c) Thirty dollars for projects costing from \$2,000.01 to \$5,000.

(d) Sixty dollars for projects costing from \$5,000.01 to \$10,000.

(e) Seventy-five dollars for projects costing more than \$10,000.

(3) This section does not apply to projects funded in whole or in part by any federal agency, state agency, county, city, village, town, county utility district, town sanitary district, public inland lake protection and rehabilitation district,

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metropolitan sewerage district or federally recognized Native American tribal governing body.

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374.

30.29 Operation of motor vehicles in waters prohibited.

(2) PROHIBITION. Except as provided under sub. (3), no person may operate a motor vehicle in any navigable waters of the state.

(3) EXCEPTIONS. This section does not apply to:

(a) *Stream crossing.* A person operating a motor vehicle to cross a stream by use of a bridge, culvert, ford or similar structure if the crossing is in the most direct manner practical, if the crossing is from a highway or private road or from an established trail and if the person operates the motor vehicle at the minimum speed required to maintain controlled forward motion of the motor vehicle.

(b) *Agriculture activities.* A person operating a motor vehicle while the person is engaged in agricultural use, as defined under s. 91.01 (1).

(c) *Department activities.* The department or any agent of the department operating a motor vehicle while the person is engaged in activities authorized by the department.

(d) *Activities for which a permit is issued.* A person or agent of a person who is issued a permit by the department while the person or agent is engaged in activities related to the purpose for which the permit is issued.

(e) *Amphibious vehicles.* A person operating an amphibious motor vehicle registered as a boat with the department if the amphibious vehicle enters the water at a boat launch or a ford.

(f) *Boat launching.* A person operating a motor vehicle to launch or load a boat, canoe or other watercraft.

(g) *On frozen waters.* A person operating a motor vehicle on the surface of any navigable waters which are frozen.

(h) *Access to frozen waters.* A person operating a motor vehicle to cross the bed or banks of a navigable water in order to reach the surface of any navigable waters which are frozen if the crossing is in the most direct manner practical, if the crossing is from a highway or private road or from an established trail and if the person operates the motor vehicle at the minimum speed required to maintain controlled forward motion of the motor vehicle.

(4) PENALTY. A person who violates this section shall forfeit \$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.

History: 1981 c. 189; 1987 a. 374.

30.292 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 does any of the following:

(a) Directly commits the violation.

(b) Aids and abets the commission of the violation.

(c) Is a party to a conspiracy with another to commit the violation or advises, hires, counsels or otherwise procures any person to commit it.

History: 1987 a. 374.

30.294 Nuisances, abatement. Every violation of this chapter is declared to be a public nuisance and may be prohibited by injunction and may be abated by legal action brought by any person.

History: 1987 a. 374.

30.298 Penalties. (1) Any person who violates any provision of ss. 30.12 to 30.21 for which a penalty is not provided under the applicable section or by sub. (2) or (3) shall forfeit not less than \$100 nor more than \$10,000 for the first offense and shall forfeit not less than \$500 nor more than \$10,000 upon conviction of the same offense a 2nd or subsequent time.

(2) Any person who violates s. 30.18 (2) (a) 1 or 30.195 (1) shall forfeit not less than \$500 nor more than \$10,000 for the first offense and shall forfeit not less than \$1,000 nor more than \$10,000 upon conviction of the same offense a 2nd or subsequent time.

(3) Any person who violates s. 30.206 shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit not less than \$50 nor more than \$500 upon conviction of the same offense a 2nd or subsequent time.

(4) A violation of a permit, contract or order issued under this chapter is a violation of the statute under which the permit, contract or order was issued.

(5) In addition to the forfeitures specified under subs. (1) to (3), the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest in navigable waters. The court may order abatement of a nuisance, restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

History: 1987 a. 374.

SUBCHAPTER III**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) If the owners of the property on which the dock wall or shore protection wall is located fail to notify the board of harbor commissioners or the local legislative body within the 90-day period that the work will be commenced as specified in the resolution; the board of harbor commissioners or the local legislative body shall request the city attorney or corporation counsel for the commencement of an action in the circuit court in the county in which the property is located for determination of whether or not the 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 the 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 the order, or in the alternative provide that the municipality may complete the work and charge the cost thereof to the owners of the property. If the work is performed by the municipality, the cost shall be recovered from the owners of the 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 and the appeal shall be given preference. Only that 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) **COOPERATION WITH FEDERAL GOVERNMENT IN HARBOR IMPROVEMENTS.** Prepare the necessary plats and otherwise cooperate 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 cooperation. 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 wharfage 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; 1983 a. 219; 1989 a. 31

Judicial Council Note, 1983: Sub. (3) (c) is amended to replace the appeal deadline of 30 days after entry of the order by the standard time specified in s. 808.04 (1), stats. The subsection is further amended to eliminate the superfluous provision that the appeal be perfected in the same manner as other civil appeals. The manner of perfecting civil appeals is established by s. 809.11, stats. [Bill 151-S]

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

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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) **COOPERATION AMONG MUNICIPALITIES.** Whenever 2 or more municipalities propose to cooperate 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 cooperating 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 \$7,500.

(b) The work to be done or equipment, supplies or materials to be acquired involve marine construction or repair work requiring the use of floating scows, pile drivers or other floating equipment and will involve an expenditure of less than \$15,000.

(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; 1981 c. 208.

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 office of the commissioner of transportation, except as to the system of accounting and the payment of wages to employes.

(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 office of the commissioner of transportation 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; 1981 c. 347 s. 80 (2)

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

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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 NOTES, BONDS 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, refunding bonds or bond anticipation notes issued under s. 30.35 or 66.521 or may be pledges or assignments of net profits, issued pursuant to s. 66.066 (4) as if the harbor facility were a public utility.

(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 irrepealable tax to pay interest thereon and discharge the principal thereof as required by article XI, section 3, of the 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 revenue 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 construction, 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; 1981 c. 238; 1983 a. 192; 1983 a. 207 ss. 3, 93 (3).

30.35 Financing harbor improvements through bonds or notes.

(1) ISSUANCE OF BONDS OR NOTES 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, refunding bonds or bond anticipation notes, the governing body shall proceed by ordinance to authorize the issuance and sale of such bonds or notes. The ordinance

shall set forth the purposes for which the bonds or notes 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 or notes 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, refunding bonds or bond anticipation notes are issued.

(2) CONTENTS OF ORDINANCE AUTHORIZING BOND OR NOTE ISSUE. The ordinance authorizing the issuance of revenue bonds, refunding bonds or bond anticipation notes constitutes a contract with the holder of such bonds or notes and shall include covenants and provisions for the security of the bondholders and noteholders and the payment of the bonds or notes as the governing body deems necessary or desirable for the security of the bondholders and noteholders, 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 the principal of, and interest on, the bonds or notes authorized by the ordinance.

(c) The establishment of the bond proceeds funds and reserve funds that the governing body believes necessary or desirable for the security of the bondholders and noteholders.

(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.

(2m) TERMS OF THE BONDS AND NOTES. The provisions applicable to revenue bonds under s. 66.066 (2) (i) and (m) apply to revenue bonds, refunding bonds and bond anticipation notes under this section. The provisions applicable to revenue bonds under s. 66.066 (2) (a) shall apply to revenue bonds, refunding bonds and bond anticipation notes under this section except that the ordinance or resolution authorizing the bonds or notes may specify the time they mature, the amounts in which they mature, the conditions of redemption, the number of times they are issuable and the ranking of the issues.

(3) FORM OF THE BONDS OR NOTES. Revenue bonds, refunding bonds and bond anticipation notes shall be in the form designated by the governing body, shall be executed as provided in s. 67.08 (1) and may be registered under s. 67.09.

(4) BONDS AND NOTES NOT AN OBLIGATION OF THE MUNICIPALITY. Bonds and notes 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 OR NOTES.** The governing body may authorize the purchase of a part or all of such revenue bonds, refunding bonds or bond anticipation notes out of moneys accruing to or held in the debt amortization and interest fund or any other municipal funds not immediately needed, and such funds may be invested in such bonds or notes. If the municipality does not purchase such bonds or notes, as authorized by this subsection, or determines to sell such bonds or notes after having so purchased them, the bonds or notes shall be offered at sale in the manner and at the time and place that the governing body determines. In cities of the 1st class, such bonds or notes shall be sold under the direction of the public debt commission.

(6) **BONDHOLDERS AND NOTEHOLDERS HAVE LIEN.** Title to all of the harbor facilities for which revenue bonds, refunding bonds or bond anticipation notes are issued remains in the municipality, but a statutory lien exists in favor of the bondholders and noteholders against the facilities which have been acquired, constructed, altered or remodeled and the cost of which has been financed with funds obtained through the issuance of such bonds and notes. To provide further security for the bondholders and noteholders, the ordinance or resolution authorizing the issuance of revenue bonds, refunding bonds or bond anticipation notes may provide for a pledge of the revenues of the facilities, including, if the facilities are leased under sub. (6), an assignment of all or part of the municipality's rights as lessor.

(7) **BONDS AND NOTES MAY BE PURCHASED BY FIDUCIARIES.** Bonds and notes 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 AND NOTES MAY BE ACCEPTED BY STATE OR MUNICIPAL OFFICER.** The bonds and notes 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; 1981 c. 238; 1983 a. 24; 1983 a. 207 s. 93 (3)

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 chairperson of the town board or the chairperson of the 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 or she shall appoint a successor for a 3-year term. All appointments are subject to confirmation by the governing body of the municipality. A person appointed to the board shall be a qualified elector of the municipality which created the board and 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 a 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.

(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) **EMPLOYEES.** 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.

History: 1983 a. 192; 1987 a. 289; 1989 a. 31; 1989 a. 56 s. 258.

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 cooperation of the local highway authorities and in all cases shall seek the advice and cooperation 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 beltlines 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.

3. Acquire, charter and operate vessels for use in domestic and foreign commerce.

(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 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, except that revenues assigned or pledged under s. 30.35 (6) or 66.521 shall be paid into the fund or funds provided for in the ordinance or resolution authorizing the issuance of the bonds and shall be applied in accordance with that ordinance or resolution.

(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 and for the acquisition, chartering and operation of vessels under sub. (8) (b) 3. 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.

History: 1981 c. 238; 1985 a. 29; 1987 a. 27.

SUBCHAPTER IV

LOWER WISCONSIN STATE RIVERWAY

30.40 Definitions. In ss. 30.40 to 30.49:

(1) "Agricultural use" means beekeeping; dairying; egg production; feedlots; grazing; floriculture; raising of livestock; raising of poultry; raising of fruits, nuts and berries; raising of grains, grass, mint and seed crops; raising of vegetables; and sod farming.

(2) "Board" means the lower Wisconsin state riverway board.

(3) "Boat" has the meaning given in s. 30.50 (2).

(3g) "Forester" means a person who is employed by the department to carry out assigned forest management responsibilities or who has received a bachelor's or higher degree from a school of forestry with curriculum accredited by the society of American foresters in the management of forest resources.

(3r) "High-voltage transmission line" means a conductor of electric energy exceeding one mile in length designed for operation at a nominal voltage of 100 kilovolts or more, together with associated facilities or structures.

(4) "Highway" means a way or thoroughfare, except a waterway, that is used for vehicular travel by the public.

(6) "Mobile home" means a prefabricated unit with walls of rigid construction that is designed to be towed as a single unit or in sections upon a highway by a motor vehicle and that is used or is intended to be used for human habitation.

(7) "Modify" means to renovate, remodel, expand in size or otherwise change a structure that is not damaged or destroyed.

(8) "Pedestrian" has the meaning given in s. 340.01 (43).

(9) "Person" means a natural person, corporation, partnership, association, cooperative, municipality or other local governmental unit, private or public utility, municipal power district, estate or trust, the United States, a federal agency, the state of Wisconsin or a state agency.

(10) Notwithstanding s. 30.01 (5), "pier" means a structure extending into the river from the shore with water on both sides.

(11) "Private road" means a way or thoroughfare in private ownership and used for vehicular travel only by the owner and those having express or implied permission from the owner.

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(12) "Public access site" means a site owned by the state or a municipality and that provides public access to the river for boats and for recreational users. "Public access site" includes a structure in conjunction with the site that is necessary for the operation and use by the public of the site.

(13) "Refuse" means combustible and noncombustible rubbish, including, but not limited to, ashes, paper, glass, cloth, wood, metal and litter.

(14) "River" means the Wisconsin river downstream from the dam at Prairie du Sac.

(15) "Riverway" means the area within the boundaries of the lower Wisconsin state riverway.

(16) "Solid waste" has the meaning given in s. 144.01 (15).

(17) "Stairway" means a structure constructed of wood or other material that is necessary due to the steepness of a slope for access to the river.

(18) "Structure" means a building, facility or other unit that is constructed or otherwise erected.

(18m) "Timber" means standing trees which, because of their size, quality and number, are marketable.

(19) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for one of the following:

(a) The transmission or distribution of electrical power or light that is not a high-voltage transmission line.

(b) The transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication services.

(20) "Visible from the river" means possible to be seen from any point on the river.

(21) "Visually inconspicuous" means difficult to be seen and not readily noticeable from any point on the river during the time when the leaves are on the deciduous trees.

(22) "Walkway" means a paved or unpaved trail or pathway or a structure constructed of wood or other material that is necessary due to the difficulty of the terrain for access to the river.

(23) Notwithstanding s. 30.01 (8), "wharf" means a structure in the river extending along the shore and generally connected with the uplands throughout its length.

(23m) "Woody vegetation" includes trees that are not timber.

(24) "Working day" has the meaning given in s. 227.01 (14).

History: 1989 a. 31.

30.41 Creation. (1) There is created a lower Wisconsin state riverway consisting of land as designated by the natural resources board.

(2) The department shall publish as an appendix to ch. NR 45, Wis. adm. code, a map and a description of the riverway.

History: 1989 a. 31.

30.42 Departmental duties, powers, prohibitions. (1) The department shall:

(a) Manage the land in the riverway under its ownership, supervision, management or control in conformity with ss. 30.40 to 30.49.

(b) Promote to the recreational users of the riverway an appreciation of the physical characteristics of the riverway and an appreciation of the local history, traditions and culture of the river valley.

(c) Consult with the board and with municipalities located at least in part in or adjacent to the riverway on issues concerning the riverway.

(d) Promulgate rules that are applicable only to land in the riverway to regulate the cutting and harvesting of timber so

that the effect of cutting or harvesting of timber on the scenic beauty and the natural value of the riverway is minimized.

(e) For each county named in s. 15.345 (6) (b), assign a department employe whose office is in the county to serve as a liaison representative on issues concerning the riverway.

(f) Encourage an owner of land who on August 9, 1989, is subject to a contract under subch. I of ch. 77 or an order designating managed forest land under subch. VI of ch. 77 to voluntarily modify the contract or amend the order to require compliance with the rules regulating timber cutting and harvesting promulgated under par. (d).

(2) The department may:

(a) Acquire land in the riverway under s. 23.09 (2) (d) including easements and rights in land under s. 23.09 (10).

(b) Enter into agreements with other agencies or persons to provide continuing and necessary maintenance, management, protection, husbandry and support for the land in the riverway under the ownership, supervision, management or control of the department.

(3) Notwithstanding s. 227.11, the department may not promulgate rules interpreting or establishing procedures for ss. 30.44 to 30.46 except for the promulgation of rules under sub. (1) (d).

History: 1989 a. 31.

30.43 Board duties. The board shall:

(1) Review applications for permits under s. 30.44 (1) to (5) and issue permits for activities that comply with their applicable performance standards.

(2) Review decisions under s. 30.44 (11).

History: 1989 a. 31.

30.435 Board powers. The board may:

(1) Grant waivers under s. 30.44 (8) (c) and impose conditions under s. 30.44 (7) and (11) (d).

(2) Issue general permits under s. 30.44 (1) (f).

(3) Enter into contracts to carry out its duties and powers under ss. 30.40 to 30.49.

(4) Employ staff outside the classified service in accordance with s. 16.505.

(5) Inform or advise a municipality that has land located outside the riverway as to the impact the development of the land may have on the riverway.

(6) Advise or make a recommendation to a city or village that has land adjacent to the riverway to encourage the city or village to adopt ordinances or other rules or regulations that preserve the scenic value of that land.

(7) Report to the legislature on the effectiveness of ss. 30.44 to 30.49.

(8) Advise the department on any conflict between the recreational use in the riverway and ss. 30.44 (1) to (5), 30.445 and 30.45 to 30.48.

(9) Delegate to its staff the power to:

(a) Issue, grant waivers to and impose conditions on permits, other than general permits.

(b) Enter into contracts.

History: 1989 a. 31.

30.437 Reports. The department shall prepare 3 reports with its recommendations on whether aid should be provided to municipalities for their costs incurred in complying with ss. 30.44 to 30.47. The department shall submit the 3 reports to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3). The first report shall be submitted after July 1, 1990, and before August 1, 1990. The 2nd report shall be submitted after July 1, 1992, and before August 1, 1992. The 3rd report shall be submitted after July 1, 1994,

and before August 1, 1994. This section does not apply after August 1, 1994.

History: 1989 a. 31.

30.44 Permits. (1) STRUCTURES; MOBILE HOMES. (a) For purposes of this subsection, notwithstanding s. 30.40 (18), "structure" excludes boat shelters, boathouses, bridges, dams, fishing rafts, fixed houseboats, piers, public access sites, stairways, swimming rafts, high-voltage transmission lines, utility facilities, walkways and wharves.

(b) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction of a structure, including clearing or grading the land for the structure.
2. Placement or replacement of a mobile home.
3. Modification of a structure or a mobile home.
4. Repair of a damaged structure or reconstruction of a destroyed structure unless exempt under par. (g).
5. Repair of a mobile home unless exempt under par. (g).

(c) A person may not be issued a permit for an activity in par. (b) on land that is visible from the river and that is in the riverway unless all of the following performance standards are met:

1. Sufficient vegetation exists on the land to allow the structure or mobile home to be visually inconspicuous.

2. The structure or mobile home shall not be higher than the surrounding vegetation during the time when the leaves are on the deciduous trees.

3. Visual impact shall be minimized by the use of exterior colors that harmonize with the surroundings and by the limited use of glass or other reflective materials, except that a structure that is for agricultural use may be painted in a traditional manner in red or white.

4. The natural slope of the land shall be 12% or less.

5. The site of the structure or mobile home shall be at least 100 feet behind the top of the bluff or 100 feet below the top of the bluff.

(d) A person may not be issued a permit for an activity in par. (b) on land that is not visible from the river and that is in the riverway unless the performance standard in par. (e) is met.

(e) The height of the structure or mobile home shall not result in its being visible from the river.

(f) For land in the riverway that is not visible from the river and that is not zoned shorelands, the board may issue a general permit for an activity in par. (b) that is applicable to a designated area of the riverway instead of requiring applications for individual permits for the activity under par. (b). A person engaging in an activity in par. (b) in an area for which a general permit has been issued for the activity shall comply with the performance standard in par. (e).

(g) Paragraphs (b) to (f) do not apply to the repair of a damaged structure or mobile home or to the reconstruction of a destroyed structure if all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair or reconstruction.

2. The repaired mobile home or the repaired or reconstructed structure will not be larger in size or more visible from the river than it was immediately before it was damaged or destroyed.

(2) WALKWAYS; STAIRWAYS. (a) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction of a stairway or walkway.
2. Modification of a stairway or walkway.

3. Repair of a damaged stairway or walkway or reconstruction of a destroyed stairway or walkway unless exempt under par. (c).

(b) A person may not be issued a permit for an activity in par. (a) unless the following performance standards are met:

1. The walkway or stairway shall be visually inconspicuous.

2. The walkway or stairway shall have sufficient safeguards to minimize erosion.

3. The walkway or stairway shall be for pedestrians only.

(c) Paragraphs (a) and (b) do not apply to the repair of a damaged stairway or walkway or to the reconstruction of a destroyed stairway or walkway if all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair or reconstruction.

2. The repaired or reconstructed stairway or walkway will not be larger in size or more visible from the river than it was immediately before it was damaged or destroyed.

4. The repaired or reconstructed stairway or walkway shall be for pedestrians only.

(3) FORESTRY. (a) A person shall apply for and receive a permit before cutting or harvesting timber on land in the riverway.

(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (bn) is met.

(bn) The cutting and harvesting of timber shall comply with the rules regulating timber cutting and harvesting promulgated by the department under s. 30.42 (1) (d).

(c) This subsection does not apply to the following:

1. Timber subject to a contract under subch. I of ch. 77 that is in effect on August 9, 1989, except as provided in s. 77.17.

2. Timber subject to an order designating managed forest land under subch. VI of ch. 77 that is in effect on August 9, 1989, except as provided in s. 77.82 (11m).

2g. Timber that is on land zoned shorelands under s. 59.971, that is located in a county that has adopted the rules regulating timber cutting and harvesting promulgated by the department under s. 30.42 (1) (d), and that is cut and harvested in compliance with these rules.

2m. The cutting of timber that is necessary for maintenance of an easement or a right-of-way for a high-voltage transmission line or a utility facility.

2r. Diseased timber if a forester has issued a written determination that the timber is subject to an actual, potential or incipient infestation or infection by an insect or disease that is harmful to the timber.

3. Timber damaged by natural causes.

4. Timber cut on land that is more than 75 feet beyond the high-water mark of the river and that is owned or occupied by a person if the timber cut is used as firewood for the person's agricultural or household use.

(3m) UTILITY FACILITIES. (a) A person shall apply to and receive a permit from the board before constructing, modifying or relocating a utility facility that is in the riverway.

(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (c) is met.

(c) All reasonable efforts, as determined by the board, shall be taken to minimize the visual impact of the utility facility.

(d) The use of an aboveground utility facility shall not be a basis for the board to determine that all reasonable efforts will not be taken to minimize the visual impact.

(5) BRIDGES. (a) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction, modification or reconstruction of a bridge.
2. Repair of a bridge unless exempt under par. (d).

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(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (c) is met.

(c) Visual impact shall be minimized by the use of exterior colors that harmonize with the surroundings and by the limited use of glass or other reflective materials.

(d) Paragraphs (a) and (b) do not apply to the repair of a bridge in the riverway if all of the following are applicable:

1. No municipal ordinance or other municipal regulation prohibits the repair.

2. The repaired bridge will not be larger in size or more visible from the river than it was immediately before it was damaged.

(7) **CONDITIONS ON PERMITS.** The board or county may impose on a permit a condition that is necessary to assure compliance with the performance standards in subs. (1) to (5) or to assure that the activity is completed within a reasonable time, except that only the board may impose such a condition on a permit issued under sub. (3m).

(8) **BOARD PROCEDURE.** (a) Except as provided under sub. (1) (f), a person shall apply for and be issued by the board a permit for an activity in subs. (1) to (3) and (5) for land in the riverway that is not zoned shorelands under s. 59.971.

(am) A person shall apply for and be issued by the board a permit for an activity in sub. (3m) for land in the riverway.

(b) The board may not issue a permit under par. (a) or (am) if the performance standards for the activity are not met.

(c) The board may grant a waiver of a performance standard for an activity in sub. (1) (b) or a waiver for an activity prohibited in s. 30.45 (3) or (3m) and issue a permit under par. (a) or (am) if one of the following applies:

1. A municipality requests the waiver that is necessary for municipal purposes.

2. A municipality requests the waiver on behalf of a resident of a municipality, enforcement of the performance standard or prohibition will cause unnecessary hardship to the resident and the visual impact of the activity will be minimized to the greatest degree possible.

(d) For purposes of par. (c) 2, unnecessary hardship must be:

1. Compelling personal needs of the resident that are not self-imposed or self-created and that are not solely based on the financial hardship of the resident; or

2. Natural causes beyond the control of the resident.

(e) The board may not grant a waiver for unnecessary hardship due to natural causes beyond the control of the resident if the reason for granting the waiver is based solely on the financial hardship of the resident.

(9) **COUNTY PROCEDURE.** (a) A person shall apply for and be issued by the county in which the land is located a permit for an activity in subs. (1) to (3) and (5) for land in the riverway that is in the county and that is zoned shorelands under s. 59.971.

(b) The county may not issue a permit under par. (a) if the performance standards for the activity are not met.

(c) The county may grant a waiver of a performance standard for an activity in sub. (1) (b) or a waiver for an activity prohibited in s. 30.45 (3) or (3m) and issue a permit for the activity under par. (a) if one of the following applies:

1. A municipality requests the waiver that is necessary for municipal purposes.

2. A municipality requests the waiver on behalf of a resident of a municipality, enforcement of the performance standard or prohibition will cause unnecessary hardship to the resident and the visual impact of the activity will be minimized to the greatest degree possible.

(d) For purposes of par. (c) 2, unnecessary hardship must be:

1. Compelling personal needs of the resident that are not self-imposed or self-created and that are not solely based on the financial hardship of the resident; or

2. Natural causes beyond the control of the resident.

(e) The county may not grant a waiver for unnecessary hardship due to natural causes beyond the control of the resident if the reason for granting the waiver is based solely on the financial hardship of the resident.

(f) Notwithstanding s. 59.971 (4) (b), the procedures for appeals under s. 59.99 apply to denials of permits under this subsection. If the county does not have a county board of adjustment established under s. 59.99, the procedure established by the county that is in lieu of the procedure for appeals in s. 59.99 shall apply.

(10) **REVOCAION OF PERMIT.** (a) The board or a county shall revoke a permit it issued under sub. (8) or (9) if a person fails to comply with the performance standards for the permit that are not waived under sub. (8) (c) or (9) (c).

(b) The board shall revoke a general permit issued under sub. (1) (f) if it finds the performance standard under sub. (1) (e) is not being met in the designated area.

(11) **BOARD REVIEW.** Notwithstanding s. 59.971 (4) (b), if a county grants a waiver and issues a permit under sub. (9) (c), the following procedure shall apply in lieu of the procedures for appeals specified in sub. (9) (f):

(a) Within 10 working days after the date the county makes its decision, the county shall file a copy of its permit, decision and any supporting materials with the board.

(b) The board shall decide whether to accept the decision for review within 14 working days after the filing. Until the board decides whether to accept the decision for review, no person may engage in the activity for which the county granted the waiver and issued the permit.

(c) If the board decides to accept the decision for review, it shall determine whether the waiver meets the requirements of sub. (9) (c). If the board determines that the requirements of sub. (9) (c) are met, it shall approve the waiver. If the board determines that the requirements of sub. (9) (c) are not met, it shall deny the waiver.

(d) If the board approves the waiver, it may impose on the waiver a condition that is necessary to assure compliance with any performance standard that has not been waived or to assure that the activity is completed within a reasonable time.

(e) If the board decides to accept the decision for review, no person may engage in the activity for which the county granted the waiver and issued the permit while the review is pending before the board.

(f) If the board declines the decision for review, or fails to accept the decision for review within 14 working days after the filing, the decision shall become final.

History: 1989 a. 31.

30.445 Piers. (1) No person may construct, relocate or modify a pier or reconstruct a destroyed pier in the riverway.

(2) No person may have or maintain a pier in the riverway after November 30, 1990, unless the board has issued a permit for the pier under sub. (3) and the board has not revoked the permit under sub. (6).

(3) Any person who owns a pier in the riverway that was in existence on August 9, 1989, may, before September 1, 1990, apply for a permit from the board to have and maintain the pier. Upon application the board shall issue the permit.

(4) The permit authorizes the person to whom the permit is issued to have and maintain the pier in the riverway on the condition that it be maintained in at least as good condition as it was in on the date of the application for the permit.

(5) The permit authorizes repairs to the pier unless any of the following applies:

(a) A municipal ordinance or other municipal regulation prohibits the repair.

(b) The repaired pier will be larger in size or more visible from the river than it was immediately before the damage.

(6) The board shall revoke any permit issued under sub. (3) if the owner of the pier does not comply with sub. (4) or (5).

(7) If a person who owns a pier in the riverway that was in existence on August 9, 1989, does not apply for a permit from the board or has not removed the pier before September 1, 1990, the person shall remove the pier by November 30, 1990.

(8) If a permit issued under sub. (3) has been revoked, the owner of the pier shall remove the pier within 15 days after the revocation, or if the board grants additional time for the removal, within that time.

History: 1989 a 31.

30.45 Prohibitions. In the riverway:

(1) No person may start or engage in an activity under s. 30.44 (1) to (5) or 30.445 without having any permit that is required under s. 30.44 or 30.445.

(1g) No person may cut or harvest timber unless par. (c) applies and either par. (a) or (b) applies:

(a) The person has a permit under s. 30.44 (3).

(b) The cutting or harvesting of the timber is exempt under s. 30.44 (3) (c).

(c) The cutting or harvesting complies with any rule promulgated under s. 30.42 (1) (d) which the person must comply with under s. 77.17 or 77.82 (11m).

(1r) No person may construct, modify or relocate a high-voltage transmission line unless it has been approved under s. 196.491 (3) (d) 3m or 196.492.

(2) No person may violate a condition imposed under s. 30.44 (7) or (11) (d).

(3) No person may cut woody vegetation below the ordinary high-water mark or within 75 feet beyond the ordinary high-water mark of the river except for the amount necessary for:

(a) One strip 15 feet or less in width for each separately owned parcel of land on the river that is necessary for gaining access to the river.

(ag) An activity for which a permit has been issued under s. 30.44 or 30.445 and has not been revoked under s. 30.44 (10) or 30.445 (6).

(ar) An activity that s. 30.44 exempts from a permit.

(b) Maintenance of an easement or right-of-way for a utility facility.

(bn) Construction, reconstruction, modification, relocation, repair or maintenance of a high-voltage transmission line.

(c) Construction, modification, reconstruction or repair of a public access site as allowed under sub. (8).

(cg) Construction, modification, reconstruction or repair of a wharf as allowed under sub. (9).

(cr) Maintenance of a structure by a person who complies with any provision of ss. 30.44 to 30.46 and subs. (1), (2) and (4) to (13) that applies to the structure.

(d) Maintenance of a right-of-way for a highway, private road or a railroad.

(dh) Modification, repair or reconstruction of a dam.

(dp) Removal of diseased woody vegetation if a forester has issued a written determination that the woody vegetation is subject to an actual, potential or incipient infestation or infection by an insect or disease that is harmful to the woody vegetation.

(dt) Cutting or harvesting timber if the cutting or harvesting complies with any rule promulgated under s. 30.42 (1) (d) which the landowner must comply with under s. 77.17 or 77.82 (11m).

(e) Removal of woody vegetation damaged by natural causes.

(3m) No person may cut woody vegetation on land that is more than 75 feet beyond the ordinary high-water mark of the river except:

(a) As specified in sub. (3) (a) to (e).

(b) For woody vegetation cut on land owned or occupied by a person if the woody vegetation cut is used as firewood for the person's agricultural or household use.

(4) No person may store or dispose of junk as defined in s. 84.31 (2) (e).

(4m) No person may store or dispose of solid waste unless the solid waste is:

(a) Nonhazardous sludges from a treatment work, as defined under s. 147.015 (18), that is spread as a soil conditioner or a nutrient on land that is in agricultural use; or

(b) Unmanipulated animal or vegetable manure, as defined in s. 94.64 (1) (t), that is spread as a soil conditioner or a nutrient on land that is in agricultural use.

(5) No person may begin a mining or quarrying activity or expand a mining or quarrying activity.

(6) No person may construct, reconstruct or alter a highway or private road unless the highway or private road and any embankments, grading, rock cuts or associated structures are visually inconspicuous and are constructed with sufficient safeguards to prevent erosion.

(7) No person may erect a sign that is visible from the river other than:

(a) A sign erected by the department that is necessary for public use of the riverway.

(b) A sign erected by the state or municipality in charge of a highway.

(c) A sign required for notice under s. 943.13 (2).

(8) No person may:

(a) Construct, reconstruct or modify a public access site unless the visual impact of the site is minimized by the use of exterior colors that harmonize with the surroundings and by the limited use of glass or other reflective materials.

(b) Repair a damaged or reconstruct a destroyed public access site unless all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair or reconstruction.

2. The repaired or reconstructed public access site will not be larger in size or more visible from the river than it was immediately before it was damaged or destroyed.

(9) No person may:

(a) Construct or modify a wharf or reconstruct a destroyed wharf unless it will be 20 feet or less in length and 3 feet or less in width and it will not have a railing or other structure extending above its deck.

(b) Repair a damaged wharf unless all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair.

2. The repaired wharf will not be larger in size or more visible from the river than it was immediately before it was damaged.

(10) No person may:

(a) Construct, relocate, replace or reconstruct a boat shelter.

(b) Have or maintain a boat shelter after November 15, 1990.

(12) No person may:

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(a) Construct, relocate, replace or reconstruct a swimming raft.

(b) Have or maintain a swimming raft after November 15, 1990.

(13) No person may have or maintain a stairway or walkway unless sufficient safeguards are taken to minimize erosion.

History: 1989 a. 31.

30.455 Department of transportation activities. (1) Construction, reconstruction, design, maintenance, modification or repair activities, or mining or quarrying activities in the riverway, that are carried out under the direction and supervision of the department of transportation are not subject to ss. 30.44 to 30.45. At the earliest practical time before the commencement of these activities, the department of transportation shall notify and consult with the department on the location, nature and extent of the proposed work.

(2) (a) The exemption under sub. (1) does not apply unless the standard in par. (b) is met.

(b) To the extent it is economically and technically feasible, the department of transportation shall minimize the visual impact of the activity and any resulting highway or structure.

(c) The department of transportation, in consultation with the department, shall adopt standards to implement par. (b).

(3) If the department determines that there is reasonable cause to believe that an activity being carried out under this subsection or a resulting highway or structure is not in compliance with the standard in sub. (2) (b), 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 considers appropriate.

(4) Except as may be required under s. 1.11, no public notice or hearing is required in connection with any interdepartmental consultation and cooperation under this subsection.

History: 1989 a. 31.

30.46 Agricultural use. (1) A person may develop or use land in the riverway for agricultural use that is not in agricultural use on August 9, 1989, if:

(a) The development and use comply with the rules for the soil and water resource management program promulgated by the department of agriculture, trade and consumer protection under s. 92.14; and

(b) The person otherwise complies with this subchapter in developing or using the land for agricultural use.

(2) Notwithstanding sub. (1) (b), a person is not required to comply with rules for the soil and water resource management program promulgated under s. 92.14 by the department of agriculture, trade and consumer protection for land in the riverway and that is in agricultural use on August 9, 1989.

(3) Notwithstanding sub. (1) (b), s. 30.44 (1) does not apply to the construction, modification, repair or reconstruction of a structure that is used exclusively for agricultural use on land in the riverway if the land is in agricultural use on August 9, 1989.

History: 1989 a. 31.

30.47 Restrictions on recreational use. (1) No natural person may operate a boat on public waters in the riverway without having an adequately sized waterproof container in the boat in which to place refuse.

(2) No person may leave refuse on land in the riverway owned, managed, supervised or controlled by the department or on public waters in the riverway.

(3) (a) Except as provided in par. (b), no person may have a glass container on land in the riverway owned, managed, supervised or controlled by the department or on islands or public waters in the riverway.

(b) Paragraph (a) does not apply to a natural person or his or her guest having a glass container on land in the riverway that the natural person owns or occupies as a tenant.

History: 1989 a. 31.

30.48 Applicability. (1) Sections 30.44 to 30.47 are in addition to and are not superseded by any law, rule, ordinance or other regulation governing an activity that occurs in the riverway.

(2) Sections 30.44 to 30.47 do not apply to land that is located in a city or village on August 9, 1989, or to land located within 0.5 mile of the corporate limits of a city or village on August 9, 1989, that is annexed to the city or village after August 9, 1989.

History: 1989 a. 31.

30.49 Enforcement. (1) **FORFEITURES.** (a) Any person who knowingly violates ss. 30.44 to 30.455 or 30.46 (1) shall forfeit not more than \$1,000 for each violation.

(b) Each day that a violation under par. (a) continues is a separate violation.

(c) Any person who violates ss. 30.44 to 30.455 or 30.46 (1) shall forfeit not more than \$1,000 for each violation.

(d) Any person who intentionally violates s. 30.47 shall forfeit not more than \$500.

(e) Paragraph (b) does not apply to a violation under par. (c) or (d).

(f) 1. For violations under par. (c), if the alleged violator has not previously received a warning notice for a violation of the same statutory provision, the law enforcement officer or warden shall issue the violator a warning notice and may not issue a citation.

2. The warning notice under subd. 1 shall inform the alleged violator of the action the alleged violator is required to take to be in compliance with the applicable statutory provision. If the warning notice requires the alleged violator to remedy the effects of the violation, the alleged violator has 30 days to do so unless subd. 3 applies.

3. The alleged violator may request in writing from the board an extension of time to remedy the effects of the violation. The board for good cause may grant an extension of time.

4. If the alleged violator fails to comply with the warning notice, the law enforcement officer or warden may issue a citation. If the alleged violator complies with the warning notice, the law enforcement officer or warden may not issue a citation.

5. The department shall record the issuances of warning notices for purposes of this paragraph.

(2) **CIVIL REMEDIES.** (a) The state, board or a municipality may file a civil action to enforce ss. 30.44 to 30.46.

(b) If the plaintiff prevails in a civil action under par. (a), the court may grant:

1. Injunctive relief under ch. 813.

2. A declaratory judgment under s. 806.04.

3. A decree for specific performance for which the court may supervise compliance.

(3) **OTHER RIGHTS, REMEDIES.** This section does not limit any other right or remedy provided by law.

History: 1989 a. 31.

SUBCHAPTER V

REGULATION OF BOATING

30.50 Definitions. In ss. 30.50 to 30.80:

(1e) "Alcohol beverage" has the meaning specified under s. 125.02 (1).

(1m) "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c).

(1s) "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.

(2) "Boat" or "vessel" means every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water and a fishing raft.

(3) "Certificate of number" means the certificate of number card, certification sticker or decal and identification number issued by the department under the federally approved numbering system unless the context clearly indicates otherwise.

(3g) "Controlled substance" has the meaning specified under s. 161.01 (4).

(3r) "Drug" has the meaning specified under s. 450.01 (10).

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

(4b) "Great bodily harm" has the meaning given in s. 939.22 (14).

(4e) "Intoxicant" means any alcohol beverage, controlled substance or other drug or any combination thereof.

(4m) "Intoxicated boating law" means s. 30.681 (1) or a local ordinance in conformity with that section, s. 30.681 (2) or, if the operation of a motorboat is involved, s. 940.09 or 940.25.

(4s) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

(5) "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.

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

(7) "Nonmotorized boat" means a boat which is not a motorboat but which is designed and constructed to be used as a boat for transportation of a person or persons on water. This term includes, but is not limited to, any canoe, sailboat, inflatable boat or similar device, row boat, raft and dinghy which is not a motorboat.

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

(8g) "Operation of a motorboat" means controlling the speed or direction of a motorboat, except a sailboat operating under sail alone.

(8r) "Operator" means a person who is engaged in the operation of a motorboat, who is responsible for the operation of a motorboat or who is supervising the operation of a motorboat.

(9) "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.

(9g) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity or concentration of alcohol or other intoxicant in a person's blood, breath or urine.

(9x) "Refusal law" means s. 30.684 (5) or a local ordinance in conformity with that section.

(10) "Registration" means the registration card and registration sticker or decal issued by the department for federally documented vessels.

(11) "Sailboard" means a sailboat with a hull resembling a surfboard which has little or no cockpit or seating area and which is designed to be sailed by a person in a standing position.

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

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

(13m) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

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

History: 1979 c 275; 1983 a. 27, 100; 1985 a. 279, 331; 1987 a. 3, 374; 1989 a. 145.

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 promulgated 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 promulgates, 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 compliance 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 promulgate 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; 1985 a. 332 ss. 44, 251 (1); 1987 a. 403.

30.505 Certificate of number system to conform to federal system. The certificate of number system and the issuance of identification numbers employed by the department shall be in conformity with the overall system of identification numbering for motorboats established by the U.S. government. The department shall promulgate rules as are necessary to bring the state certificate of number system and the issuance of identification numbers into conformity with this federal system.

History: 1983 a. 27 s. 858.

30.51 Certificate of number and registration; requirements; exemptions. (1) **REQUIREMENTS.** (a) *Certificate of number.* 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 certificate of number issued under this chapter or is exempt from the certificate of number requirements of this chapter. A boat is not covered by a certificate of number unless the owner is issued a valid certificate of number card, the certificate sticker or decal is properly attached to and displayed on the boat and the identification number is properly displayed on the boat.

(b) *Registration.* 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 registration issued under this chapter or is exempt from the registration requirements of this chapter. A boat is not covered by a registration unless the owner is issued a valid registration card and the registration sticker or decal is properly displayed on the boat.

(2) **EXEMPTIONS.** (a) *Exemptions from both certificate of number and registration requirements.* A boat is exempt from both the certificate of number and the registration requirements of this chapter if it is:

1. A nonmotorized boat which is not a sailboat.
2. A nonmotorized boat which is a sailboat but which either is 12 feet in length or less or is a sailboard.
3. 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.
4. 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.
5. From a country other than the United States temporarily using the waters of this state.
6. A military or public boat of the United States, except recreational-type public vessels.
7. A boat whose owner is a state or subdivision of a state, which is used principally for governmental purposes, and which is clearly identifiable.
8. A ship's lifeboat.
9. 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.

(b) *Exemption from certificate of number requirements.* A boat is exempt from the certificate of number requirements of this chapter if it is a federally documented vessel.

(c) *Exemption from registration requirements.* A boat is exempt from the registration requirements of this chapter if it is:

1. Covered by a certificate of number issued under this chapter.
2. A federally documented vessel which is a commercial fishing boat licensed under s. 29.33.
3. A federally documented vessel with a home port located outside this state. 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.

4. Operated within 15 days after an application for registration is made and the required fee is paid if proof of the application for registration is carried on board the boat.

History: 1973 c. 302; 1979 c. 275; 1983 a. 27; 1985 a. 279.

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

State has jurisdiction over tribal members operating motorboats on non-reservation waters to enforce section; enforcement does not conflict with members' treaty rights or federal law and is not discriminatory. *State v. Big John*, 146 W (2d) 741, 432 NW (2d) 576 (1988).

30.52 Certificate of number and registration; application; certification and registration period; fees; issuance. (1) APPLICATION. (a) *Application for certificate of number.* 1. Any person who owns a boat required to be covered by a certificate of number shall apply to the department for a certificate of number.

2. Any person who owns a nonmotorized boat which is exempt from the certificate of number requirement under s. 30.51 (2) (a) 1 or 2 may apply to the department for a certificate of number.

3. If a boat otherwise subject to the certificate of number requirements of this chapter is covered by a valid certificate of number issued under federal law or the federally approved numbering system of another state and is used in this state in excess of 60 consecutive days or if this state becomes the state of principal use, the owner of the boat shall immediately apply to the department for a certificate of number.

(b) *Application for registration.* 1. Any person who owns a boat required to be registered under this chapter shall apply to the department for registration.

2. If a federally documented vessel with a home port located outside this state is used in this state in excess of 60 consecutive days or if this state becomes the state of principal use, the owner of the boat shall immediately apply to the department for registration.

(c) *Application for duplicates.* If a certificate of number card, a registration card, a certification sticker or decal or a registration sticker or decal is lost or destroyed the owner may apply for a duplicate. The application shall be made upon a form designated by the department and shall be accompanied by the required fee for each duplicate certificate of number card, registration card, certification sticker or decal or registration sticker or decal applied for.

(2) **CERTIFICATION AND REGISTRATION PERIOD.** The certification and registration period runs for 2 years, commencing on April 1 of the year in which the certificate of number or registration is issued and, unless sooner terminated or discontinued in accordance with this chapter, expiring on March 31 of the 2nd year after issuance. A certificate of number or registration is valid only for the period for which it is issued.

(3) **FEES.** (a) *Payment of fee required.* A person who applies for the issuance or renewal of a certificate of number or registration shall pay the department the fee required under this subsection for the whole or any part of a certification and registration period.

(b) *Fee for boats under 16 feet.* The fee for the issuance or renewal of a certificate of number for a boat less than 16 feet in length is \$6.50.

(c) *Fee for boats 16 feet or more but less than 26 feet.* The fee for the issuance or renewal of a certificate of number for a boat 16 feet or more but less than 26 feet in length is \$8.50.

(d) *Fee for boats 26 feet or more but less than 40 feet.* The fee for the issuance or renewal of a certificate of number for a boat 26 feet or more but less than 40 feet in length is \$10.50.

(e) *Fee for boats 40 feet or longer.* The fee for the issuance or renewal of a certificate of number for a boat 40 feet or more in length is \$12.50.

(f) *Fee for nonmotorized sailboats.* Notwithstanding pars. (b) to (e), the fee for the issuance or renewal of a certificate of number for a sailboat which is not a motorboat is \$6.50.

(g) *Fee for documented vessels.* The fee for the issuance or renewal of registration for a federally documented vessel is the same as the fee for the issuance or renewal for a certificate of number under pars. (b) to (e).

(h) *Fee for issuance upon transfer of ownership.* Notwithstanding pars. (b) to (g), the fee for the issuance of a certificate of number or registration to the new owner upon transfer of ownership of a boat certified or registered under this chapter by the previous owner is \$2.50 if the certificate of number or registration is issued for the remainder of the certification and registration period for which the previous certificate of number or registration was issued.

(i) *Fleet fees.* A person owning or holding 3 or more boats may, at the person's option, pay a fleet rate for these boats instead of the fees which otherwise would be payable under pars. (b) to (g). Notwithstanding pars. (b) to (g), the fee for the issuance or renewal of certificates of number or registrations for boats under the fleet rate is \$9 plus 50% of the fees which would otherwise be applicable for the boats under pars. (b) to (g).

(j) *Fee for issuance of duplicates.* The fee for the issuance of each duplicate certificate of number card, registration card, certification sticker or decal or registration sticker or decal is \$2.50.

(3m) **VOLUNTARY CONTRIBUTIONS; LAKE RESEARCH.** (a) Any applicant for the issuance or renewal of a certificate of number or registration under sub. (3) (b) to (i) may, in addition to paying the fee charged for the certificate, elect to make a voluntary \$1 contribution to be used for lake research.

(b) All moneys collected under par. (a) shall be deposited into the account under s. 20.370 (1) (is) to be used exclusively for research conducted by the department to determine methods of improving the quality of the lakes in this state.

(4) **SALES AND USE TAXES.** The department shall collect from the applicant any sales and use taxes due under s. 77.61 (1) on any boat for which a certificate of number or registration is applied for and the report in respect to those taxes. The department shall use collection and accounting methods approved by the department of revenue.

(5) **ISSUANCE.** (a) *Certificate of number, card, sticker or decal; number.* 1. Upon receipt of a proper application for the issuance or renewal of a certificate of number accompanied by the required fee, a sales tax report and the payment of any sales and use tax due under s. 77.61 (1), the department shall issue to the applicant a certificate of number card. The certificate of number card shall state the identification number awarded, the name and address of the owner and other information the department deems necessary. The certificate of number card shall be of pocket size and of durable water resistant material.

2. At the time the department issues a certificate of number card, it shall issue 2 certification stickers or decals per boat. The certification stickers or decals shall bear the year of expiration of the current certification and registration period. The department shall provide the applicant with instructions concerning the attachment of the certification stickers or decals to the boat.

3. At the time the department issues a certificate of number card, it shall award an identification number. The department shall provide the applicant with instructions concerning the painting or attachment of the awarded identification number to the boat. The identification number shall be awarded to a particular boat unless the owner is a manufac-

turer of or dealer in boats, motors or trailers and desires to use the identification 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.

4. At the time the department issues a certificate of number card, it shall furnish to the person obtaining the card a copy of the state laws pertaining to operation of boats or informational material based on these laws.

(b) *Registration, card, sticker or decal.* 1. Upon receipt of a proper application for the issuance or renewal of a registration accompanied by the required fee and the payment of any sales and use tax due under s. 77.61 (1), the department shall issue to the applicant a registration card. The registration card shall state the name and address of the owner and other information the department deems necessary. The registration card shall be of pocket size and of durable water resistant material.

2. At the time the department issues a registration card, it shall issue 2 registration stickers or decals per boat. The registration stickers or decals shall bear the year of expiration of the current certification and registration period. The department shall provide the applicant with instructions concerning the attachment of the registration stickers or decals to the boat.

3. At the time the department issues a registration card, it shall furnish to the person obtaining the card a copy of the state laws pertaining to the operation of boats or informational material based on these laws.

(c) *Duplicates.* Upon receipt of a proper application for the issuance of a duplicate certificate of number card, registration card, certification sticker or decal or registration sticker or decal accompanied by the required fee, the department shall issue the applicable duplicate to the owner.

History: 1971 c. 215; 1973 c. 302; 1977 c. 29, 418; 1979 c. 34, 221, 275; 1983 a. 27 ss. 847 to 862; 1983 a. 192, 405; 1987 a. 290.

30.523 Certification or registration card to be on board; display of stickers or decals and identification number. (1) CARD TO BE ON BOARD; EXCEPTION. (a) *Certificate of number card.* Any person operating a boat which is required to be covered by a certificate of number issued under this chapter shall have the certificate of number card available at all times for inspection on the boat, unless the department determines the boat is of the use, size or type as to make the retention of the certificate of number card on the boat impractical.

(b) *Registration card.* Any person operating a boat which is required to be covered by a registration issued under this chapter shall have the registration card available at all times for inspection on the boat unless the department determines the boat is of the use, size or type as to make the retention of the registration card on the boat impractical.

(2) **DISPLAY OF STICKERS OR DECALS.** (a) *Certification stickers or decals.* Upon being issued a certificate of number card and certification stickers or decals, the owner of the boat shall attach or affix the stickers or decals to each side of the forward half of the boat in the manner prescribed by rules promulgated by the department. The owner shall maintain the certification stickers or decals in a legible condition at all times.

(b) *Registration stickers or decals.* Upon being issued a registration card and registration stickers or decals, the owner of the boat shall attach or affix the stickers or decals in the manner prescribed by rules promulgated by the department. The owner shall attach or affix the registration stickers or decals to the transom of the boat on each side of the federally documented name of the vessel in a manner so both stickers or decals are visible. The owner shall maintain the

registration stickers or decals in a legible condition at all times.

(c) *Stickers or decals for boats owned by manufacturers and dealers.* Notwithstanding pars. (a) and (b), a manufacturer or dealer in boats, motors or trailers may attach or affix the certification or registration stickers or decals to removable signs to be temporarily but firmly mounted upon or attached to the boat while the boat is being tested or demonstrated or while the boat is being used in connection with the testing or demonstration of a motor or trailer.

(d) *Restriction on other stickers and decals.* No sticker or decal other than the certificate of number stickers or decals, stickers or decals provided by the department and stickers or decals authorized by reciprocity may be attached, affixed or displayed on either side of the forward half of a boat.

(3) **DISPLAY OF IDENTIFICATION NUMBER.** Upon being issued a certificate of number card and awarded an identification number, the owner of the boat shall paint on or attach the identification number to each side of the forward half of the boat in the manner prescribed by rules promulgated by the department. The owner shall paint or attach the identification number so it is clearly visible and shall maintain the identification number in a legible condition at all times. A manufacturer or dealer in boats, motors or trailers may paint the identification number on or attach the identification number 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 identification number awarded 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.

History: 1973 c. 302; 1979 c. 275; 1983 a. 27; 1987 a. 397 s. 3; Stats 1987 s. 30, 523.

30.525 Voluntary contributions for nonmotorized boats. The department shall encourage owners of boats which are exempt from the certificate of number requirement under s. 30.51 (2) (a) 1 or 2 to contribute funds to be utilized for the development or enhancement of programs or services which provide benefits relating directly to nonmotorized boating activities. The department shall make reasonable efforts to publicize the nonmotorized boat voluntary contribution program and the purposes for which these revenues are to be utilized.

History: 1983 a. 27.

30.53 Certificate of origin; requirements; contents. (1) REQUIREMENTS. No manufacturer, importer, dealer or other person may sell or otherwise dispose of a new boat to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's or importer's certificate of origin executed in accordance with this section and with those assignments on the certificate as are necessary to show title in the purchaser of the boat. No dealer may purchase or acquire a new boat without obtaining from the seller of the boat the manufacturer's or importer's certificate of origin.

(2) **CONTENTS.** A manufacturer's or importer's certificate of origin of a boat shall contain, in the form and together with the information the secretary requires, the following information:

(a) A description of the boat, including, if applicable, the make, year, length, series or model, hull type and hull identification number of the boat and, for a boat with an inboard motor, the make of the engine and the engine serial number.

(b) Certification of the date of transfer of the boat to a distributor, dealer or other transferee, and the name and address of the transferee.

(c) Certification that this transaction is the first transfer of the new boat in ordinary trade and commerce.

(d) The signature and address of a representative of the transferor.

(3) ASSIGNMENT. An assignment of a manufacturer's or importer's certificate of origin shall be printed on the reverse side of the manufacturer's or importer's certificate of origin in the form prescribed by the secretary. The assignment form shall include the name and address of the transferee, a certification that the boat is new and a warranty that the title at the time of delivery is subject only to the liens and encumbrances that are set forth and described in full in the assignment. Nothing in this subsection requires the transferee to apply for a certificate of title under s. 30.533.

(4) NONAPPLICABILITY. Subsection (3) does not apply to or affect:

(a) A lien given by statute or rule of law to a supplier of services or materials for the boat.

(b) A lien given by statute to the United States, this state or any political subdivision of this state.

(c) A security interest in a boat created by a manufacturer or dealer who holds the boat for sale, which shall be governed by the applicable provisions of ch. 409.

History: 1987 a 397

30.531 Certificate of title; requirements; exemptions. (1) CERTIFICATE. The owner of a boat subject to registration in this state, whether or not the boat is operated on the waters of this state, shall make application for certificate of title for the boat under the following circumstances:

(a) If the owner has newly acquired the boat, he or she shall make application under s. 30.533.

(b) If the owner applies for registration of a boat without holding a valid certificate of title previously issued to that owner by the department for the boat, he or she shall at the same time apply for a certificate of title.

(2) PREREQUISITE TO REGISTRATION. Except as provided in sub. (3), an applicant's eligibility for a certificate of title is a prerequisite to registration of the boat. If the applicant for registration holds a valid certificate of title previously issued to the applicant by the department for the boat, that is prima facie evidence of ownership of the boat and the applicant need not apply for a new certificate of title on application for registration.

(3) EXEMPTION. (a) *Boats exempt from registration requirements.* A boat is exempt from both the certificate of origin and certificate of title requirements of this chapter if it is exempt under s. 30.51 (2) from the certificate of number or registration requirements of this chapter.

(b) *Boats under 16 feet.* A boat is exempt from both the certificate of origin and certificate of title requirements of this chapter if it is less than 16 feet in length.

(c) *Boats purchased by nonresidents.* A nonresident who purchases a boat in this state and who intends to title and register the boat in another state is not required to apply for a certificate of title under this chapter. A nonresident who purchases a boat in this state may apply for a certificate of title under this chapter.

History: 1987 a 397

30.533 Application for certificate of title; hull and engine identification numbers. (1) CERTIFICATE; CONTENTS. An application for a certificate of title shall be made to the department upon a form prescribed by it and shall be

accompanied by the required fee. Each application for certificate of title shall contain the following information:

(a) The name and address of the owner.

(b) The name and address of the previous owner.

(c) A description of the boat, including, if applicable, the make, year, length, series or model, hull type and hull identification number of the boat, the make of the engine and the engine serial number for a boat with an inboard motor, and any other information which the department may reasonably require for proper identification of the boat.

(d) If the boat is a new boat being registered for the first time, the signature of a dealer authorized to sell such new boat and the manufacturer's certificate of origin. Such certificate of origin shall contain such information as is prescribed by the department.

(e) If the boat is a used boat which was last previously registered in another jurisdiction, the applicant shall furnish any certificate of ownership issued by the other jurisdiction and a statement pertaining to the title history and ownership of the boat, such statement to be in the form the department prescribes.

(f) If the boat is a used boat which was last previously registered or titled in this state, or both, the applicant shall furnish any certificate of number or other evidence of registration and any certificate of title previously issued by this state and a statement pertaining to the title history and ownership of the boat, such statement to be in the form the department prescribes.

(g) A signed statement by the applicant that the applicant has inspected the hull identification number and the engine serial number, if any, to ensure that such numbers conform with the numbers recorded on the application for a certificate of title.

(h) Any further evidence of ownership which may reasonably be required by the department to enable it to determine whether the owner is entitled to a certificate of title.

(2) HULL IDENTIFICATION NUMBER. If the boat contains a permanent hull identification number placed on the boat by the manufacturer of the boat, this number shall be used as the hull identification number. If there is no manufacturer's hull identification number, or if the manufacturer's hull identification number has been removed, obliterated or altered, the application for certificate of title shall so state and the secretary shall assign a hull identification number to the boat. The assigned hull identification number shall be permanently affixed to, or imprinted on, the starboard side of the transom of the boat to which the hull identification number is assigned.

(3) ENGINE SERIAL NUMBER. If the boat has an inboard motor which contains an engine serial number, this number shall be recorded on the certificate of title as the engine serial number. If the boat has an inboard motor which does not contain an engine serial number, or if the engine serial number has been removed, obliterated or altered, the application for certificate of title shall so state and the certificate of title shall not contain an engine serial number.

History: 1987 a. 397; 1989 a. 128.

30.535 Department to examine records. Before issuing a certificate of title for a boat, the department shall check the application against the records of stolen boats in the national crime information center.

History: 1987 a. 397.

30.537 Certificate of title; issuance, records, fees. (1) ISSUANCE. The department shall file each application for certificate of title received by it and, when satisfied as to its genuineness and regularity and that the applicant is entitled

to the issuance of a certificate of title, shall issue and deliver a certificate to the owner of the boat.

(2) **RECORDS.** The department shall file and retain for at least 5 years a record of all applications for certificate of title, including, if applicable, the manufacturer's certificate of origin, and all certificates of title issued by it:

- (a) According to title number.
- (b) According to hull identification number or engine serial number or both.
- (c) Alphabetically, according to name of owner.
- (d) In any other manner which the department determines to be desirable.

(3) **SEARCH FEE.** The department shall conduct a title search upon the request of an applicant for a certificate of title and shall charge a fee of \$5 for each search.

(4) **TITLE FEES.** The department shall require that:

- (a) The owner of the boat pay a \$5 fee to file an application for the first certificate of title.
- (b) The owner of the boat pay a \$5 fee for a certificate of title after a transfer.
- (c) The owner of the boat pay a \$5 fee for a replacement certificate of title.

(5) **FEE RESTRICTION.** The department shall not charge any fee for services under this section except as specified in subs. (3) and (4).

History: 1987 a. 397; 1989 a. 128.

30.539 Contents of certificate of title. (1) INFORMATION. Each certificate of title issued by the department shall contain:

- (a) The name and address of the owner.
- (b) The title number assigned to the boat.
- (c) A description of the boat, including, if applicable, the make, year, length, series or model, hull type and hull identification number of the boat and, for a boat with an inboard motor, the make of the engine and the engine serial number.
- (d) Any other data which the department deems pertinent and desirable.

(2) **FORMS.** The certificate of title shall contain forms for assignment and warranty of title by the owner, and for assignment and warranty of title by a dealer, or insurance company, and may contain forms for application for a certificate of title by a transferee.

History: 1987 a. 397.

30.54 Lost, stolen or mutilated certificates. (1) If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a replacement upon furnishing information satisfactory to the department. The replacement certificate of title shall contain the legend "This is a replacement certificate and may be subject to the rights of a person under the original certificate"

(2) If a person applies for a replacement certificate under sub. (1), conservation wardens or local law enforcement officials, after presenting appropriate credentials to the owner or legal representative of the owner named in the certificate of title, shall inspect the boat's engine serial number or hull identification number, for purposes of verification or enforcement.

(3) The department shall not issue a new certificate of title to a transferee upon application made on a replacement until 15 days after receipt of the application.

(4) A person recovering an original certificate of title for which a replacement has been issued shall promptly surrender the original certificate to the department.

History: 1987 a. 397.

30.541 Transfers of boat titles. (1) OWNERS. If an owner transfers an interest in a boat, other than by the creation of a security interest, the owner shall, at the time of the delivery of the boat, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of origin and deliver the certificate of origin and the certificate of title to the transferee. The transferee shall make application for a new certificate of title as provided under s. 30.549 (2) and shall include in the application the certificate of origin.

(2) **DEALERS.** If a dealer acquires a new or used boat and holds it for resale the dealer need not send the certificate of title or application for original certificate to the department. Upon transferring the boat to another person the dealer shall immediately give such person on a form prescribed by the department a receipt for all title, registration, security interest and sales tax moneys paid to the dealer for transmittal to the department when required. The dealer shall promptly execute the assignment and warranty of title, showing the name and address of the transferee and of any secured party holding a security interest created or reserved at the time of the resale, in the spaces provided therefor on the certificate of origin or the certificate of title, and shall, within 7 business days following the sale or transfer, deliver the certificate of origin and the certificate of title or application for certificate of title to the transferee.

(3) **INVOLUNTARY TRANSFERS.** (a) If the interest of an owner in a boat passes to another other than by voluntary transfer, the transferee shall, except as provided in par. (b), promptly mail or deliver to the department the last certificate of title, if available, and the documents required by the department to legally effect such transfer, and an application for a new certificate in the form the department prescribes.

(b) If the interest of the owner is terminated or the boat is sold under a security agreement by a secured party, the transferee shall promptly mail or deliver to the department the last certificate of title, an application for a new certificate in the form the department prescribes, and an affidavit made by or on behalf of the secured party that the boat was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement.

(c) A person holding a certificate of title whose interest in the boat has been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate, and the action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of an owner or secured party.

(4) **NEW CERTIFICATES ISSUED.** (a) The department, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other transfer documents required by law, to support the transfer, shall issue a new certificate of title in the name of the transferee as owner.

(b) The department, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner.

(c) The department shall file and retain for 5 years a record of every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the boat designated therein.

History: 1987 a. 397; 1989 a. 56, 128

30.543 Report of stolen or abandoned boats. Each sheriff and police department in the state shall immediately report to the department of justice each boat reported stolen or recovered within its jurisdiction and the department of justice shall subsequently report such information to the national crime information center.

History: 1987 a. 397

30.544 Inspection of boats purchased out-of-state. For purposes of enforcement, conservation wardens or local law enforcement officials, after presenting appropriate credentials to the owner of a boat which was purchased outside of this state and which is subject to the certificate of title requirements of this chapter, shall inspect the boat's engine serial number or hull identification number.

History: 1987 a. 397

30.547 Penalty. Any person who intentionally falsifies an application for a certificate of title or a certificate of title issued under s. 30.537 (1) or 30.541 (4) or who intentionally alters a hull identification number or engine serial number shall be fined not more than \$5,000 or imprisoned not more than 5 years or both.

History: 1987 a. 397

30.549 Transfer of ownership of boats with a certificate of title, certificate of number or registration. (1) DUTY OF SELLER. If the owner of a boat covered by a valid certificate of title and a valid or expired certificate of number or registration issued by this state transfers all or any part of the owner's interest in the boat, other than by the creation of a security interest, the owner shall give the certificate of number card or the registration card to the new owner and shall deliver the certificate of title to the new owner as provided under s. 30.541 (1).

(2) **DUTY OF PURCHASER.** Transfer of the ownership of a boat terminates the certificate of title and the certificate of number or registration 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 title and a new certificate of number or registration within 10 days after the date of purchase as prescribed by the department. Upon receipt of the application accompanied by the required fee, the department shall issue a new certificate of title and a new certificate of number card or registration card for the boat. Notwithstanding s. 30.52 (5) (a) 2 or (b) 2, the department shall not issue new certification stickers or decals or new registration stickers or decals if the fee specified under s. 30.52 (3) (h) rather than the appropriate fee specified under s. 30.52 (3) (b) to (g) is paid. The department shall not award a new identification number to the boat unless compliance with federal numbering regulations requires otherwise.

History: 1979 c. 275; 1983 a. 27; 1987 a. 397 s. 5; Stats. 1987 s. 30.549

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 title and certificate of number or registration issued by this state is destroyed or abandoned, the owner shall notify the department of that fact within 15 days after the destruction or abandonment and shall at the same time return the certificate of title and certificate of

number card or registration card to the department for cancellation.

(2) **CHANGE OF ADDRESS.** If a person, after applying for a certificate of title and certificate of number or registration or after receiving a certificate of title and certificate of number card or a registration card, moves from the address given in the application or the card, he or she, within 15 days after moving, shall notify the department in writing of both the old and new address and of any identification numbers awarded under this chapter.

History: 1973 c. 302; 1983 a. 27; 1987 a. 397

30.553 Sharing boat title records. (1) At time intervals to be determined by the department, but at least quarterly, the department shall, upon request, provide boat manufacturers with the department's records under ss. 30.537 (2) and 30.541 (4) (c) for the primary purpose of validating the hull identification numbers and engine serial numbers provided by applicants for certificate of title.

(2) Upon examination, if a boat manufacturer discovers a discrepancy between the information contained in the department's records and the manufacturer's records, the manufacturer shall notify the department of the discrepancy and the department shall investigate and determine which is the correct information.

History: 1987 a. 397

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.

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(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.** 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.

(6) **CERTAIN MOORED, ANCHORED OR DRIFTING BOATS; OTHER STRUCTURES.** (a) Except as provided under par. (b), any moored, anchored or drifting boat or any other fixed and floating structure outside designated mooring areas or beyond 200 feet from the shoreline is required to be lighted from sunset to sunrise by a white light visible all around the horizon.

(b) This subsection does not require any light to be shone from duck blinds constructed on emergent vegetation.

(7) **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.

(8) **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).

(9) **DEPARTMENT TO PROMULGATE RULES.** The department shall promulgate rules modifying or supplementing the lighting requirements of this section as necessary to keep the requirements in conformity with the lighting rules adopted by the U.S. coast guard.

History: 1973 c. 302; 1979 c. 275; 1985 a. 243; 1987 a. 399; 1989 a. 359.

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 promulgated under this section. 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 promulgated under this section. 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) MUFFLER REQUIREMENT AND NOISE LEVEL STANDARDS.

(a) *Mufflers.* The engine of every motorboat propelled by an internal combustion engine and used on the waters of this state shall be equipped and maintained with a muffler, underwater exhaust system or other noise suppression device.

(b) *Maximum noise levels for operation.* No person may operate a motorboat powered by an engine on the waters of this state in such a manner as to exceed a noise level of 86 measured on an "A" weighted decibel scale.

(c) *Maximum noise levels for sale.* No person may sell, resell or offer for sale any motorboat for use on the waters of the state if the motorboat has been so modified that it cannot be operated in such a manner that it will comply with the noise level requirements under par. (b).

(d) *Maximum noise level for manufacture.* 1. No person may manufacture and offer for sale any motorboat for use on the waters of this state if the motorboat cannot be operated in such a manner so as to comply with the noise level requirements under par. (b).

2. The department may promulgate rules establishing testing procedures to determine noise levels for the enforcement of this section.

3. The department may revise these rules as necessary to adjust to advances in technology.

(e) *Tampering.* No person may remove or alter any part of a marine engine, its propulsion unit or its enclosure or modify the mounting of a marine engine on a boat in such a manner as to exceed the noise levels prescribed under par. (b).

(f) *Local regulation.* No political subdivision of this state may establish, continue in effect or enforce any ordinance or regulation which prescribes noise levels for motorboats or which imposes any requirement for the sale or use of marine engines at prescribed noise levels unless the ordinance or regulation is identical to the provisions of this subsection or rules promulgated by the department under this subsection.

(g) *Exemption for specific uses.* This subsection does not apply to any of the following:

1. A motorboat while competing in a race conducted under a permit from a town, village or city or from an authorized agency of the federal government.

2. A motorboat designed and intended solely for racing, while the boat is operated incidentally to the testing or tuning up of the motorboat and engine for the race in an area designated by and operated under a permit specified under subd. 1.

3. A motorboat on an official trial for a speed record if conducted under a permit from a town, village or city.

4. The operation of a commercial or nonrecreational fishing boat, ferry or other vessel engaged in interstate or international commerce, other than a tugboat.

(h) *Exemption by rule.* The department may promulgate by rule exemptions from compliance with this subsection for certain activities for certain types of motorboats for specific uses and for specific areas of operation.

(i) *Exemption for certain agents.* This subsection does not apply to an authorized agent of the federal, state or municipal government when operating a motor boat necessary to carry out his or her official duty of enforcement, search and rescue, fire fighting or research programs.

(3) **PERSONAL FLOTATION DEVICES.** Every boat shall carry at least one personal flotation 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. This subsection does not apply to sailboards.

(4) **FIRE EXTINGUISHERS.** (a) 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.

(b) This subsection does 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 racing, while the boat is operated incidentally to the tuning up of the boat and engine for the race at the race location on the day of the race.

(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.

(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 nonconductive shielding means to prevent accidental shorting of battery terminals.

(9) **DEPARTMENT MAY PROMULGATE RULES.** The department shall promulgate 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; 1983 a. 316; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 224, 359.

30.63 Sale and use of certain outboard motors restricted.

(1) **SALE.** 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; 1989 a. 56.

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; Stats. 1973 s. 30.63; 1973 c. 336; Stats. 1973 s. 30.635.

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 steering control 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 promulgate 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.

History: 1985 a. 332 s. 251 (1).

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 may operate a motorboat at a speed in excess of the 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; 1981 c. 303.

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 promulgate 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; 1989 a. 359

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. (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 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.

(8m) **MOORING.** No person may use a mooring or attach a boat to a mooring buoy if the mooring or mooring buoy violates s. 30.772 or 30.773.

(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 WHISTLES.** 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; 1983 a. 459; 1985 a. 146 s. 8; 1985 a. 243, 331.

30.681 Intoxicated boating. (1) OPERATION. (a) *Operating while under the influence of an intoxicant.* No person may engage in the operation of a motorboat while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation.

(b) *Operating with alcohol concentrations at or above specified levels.* No person may engage in the operation of a motorboat while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. No person may engage in the operation of a motorboat while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b), the offenses shall be joined. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 and 3. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(2) **CAUSING INJURY.** (a) *Causing injury while under the influence of an intoxicant.* No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation may cause injury to another person by the operation of a motorboat.

(b) *Causing injury with alcohol concentrations at or above specified levels.* No person who has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood may cause injury to another person by the operation of a motorboat. No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of a motorboat.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 and 3. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(d) *Defenses.* In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood or 0.1 grams or more of alcohol in 210 liters of his or her breath.

History: 1985 a. 331; 1989 a. 275.

30.682 Preliminary breath screening test. (1) REQUIREMENT. A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated boating law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(2) **USE OF TEST RESULTS.** A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated boating law or for the purpose of deciding whether or not to request a chemical test under s. 30.684. Following the preliminary breath screening test, chemical tests may be required of the person under s. 30.684.

(3) **ADMISSIBILITY.** The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under s. 30.684.

(4) **REFUSAL.** There is no penalty for a violation of sub. (1). Section 30.80 (1) and the general penalty provision under s. 939.61 do not apply to that violation.

History: 1985 a. 331.

30.683 Implied consent. Any person who engages in the operation of a motorboat upon the waters of this state is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 30.684. Any person who engages in the operation of a motorboat upon the waters of this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 30.684.

History: 1985 a. 331.

30.684 Chemical tests. (1) REQUIREMENT. (a) *Samples, submission to tests.* A person shall provide one or more samples of his or her breath, blood or urine for the purpose of

authorized analysis if he or she is arrested for a violation of the intoxicated boating law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated boating law and if he or she is requested to submit to the test by a law enforcement officer.

(b) *Information.* A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under par. (a) shall inform the person at the time of the request and prior to obtaining the sample or administering the test:

1. That he or she is deemed to have consented to tests under s. 30.683;

2. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under sub. (5) and is subject to the same penalties and procedures as a violation of s. 30.681 (1) (a); and

3. That in addition to the designated chemical test under sub. (2) (b), he or she may have an additional chemical test under sub. (3) (a).

(c) *Unconscious person.* A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated boating law, one or more chemical tests may be administered to the person without a request under par. (a) and without providing information under par. (b).

(2) **CHEMICAL TESTS.** (a) *Test facility.* Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

(b) *Designated chemical test.* A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

(c) *Additional chemical test.* A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under par. (b), which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

(d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health and social services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this section. Blood may be withdrawn from a person arrested for a violation of the intoxicated boating law only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

(e) *Report.* A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this section shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the person who provided the sample or submitted to the chemical

test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(3) **ADDITIONAL AND OPTIONAL CHEMICAL TESTS.** (a) *Additional chemical test.* If a person is arrested for a violation of the intoxicated boating law or is the operator of a motorboat involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer the additional chemical test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

(b) *Optional test.* If a person is arrested for a violation of the intoxicated boating law and if the person is not requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under sub. (2) (b) or the additional chemical test under sub. (2) (c).

(c) *Compliance with request.* A test facility shall comply with a request under this subsection to administer any chemical test it is able to perform.

(d) *Inability to obtain chemical test.* The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under subs. (1) and (2).

(4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated boating law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(5) **REFUSAL.** No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under sub. (1). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of sub. (1) or this subsection are limited to:

(a) Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated boating law.

(b) Whether the person was lawfully placed under arrest for violating the intoxicated boating law.

(c) Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under sub. (1) (b) or whether the request and information was unnecessary under sub. (1) (c).

(d) Whether the person refused to provide a sample or to submit to a chemical test.

History: 1985 a. 331; 1987 a. 3.

30.686 Report arrest to department. If a law enforcement officer arrests a person for a violation of the intoxicated boating law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

History: 1985 a. 331.

30.687 Officer's action after arrest for violating intoxicated boating law. A person arrested for a violation of the intoxicating boating law, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 30.684 (1) (a) shows that there is 0.05% or less by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters of the person's breath, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

History: 1985 a. 331.

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.

(4) INTOXICATED OPERATION. No person may use water skis, an aquaplane or a similar device while under the influence of an intoxicant to a degree which renders him or her incapable of safely using water skis, an aquaplane or a similar device, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely using water skis, an aquaplane or a similar device.

History: 1973 c. 302; 1985 a. 331.

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 underwa-

ter 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 (9) and (11), 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 promulgate rules necessary to carry out the purposes of this section.

History: 1977 c. 395; 1979 c. 221; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1).

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 rules, 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 rules may restrict any or all of the following:

1. The type of boats which may be used on the waters affected by the rules;
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 of-

ficers of water safety patrol units 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; 1985 a. 332 s. 251 (7); 1989 a. 159.

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.

30.73 Use regulations, Brule river. (1) PROHIBITED USES. No person may operate, occupy or use any motorboat or any pneumatic inner tube, inflatable raft or similar device on the Brule river or any of its stream tributaries in Douglas county. This subsection does not prohibit a person from operating, occupying or using a noninflatable nonmotorized boat, canoe or kayak.

(2) EXCEPTIONS. Subsection (1) does not apply to:

(a) Peace officers or rescue units engaged in emergency operations.

(b) Agents of the department while engaged in fish management or law enforcement activities.

(c) Persons on the Brule river within one mile of its mouth.

(3) ENFORCEMENT; LITTERING. The department shall enforce this section and restrictions on littering in the area of the Brule river and its stream tributaries in Douglas county.

(4) PENALTY. A person who violates this section is subject to the penalties provided under s. 30.80 (1).

History: 1981 c. 303.

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 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 (5) (a) 4 and (b) 3.

(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; 1983 a. 27 s. 2202 (38).

30.745 Limited jurisdiction for administration and enforcement of navigation aids by municipalities. (1) DEFINITIONS. As used in this section:

(a) "Adjacent outlying waters" means the outlying waters adjacent to the boundaries of a municipality and extending outward for a distance of one-half mile.

(b) "Municipality" means any town, village or city.

(c) "Outlying waters" has the meaning provided under s. 29.01 (11).

(2) EXERCISE OF LIMITED JURISDICTION. (a) *Authority to enact ordinances.* A municipality may enact by ordinance a navigation aids system and regulations affecting moorings, markers and buoys in adjacent outlying waters if the system and regulations are not in conflict with the uniform navigation aids system established by the department under s. 30.74 (2) or with any county ordinance.

(b) *Conflicts.* Any municipal ordinance enacted under this section which conflicts with the uniform navigation aids system established by the department under s. 30.74 (2) or with any county ordinance is void.

(c) *Administration and enforcement.* A municipality may exercise jurisdiction over adjacent outlying waters for the purpose of administering and enforcing an ordinance enacted under this section.

History: 1981 c. 222; 1983 a. 27 s. 2202 (38).

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 uni-

form in operation throughout the state. No municipality or public inland lake protection and rehabilitation district 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 promulgated under those sections.

(3) LOCAL REGULATIONS. (a) Any town, village or city may, in the interest of public health, safety or welfare, adopt local regulations applicable on any waters of this state within its jurisdiction if the regulation is not contrary to or inconsistent with this chapter and if the regulation relates to the equipment, use or operation of boats or to any activity regulated by ss. 30.60 to 30.71. Except as provided under s. 33.455 (3) (b), no such local regulation which 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.

(am) 1. A public inland lake protection and rehabilitation district may, in the interest of public health, safety or welfare, adopt and enforce local regulations applicable to a lake entirely within its boundaries if each town, village and city having jurisdiction on the lake adopts a resolution authorizing the lake district to do so.

2. A local regulation adopted under subd. 1 must not be contrary to or inconsistent with this chapter and must relate to the equipment, use or operation of boats or to an activity regulated by ss. 30.60 to 30.71.

3. If a public inland lake protection and rehabilitation district adopts a regulation under this paragraph, the lake district regulation supersedes all conflicting provisions of a town, village or city regulation adopted under par. (a) that are applicable to the lake.

4. If a town, village or city having jurisdiction on the lake rescinds the resolution authorizing the public inland lake protection and rehabilitation district to adopt and enforce regulations under this paragraph, the lake district regulations are void.

(b) Any county may, in the interest of public health, safety or welfare, adopt local regulations applicable on any river or stream within its jurisdiction if the regulation is not contrary to or inconsistent with this chapter, and if the regulation relates to the equipment, use or operation of boats or to any activity regulated by ss. 30.60 to 30.71. If a county adopts a regulation under this paragraph, the county regulation supersedes all provisions of a town, village or city regulation adopted under par. (a) that is inconsistent with the county regulation.

(c) If any county operates any marina development adjacent to any waters of this state, the authority conferred upon any town, village or city under par. (a) shall exclusively vest in the county in respect to adoption of local regulations that relate to the development, operation and use of the marina facility and its adjoining waters.

(d) Local regulations pertaining to the equipment, use or operation of boats on inland lakes shall be subject to advisory review by the department as provided under this paragraph. Proposed local regulations subject to review under this paragraph shall be submitted by the local town, village or city

clerk or by a public inland lake protection and rehabilitation district to the department at least 60 days prior to final action thereon by the town, village or city governing body. Advisory reports regarding town, village or city or lake district regulation of the 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 the effect of the local regulation on an affected town, village, city or lake district in view of pertinent local conditions. Advisory reports 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 20 days after receipt by the department of proposed local regulations, the department shall advise the town, village, city or lake district in writing as to the results of its advisory review under this paragraph. The department shall address the results sent to a town, village or city to its clerk.

(e) Notwithstanding the prohibition in sub. (1) against local regulations that exclude any boat from the free use of the waters of the state:

1. A municipality or a public inland lake protection and rehabilitation district that has in effect a local regulation adopted under par. (am) may charge boat operators reasonable fees for any of the following:

a. Use of a public boat launching facility that the municipality or lake district owns or operates.

b. The municipality's or lake district's costs for operating or maintaining a water safety patrol unit, as defined in s. 30.79 (1) (b) 2.

c. The municipality's or lake district's costs for providing other recreational boating services.

2. A town, village or city may regulate the operation, equipment, use and inspection of those boats carrying passengers for hire that operate from a base within its jurisdiction and may 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; 1987 a. 99; 1989 a. 159, 324, 359.

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.

30.772 Placement and use of moorings; restrictions; permits. (1) AUTHORITY. The department is authorized to regulate the placement and use of moorings.

(2) RESTRICTIONS. No mooring may be placed or used in any navigable waters if:

(a) The mooring obstructs or interferes with public rights or interest in the navigable waters.

(b) The riparian owner does not give written permission for the placement and use of the mooring.

(c) The mooring or use of the mooring interferes with the rights of other riparian owners.

(d) The mooring or use of the mooring adversely affects critical or significant fish or wildlife habitat.

(e) The mooring anchor is placed more than 150 feet from the ordinary high-water mark, or more than 200 feet from the ordinary high-water mark if sub. (3) (a) 5 applies, unless one of the following occurs:

1. A permit is obtained from the appropriate municipality and approved by the department.

2. A permit is obtained from the department.

3. The mooring is properly within a designated mooring area.

(f) The placement or use of the mooring violates a condition or restriction on a permit issued under sub. (4) or violates department rules.

(3) MUNICIPAL REGULATION OF MOORINGS; MUNICIPAL PERMITS; PROCEDURE. (a) Subject to department approval, the governing body of a municipality with jurisdiction over navigable waters may, by ordinance, adopt local regulations relative to the placement and use of moorings, including but not limited to regulations governing:

1. The number of moorings for a specific distance of frontage or within a specific area.

2. The number of boats to be attached to any mooring.

3. The distance between moorings.

4. The safe distance of moored boats from any other moored boats, properly marked and established traffic lanes, properly marked swimming or bathing areas, or structures, including piers, rafts, docks and wharves.

5. The placement or use of moorings up to 200 feet from the ordinary high-water mark, subject to all of the requirements of this section and s. 30.773, if applicable.

(am) If the governing body of a municipality adopts an ordinance under par. (a) 5, any boat moored or anchored to a mooring placed within 200 feet of the ordinary high-water mark or within a designated mooring area is not required to be lighted, as provided in s. 30.61 (6) (a), regardless of whether the moored or anchored boat drifts beyond 200 feet from the ordinary high-water mark or outside of the designated mooring area, unless the local regulations require the boat to be so lighted.

(b) The regulations shall not conflict with the uniform navigation aids system established by the department under s. 30.74 (2) or any rules adopted by the department under s. 30.74 (2).

(c) A municipality shall submit local regulations proposed under this subsection to the department at least 30 days before the municipality votes to adopt the regulations. The department shall advise the municipality in writing of its approval or disapproval of each such regulation. No regulation disapproved by the department may be adopted by the municipality. Permits issued for moorings more than 150 feet from the ordinary high-water mark, or more than 200 feet from the ordinary high-water mark if par. (a) 5 applies, shall be submitted to the department for approval unless the permit is for a mooring within a designated mooring area.

(d) The governing body of a municipality may, by ordinance, require a permit authorizing the placement and use of moorings, subject to all of the following:

1. Mooring permits shall be issued only after the governing body, or a person designated by the governing body, determines that the mooring conforms to the provisions of this section and all applicable local regulations adopted under this section.

2. Except as provided under subd. 4, if a mooring permit is issued under this section, no subsequent permit may be required unless the mooring location is changed.

3. After a mooring permit is issued, the governing body of a municipality may revoke the mooring permit if the mooring subsequently violates any provision of this section or any local regulation adopted under this section.

4. The provisions and procedures of ch. 68 shall apply to the grant, denial or revocation of a mooring permit by a municipality.

(e) Any mooring, mooring anchor or mooring buoy which is placed or used in any navigable water in violation of this section or any local regulation adopted by a municipality under this subsection constitutes a public nuisance subject to s. 30.294. A municipality may, by ordinance, provide that any person who violates any local regulation adopted under this subsection is subject to a forfeiture not to exceed \$50 for each such violation. The ordinance may also provide that each day during which the violation exists is a separate offense.

(f) In addition to, or as an alternative to, the penalties specified in par. (e), the governing body of a municipality may remove unlawful moorings as provided under and pursuant to the procedures of s. 66.0495.

(4) DEPARTMENT PERMITS. The department may issue a permit authorizing the placement or use of a mooring beyond 150 feet from the ordinary high-water mark if the municipality does not have an established permit procedure, or more than 200 feet from the ordinary high-water mark if sub. (3) (a) 5 applies. The department may place conditions or restrictions on any permit issued under this subsection.

(5) EXCEPTION. The restrictions under this section do not apply to the fleeting of barges on the Mississippi river and its tributaries.

History: 1985 a. 243; 1987 a. 374; 1987 a. 399.

30.773 Designated mooring areas. **(1) ESTABLISHMENT OF DESIGNATED MOORING AREAS.** Subject to department approval, a municipality with jurisdiction over navigable waters may establish designated mooring areas as provided in this section.

(2) PROCEDURES. A municipality authorized to establish a bulkhead line under s. 30.11 may establish a designated mooring area in the same manner as it is authorized to establish the bulkhead line except that if the municipality created a board of harbor commissioners, the municipality is required to obtain the approval of that board in addition to the approval of the department.

(3) STANDARDS FOR APPROVAL. In addition to requiring compliance with standards and procedures under s. 30.11 and sub. (2), the department shall grant an approval for the establishment of a designated mooring area only if:

(a) The designated mooring area is more than 150 feet from the ordinary high-water mark.

(b) The establishment and operation of the mooring area does not materially obstruct navigation.

(c) The establishment and operation of the mooring area is not detrimental to public rights or interest in the waterway.

(d) The mooring area is not within and does not adversely affect a critical or significant fish or wildlife habitat area.

(e) The establishment and operation of the mooring area complies with all applicable zoning requirements.

(f) The riparian owners agree in writing to the establishment of the mooring area and the area is to be used by the riparian owners or by others with the written consent of the riparian owners.

(g) Use of the mooring area is not unfairly restricted or used to assert exclusive privileges for use of the navigable waters.

(h) The mooring area is marked in a manner which notifies the public of the boundaries of the mooring area and assists in navigation near the mooring area. These markers shall be consistent with the uniform aids to navigation established under s. 30.74 (2).

(4) PERMITS AND REGULATIONS. (a) Department permits under s. 30.772 (4) or department approval of municipal

permits under s. 30.772 (3) (c) are not required for moorings placed within a designated mooring area.

(b) A municipality may regulate the placement and use of moorings within designated mooring areas in the manner provided under s. 30.772 (3).

(5) EXCEPTION. The restrictions under this section do not apply to the fleeting of barges on the Mississippi river and its tributaries.

History: 1985 a 243.

30.78 Local regulation of seaplanes. (1) CITY, VILLAGE AND TOWN ORDINANCES. 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 the aircraft or prohibit the use of the waters altogether.

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

(1g) LAKE DISTRICT ORDINANCES. (a) A public inland lake protection and rehabilitation district may adopt by ordinance after public hearing and may enforce local regulations applicable to a lake entirely within its boundaries if each town, village and city having jurisdiction on the lake adopts a resolution authorizing the lake district to do so.

(b) Ordinances authorized under par. (a) are limited to the type of regulation authorized under sub. (1) (a) to (c).

(c) If any town, village or city having jurisdiction on the lake rescinds the resolution authorizing the public inland lake protection and rehabilitation district to adopt by ordinance and enforce regulations under this paragraph, the lake district ordinances are void.

(1r) NOTICE TO DEPARTMENT OF TRANSPORTATION. The department of transportation shall receive timely notice of the public hearing required under subs. (1) and (1g) and shall have an opportunity to present testimony on the proposed ordinance. An ordinance under sub. (1) (b) or (1g) that regulates or restricts an area of surface waters for landing or take-off purposes shall be filed with the department of transportation.

(2) MARKING OF REGULATED OR RESTRICTED AREAS. Any ordinance that regulates or restricts an area of surface waters under sub. (1) or (1g) shall direct that the area be marked by standard marking devices.

(3) CONFLICTING ORDINANCES. (a) If a public inland lake protection and rehabilitation district adopts an ordinance under sub. (1g), the lake district ordinance supersedes all conflicting provisions of a town, village or city ordinance adopted under sub. (1) that are applicable to that lake.

(b) 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; 1989 a 159.

30.79 Local water safety patrols; state aids. (1) DEFINITIONS. In this section:

(a) "Local governmental unit" means a municipality or a public inland lake protection and rehabilitation district.

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

(b) "Water safety patrol unit" means one of the following:

1. 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 promulgated and ordinances enacted under ss. 30.50 to 30.80 and for the purpose of conducting search and rescue operations.

2. A unit created by a public inland lake protection and rehabilitation district or by a number of local governmental units riparian to a single lake, at least one of which is a lake district, for the purposes specified in subd. 1.

(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.

(2m) RULES FOR ELIGIBILITY. (a) The department shall promulgate rules that restrict the costs eligible for state aid under this section. The rules shall establish the following:

1. A method for calculating the maximum number of hours spent on enforcement activities or on search and rescue operations by a water safety patrol unit that will be eligible for state aid.

2. The maximum number of crew members on a boat operated by a water safety patrol unit whose compensation will be eligible for state aid.

3. The types and location of navigable waters on which a water safety patrol unit may operate for the local governmental unit operating the water safety patrol unit to be eligible for state aid.

(b) In establishing the method of calculation under par. (a) 1, the department shall include the amount of boating activity and the size of the navigable water as factors to be used in making these calculations.

(c) In addition to the rules promulgated under par. (a) the department may promulgate rules that relate to making the operation or maintenance of a water safety patrol unit more cost-effective.

(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 promulgated 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 local governmental unit or group of local governmental units 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 local governmental unit 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 promulgated 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 jurisdiction of the local governmental unit for other purposes.

(5) PAYMENT OF AIDS. On or before January 31 of the year following the year in which a local governmental unit operated a water safety patrol unit, it shall file with the depart-

ment on the forms prescribed by it a detailed statement of the costs incurred by the local governmental unit 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 that are directly attributable to the operation and maintenance of the water safety patrol unit, including a reasonable amount for depreciation of equipment. In calculating the net costs, the department shall deduct any fines or forfeitures imposed on persons convicted of violations of ordinances under s. 30.77 and any costs that do not comply with the rules promulgated under sub. (2m). The department shall compute the state aids on the basis of 75% of these net costs 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 local governmental units exceed the moneys available for such purpose, the department shall prorate the payments. No local governmental unit may receive state aid amounting to more than 20% of the funds available.

History: 1973 c. 302; 1977 c. 29, 274; 1989 a. 31, 159, 359

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 under subs. (2) to (6) 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. 30.68 (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).

(2g) Any person violating any provision of s. 30.67 (1):

(a) Shall be fined not less than \$300 nor more than \$1,000 or imprisoned not more than 6 months or both if the accident did not involve death or injury to a person.

(b) Shall be fined not less than \$300 nor more than \$5,000 or imprisoned not more than one year or both if the accident involved injury to a person but the person did not suffer great bodily harm.

(c) Shall be fined not more than \$10,000 or imprisoned not more than 2 years or both if the accident involved injury to a person and the person suffered great bodily harm.

(d) Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both if the accident involved death to a person.

(2r) 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 promulgated under s. 30.72 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.

(5) Any person violating s. 30.68 (8m) shall forfeit not more than \$100. Each day during which such violation exists constitutes a separate offense.

(6) (a) Penalties related to prohibited operation of a motorboat, intoxicants; refusal. 1. Except as provided under subs. 2 and 3, a person who violates s. 30.681 (1) or 30.684 (5) shall forfeit not less than \$150 nor more than \$300.

2. Except as provided under subd. 3, a person who violates s. 30.681 (1) or 30.684 (5) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated boating law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

3. A person who violates s. 30.681 (1) or 30.684 (5) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated boating law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

(b) Penalties related to causing injury, intoxicants. A person who violates s. 30.681 (2) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

(c) Calculation of previous convictions. In determining the number of previous convictions under par. (a) 2 and 3, convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(d) Alcohol or controlled substances; examination. In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol or controlled substances. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

(e) Certificate of satisfactory completion of safety course. In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1).

History: 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145.

30.81 Local regulations on icebound inland waters. (1) TOWN, VILLAGE AND CITY 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 the local regulation is not valid unless each town, village and city having jurisdiction over any portion of the lake has enacted an identical local regulation. When the identical local regulations have been enacted, the regulation of any individual town, village or city is in effect on the entire lake.

(1m) LAKE DISTRICT ORDINANCES. (a) A public inland lake protection and rehabilitation district may, in the interest of public health or safety, adopt by ordinance and enforce local regulations applicable to a lake entirely within its boundaries if each town, village and city having jurisdiction on the lake adopts a resolution authorizing the lake district to do so.

(b) An ordinance adopted under par. (a) must be consistent with this chapter and must relate to the use or operation of boats and other craft, including snowmobiles and other motor vehicles, on icebound inland lakes.

(c) If a public inland lake protection and rehabilitation district adopts an ordinance under this subsection, the district ordinance supersedes all conflicting provisions of a town, village or city ordinance adopted under sub. (1) that are applicable to the lake.

(d) If a town, village or city having jurisdiction on the lake rescinds the resolution authorizing the public inland lake

protection and rehabilitation district to adopt by ordinance and enforce regulations under this paragraph, the lake district regulations are void.

(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) or (1m).

(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 any public inland lake protection and rehabilitation district that is enacted under this section permitting traffic on icebound inland waters shall not render the municipality or lake district adopting the ordinance liable for any accident to those engaged in permitted traffic while the ordinance is in effect.

(4) **ENFORCEMENT.** A law enforcement officer of a town, village or city that is subject to an ordinance enacted under sub. (1) or (1m) has the powers of sheriff in enforcing the ordinance on any portion of the lake, whether or not that portion of the lake is within the jurisdiction of the town, village or city for other purposes.

History: 1989 a. 159.

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) "Governmental unit" means the department, a municipality, a public inland lake protection and rehabilitation district organized under ch. 33, the Milwaukee river revitalization council, the lower Wisconsin state riverway board or the Fox river management commission.

(bg) "Great Lakes" means Lake Superior and Lake Michigan and includes Chequamegon Bay and Green Bay.

(bn) "Inland water" means a water not defined as outlying waters in s. 29.01 (11) and includes a bay, bayou or a slough of the Mississippi river bottoms.

(c) "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, that provide safety and convenience for operators of recreational boats. "Recreational boating facilities" includes harbors of refuge, public accesses, launching ramps and locks and facilities that provide access between waterways for operators of recreational boats.

(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 governmental unit. Feasibility studies shall be of sufficient detail to allow affected governmental units to decide if a recreational 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 support by the governmental unit.
4. Distance the area to be studied is from other recreational boating facilities.
5. Work previously completed.

(e) A governmental unit'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 governmental unit to cost-sharing in the construction of a proposed facility or the management or operation of a facility.

(3) **PROJECT PRIORITY LIST.** (a) Only those proposed recreational boating facility projects found to be feasible and supported by the affected governmental unit 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 governmental units, except itself, 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 recreational boating facilities.
3. Expression of support by the governmental unit.
4. Existing facilities.
5. Projects underway.
6. Commitment of funds.
7. Location of the proposed project within the region identified in s. 25.29 (7) (a).

(4) **AIDS.** (a) The department shall develop and administer, with the approval of the commission, a financial assistance program for governmental units and the department in the construction and maintenance of capital improvements related to recreational boating facilities and in the maintenance and operation of locks and facilities which provide access between waterways. No financial assistance under this section may be provided to the Fox river management commission for feasibility studies of construction projects or for construction projects. No financial assistance under this section may be provided to the department other than for projects for access to inland waters that are lakes without a public access facility.

(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, general revenue sharing, gifts, grants and contributions and user fees.

2. The department may cost-share, with the approval of the commission, with an affected governmental unit, including itself, at a rate of up to 50% of any construction, management, operation, acquisition, maintenance or feasibility study costs or any combination of these costs, for the recreational boating facility if the costs are the type that qualify for funding under this section. The department may pay, with the approval of the commission, an additional 10% of the costs of a construction project if a municipality conducts a boating safety enforcement and education program approved by the department.

3. No more than 10% of the state funds available for recreational boating facilities aids under this section may be expended for feasibility studies in one year. No more than one percent of the state funds available for recreational boating facilities aids under this section 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. Forty percent of the state funds available for recreational boating facilities aids under this section shall be expended for Great Lakes projects. Forty percent of the state funds available for recreational boating facilities aids under this section shall be expended for inland water projects. The commission may designate recreational boating aids for locks and facilities that provide access between the Great Lakes and inland waters as aids expended for inland waters, as aids expended for projects deemed necessary by the commission without regard to location or as aids under a combination of these 2 types of projects. Twenty percent of the state funds available for recreational boating facilities aids under this section shall be expended for projects deemed necessary by the commission without regard to location.

7. Projects qualifying for funds available for recreational boating facilities aids under this section include, but are not limited to, construction and improvement of harbors of refuge on the Great Lakes; accommodation of motor-powered recreational watercraft; construction and improvement of public access and related facilities on inland waters where motor-powered recreational watercraft are permitted; and management, maintenance and operation of locks and facilities that provide access between waterways for the operators of recreational watercraft.

(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, governmental units and other persons.

(6) **COOPERATION AND ASSISTANCE.** (a) The department shall provide governmental units 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.

(7) **USE OF WISCONSIN CONSERVATION CORPS.** To the greatest extent practicable, the commission and affected governmental units shall encourage and utilize the Wisconsin conservation corps for appropriate projects.

History: 1977 c. 274; 1979 c. 34 s. 2102 (39) (a); 1979 c. 154, 221; 1981 c. 20; 1983 a. 27 ss. 870, 2202 (38); 1985 a. 29, 332; 1989 a. 31, 160

30.93 Fox river management. (1) DEFINITIONS. AS used in this section:

(a) "Commission" means the Fox river management commission.

(b) "Fox river locks and facilities" means structures, appurtenances and real property on or near the Fox river, including locks, dams and related structures and facilities under the ownership or control of the federal government on April 1, 1984.

(c) "Long-term agreement" means any agreement which involves the continuation of leasing obligations by this state for, or the continuation of responsibility for the management and operation by this state of, any Fox river locks and facilities beyond October 15, 1985.

(d) "Short-term agreement" means any agreement which does not involve the retention of ownership rights by this state of, the continuation of leasing obligations by this state for, or the continuation of responsibility for the management and operation by this state of, any Fox river locks and facilities beyond October 15, 1985, and which does not in any other way obligate or restrict the state on or after October 15, 1985.

(2) **AUTHORITY TO NEGOTIATE AND ENTER INTO AGREEMENTS WITH THE FEDERAL GOVERNMENT.** (a) *Negotiations.* The commission is authorized to enter into negotiations with the federal government on behalf of the state concerning:

1. The leasing by the state of Fox river locks and facilities.

2. The assumption by the state of responsibility for the management or operation of the Fox river locks and facilities.

(b) *Short-term agreements.* Prior to October 16, 1985, the commission is authorized to enter into only short-term agreements with the federal government concerning Fox river locks and facilities.

(c) *Long-term agreements.* On and after October 16, 1985, the commission is authorized to enter into long-term agreements with the federal government concerning Fox river locks and facilities.

(3) **AUTHORITY OVER FOX RIVER LOCKS AND FACILITIES.** (a) *Authority in general.* If an agreement is entered into with the federal government, the commission may assume responsibility for the management and operation of the Fox river locks and facilities.

(b) *Authority to contract; Wisconsin conservation corps.* The commission may contract with public agencies, public or private organizations, businesses or individuals to carry out management or operation responsibilities for the Fox river locks and facilities. The commission may contract with the department of health and social services or other state agency to carry out management or operation responsibilities for the Fox river locks and facilities. The commission may act as a Wisconsin conservation corps project sponsor and may enter into agreements with the Wisconsin conservation corps board to carry out management or operation responsibilities for the Fox river locks and facilities.

(c) *Budget.* The commission shall prepare a biennial budget which shall be submitted to the department concerning activities to be performed under this subsection.

(d) *Staff and employes.* The commission may hire staff and employes to perform activities under this section subject to the requirements of s. 16.505.

(4) USER FEES. (a) *Requirement.* The commission shall charge user fees for services it provides to the operators of boats using the Fox river locks and facilities.

(b) *Regular user fees.* Unless modified under par. (d):

1. The daily user fee for any boat is \$5.
2. The annual user fee for any boat is \$50.

(c) *Additional fees.* In addition to the regular user fees, the commission may charge passenger fees and cargo fees for boats carrying large numbers of passengers or large cargoes.

(d) *Modification and implementation of fees.* The fees specified under par. (b) may be modified by rules promulgated under sub. (6). The fees authorized under par. (c) may be implemented by rules promulgated under sub. (6).

(5) CONTRIBUTIONS; FEDERAL ASSISTANCE. The commission shall encourage and may accept contributions and gifts for the management, operation and maintenance of the Fox river locks and facilities. The commission may apply for federal assistance for the management, operation and maintenance of the Fox river locks and facilities.

(6) RULES. If, in exercising its authority under this section, the commission determines that rules are needed, the commission may submit proposed rules to the department. The department may promulgate these rules under ch. 227.

(7) COMMISSIONERS. Members of the commission shall not receive a salary but are entitled to reimbursement for their actual and necessary expenses and, in addition, to a per diem payment of \$25 for each day on which they were actually and necessarily engaged in the performance of their duties. Members of the commission are considered public officers for the purposes of s. 895.46.

History: 1983 a. 410; 1985 a. 16

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.