

# State of Wisconsin



1995 Assembly Bill 590

Date of enactment: April 10, 1996  
Date of publication\*: April 24, 1996

## 1995 WISCONSIN ACT 211

AN ACT *to repeal* 30.43 (2), 30.437, 30.44 (1) (c) 5., 30.44 (8) (am), 30.44 (9) and 30.44 (11); *to renumber and amend* 30.42 (1) (d); *to amend* 30.435 (1), 30.44 (title), 30.44 (1) (c) 3., 30.44 (1) (c) 4., 30.44 (1) (f), 30.44 (7), 30.44 (8) (a), 30.44 (8) (b) and (c) (intro.), 30.44 (10) (a), 30.45 (2), 30.45 (5) and 30.455 (1); and *to create* 30.40 (1r), 30.40 (7m), 30.40 (12m), 30.40 (14m), 30.42 (1) (d) 2., 30.435 (2m), 30.44 (1) (c) 4m., 30.44 (3) (c) 2n., 30.44 (3e), 30.443, 30.45 (3) (dg), 30.45 (5m) and 30.45 (6m) of the statutes; **relating to:** the lower Wisconsin state riverway concerning performance standards for structures and mobile homes, erosion prevention and control, cutting and harvesting of timber, permit procedures of the counties in the riverway and of the lower Wisconsin state riverway board, reports by the department of natural resources, recreational trails and mining and quarrying activities; providing an exemption from emergency rule procedures; and granting rule-making authority.

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

**SECTION 1.** 30.40 (1r) of the statutes is created to read:

30.40 (1r) "Bluff zone" means land in the riverway in the areas that are 200 feet in width from behind the bluff line to 100 feet below the bluff line.

**SECTION 1y.** 30.40 (7m) of the statutes is created to read:

30.40 (7m) "Nonmetallic mining" has the meaning given in s. 144.9407 (1) (a).

**SECTION 2.** 30.40 (12m) of the statutes is created to read:

30.40 (12m) "Recreational trail" means an unpaved trail or pathway that is used for recreational purposes and is not necessary for access to the river due to the difficulty of the terrain.

**SECTION 3.** 30.40 (14m) of the statutes is created to read:

30.40 (14m) "River edge zone" means land in the riverway in the areas that begin from the point at which tree growth begins at the edge of the river and that extend 75 feet landward from that point.

**SECTION 4.** 30.42 (1) (d) of the statutes is renumbered 30.42 (1) (d) 1. and amended to read:

30.42 (1) (d) 1. 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. For land that is in the river edge zone or the bluff zone, the rules promulgated under this paragraph shall require that the cutting and harvesting of timber be solely by selection cutting and that the minimum basal area for the residual stand of timber be 60 square feet per acre. The rules promulgated under this paragraph do not apply to any cutting or harvesting of timber subject to regulation under s. 30.43 (3).

**SECTION 5.** 30.42 (1) (d) 2. of the statutes is created to read:

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

30.42 (1) (d) 2. For purposes of subd. 1, the department shall, by rule, define "basal area" and "selection cutting".

**SECTION 6.** 30.43 (2) of the statutes is repealed.

**SECTION 8.** 30.435 (1) of the statutes is amended to read:

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

**SECTION 8m.** 30.435 (2m) of the statutes is created to read:

30.435 (2m) Promulgate rules and otherwise act under s. 30.443.

**SECTION 9.** 30.437 of the statutes is repealed.

**SECTION 10.** 30.44 (title) of the statutes is amended to read:

**30.44** (title) **Permits; and waivers; board and county procedures.**

**SECTION 11m.** 30.44 (1) (c) 3. of the statutes is amended to read:

30.44 (1) (c) 3. Visual impact shall be minimized by the use of exterior colors that harmonize with the natural surroundings during the time when the leaves are on the deciduous trees 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.

**SECTION 12g.** 30.44 (1) (c) 4. of the statutes is amended to read:

30.44 (1) (c) 4. The natural slope of the land shall be 12% 20% or less.

**SECTION 12r.** 30.44 (1) (c) 4m. of the statutes is created to read:

30.44 (1) (c) 4m. The person being issued the permit will comply with any applicable standards that the board imposes under s. 30.443 (2).

**SECTION 13.** 30.44 (1) (c) 5. of the statutes is repealed.

**SECTION 14.** 30.44 (1) (f) of the statutes is amended to read:

30.44 (1) (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).

**SECTION 15.** 30.44 (3) (c) 2n. of the statutes is created to read:

30.44 (3) (c) 2n. The cutting of timber that is necessary for the construction, reconstruction, modification, repair or maintenance of a recreational trail.

**SECTION 16.** 30.44 (3e) of the statutes is created to read:

30.44 (3e) NONMETALLIC MINING. (a) A person shall apply for and receive a permit before beginning or expanding nonmetallic mining on land in the riverway that is not visible from the river when the leaves are on the deciduous trees.

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

1. Any structure and any stockpiled minerals or soil associated with the nonmetallic mining activity may not be visible from the river when the leaves are on the deciduous trees.

2. The excavation for the nonmetallic mining activity may not be visible from the river when the leaves are on the deciduous trees.

**SECTION 17.** 30.44 (7) of the statutes is amended to read:

30.44 (7) CONDITIONS ON PERMITS. The board ~~of 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. (3), (3m) or (4).~~

**SECTION 18.** 30.44 (8) (a) of the statutes is amended to read:

30.44 (8) (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), ~~(2) and to~~ (5) for land in the riverway ~~that is not zoned shorelands under s. 59.971.~~

**SECTION 19.** 30.44 (8) (am) of the statutes is repealed.

**SECTION 20.** 30.44 (8) (b) and (c) (intro.) of the statutes are amended to read:

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

(c) (intro.) The board may grant a waiver of a performance standard for an activity in sub. (1) (b) and issue a permit under par. (a) or may grant a waiver authorizing an activity prohibited under s. 30.45 (3) or (3m) for land in the riverway ~~that is not zoned shorelands under s. 59.971~~ if one of the following applies:

**SECTION 21.** 30.44 (9) of the statutes is repealed.

**SECTION 22.** 30.44 (10) (a) of the statutes is amended to read:

30.44 (10) (a) The board ~~or a county~~ shall revoke a permit it issued under sub. (8) or ~~s. 30.44 (9), 1993 stats.,~~ if a person fails to comply with the performance standards for the permit that are not waived under sub. (8) (c) or ~~s. 30.44 (9) (c), 1993 stats.~~

**SECTION 23.** 30.44 (11) of the statutes is repealed.

**SECTION 23m.** 30.443 of the statutes is created to read:

**30.443 Erosion prevention and control.** (1) For activities under s. 30.44 (1) (b), the board may do any of the following:

(a) Promulgate rules establishing standards for erosion prevention or control at sites in the riverway that are not subject to the standards established under s. 101.1205 (1) or 101.653 (2) and that have a natural slope of 20% or less.

(b) Promulgate rules establishing standards for erosion prevention or control that are in addition to standards established under ss. 101.1205 (1) and 101.653 (2) for sites in the riverway that are subject to those standards and that have a natural slope of 12% or more but 20% or less.

(2) The board may impose any of the applicable standards established under sub. (1) (a) or (b) or ss. 101.1205 (1) and 101.653 (2) as a condition for receiving a permit under s. 30.44 (1), and the board may promulgate rules to enforce these standards in the riverway.

**SECTION 24.** 30.45 (2) of the statutes is amended to read:

30.45 (2) No person may violate a condition imposed under s. 30.44 (7) or under s. 30.44 (11) (d), 1993 stats.

**SECTION 25.** 30.45 (3) (dg) of the statutes is created to read:

30.45 (3) (dg) Construction, reconstruction, modification, repair or maintenance of a recreational trail.

**SECTION 26m.** 30.45 (5) of the statutes is amended to read:

30.45 (5) No person may begin a mining ~~or quarrying~~ activity or expand a mining ~~or quarrying~~ activity, except as provided in sub. (5m) or s. 30.44 (3e).

**SECTION 26p.** 30.45 (5m) of the statutes is created to read:

30.45 (5m) No person may begin or expand a nonmetallic mining activity on land that is visible from the river when the leaves are on the deciduous trees.

**SECTION 27.** 30.45 (6m) of the statutes is created to read:

30.45 (6m) No person may construct, reconstruct or alter a recreational trail unless the recreational trail and

any embankments, grading and associated structures are visually inconspicuous and are constructed with sufficient safeguards to prevent erosion.

**SECTION 27m.** 30.455 (1) of the statutes is amended to read:

30.455 (1) Construction, reconstruction, design, maintenance, modification or repair activities, or non-metallic 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 and the board on the location, nature and extent of the proposed work.

**SECTION 28. Nonstatutory provisions; transfers of county actions.**

(1) Applications submitted to a county for permits under section 30.44 (9), 1993 stats., that are pending in a county on the effective date of this subsection shall be transferred to the lower Wisconsin state riverway board for determinations of whether to issue the permits under section 30.44 (8) of the statutes, as affected by this act.

(2) Requests for waivers submitted to a county under section 30.44 (9) (c), 1993 stats., that are pending in a county on the effective date of this subsection shall be transferred to the lower Wisconsin state riverway board for determinations of whether to grant the waivers under section 30.44 (8) of the statutes, as affected by this act.

(3) Appeals of denials of permits under section 30.44 (9) (f), 1993 stats., that are pending in a county on the effective date of this subsection shall be transferred to the lower Wisconsin state riverway board for determinations of whether to issue the permits under section 30.44 (8) of the statutes, as affected by this act.

(4) The procedures under section 30.44 (11), 1993 stats., shall apply to reviews of waivers granted under section 30.44 (9) (c), 1993 stats., that are pending before the lower Wisconsin state riverway board on the effective date of this subsection.