

1999 ASSEMBLY BILL 602

November 24, 1999 – Introduced by Representatives MONTGOMERY, LA FAVE, ALBERS, BRANDEMUEHL, CARPENTER, F. LASEE, FREESE, GRONEMUS, GUNDERSON, KEDZIE, KELSO, KREIBICH, LADWIG, MUSSER, OWENS, PETROWSKI, PORTER, RYBA, SPILLNER, STONE, SYKORA, URBAN and DUFF, cosponsored by Senators SHIBILSKI, DARLING, DRZEWIECKI, HUELSMAN, SCHULTZ and WIRCH. Referred to Committee on Environment.

1 **AN ACT to create** 299.05 (3) and 299.052 of the statutes; **relating to:** establishing
2 a time period for review by the department of natural resources of applications
3 for certain permits, licenses, approvals and determinations and requiring the
4 exercise of rule-making authority.

Under current law, no person may engage in certain activities affecting navigable waters or the bed of a lake or stream unless the person first obtains a permit or approval from the department of natural resources (DNR) authorizing the activity. Current law also requires DNR to establish time limits for completing review of certain applications and to refund application fees if the application is not reviewed within the time limit.

This bill requires DNR to complete its review of applications for certain licenses, permits, approvals or determinations and take action on the application within a specified time or the application is considered approved. The bill requires DNR to establish a time limit to complete its review of applications seeking authorization of specified activities, or seeking certain determinations that may affect a proposed activity, including the following:

A determination by DNR of whether a body of water is a navigable water, which is subject to special regulation.

1. Placing a dam, bridge or other obstruction in or over a navigable water.
2. Placing any material or structure upon the bed of a navigable water.
3. Activities in wetlands that may not be undertaken until DNR issues a water quality certification, based on DNR's determination that the proposed activity is wetland dependent or will not adversely affect wetland functioning.

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4. Construction, improvement, extension or other modification of a sewerage system, including all structures, conduits and pipes by which sewage is collected, treated or disposed of (except indoor plumbing).

5. Diverting water from a lake or stream.

6. Constructing, dredging or enlarging an artificial water or waterway.

7. Grading or removing topsoil from the bank of a navigable water.

8. Removing material from the bed of a lake or stream.

9. Constructing or operating a high-capacity well.

10. Discharging pollutants in storm water from industrial activity or municipal storm sewers into the waters of this state.

Under the bill, DNR must complete its review and take action on the application within the specified review period or, if the applicant refuses a required refund of the application fee, the application is considered approved, subject to any terms and conditions for the license, permit, approval or determination required by law. The review period may be extended by agreement between DNR and the applicant, if the applicant materially modifies the application or if additional, unforeseeable information is required to complete the review. The bill allows DNR to extend the deadline unilaterally only if the extension is necessary to prevent substantial harm to public health or the environment.

Finally, the bill requires DNR to submit proposed rules to implement this process within four months after the date on which this bill takes effect and first implements this process roughly one year after the date on which the bill takes effect.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 299.05 (3) of the statutes is created to read:

2 **299.05 (3)** An applicant entitled to a refund of fees under this section may
3 refuse to accept the refund and proceed as provided in s. 299.052.

4 **SECTION 2.** 299.052 of the statutes is created to read:

5 **299.052 Deadlines for reviewing certain applications.** (1) (a) The
6 department by rule shall establish time periods within which the department
7 intends to approve or disapprove an application for any of the following licenses,
8 permits, approvals or determinations:

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1 1. Permits, approvals and determinations under ss. 30.10, 30.12, 30.123, 30.18,
2 30.19 and 30.20, and ch. NR 110, Wis. Adm. Code.

3 2. Permits issued under ch. NR 103, Wis. Adm. Code, pursuant to 33 CFR 330.6.

4 3. Approvals under s. 281.17 (1).

5 4. Permits under s. 283.33.

6 (b) The rules required under par. (a) may establish any of the following:

7 1. Methods for determining the commencement of the time period established
8 under par. (a) and for determining when the application for a license, permit,
9 approval or determination is complete.

10 2. Extensions of the time period established under par. (a) if the applicant
11 makes a material modification to the application that affects the public interest in
12 waters.

13 3. Contingencies if information needed by the department to complete its
14 review of an application for a license, permit, approval or determination is unknown
15 or cannot be determined with certainty when the department receives the
16 application.

17 4. Deadlines for the department to complete intermediate steps in the process
18 of completing its review of an application.

19 **(2)** Upon receiving an application for a license, permit, approval or
20 determination specified in sub. (1) (a), the department shall inform the applicant of
21 the time period established under sub. (1) (a) for the license, permit or approval.

22 **(3)** (a) Notwithstanding s. 30.02 (3), upon receipt of a complete application for
23 a permit, license, approval or determination specified in sub. (1) (a), the department
24 shall either schedule a hearing as required by law or provide notice stating that it
25 will proceed on the application without a hearing if no substantive written objection

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1 to issuance of the permit, license, approval or determination is received within 30
2 days after publication of the notice. The notice shall be provided to the clerk of each
3 municipality in which the project is located and to any other person required by law
4 to receive notice. The department may provide notice to other persons as it deems
5 appropriate. The department shall provide a copy of the notice to the applicant, who
6 shall publish it as a class 1 notice under ch. 985 in a newspaper designated by the
7 department that is likely to give notice in the area affected. The applicant shall file
8 proof of publication with the department.

9 (b) 1. If a public hearing is ordered by the department, the department shall
10 within 10 days after the time the requirement for a hearing becomes known, schedule
11 a hearing date at the soonest time available on the docket of division of hearings and
12 appeals. The division of hearings and appeals shall mail a written notice at least 10
13 days before the hearing to each person given notice under par. (a) and to any person
14 who submitted a substantive written objection to issuance of the permit.

15 2. The applicant shall publish a class 1 notice under ch. 985 of the hearing in
16 a newspaper designated by the department that is likely to give notice in the area
17 affected. The applicant shall file proof of publication under this subdivision with the
18 hearing examiner at or prior to the hearing.

19 (4) (a) During the time period established under sub. (1) (a), the department
20 and the applicant may jointly agree to a different time period for acting on an
21 application for a license, permit, approval or determination than that specified under
22 sub. (1) (a).

23 (b) The department may unilaterally extend the time period established under
24 sub. (1) (a) only if, within the time period established under sub. (1) (a), the
25 department finds that an extension of the time period is necessary to prevent

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1 substantial harm to public health or the environment and provides written notice to
2 the applicant that states with particularity the facts on which that finding is based.

3 (5) (a) Subject to subs. (1) (b) 2., (3) and (4), if the department does not provide
4 the applicant written notice that the department has disapproved the application for
5 a license, permit, approval or determination, including the specific facts upon which
6 the disapproval is based, before the expiration of the time period established under
7 sub. (1) (a) for the license, permit, approval or determination, the application is
8 considered approved. A license, permit, approval or determination considered
9 approved under this paragraph is subject to any terms or conditions specified by
10 statute or rule for the license, permit, approval or determination and the department
11 may suspend, limit, revoke or withdraw the license, permit, approval or
12 determination for substantial failure to comply with those terms or conditions.
13 Within 30 days after a license, permit, approval or determination is considered
14 approved under this paragraph, the department shall provide the applicant with a
15 statement of any terms and conditions that customarily apply to that license, permit,
16 approval or determination. This paragraph does not apply if the applicant accepts
17 a refund of fees under s. 299.05.

18 (b) The department may not disapprove an application for a license, permit,
19 approval or determination solely because the department is unable to complete its
20 review of the application within the time period established under sub. (1).

21 (6) This section does not apply to any application for a permit, license, approval
22 or determination that requires the preparation of an environmental impact
23 statement under s. 1.11.

24 **SECTION 3. Nonstatutory provisions.**

