

1999 ASSEMBLY BILL 785

February 22, 2000 – Introduced by Representatives GOETSCH, HAHN, PETROWSKI, ALBERS, OWENS, GUNDERSON, MUSSER, LADWIG, SPILLNER and AINSWORTH, cosponsored by Senators SCHULTZ and HUELSMAN. Referred to Committee on Environment.

1 **AN ACT to repeal** 30.01 (1nm), 31.02 (7), 31.02 (8) and (9), 88.01 (8m), 88.31 (1)
2 to (7), 88.31 (7m), 88.35 (5m) and 88.62 (3) (b); **to renumber and amend** 88.62
3 (3) (a); and **to amend** 30.10 (4) (d), 30.12 (4m) (title), 30.12 (4m) (intro.), 30.20
4 (1) (d), 31.02 (7m), 88.31 (title), 88.31 (8) (intro.), 88.35 (6) (intro.), 88.72 (3) and
5 88.72 (4) of the statutes; **relating to:** certain permits issued by the department
6 of natural resources that apply to work conducted on ditches, pipelines and
7 other drainage equipment located in drainage districts operated by drainage
8 boards.

Analysis by the Legislative Reference Bureau

Under current law, a drainage board, as part of county government, operates one or more drainage districts. A drainage district drains property owned by two or more persons. The department of agriculture, trade and consumer protection (DATCP) assists drainage boards and oversees their activities and promulgates rules that apply to drainage boards. A city, village or town (municipality) may assume jurisdiction to operate a drainage district from a drainage board in certain instances. However, once a drainage district is under municipal jurisdiction it is subject to the drainage laws of that municipality and is exempt from state drainage law.

The department of natural resources (DNR) regulates construction in navigable waters, including construction relating to the drainage of land. Generally,

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DNR determines navigability, except that current law provides that if a drainage district drain is located in the Duck Creek Drainage District, it is not considered navigable unless a U.S. geological survey map or other scientific evidence shows that the drain was a navigable stream before it became a drainage district drain. Under this bill the same navigability standards apply to all drains operated by drainage boards.

Current law provides that a person wishing to deposit any material or place any structure upon the bed of any navigable water must obtain a permit from DNR unless the legislature otherwise authorizes the structure or deposit. Current law provides an exception to this requirement for the Duck Creek Drainage District under which the drainage board for that district may place a structure or deposit in a drain if DATCP, after consulting with DNR, specifically approves the structure or deposit or if the structure or deposit is required by DATCP in order to conform the drain to specifications approved by DATCP in consultation with DNR. This bill extends this exception to all drainage districts operated by drainage boards.

Current law also provides that, with certain exceptions, a person wishing to remove material from the bed of a lake or stream must obtain a permit from DNR. Under one of the exceptions, the drainage board for the Duck Creek Drainage District may remove material from a drain that the board operates if the removal is required by DATCP in order to conform the drain to specifications imposed by DATCP in consultation with DNR. This bill extends this exception to all drainage districts operated by drainage boards.

Current law requires DNR to confer with the drainage commissioners in each drainage district, except the Duck Creek Drainage District, on the formation of policies for the operation and maintenance of dams. This bill eliminates this requirement for all drainage districts operated by drainage boards.

Current law also requires that the drainage board for the Duck Creek Drainage District operate, repair and maintain dams and other structures in compliance with the statutes regulating the drainage of lands and any rules promulgated by DATCP under those statutes. Current law provides that if the board fails to perform its duties, DNR may do so in the interest of drainage and conservation. This bill extends the application of these provisions to all drainage boards.

In addition to the current law requirements for obtaining permits to place a structure or deposit in navigable waters or to remove material from the bed of a lake or stream, current law requires that a drainage board obtain a separate permit from DNR to acquire and remove any dam or obstruction or to clean out, widen, deepen or straighten any navigable stream. Under current law, only the Duck Creek Drainage District is exempt from this permitting requirement. This bill eliminates the permitting requirement for all drainage districts operated by drainage boards.

For further information see the *state* 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:

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1 **SECTION 1.** 30.01 (1nm) of the statutes, as created by 1999 Wisconsin Act 9, is
2 repealed.

3 **SECTION 2.** 30.10 (4) (d) of the statutes, as created by 1999 Wisconsin Act 9, is
4 amended to read:

5 30.10 **(4)** (d) A drainage district drain located in the Duck Creek Drainage
6 District and operated by the board for that district operated by a drainage board
7 under ch. 88 is not navigable unless it is shown, by means of a U.S. geological survey
8 map or other similarly reliable scientific evidence, that the drain was a navigable
9 stream before it became a drainage district drain.

10 **SECTION 3.** 30.12 (4m) (title) of the statutes, as created by 1999 Wisconsin Act
11 9, is amended to read:

12 30.12 **(4m)** (title) ~~DUCK-CREEK DRAINAGE DISTRICT~~ DISTRICT STRUCTURES AND
13 DEPOSITS.

14 **SECTION 4.** 30.12 (4m) (intro.) of the statutes, as created by 1999 Wisconsin Act
15 9, is amended to read:

16 30.12 **(4m)** (intro.) Subsection (1) does not apply to a structure or deposit that
17 ~~the a drainage board for the Duck Creek Drainage District~~ places in a drain that the
18 board operates in the Duck Creek Drainage District within a drainage district under
19 ch. 88 if either of the following applies:

20 **SECTION 5.** 30.20 (1) (d) of the statutes, as created by 1999 Wisconsin Act 9, is
21 amended to read:

22 30.20 **(1)** (d) The A drainage board ~~for the Duck Creek Drainage District~~ may
23 without a permit under sub. (2) (c) remove material from a drain that the drainage
24 board operates in the Duck Creek Drainage District a drainage district under ch. 88
25 if the removal is required, under rules promulgated by the department of

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1 agriculture, trade and consumer protection, in order to conform the drain to
2 specifications imposed by the department of agriculture, trade and consumer
3 protection after consulting with the department of natural resources.

4 **SECTION 6.** 31.02 (7) of the statutes, as amended by 1999 Wisconsin Act 9, is
5 repealed.

6 **SECTION 7.** 31.02 (7m) of the statutes, as created by 1999 Wisconsin Act 9, is
7 amended to read:

8 31.02 (7m) The A drainage board for the ~~Duck Creek Drainage District~~ shall
9 operate, repair and maintain dams, dikes and other structures in district drains that
10 the board operates in the ~~Duck Creek Drainage District~~ a drainage district in
11 compliance with ch. 88 and any rules promulgated by the department of agriculture,
12 trade and consumer protection under ch. 88. If a county drainage board fails to
13 perform its duties under this subsection, the department of natural resources may
14 exercise its authority under ~~subs. sub. (6), (8) and (9).~~

15 **SECTION 8.** 31.02 (8) and (9) of the statutes are repealed.

16 **SECTION 9.** 88.01 (8m) of the statutes, as created by 1999 Wisconsin Act 9, is
17 repealed.

18 **SECTION 10.** 88.31 (title) of the statutes is amended to read:

19 **88.31** (title) ~~Special procedure in cases affecting~~ **Drainage work in**
20 **navigable waters.**

21 **SECTION 11.** 88.31 (1) to (7) of the statutes are repealed.

22 **SECTION 12.** 88.31 (7m) of the statutes, as created by 1999 Wisconsin Act 9, is
23 repealed.

24 **SECTION 13.** 88.31 (8) (intro.) of the statutes, as affected by 1999 Wisconsin Act
25 9, is amended to read:

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1 88.31 **(8)** (intro.) Subject to other restrictions imposed by this chapter, a
2 drainage board which has obtained all of the permits as required under ~~this chapter~~
3 ~~and ch. 30~~ may:

4 **SECTION 14.** 88.35 (5m) of the statutes, as affected by 1999 Wisconsin Act 9, is
5 repealed.

6 **SECTION 15.** 88.35 (6) (intro.) of the statutes is amended to read:

7 88.35 **(6)** (intro.) Upon the completion of its duties under subs. (1) to ~~(5m)~~ (5),
8 the board shall prepare a written report, including a copy of any maps, plans or
9 profiles that it has prepared. The assessment of benefits and awards of damages
10 shall be set forth in substantially the following form:

11 **SECTION 16.** 88.62 (3) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
12 is renumbered 88.62 (3) and amended to read:

13 88.62 **(3)** If drainage work is undertaken in navigable waters, the drainage
14 board shall obtain a ~~permit under s. 30.20 or 88.31 or ch. 31, as directed by the~~
15 ~~department of natural resources, except as provided in par. (b)~~ any permit that is
16 required under ch. 30 or 31.

17 **SECTION 17.** 88.62 (3) (b) of the statutes, as created by 1999 Wisconsin Act 9,
18 is repealed.

19 **SECTION 18.** 88.72 (3) of the statutes, as affected by 1999 Wisconsin Act 9, is
20 amended to read:

21 88.72 **(3)** At the hearing on the petition, any interested person may appear and
22 contest its sufficiency and the necessity for the work. If the drainage board finds that
23 the petition has the proper number of signers and that to afford an adequate outlet
24 it is necessary to remove dams or other obstructions from waters and streams which
25 may be navigable, or to straighten, clean out, deepen or widen any waters or streams

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1 either within or beyond the limits of the district, the board shall obtain any permit
2 that is required under ~~this chapter or~~ ch. 30 or 31.

3 **SECTION 19.** 88.72 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
4 amended to read:

5 88.72 (4) Within 30 days after the department of natural resources has issued
6 all of the permits as required under ~~this chapter and~~ chs. 30 and 31, the board shall
7 proceed to estimate the cost of the work, including the expenses of the proceeding
8 together with the damages that will result from the work, and shall, within a
9 reasonable time, award damages to all lands damaged by the work and assess the
10 cost of the work against the lands in the district in proportion to the assessment of
11 benefits then in force.

12 (END)