

**1999 DRAFTING REQUEST**

**Bill**

Received: **03/9/99**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **John La Fave (608) 266-0486**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Time limit for DNR review of certain applications

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nilsepe 03/19/99	jgeller 03/23/99		_____			S&L
/1			jfrantze 03/25/99	_____	lrb_docadmin 03/25/99	lrb_docadmin 03/30/99	

FE Sent For:

<END>

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1/?	nilsepe	1 3/23 jg	6/3/23	7/6/23			
				3/23			

FE Sent For:

<END>

-2458

**Nilsen, Paul**

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**From:** LaFave, John  
**Sent:** Friday, March 05, 1999 3:47 PM  
**To:** Nilsen, Paul  
**Subject:** Requesting bill draft

I'm requesting a bill draft of a 1997 session bill that you had drafted. Please draft AB-636 as it was modified by ASA#1. Any questions please e-mail back to me or call 6-0486. Thank you.

Sincerely,  
Rep. John La Fave

stays  
-2458/41

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1997 ASSEMBLY BILL 636**

1999 Bill

WPO-  
check auto  
refs

February 3, 1998 Offered by COMMITTEE ON ENVIRONMENT.

Regen

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.

✓  
insert  
A

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

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

6 299.05 (3) An applicant entitled to a refund of fees under this section may  
7 refuse to accept the refund and proceed as provided in s. 299.052.

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

9 **299.052 Deadlines for reviewing certain applications.** (1) (a) The  
10 department by rule shall establish time periods within which the department  
11 intends to approve or disapprove an application for any of the following licenses,  
12 permits, approvals or determinations:

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

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

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.**



1 (1) RULES ESTABLISHING DEADLINE FOR REVIEWING CERTAIN APPLICATIONS. The  
 2 department of natural resources shall submit in proposed form the rules required  
 3 under section 299.052 (1) of the statutes, as created by this act, to the legislative  
 4 council staff under section 227.15 (1) of the statutes no later than the first day of the  
 5 3rd month beginning after the effective date of this subsection.

6 **SECTION 4. Initial applicability.**

7 (1) This act first applies to an application for a license, permit, approval or  
 8 determination submitted on the effective date of this subsection.

9 **SECTION 5. Effective dates.** This act takes effect on the day after publication,  
 10 except as follows:

11 ~~(1) The treatment of section 299.05 (3) of the statutes takes effect on November~~  
 12 ~~1, 1999.~~

13 (2) The treatment of section 299.052 (2) and (5) of the statutes and SECTION 4  
 14 of this act take effect on the first day of the 12th month beginning after publication.

15 (END)

a.r.

INSET  
A

# 1997 ASSEMBLY BILL 636

December 2, 1997 - Introduced by Representatives LA FAVE, DUFF, F. LASEE, RILEY, SYKORA, GRONEMUS, MUSSER, GREEN, WALKER, GROTHMAN, SKINDRUD, HARSDDORF, OTTE, AINSWORTH, HANDRICK, WARD, PORTER, POWERS, LADWIG, OLSEN, SCHAFER, JESKEWITZ, KEDZIE, LORGE, ZUKOWSKI and RYBA, cosponsored by Senators SHIBILSKI, DARLING, WELCH, FARROW, FITZGERALD and HUELSMAN. 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 and approvals and requiring the exercise of  
4 rule-making authority.

## Analysis by the Legislative Reference Bureau

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 or approvals and take action on the application within a specified time or the application is considered ~~approved~~ <sup>or determinations</sup>. The bill requires DNR to establish a time limit to complete its review of applications seeking authorization of specified activities, including the following:

- 1. ~~Placing a dam, bridge or other obstruction in or over a navigable water.~~
- 2. ~~Constructing new residential, commercial and industrial structures along the banks, bluffs and bluff tops of the lower St. Croix River.~~
- 3. ~~Engaging in minor dredging projects on the Wolf River.~~
- 4. ~~Use of the bed of a Great Lake by a public utility or neighboring municipality.~~
- 5. ~~Municipalities establishing bulkhead lines within a navigable water, or enclosing navigable water by use of a drain, storm sewer or similar conduit.~~
- 2. ~~Placing any material or structure upon the bed of a navigable water.~~
- 7. ~~Placing a boathouse or fixed houseboat beyond the ordinary high water mark of a navigable water.~~
- 8. ~~Placing a fishing raft in a navigable water.~~

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

affect  
or seeking certain determinations that may affect a proposed activity,

insert A+1

- 5. ~~5.~~ Diverting water from a lake or stream.
- 6. ~~6.~~ ~~Changing the course of a navigable water, or constructing, dredging or enlarging an artificial waterway.~~
- 7. ~~7.~~ Grading or removing topsoil from the bank of a navigable water.
- 8. ~~8.~~ Removing material from the bed of a lake or stream.
- 9. ~~9.~~ ~~Constructing, maintaining or operating a water resource development project under an agreement between this state and a federal agency.~~
- 9. ~~9.~~ Constructing or operating a high-capacity well.
- 10. ~~10.~~ Discharging pollutants in storm water from industrial activity or municipal storm sewers into the waters of this state.

approved, subject to any terms and conditions for the license, permit, approval or determination required by law.

water or

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 ~~granted~~. The review period may be extended by agreement between DNR and the applicant.

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

if the applicant materially modifies the application or if additional information is required

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

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

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

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

- 1. Permits and approvals under ss. 30.10 to 30.123, 30.126, 30.18 to 30.20, 30.205, 30.21, 30.25 and 30.27.
- 2. Approvals under s. 281.17 (1).
- 3. Permits under s. 283.33.

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

the date on which

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.

unforeseeable

four Finally, the bill requires DNR to submit proposed rules to implement this process within 4 months after this bill takes effect and first implements this process roughly one year after the bill takes effect.

may not be undertaken until

3. Activities in wetlands that are <sup>DNR</sup> wetland dependent or will not adversely affect wetland functioning. <sup>activity</sup>

issues a water quality certification, based on DNR's determination that the proposed

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).

(end insert)

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

**Date:** 3/25/99

**To:** Representative La Fave

**Relating to LRB drafting number:** LRB-2458

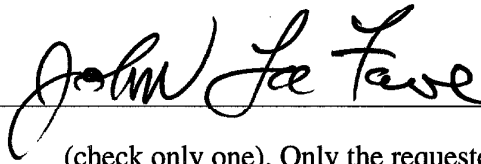
**Topic**

Time limit for DNR review of certain applications

**Subject(s)**

Environment - miscellaneous

1. **JACKET** the draft for introduction



in the **Senate**  or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Paul E. Nilsen, Legislative Attorney  
Telephone: (608) 261-6926