

**1999 DRAFTING REQUEST**

**Bill**

Received: 11/24/98

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Etzler**

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

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - highways**

Extra Copies: **TNF**

**Topic:**

DOA:.....Etzler - DOT/DNR cooperation

**Instructions:**

See Attached

**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 11/24/98	gilfokm 11/24/98		_____			State
/P1			ismith 11/25/98	_____	lrb_docadmin 11/25/98		

FE Sent For:

<END>

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1?	nilsepe	1/1-11-24 tomg	IS 11/25	IS/LP 11/25			

FE Sent For:

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**Department of Transportation**  
**1999-2001 Biennial Budget Request**  
**STATUTORY MODIFICATIONS**

**DIN NUMBER:** 6401

**TOPIC:** DOT/DNR Cooperative Agreement for Environmental Approval

**DESCRIPTION OF CHANGE:**

Amend s. 30.12(4)(a) as follows: 30.12(4)(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, bridge or other transportation project 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, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231, 87.30, or chs. 281 to 285 or 289 to 299, except s.281.48. 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.

**JUSTIFICATION:**

Current law (s. 30.12(4)) exempts WisDOT highway and bridge projects from the permit, approval and public hearing requirements of the state's water quality laws, if the projects are carried out in accordance with the WisDOT/DNR cooperative agreement liaison process. However, this exemption does currently not apply to rail, harbor or airport projects.

Also, current law (s. 30.19(1m)), exempts the construction and repair of public highways from the prohibitions, permit, approval and public hearing requirements of s. 30.19, Wis. Stats, Enlargement and Protection of Waterways. Again, this exemption does not currently apply to rail, harbor or airport projects.

WisDOT highway and bridge projects are still subject to the requirements of the DNR/DOT Cooperative Agreement liaison process. Through this liaison process, the environmental protection requirements of the state's laws must still be met through the liaison process, even though no permit is issued. The WisDOT/DNR liaison process requires WisDOT to notify DNR of its intentions to make changes in the state highway system. WisDOT must send DNR detailed information on the improvements it intends to make. DNR reviews the proposed improvements and makes recommendations necessary for the projects to comply with the applicable environmental and regulatory requirements.

The major benefit of this change is that there will be a single uniform approach for all WisDOT projects in meeting state environmental requirements. This uniform approach will eliminate confusion and help streamline the review process in both DNR and WisDOT.

Another benefit of this change is that the liaison process allows wetland mitigation for WisDOT projects that cause wetland losses, whereas the permit process does not. The DNR and WisDOT secretaries recognized in 1990 that, while in most cases project planning and coordination should result in the avoidance or minimization of wetland impacts to a great extent, location factors often place constraints on siting alternatives for transportation projects. Therefore the taking of wetlands to construct WisDOT projects is sometimes unavoidable. The secretaries signed an amendment to the interagency agreement that allows the taking of wetlands if WisDOT mitigates for the lost acreage by restoring or creating additional wetlands.

In addition, the liaison process includes procedures for resolving conflicts that arise between the two departments during project coordination. If the secretaries of DNR and WisDOT are unable to agree on methods to resolve the conflict, the secretary of DNR, notwithstanding sec. 30.12(4), is authorized to proceed with enforcement action as the secretary deems appropriate. No project has proceeded to this level in the 20 years that the liaison process has been formally recognized by the legislature.

This change will eliminate the mandatory public notice requirements process under Ch. 30, stats., for rail, harbor and airport projects. This includes the provisions that allow the general public to request and receive a hearing before an administrative law judge on the permit. This exemption already exists on WisDOT-directed highway and bridge projects, and would just be extended to rail, harbor and airport projects. WisDOT has estimated that this would affect less than 10 projects per year.

The s. 30.12 (4) exemptions are for activities affecting the waters of the state (wetland, streams, lakes, ground water, water quality) and do not apply to air permit actions or other laws and requirements not listed in s. 30.12 (4).

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-5311/P1dn  
PENjlg:hmh

Wednesday, September 2, 1998

This draft is identical to 1997 Assembly Bill 656.

Paul E. Nilsen  
Legislative Attorney  
261-6926

*See changes - PEN 1/24/98*

Kmg

99-1015/P1

SOON

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

→ DOA: Etzler - DOT/DNR cooperation  
1999-2001 Budget

no cat

1 **AN ACT** ...; relating to: interdepartmental coordination of certain environmental  
2 protection measures applicable to transportation  
3 projects.

**Analysis by the Legislative Reference Bureau**

Analysis head ENVIRONMENT  
water quality

TRANSPORTATION

~~OTHER TRANSPORTATION~~

including rail, harbor and airport projects,

Under current law, no permit is required from the department of natural resources (DNR) for highway and bridge work that is directed and supervised by the department of transportation (DOT) and that involves the placement of structures or the deposition of material in navigable waters of this state if the work is accomplished in accordance with interdepartmental liaison procedures established by DOT and DNR for minimizing the adverse environmental impact, if any, of the work.

This bill ~~expands~~ expands the exemption for highway and bridge work to ~~also~~ exempt from having to obtain a permit from DNR to place structures or deposit material in navigable waters if the transportation project is accomplished in accordance with the interdepartmental liaison procedures.

The bill also allows DOT to construct, dredge or enlarge any artificial waterway <sup>conn</sup> connecting to a navigable <sup>(water)</sup> without obtaining a permit from DNR if the project is accomplished using the interdepartmental liaison procedures.

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:*

1 SECTION 1. 30.12 (4) (a) of the statutes is amended to read:

2 30.12 (4) (a) Activities affecting waters of the state as defined in s. 281.01 (18)  
3 that are carried out under the direction and supervision of the department of  
4 transportation in connection with highway ~~and~~, bridge or other transportation  
5 project design, location, construction, reconstruction, maintenance and repair are  
6 not subject to the prohibitions or permit or approval requirements specified under  
7 this section or s. 29.601, 30.11, 30.123, <sup>30.19</sup>30.195, 30.20, 59.692, 61.351, 62.231 or 87.30  
8 or chs. 281 to 285 or 289 to 299, except s. 281.48. However, at the earliest practical  
9 time prior to the commencement of these activities, the department of transportation  
10 shall notify the department of the location, nature and extent of the proposed work  
11 that may affect the waters of the state.

(END)

*includes  
changes by  
97 Act 248*

*Amendments to  
statutes*



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1015/P1  
PEN:kmg:ijs

DOA:.....Etzler – DOT/DNR cooperation

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

- 1     **AN ACT ...; relating to:** interdepartmental coordination of certain environmental  
2             protection measures applicable to transportation projects.

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*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

**WATER QUALITY**

Under current law, no permit is required from the department of natural resources (DNR) for highway and bridge work that is directed and supervised by the department of transportation (DOT) and that involves the placement of structures or the deposition of material in navigable waters of this state, if the work is accomplished in accordance with interdepartmental liaison procedures established by DOT and DNR for minimizing the adverse environmental impact, if any, of the work.

This bill expands the exemption for highway and bridge work to exempt any transportation project, including rail, harbor and airport projects, directed and supervised by DOT from having to obtain a permit from DNR to place structures or deposit material in navigable waters if the transportation project is accomplished in accordance with the interdepartmental liaison procedures.

The bill also allows DOT, in connection with a transportation project, to construct, dredge or enlarge any artificial waterway connecting to a navigable water without obtaining a permit from DNR if the project is accomplished using the interdepartmental liaison procedures.



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10 transportation shall notify the department of the location, nature and extent of the  
11 proposed work that may affect the waters of the state.

12

(END)

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**NOTE TO DRAFTING FILE for LRB-1015:**

Per the drafter, this draft has been redrafted to a “/1” as no problems remain in the draft that require resolution before introduction of the budget bill. There are no changes between the “/PX” and the “/1.”

DOA:.....Etzler – DOT/DNR cooperation

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

- 1 **AN ACT ...; relating to:** interdepartmental coordination of certain environmental  
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*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

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12 (END)