

**2001 DRAFTING REQUEST**

**Bill**

Received: **09/29/2000**

Received By: **rkite**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Grinde**

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

Drafter: **gibsom**

May Contact:

Alt. Drafters: **rkite**

Subject: **Nat. Res. - miscellaneous**

Extra Copies:

**Pre Topic:**

DOA:..... Grinde -

**Topic:**

Regulation of drainage districts

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofcd</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rkite 10/04/2000	gilfokm 10/13/2000	martykr 10/17/2000	_____	lrb_docadmin 10/17/2000		State
/2	rkite 10/18/2000	gilfokm 10/18/2000	martykr 10/19/2000	_____	lrb_docadmin 10/19/2000		State
/3	gibsom 01/08/2001	gilfokm 01/08/2001	martykr 01/09/2001	_____	lrb_docadmin 01/09/2001		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typcd</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4	gibsom 01/16/2001 gibsom 01/18/2001	gilfokm 01/16/2001	rschluet 01/16/2001	_____ _____ _____	lrb_docadmin 01/17/2001		S&L
/5			rschluet 01/18/2001	_____ _____	lrb_docadmin 01/18/2001		S&L

FE Sent For:

<END>

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/3	gibsom 01/08/2001	gilfokm 01/08/2001	martykr 01/09/2001	_____	lrb_docadmin 01/09/2001		State

15-1/KMG  
18-01

*[Handwritten signatures and initials]*  
1-18-1 1-18-1

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/4	gibsom 01/16/2001	gilfokm 01/16/2001	rschluet 01/16/2001	_____	lrb_docadmin 01/17/2001		S&L

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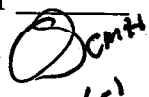
See Attached

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/2	rkite 10/18/2000	gilfokm 10/18/2000	martykr 10/19/2000	_____	lrb_docadmin 10/19/2000		State
/3	gibsom 01/08/2001	gilfokm 01/08/2001	martykr 01/09/2001	_____	lrb_docadmin 01/09/2001		State

1/4-1/16-01 KMG

  
1-16-1

  
1-16-1

FE Sent For:

**<END>**

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By/Representing: Grinde

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May Contact:

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Subject: Nat. Res. - miscellaneous

Extra Copies:

~~DAICP~~

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**Instructions:**

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/2	rkite 10/18/2000	gilfokm 10/18/2000	martykr 10/19/2000	_____	lrb_docadmin 10/19/2000		State

*km 1/9* *es*  
*kr 1/9*

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<END>

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May Contact:

Alt. Drafters:

Subject: Nat. Res. - miscellaneous

Extra Copies: DATCP

Pre Topic:

DOA:.....Grinde -

Topic:

Regulation of drainage districts

Instructions:

See Attached

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/1	rkite 10/04/2000	gilfokm 10/13/2000	martykr 10/17/2000		lrb_docadmin 10/17/2000		State

12-10/18  
KMG

Kra 10/19

RS  
10/19

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<END>



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1?	rkite	1-10/13 kmj	km 10/16	km 10/17			

FE Sent For:

<END>

## 15. Drainage Districts; DNR Permit Requirements

### **Explanation:**

The department regulates county drainage board operation of local drainage districts under ch. 88, Stats., and ch. ATCP 48, Wis. Adm. Code. The Department of Natural Resources also regulates dredging and other activities in drainage districts under chs. 30, 31 and 88, Stats. Current regulations are confusing and duplicative, and may subject county drainage boards to conflicting legal requirements. DATCP proposes to clarify current regulatory requirements, and eliminate conflicting and duplicative requirements.

### **Statutory Changes:**

See Legislative Reference Bureau draft attached as *Appendix A*.

LRB-4110/1

soon

0605/11

1999 - 2000 LEGISLATURE

LRB #1107  
RNK & MGS

10/4

D-Note

1999 BILL

soon

DOA - Bud

→ PROOF: all amended  
stats. w/ folio

1 AN ACT ~~to repeal~~ 30.01 (1m), 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 the budget

**Analysis by the Legislative Reference Bureau**

Under current law, a drainage board<sup>s</sup>, 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.

head NATURAL RESOURCES

sub Other natural resources

**BILL**

*the drain*

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

**BILL**

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. 30.01 (1m) 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:

**BILL**

1           30.20 (1) (d) ~~The A drainage board for the Duck Creek Drainage District~~ may <sup>V</sup> <sub>MM</sub>  
 2 without a permit under sub. (2) (c) <sup>V</sup> remove material from a drain that the drainage  
 3 board operates in ~~the Duck Creek Drainage District~~ a drainage district under ch. 88  
 4 if the removal is required, under rules promulgated by the department of  
 5 agriculture, trade and consumer protection, in order to conform the drain to  
 6 specifications imposed by the department of agriculture, trade and consumer  
 7 protection after consulting with the department of natural resources.

8           **SECTION 6.** 31.02 (7) of the statutes, <sup>V</sup> <sub>MM</sub> as amended by 1999 Wisconsin Act 9, is  
 9 repealed.

10           **SECTION 7.** 31.02 (7m) of the statutes, <sup>V</sup> <sub>MM</sub> as created by 1999 Wisconsin Act 9, is  
 11 amended to read:

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

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

20           **SECTION 9.** 88.01 (8m) <sup>V</sup> <sub>MM</sub> of the statutes, as created by 1999 Wisconsin Act 9, is  
 21 repealed.

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

23           **88.31 (title) ~~Special procedure in cases affecting~~ Drainage work in**  
 24 **navigable waters.**

25           **SECTION 11.** 88.31 (1) to <sup>(7m)</sup> <sub>MM</sub> of the statutes are repealed.

**BILL**

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

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

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

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

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

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

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

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

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

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

insert  
5-2  
SORT;  
out-of-order

*[Handwritten signatures and scribbles across the page]*

**BILL**

1            88.72 (3) At the hearing on the petition, any interested person may appear and  
2 contest its sufficiency and the necessity for the work. If the drainage board finds that  
3 the petition has the proper number of signers and that to afford an adequate outlet  
4 it is necessary to remove dams or other obstructions from waters and streams which  
5 may be navigable, or to straighten, clean out, deepen,<sup>v</sup> or widen any waters or streams  
6 either within or beyond the limits of the district, the board shall obtain any permit  
7 that is required under ~~this chapter or ch. 30 or 31.~~

8            **SECTION 19.** 88.72 (4) of the statutes, *as affected by 1999 Wisconsin Act 97* is  
9 amended to read:

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

17    (END)



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0605/lins  
RNK.....

Insert 5-2 ✓

SECTION 1. 88.11 (1) (f) of the statutes is repealed.

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

LRB-0605/1dn

RNK.....  
*mg*

Kirsten Grinde:

This draft is a redraft of 1999 LRB-4110/1. Please note that this draft contains an additional provision repealing s. 88.11 (1) (f), stats., because that provision authorizes DATCP to assist districts in applying for permits under s. 88.31, stats., but the draft eliminates that permitting procedure. If you want DATCP to be authorized to assist districts in applying for relevant permits under ch. 30 or 31, stats., please let me know and I will redraft accordingly.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

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

LRB-0605/1dn  
RNK.kmg.km

October 16, 2000

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Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

Soon

PKR  
2

2001 - 2002 LEGISLATURE

LRB-0605/4

RNK:kmg:km

D-Note

DOA:.....Grinde - Regulation of drainage districts

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

DON'T  
GEN. CAT.

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**NATURAL RESOURCES**

**OTHER NATURAL RESOURCES**

(14)

Under current law, drainage boards ~~as part of county government~~ operate one or more drainage districts. A drainage district drains property owned by two or more persons. 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.

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

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

1           **SECTION 1.** 30.01 (1m) of the statutes is repealed.

2           **SECTION 2.** 30.10 (4) (d) of the statutes is amended to read:

3           30.10 (4) (d) A drainage district drain located in the Duck Creek Drainage  
4 ~~District and operated by the board for that district~~ operated by a drainage board  
5 under ch. 88 is not navigable unless it is shown, by means of a U.S. geological survey

1 map or other similarly reliable scientific evidence, that the drain was a navigable  
2 stream before it became a drainage district drain.

3 **SECTION 3.** 30.12 (4m) (intro.) of the statutes is amended to read:

4 30.12 (4m) ~~DUCK CREEK DRAINAGE DISTRICT~~ DISTRICT STRUCTURES AND DEPOSITS.  
5 (intro.) Subsection (1) does not apply to a structure or deposit that ~~the a~~ drainage  
6 board ~~for the Duck Creek Drainage District~~ places in a drain that the board operates  
7 ~~in the Duck Creek Drainage District~~ within a drainage district under ch. 88 if either  
8 of the following applies:

9 **SECTION 4.** 30.20 (1) (d) of the statutes is amended to read:

10 30.20 (1) (d) ~~The A~~ drainage board ~~for the Duck Creek Drainage District~~ may  
11 without a permit under sub. (2) (c) remove material from a drain that the drainage  
12 board operates ~~in the Duck Creek Drainage District~~ a drainage district under ch. 88  
13 if the removal is required, under rules promulgated by the department of  
14 agriculture, trade and consumer protection, in order to conform the drain to  
15 specifications imposed by the department of agriculture, trade and consumer  
16 protection after consulting with the department of natural resources.

17 **SECTION 5.** 31.02 (7) of the statutes is repealed.

18 **SECTION 6.** 31.02 (7m) of the statutes is amended to read:

19 31.02 (7m) ~~The A~~ drainage board ~~for the Duck Creek Drainage District~~ shall  
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22 compliance with ch. 88 and any rules promulgated by the department of agriculture,  
23 trade and consumer protection under ch. 88. If a ~~county~~ drainage board fails to  
24 perform its duties under this subsection, the department of natural resources may  
25 exercise its authority under ~~subs. sub. (6), (8) and (9).~~

1           **SECTION 7.** 31.02 (8) and (9) of the statutes are repealed.

2           **SECTION 8.** 88.01 (8m) of the statutes is repealed.

3           **SECTION 9.** 88.11 (1) (f) of the statutes is repealed.

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

5           **88.31 (title) ~~Special procedure in cases affecting~~ Drainage work in**  
6 **navigable waters.**

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

8           **SECTION 12.** 88.31 (8) (intro.) of the statutes is amended to read:

9           **88.31 (8) (intro.)** Subject to other restrictions imposed by this chapter, a  
10 drainage board which has obtained all of the permits as required under ~~this chapter~~  
11 ~~and ch. 30~~ may:

12           **SECTION 13.** 88.35 (5m) of the statutes is repealed.

13           **SECTION 14.** 88.35 (6) (intro.) of the statutes is amended to read:

14           **88.35 (6) (intro.)** Upon the completion of its duties under subs. (1) to ~~(5m)~~ (5),  
15 the board shall prepare a written report, including a copy of any maps, plans or  
16 profiles that it has prepared. The assessment of benefits and awards of damages  
17 shall be set forth in substantially the following form:

18           **SECTION 15.** 88.62 (3) (a) of the statutes is renumbered 88.62 (3) and amended  
19 to read:

20           **88.62 (3)** If drainage work is undertaken in navigable waters, the drainage  
21 board shall obtain ~~a permit under s. 30.20 or 88.31 or ch. 31, as directed by the~~  
22 ~~department of natural resources, except as provided in par. (b) any permit that is~~  
23 required under ch. 30 or 31.

24           **SECTION 16.** 88.62 (3) (b) of the statutes is repealed.

25           **SECTION 17.** 88.72 (3) of the statutes is amended to read:

1           88.72 (3) At the hearing on the petition, any interested person may appear and  
2 contest its sufficiency and the necessity for the work. If the drainage board finds that  
3 the petition has the proper number of signers and that to afford an adequate outlet  
4 it is necessary to remove dams or other obstructions from waters and streams which  
5 may be navigable, or to straighten, clean out, deepen, or widen any waters or streams  
6 either within or beyond the limits of the district, the board shall obtain any permit  
7 that is required under ~~this chapter or~~ ch. 30 or 31.

8           **SECTION 18.** 88.72 (4) of the statutes is amended to read:

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

16                               (END)



0605/2

RNK:Kmg:

D-Note

Kirsten Grinde:

This draft makes a change in the first paragraph of the analysis for accuracy purposes. There are no changes to the body of the bill.

RNK

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

LRB-0605/2dn  
RNK:lmg:km

October 19, 2000

Kirsten Grinde:

This draft makes a change in the first paragraph of the analysis for accuracy purposes. There are no changes to the body of the bill.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

## Gibson-Glass, Mary

---

**From:** Tradewell, Becky  
**Sent:** Monday, January 08, 2001 8:20 AM  
**To:** Kite, Robin; Gibson-Glass, Mary  
**Subject:** FW: LRB-0605/2

Let me know if I can help with this. At first read, I'm not sure that it is very workable.

Becky

-----Original Message-----

**From:** Grinde, Kirsten  
**Sent:** Sunday, January 07, 2001 4:18 PM  
**To:** Tradewell, Becky  
**Subject:** LRB-0605/2

Becky,

Please modify LRB-0605/2 to limit the expansion of the Duck Creek exceptions (except dams) to all drainage districts for agricultural purposes. Also, remove the changes related to the formation of policies for the operation and maintenance of dams (leave current law which limits the exception to Duck Creek).

Drains operated and maintained by county drainage boards in more urban areas may be or may become affected by federal stormwater permit rules. A distinction of agricultural purposes from other purposes would also continue the differentiation between DATCP and DNR that has been established for the nonpoint source pollution program.

Also, the operation and maintenance of dams can have major effects on navigability, fisheries and aquatic ecology upstream and downstream of the dam, and DNR remains responsible for those issues. Also, DNR does not have the resources to operate and maintain dams if the county drainage board decides to stop operating and maintaining them.

Thanks,

Kirsten

State Budget Office  
Department of Administration  
101 E. Wilson St., 10th floor  
Madison, WI 53707-7864

voice: (608) 266-7973  
fax: (608) 267-0372  
e-mail: kirsten.grinde@doa.state.wi.us

~~all dams have to remain with drainage districts~~

~~exception only apply to drainage districts for agricultural purposes.~~

(D-N) (soon)

DOA:.....Grinde - Regulation of drainage districts

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

DON'T  
GEN. CAT.

1

AN ACT ... relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**NATURAL RESOURCES**

**OTHER NATURAL RESOURCES**

Under current law, drainage boards operate one or more drainage districts. A drainage district drains property owned by two or more persons. 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.

DNR regulates construction in navigable waters, including construction relating to the drainage of land. Generally, DNR determines navigability, except that current law provides that, if a drainage district drain is located in the Duck Creek Drainage District, the drain 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. NO ANL

Current law provides that a person wishing to deposit any material or to 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

exemption

*exemptions*  
 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.~~ *INS ANL2*

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.~~ *INS ANL3 exemption*

~~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.

*do drainage work such as*

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.~~ *removal and cleaning out* 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. *INS ANL4*

*other*

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

*on a minimum of it down*

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

- 1 SECTION 1. 30.01 (1m) of the statutes is repealed.
- 2 SECTION 2. 30.10 (4) (d) of the statutes is amended to read: *PLAIN*
- 3 *PLAIN* 30.10 (4) (d) A drainage district drain ~~(located in the Duck Creek Drainage~~
- 4 ~~District and operated by the board for that district) operated by a drainage board~~ *any other*
- 5 under ch. 88 is not navigable unless it is shown, by means of a U.S. geological survey *that is used for agricultural purposes and that is operated*

1 ~~map or other similarly reliable scientific evidence, that the drain was a navigable~~  
2 ~~stream before it became a drainage district drain.~~

3 ~~SECTION 3. 30.12 (4m) (intro.) of the statutes is amended to read:~~

4 ~~30.12 (4m) DUCK CREEK DRAINAGE DISTRICT-DISTRICT STRUCTURES AND DEPOSITS.~~  
5 ~~(intro.) Subsection (1) does not apply to a structure or deposit that the a drainage~~  
6 ~~board for the Duck Creek Drainage District places in a drain that the board operates~~  
7 ~~in the Duck Creek Drainage District within a drainage district under ch. 88 if either~~  
8 ~~of the following applies:~~

9 ~~SECTION 4. 30.20 (1) (d) of the statutes is amended to read:~~

10 ~~30.20 (1) (d) The A drainage board for the Duck Creek Drainage District may~~  
11 ~~without a permit under sub. (2) (c) remove <sup>qualifying</sup> material from a drain that the drainage~~  
12 ~~board operates in the Duck Creek Drainage District a drainage district under ch. 88~~  
13 ~~if the removal is required, under rules promulgated by the department of~~  
14 ~~agriculture, trade and consumer protection, in order to conform the drain to~~  
15 ~~specifications imposed by the department of agriculture, trade and consumer~~  
16 ~~protection after consulting with the department of natural resources.~~

17 ~~SECTION 5. 31.02 (7) of the statutes is repealed.~~

18 ~~SECTION 6. 31.02 (7m) of the statutes is amended to read:~~

19 ~~31.02 (7m) The A drainage board for the Duck Creek Drainage District shall~~  
20 ~~operate, repair, and maintain dams, dikes, and other structures in district drains~~  
21 ~~that the board operates in the Duck Creek Drainage District a drainage district in~~  
22 ~~compliance with ch. 88 and any rules promulgated by the department of agriculture,~~  
23 ~~trade and consumer protection under ch. 88. If a county drainage board fails to~~  
24 ~~perform its duties under this subsection, the department of natural resources may~~  
25 ~~exercise its authority under subs. sub. (6), (8) and (9).~~

1 ~~SECTION 7. 31.02 (8) and (9) of the statutes are repealed~~

2 ~~SECTION 8. 88.01 (8m) of the statutes is repealed~~

3 ~~SECTION 9. 88.11 (1) (f) of the statutes is repealed.~~

4 ~~SECTION 10. 88.31 (title) of the statutes is amended to read:~~

5 ~~88.31 (title) **Special procedure in cases affecting Drainage work in**~~  
6 ~~**navigable waters.**~~

7 ~~SECTION 11. 88.31 (1) to (7m) of the statutes are repealed.~~

8 ~~SECTION 12. 88.31 (8) (intro.) of the statutes is amended to read:~~

9 ~~88.31 (8) (intro.) Subject to other restrictions imposed by this chapter, a~~  
10 ~~drainage board which has obtained all of the permits as required under this chapter~~  
11 ~~and ch. 30 may:~~

12 ~~SECTION 13. 88.35 (5m) of the statutes is repealed.~~

13 ~~SECTION 14. 88.35 (6) (intro.) of the statutes is amended to read:~~

14 ~~88.35 (6) (intro.) Upon the completion of its duties under subs. (1) to (5m) (5),~~  
15 ~~the board shall prepare a written report, including a copy of any maps, plans or~~  
16 ~~profiles that it has prepared. The assessment of benefits and awards of damages~~  
17 ~~shall be set forth in substantially the following form:~~

18 ~~SECTION 15. 88.62 (3) (a) of the statutes is renumbered 88.62 (3) and amended~~  
19 ~~to read:~~

20 ~~88.62 (3) If drainage work is undertaken in navigable waters, the drainage~~  
21 ~~board shall obtain a permit under s. 30.20 or 88.31 or ch. 31, as directed by the~~  
22 ~~department of natural resources, except as provided in par. (b) any permit that is~~  
23 ~~required under ch. 30 or 31.~~

24 ~~SECTION 16. 88.62 (3) (b) of the statutes is repealed.~~

25 ~~SECTION 17. 88.72 (3) of the statutes is amended to read:~~





LPS: These ~~provisions~~ appear to be for the 1/3 draft.

INS ANLI

~~not~~ Generally, DNR determines whether a body of water such as a stream is navigable. Current law, however, provides an exemption for a drainage district drain that is located in the Duck Creek Drainage District. Under the exemption, the drain 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. This bill extends this any other drainage district drain if the drain is used for agricultural purposes.

provision to exemption to

INS ANL 2

~~not~~ This bill extends this exemption to any other structure or deposit to be placed in a drainage district drain if the structure or deposit is not a dam, or related to a dam, and if the structure or deposit is used for agricultural purposes.

INS ANL 3

~~not~~ This bill extends this exemption to all other drainage district drains if the drain from which the material is being removed is used for agricultural purposes.

INS ANL 4

~~not~~ This bill extends this exemption to all other drainage districts if the drainage work does not involve dams and if the drainage work is performed for agricultural purposes.

1 SECTION 1. 30.10 (4) (d) of the statutes is amended to read: INS 15-5

2 30.10 (4) (d) A drainage district drain located in the Duck Creek Drainage  
3 District and operated by the board for that district or any other drainage district  
4 drain that is used for agricultural purposes is not navigable unless it is shown, by  
5 means of a U.S. geological survey map or other similarly reliable scientific evidence,  
6 that the drain was a navigable stream before it became a drainage district drain.

to end

History: 1977 c. 190, 272, 418; 1981 c. 339; 1991 a. 316; 1999 a. 9.

7 SECTION 2. 30.12 (4m) (title) of the statutes is amended to read:

8 30.12 (4m) (title) ~~DUCK CREEK DRAINAGE DISTRICT~~ CERTAIN DRAINAGE DISTRICT  
9 STRUCTURES AND DEPOSITS.

10 SECTION 3. 30.12 (4m) (intro.) of the statutes is renumbered 30.12 (4m) (a) and  
11 amended to read:

(intro.)

File Component

1           30.12 (4m) (a) (intro.) Subsection (1) does not apply to a qualifying structure  
2 or deposit ~~that the drainage board for the Duck Creek Drainage District places in a~~  
3 ~~drain that the board operates in the Duck Creek Drainage District~~ if either of the  
4 following applies:

5           **SECTION 4.** 30.12 (4m) (a) of the statutes is renumbered 30.12 (4m) (a) 1. and  
6 amended to read:

7           30.12 (4m) (a) 1. ~~AA~~ The department of agriculture, trade and consumer  
8 protection, after consulting with the department of natural resources, specifically  
9 approves the qualifying structure or deposit.

10           **SECTION 5.** 30.12 (4m) (b) of the statutes is ~~amended~~ <sup>renumbered</sup> 30.12 (4m) (a) 2. and  
11 amended to read:

12           30.12 (4m) (a) 2. ~~AA~~ The qualifying structure or deposit is required, under rules  
13 promulgated by the department of agriculture, trade and consumer protection, in  
14 order to conform the drain to specifications approved by the department of  
15 agriculture, trade and consumer protection after consulting with the department of  
16 natural resources.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9.

17           **SECTION 6.** 30.12 (4m) (c) of the statutes is created to read:

18           30.12 (4m) (c) For purposes of this subsection, a qualifying structure or deposit  
19 is either of the following:

20           1. Any structure or deposit that is placed in a drain that is operated in the Duck  
21 Creek Drainage District by the board ~~for~~ for the Duck Creek Drainage District.

22           2. Any structure or deposit that is placed in a drain that is not described in  
23 subd. 1. if <sup>the</sup> structure or deposit ~~is~~ is not a dam, or a structure or deposit relating to a  
24 dam, and if ~~the~~ the drain is used for agricultural purposes.

*Exp Comp 5.*

*renumbered*

*(11)*

1 SECTION 7. 30.20 (1) (d) of the statutes is amended to read:

2 30.20 (1) (d) ~~The A drainage board for the Duck Creek Drainage District~~ may,  
3 without a permit under sub. (2) (c), remove qualifying material from a drain ~~that the~~  
4 ~~board operates in the Duck Creek Drainage District~~ if the removal is required, under  
5 rules promulgated by the department of agriculture, trade and consumer protection,  
6 in order to conform the drain to specifications imposed by the department of  
7 agriculture, trade and consumer protection after consulting with the department of  
8 natural resources.

History: 1977 c. 391; 1979 c. 34 s. 2102 (39) (g); 1981 c. 330; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1); 1987 a. 374; 1999 a. 9, 185.

9 SECTION 8. 30.20 (1) (dm) of the statutes is created to read:

10 30.20 (1) (dm) For purposes of this paragraph, <sup>✓</sup> (qualifying material) <sup>))</sup> is either of  
11 the following:  
<sub>^</sub> <sub>^</sub>

12 1. Any material that is removed from a drain that is operated in the Duck Creek  
13 Drainage District by the board <sup>g</sup> ~~for~~ the Duck Creek Drainage District.

14 2. Any material that is removed from a drain that is not described in subd. 1.  
15 if the drain is used for agricultural purposes.

16 SECTION 9. 31.01 (2m) of the statutes is created to read:

17 31.01 (2m) "Duck Creek Drainage District" has the meaning given in s. ~~30.01~~ <sup>30.01</sup>  
18 (1m).

19 SECTION 10. 88.31 (1b) of the statutes is created to read:

20 88.31 (1b) In this section, "drainage work" means removing a dam or other  
21 obstruction from a navigable body of water or cleaning out, widening, deepening, or  
22 straightening any navigable stream.

23 SECTION 11. 88.31 (1) of the statutes is renumber 88.31 (1m) and amended to  
24 read:

*sort; out-of-order*

30.01

~~30.01~~

1           88.31 (1m) If it is necessary to enter upon any waters that may be navigable,  
 2 or to ~~acquire and remove any dam or obstruction from the waters, or to clean out,~~  
 3 ~~widen, deepen or straighten any stream that may be navigable~~ <sup>to</sup> perform drainage  
 4 work, the board shall file with the department of natural resources an application  
 5 for a permit to do the drainage work. The board shall file with the application any  
 6 information that the board or the department of natural resources considers  
 7 necessary. The department shall specify by rule the information to be included in an  
 8 application. The application shall state that the public health or welfare will be  
 9 promoted by ~~the removal of the dam or other obstruction or by the straightening,~~  
 10 ~~cleaning out, deepening or widening of the waters~~ performing the drainage work and  
 11 that other public rights in and public uses of the waters will not be materially  
 12 impaired. The application shall be duly verified.

History: 1993 a. 456; 1999 a. 9.

**SECTION 12.** 88.31 (2) of the statutes is amended to read:

14           88.31 (2) Upon receipt of the application the department of natural resources  
 15 shall ~~fix a time and place for a hearing on the application, not less than 3 nor more~~  
 16 ~~than 8 weeks from the date of filing, at a place convenient to the interested parties.~~  
 17 ~~If the application is for a permit to remove a dam, notice of the hearing shall be given~~  
 18 ~~to all interested persons as provided by s. 31.06. In all other cases, the department~~  
 19 ~~shall direct the applicant to give notice under s. 88.05 (2) (b) to the persons specified~~  
 20 ~~in s. 88.05 (4) (b).~~

*[88.31 (2)]*  
 \*\*\*\*\*NOTE: This section will be amended in the next draft.

History: 1993 a. 456; 1999 a. 9.

**SECTION 13.** 88.31 (4) (intro.) of the statutes is amended to read:

22           88.31 (4) (intro.) Upon the conclusion of the hearing and investigation, the  
 23 department of natural resources shall grant the permit if it finds all of the following:

History: 1993 a. 456; 1999 a. 9.

**SECTION 14.** 88.31 (4) (a) of the statutes is amended to read:

24

1           88.31 (4) (a) That the public health and welfare will be promoted by the  
2           ~~proposed removal of the dam or other obstructions or by the proposed straightening,~~  
3           ~~cleaning out, deepening or widening of such waters; and~~ drainage work.

History: 1993 a. 456; 1999 a. 9.

4           **SECTION 15.** 88.31 (4) (b) of the statutes is amended to read:

5           88.31 (4) (b) That the proposed drainage work is necessary to the proper  
6           operation of the proposed drainage system; ~~and.~~

History: 1993 a. 456; 1999 a. 9.

7           **SECTION 16.** 88.31 (4) (c) of the statutes is amended to read:

8           88.31 (4) (c) That the proposed drainage work will not materially impair the  
9           navigability of any such waters and will not materially impair any other public right  
10          in or public uses of such waters. The enjoyment of natural scenic beauty is declared  
11          to be a public right to be considered along with other public rights.

History: 1993 a. 456; 1999 a. 9.

12          **SECTION 17.** 88.31 (6) of the statutes is amended to read:

13          88.31 (6) The department of natural resources may require the applicant for  
14          the permit to submit a plan for the <sup>or</sup>~~the~~ drainage work to be done in the waters in question  
15          and may amend or modify such plan before approving it. The department may at any  
16          time, on the application of any interested person, further amend such plan when the  
17          same can be done without materially impairing the navigability of any such waters  
18          and without materially impairing any other public right.

History: 1993 a. 456; 1999 a. 9.

19          **SECTION 18.** 88.31 (7m) of the statutes is amended to read:

20          88.31 (7m) The Duck Creek Drainage District is exempt from the permit  
21          requirements and procedures under subs. ~~(1)~~ <sup>✓</sup> (1m) to (7). Any other drainage district  
22          is exempt from the permit requirements and procedures under subs. (1m) to (7) if the

1 drainage work does not involve removal of, or other work on, a dam and if the  
2 drainage work is performed for agricultural purposes.

3 History: 1993 a. 456; 1999 a. 9.

3 **SECTION 19.** 88.315 (title) of the statutes is created to read:

4 **88.315 (title) Powers upon receipt of permits; liability.**

5 **SECTION 20.** 88.31 (8) of the statutes is renumbered 88.315 (1).

6 **SECTION 21.** 88.31 (9) of the statutes is renumbered 88.315 (2).

7 **SECTION 22.** 88.35 (5m) of the statutes is amended to read:

8 88.35 (5m) If navigable waters are affected by the proposed drainage, the  
9 drainage board for the drainage district shall obtain a permit under s. 88.31 unless  
10 the drainage district is exempt from such a permit under s. 88.31 (7m). This  
11 subsection does not apply to the Duck Creek Drainage District.

*strike permit*

12 History: 1979 c. 110; 1989 a. 31; 1993 a. 456; 1999 a. 9.

12 **SECTION 23.** 88.62 (3) (b) of the statutes is amended to read:

13 88.62 (3) (b) If the drainage work that is undertaken in navigable waters  
14 located in the Duck Creek Drainage District is not subject to a permit under ss. 30.20  
15 and 88.31, the board for that the district shall obtain a permit under s. 30.20 or ch.  
16 31, as directed if the permit is determined to be necessary by the department of  
17 natural resources.

*Place point*

History: 1987 a. 275; 1991 a. 316; 1993 a. 456; 1999 a. 9.

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

LRB-0605/3dn  
RNK:kmg:km

Note that a drain can be used under this draft for a combination of agricultural and nonagricultural purposes and still be exempt. OK?

Also, do you want a definition of "agricultural purposes"? Remember, we are using the definition in s. 29.181 (1b) (a) for the fish farming and aquaculture draft I prepared for the budget.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

No copy is being sent to DATCP or DNR. OK?

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

LRB-0605/3dn  
MGG:kmg:km

January 9, 2001

Note that a drain can be used under this draft for a combination of agricultural and nonagricultural purposes and still be exempt. OK?

Also, do you want a definition of "agricultural purposes". Remember, we are using the definition in s. 29.181 (1b) (a) for the fish farming and aquaculture draft that I prepared for the budget.

No copy is being sent to DATCP or DNR. OK?

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215



## Kite, Robin

---

**From:** Grinde, Kirsten  
**Sent:** Friday, January 12, 2001 8:01 PM  
**To:** Kite, Robin  
**Subject:** LRB-0605/3 - Regulation of drainage districts

Robin,

Please make the following changes to LRB-0605/3:

1. In regards to Mary's second question on the drafter's note: Use the definition of agricultural purposes under s. 29.181 (1b) (a).
- ✓ 2. For Section 1: please add "primarily" before "for agricultural purposes" on line 4, page 2.
3. Dams should be put back in as qualifying structures, or structures that would be exempt if used primarily for agricultural purposes. This relates to Mary's first question on the drafter's note -- we want the structure, deposit or project undertaken to be primarily related to agriculture, not just the drain.
4. Section 6: "Qualifying structure or deposit" -- please modify s. 30.12 (4m) (c) 2. to relate the "used for agricultural purposes" to the structure or deposit, and remove the reference to the drain.
- ✓ 5. Section 8: Please add "primarily" before "for agricultural purposes" on line 18, page 4.
- ✓ 6. Section 17: Please remove the last sentence of this section. DNR should retain permit authority for navigable waters since it has the responsibility under the public trust doctrine.
7. Section 22: Please remove this section. It is no longer necessary with the other changes made.
8. Regarding Mary's last question on the drafter's note: Correct, we do not want the agencies to receive a copy of this draft.

Let me know if you have any questions.

Thanks,  
Kirsten

State Budget Office  
Department of Administration  
101 E. Wilson St., 10th floor  
Madison, WI 53707-7864

voice: (608) 266-7973  
fax: (608) 267-0372  
e-mail: kirsten.grinde@doa.state.wi.us

*definition in 30.10(4)(d)  
not to apply to 30.10(4)(c)*



State of Wisconsin  
2001 - 2002 LEGISLATURE

RMR  
LRB-0605/4  
RNK:kmg:km  
M60+RNK

DOA:.....Grinde - Regulation of drainage districts

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

SOON

1 AN ACT <sup>DON'T GEN. CAT.</sup> ..., relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**NATURAL RESOURCES**

**OTHER NATURAL RESOURCES**

primarily

Under current law, drainage boards operate one or more drainage districts. A drainage district drains property owned by two or more persons. 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.

DNR regulates construction in navigable waters, including construction relating to the drainage of land. Generally, DNR determines whether a body of water such as a stream is navigable. Current law, however, provides an exemption for a drainage district drain that is located in the Duck Creek Drainage District. Under the exemption, the drain 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. This bill extends this exemption to any other drainage district drain if the drain is used for agricultural purposes.

Current law provides that a person wishing to deposit any material or to 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 exemption 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 exemption to any other structure or deposit to be placed in a drainage district drain if the structure or deposit is not a dam, or related to a dam, and if the structure or deposit is used for agricultural purposes.

*primarily*      *the removal of*

*Necessary primarily*

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 exemptions, 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 exemption to all other drainage district drains if the drain from which the material is being removed is used for agricultural purposes.

*necessary primarily*

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 do drainage work such as removing any dams or other obstructions and cleaning out navigable streams. Under current law, only the Duck Creek Drainage District is exempt from this permitting requirement. This bill extends this exemption to all other drainage districts if the drainage work does not involve dams and if the drainage work is performed for agricultural purposes.

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

*(B) and local*

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

**SECTION 1.** 30.10 (4) (d) of the statutes is *renumbered 30.10 (4)(d)2. and* amended to read:

30.10 (4) (d) <sup>2.</sup> A drainage district drain located in the Duck Creek Drainage District and operated by the board for that district or any other drainage district drain that is used *primarily* for agricultural purposes is not navigable unless it is shown, by means of a U.S. geological survey map or other similarly reliable scientific evidence, that the drain was a navigable stream before it became a drainage district drain.

*A SEC. #. CR. 30.10(4)(d)1.*

**SECTION 2.** 30.12 (4m) (title) of the statutes is amended to read:

*(B) 30.10 (4) (d) 1.*

*"In this paragraph, 'agricultural purposes' has the meaning given in s. 29.181 (1b)(a)."*

*Fix Component 1 2*

*No scoring*

1           30.12 (4m) (title) ~~DUCK CREEK DRAINAGE DISTRICT~~ CERTAIN DRAINAGE DISTRICT  
2           STRUCTURES AND DEPOSITS.

3           **SECTION 3.** 30.12 (4m) (intro.) of the statutes is renumbered 30.12 (4m) (a)  
4           (intro.) and amended to read:

5           30.12 (4m) (a) (intro.) Subsection (1) does not apply to a qualifying structure  
6           or deposit that the drainage board for the Duck Creek Drainage District places in a  
7           drain that the board operates in the Duck Creek Drainage District if either of the  
8           following applies:

9           **SECTION 4.** 30.12 (4m) (a) of the statutes is renumbered 30.12 (4m) (a) 1. and  
10          amended to read:

11          30.12 (4m) (a) 1. The department of agriculture, trade and consumer  
12          protection, after consulting with the department of natural resources, specifically  
13          approves the qualifying structure or deposit.

14          **SECTION 5.** 30.12 (4m) (b) of the statutes is renumbered 30.12 (4m) (a) 2. and  
15          amended to read:

16          30.12 (4m) (a) 2. The qualifying structure or deposit is required, under rules  
17          promulgated by the department of agriculture, trade and consumer protection, in  
18          order to conform the drain to specifications approved by the department of  
19          agriculture, trade and consumer protection after consulting with the department of  
20          natural resources.

21          **SECTION 6.** 30.12 (4m) (c) of the statutes is created to read:

22          30.12 (4m) (c) For purposes of this subsection, a “qualifying structure or  
23          deposit” is either of the following:

24            1. Any structure or deposit that is placed in a drain that is operated in the Duck  
25            Creek Drainage District by the board for the Duck Creek Drainage District.

1 2. Any structure or deposit that is placed in a drain that is not described in subd.

2 1. if the structure or deposit is not a dam, or a structure or deposit relating to a dam,  
3 and if the drain is used <sup>primarily</sup> for agricultural purposes <sup>as defined in s. 29.181(1b)(a)</sup>

4 SECTION 7. 30.20 (1) (d) of the statutes is amended to read:

5 30.20 (1) (d) The A drainage board for the Duck Creek Drainage District may,  
6 without a permit under sub. (2) (c), remove qualifying material from a drain that the  
7 board operates in the Duck Creek Drainage District if the removal is required, under  
8 rules promulgated by the department of agriculture, trade and consumer protection,  
9 in order to conform the drain to specifications imposed by the department of  
10 agriculture, trade and consumer protection after consulting with the department of  
11 natural resources.

12 SECTION 8. 30.20 (1) (dm) of the statutes is created to read:

13 30.20 (1) (dm) For purposes of this paragraph, "qualifying material" is either  
14 of the following:

15 1. Any material that is removed from a drain that is operated in the Duck Creek  
16 Drainage District by the board for the Duck Creek Drainage District.

17 2. Any material that is removed from a drain that is not described in subd. 1.

18 if the ~~drain is used~~ <sup>primarily</sup> for agricultural purposes <sup>as defined in s. 29.181(1b)(a)</sup>

19 SECTION 9. 31.01 (2m) of the statutes is created to read:

20 31.01 (2m) "Duck Creek Drainage District" has the meaning given in s. 30.01  
21 (1m).

22 SECTION 10. ~~88.31 (1) of the statutes is renumbered 88.31 (1m) and amended~~  
23 to read:

24 88.31 (1m) If it is necessary to enter upon any waters that may be navigable,  
25 ~~or to acquire and remove any dam or obstruction from the waters, or to clean out,~~

<sup>necessary</sup>  
removal is <sup>primarily</sup>

1 ~~widen, deepen or straighten any stream that may be navigable perform drainage~~  
2 ~~work, the board shall file with the department of natural resources an application~~  
3 ~~for a permit to do the drainage work. The board shall file with the application any~~  
4 ~~information that the board or the department of natural resources considers~~  
5 ~~necessary. The department shall specify by rule the information to be included in an~~  
6 ~~application. The application shall state that the public health or welfare will be~~  
7 ~~promoted by the removal of the dam or other obstruction or by the straightening,~~  
8 ~~cleaning out, deepening or widening of the waters performing the drainage work and~~  
9 ~~that other public rights in and public uses of the waters will not be materially~~  
10 ~~impaired. The application shall be duly verified.~~

11 **SECTION 11.** 88.31 (1b) of the statutes is created to read:

12 88.31 (1b) In this section, "drainage work" means removing a dam or other  
13 obstruction from a navigable body of water or cleaning out, widening, deepening, or  
14 straightening any navigable stream.

15 **SECTION 12.** 88.31 (4) (intro.) of the statutes is amended to read:

16 88.31 (4) (intro.) Upon the conclusion of the hearing and investigation, the  
17 department of natural resources shall grant the permit if it finds all of the following:

18 **SECTION 13.** 88.31 (4) (a) of the statutes is amended to read:

19 88.31 (4) (a) That the public health and welfare will be promoted by the  
20 proposed removal of the dam or other obstructions or by the proposed straightening,  
21 cleaning out, deepening or widening of such waters; and drainage work.

22 **SECTION 14.** 88.31 (4) (b) of the statutes is amended to read:

23 88.31 (4) (b) That the proposed drainage work is necessary to the proper  
24 operation of the proposed drainage system; and,

25 **SECTION 15.** 88.31 (4) (c) of the statutes is amended to read:

1 88.31 (4) (c) That the proposed drainage work will not materially impair the  
2 navigability of any such waters and will not materially impair any other public right  
3 in or public uses of such waters. The enjoyment of natural scenic beauty is declared  
4 to be a public right to be considered along with other public rights.

5 **SECTION 16.** 88.31 (6) of the statutes is amended to read:

6 88.31 (6) The department of natural resources may require the applicant for  
7 the permit to submit a plan for the drainage work to be done in the waters in question  
8 and may amend or modify such plan before approving it. The department may at any  
9 time, on the application of any interested person, further amend such plan when the  
10 same can be done without materially impairing the navigability of any such waters  
11 and without materially impairing any other public right.

12 **SECTION 17.** 88.31 (7m) of the statutes is amended to read:

13 88.31 (7m) The Duck Creek Drainage District is exempt from the permit  
14 requirements and procedures under subs. (1) (1m) to (7). ~~Any other drainage district~~  
15 ~~is exempt from the permit requirements and procedures under subs. (1m) to (7) if the~~  
16 ~~drainage work does not involve removal of, or other work on, a dam and if the~~  
17 ~~drainage work is performed for agricultural purposes.~~

18 ~~**SECTION 18.** 88.31 (8) of the statutes is renumbered 88.315 (1).~~

19 ~~**SECTION 19.** 88.31 (9) of the statutes is renumbered 88.315 (2).~~

20 ~~**SECTION 20.** 88.315 (title) of the statutes is created to read:~~

21 ~~**88.315 (title) Powers upon receipt of permits; liability.**~~

22 **SECTION 21.** 88.35 (5m) of the statutes is amended to read:

23 88.35 (5m) If navigable waters are affected by the proposed drainage, the  
24 drainage board for the drainage district shall obtain a permit under s. 88.31. This

1 ~~subsection does not apply to the Duck Creek Drainage District unless the drainage~~  
2 ~~district is exempt from such a permit under s. 88.31 (7m).~~

3 **SECTION 22.** 88.62 (3) (b) of the statutes is amended to read:

4 88.62 (3) (b) If ~~the~~ drainage work ~~that~~ is undertaken in navigable waters  
5 ~~located in the Duck Creek Drainage District is not subject to a permit under ss. 30.20~~  
6 ~~and 88.31, the board for that the~~ district shall obtain a permit under s. 30.20 or ch.  
7 31, ~~as directed~~ if the permit is determined to be necessary by the department of  
8 natural resources.

9 (END)



## Kite, Robin

**From:** Grinde, Kirsten  
**Sent:** Wednesday, January 17, 2001 6:57 PM  
**To:** Kite, Robin  
**Subject:** LRB-0605/4 - Regulation of Drainage Districts

Robin,

Sorry to keep going around on this one, but please make the following changes to LRB-0605/4:

1. Please amend s. 31.02 (7) to require DNR to confer with the department of agriculture, trade and consumer protection as well as the drainage commissioners and committees in districts having no commissioners. DNR would not have to confer with DATCP if the district has been dissolved. Also, require DNR to give careful consideration to the suggestions of DATCP under s. 31.02 (8).
2. Please repeal s. 88.01 (8m).
3. Please modify s. 88.31 to amend the title, repeal subsections (1) to (7m), and amend subsection (8) to remove "this chapter and". Also, please amend s. 88.11 (1) (f) to require the department to assist districts in applying for permits under ch. 30 and 31.
4. Please modify s. 88.35 to repeal subsection (5m) and amend subsection (6) to reflect the repeal.
5. Please amend s. 88.62 (3) (a) to replace "a permit under s. 30.20 or 88.31 or ch. 31, as directed by the department of natural resources, except as provided in par. (b)" with "any permit that is required under ch. 30 or 31."
6. Please repeal s. 88.62 (3) (b).
7. Please amend s. 88.72 (3) and (4) to remove the reference to permits under ch. 88 ("this chapter").

Items 2 - 7 above restore sections 8 to 18 of LRB-0605/1, except for section 9. Item 3 above amends s. 88.11 (1) (f) rather than repealing it. After further review, I think these changes streamline the permit process for both drainage districts and DNR by using one process for all permits under ch. 30 and 31, instead of a separate one for drainage districts. Let me know if this isn't accurate.

Thanks,

Kirsten

State Budget Office  
Department of Administration  
101 E. Wilson St., 10th floor  
Madison, WI 53707-7864

voice: (608) 266-7973  
fax: (608) 267-0372  
e-mail: kirsten.grinde@doa.state.wi.us

AM; 31.02(7)  
AM; 31.02(8)  
✓ RP; 88.01(8m)  
AM; 88.11(1)(f)  
AM; 88.31 (title)  
RP; 88.31 (1) to (7m)  
AM; 88.31(8)  
RP; 88.35(5m)  
AM; 88.35(6)  
AM; 88.62(3)(a)  
RP; 88.62(3)(b)  
AM; 88.72(3) ~~and~~  
AM; 88.72.4



*D-Note*

*noon*

DOA:.....Grinde - Regulation of drainage districts

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

~~RPS: This is  
in McG's Inbox.  
1 p.m., 1/18~~

*DON'T  
GEN. CAT.*

1 AN ACT ..., relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**NATURAL RESOURCES**

**OTHER NATURAL RESOURCES**

Under current law, drainage boards operate one or more drainage districts. A drainage district drains property owned by two or more persons. 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.

DNR regulates construction in navigable waters, including construction relating to the drainage of land. Generally, DNR determines whether a body of water such as a stream is navigable. Current law, however, provides an exemption for a drainage district drain that is located in the Duck Creek Drainage District. Under the exemption, the drain 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. This bill extends this exemption to any other drainage district drain if the drain is used primarily for agricultural purposes.

Current law provides that a person wishing to deposit any material or to 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 exemption 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 exemption to any other structure or deposit to be placed in a drainage district drain if the structure or deposit is used primarily for agricultural purposes.

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 exemptions, 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 exemption to all other drainage district drains if the removal of the material is necessary primarily for agricultural purposes.

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

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

1           **SECTION 1.** 30.10 (4) (d) of the statutes is renumbered 30.10 (4) (d) 2. and  
2 amended to read:

3           30.10 (4) (d) 2. A drainage district drain located in the Duck Creek Drainage  
4 District and operated by the board for that district or any other drainage district  
5 drain that is used primarily for agricultural purposes is not navigable unless it is  
6 shown, by means of a U.S. geological survey map or other similarly reliable scientific  
7 evidence, that the drain was a navigable stream before it became a drainage district  
8 drain.

9           **SECTION 2.** 30.10 (4) (d) 1. of the statutes is created to read:

10           30.10 (4) (d) 1. In this paragraph, "agricultural purposes" has the meaning  
11 given in s. 29.181 (1b) (a).

12           **SECTION 3.** 30.12 (4m) (title) of the statutes is amended to read:

1           30.12 (4m) (title) ~~DUCK CREEK DRAINAGE DISTRICT~~ CERTAIN DRAINAGE DISTRICT  
2 STRUCTURES AND DEPOSITS.

3           **SECTION 4.** 30.12 (4m) (intro.) of the statutes is renumbered 30.12 (4m) (a)  
4 (intro.) and amended to read:

5           30.12 (4m) (a) (intro.) Subsection (1) does not apply to a qualifying structure  
6 or deposit ~~that the drainage board for the Duck Creek Drainage District places in a~~  
7 ~~drain that the board operates in the Duck Creek Drainage District~~ if either of the  
8 following applies:

9           **SECTION 5.** 30.12 (4m) (a) of the statutes is renumbered 30.12 (4m) (a) 1. and  
10 amended to read:

11           30.12 (4m) (a) 1. The department of agriculture, trade and consumer  
12 protection, after consulting with the department of natural resources, specifically  
13 approves the qualifying structure or deposit.

14           **SECTION 6.** 30.12 (4m) (b) of the statutes is renumbered 30.12 (4m) (a) 2. and  
15 amended to read:

16           30.12 (4m) (a) 2. The qualifying structure or deposit is required, under rules  
17 promulgated by the department of agriculture, trade and consumer protection, in  
18 order to conform the drain to specifications approved by the department of  
19 agriculture, trade and consumer protection after consulting with the department of  
20 natural resources.

21           **SECTION 7.** 30.12 (4m) (c) of the statutes is created to read:

22           30.12 (4m) (c) For purposes of this subsection, a “qualifying structure or  
23 deposit” is either of the following:

24           1. Any structure or deposit that is placed in a drain that is operated in the Duck  
25 Creek Drainage District by the board for the Duck Creek Drainage District.

1           2. Any structure or deposit that is placed in a drain that is not described in subd.  
2           1. if the structure or deposit is used primarily for agricultural purposes, as defined  
3           in s. 29.181 (1b) (a).

4           **SECTION 8.** 30.20 (1) (d) of the statutes is amended to read:

5           30.20 (1) (d) ~~The A drainage board for the Duck Creek Drainage District may,~~  
6           without a permit under sub. (2) (c), remove qualifying material from a drain ~~that the~~  
7           ~~board operates in the Duck Creek Drainage District~~ if the removal is required, under  
8           rules promulgated by the department of agriculture, trade and consumer protection,  
9           in order to conform the drain to specifications imposed by the department of  
10          agriculture, trade and consumer protection after consulting with the department of  
11          natural resources.

12          **SECTION 9.** 30.20 (1) (dm) of the statutes is created to read:

13          30.20 (1) (dm) For purposes of this paragraph, "qualifying material" is either  
14          of the following:

15          1. Any material that is removed from a drain that is operated in the Duck Creek  
16          Drainage District by the board for the Duck Creek Drainage District.

17          2. Any material that is removed from a drain that is not described in subd. 1.  
18          if the removal is necessary primarily for agricultural purposes, as defined in s. 29.181  
19          (1b) (a).

20          **SECTION 10.** 31.01 (2m) of the statutes is created to read:

21          31.01 (2m) "Duck Creek Drainage District" has the meaning given in s. 30.01  
22          (1nm).

23                                        (END)

INSERT  
4-23

From LRB-0605/1  
RNK:kmg:km

~~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.

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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. 30.01 (1m) of the statutes is repealed.
- 2 SECTION 2. 30.10 (4) (d) of the statutes is amended to read:
- 3 30.10 (4) (d) A drainage district drain located in the Duck Creek Drainage
- 4 District and operated by the board for that district operated by a drainage board
- 5 under ch. 88 is not navigable unless it is shown, by means of a U.S. geological survey

~~INS 4-23~~

1 map or other similarly reliable scientific evidence, that the drain was a navigable  
2 stream before it became a drainage district drain.

3 **SECTION 3.** 30.12 (4m) (intro.) of the statutes is amended to read:

4 30.12 (4m) ~~DUCK CREEK DRAINAGE DISTRICT~~ DISTRICT STRUCTURES AND DEPOSITS.  
5 (intro.) Subsection (1) does not apply to a structure or deposit that ~~the a~~ a drainage  
6 board ~~for the Duck Creek Drainage District~~ places in a drain that the board operates  
7 ~~in the Duck Creek Drainage District~~ within a drainage district under ch. 88 if either  
8 of the following applies:

9 **SECTION 4.** 30.20 (1) (d) of the statutes is amended to read:

10 30.20 (1) (d) ~~The A~~ A drainage board for the Duck Creek Drainage District may  
11 without a permit under sub. (2) (c) remove material from a drain that the drainage  
12 board operates in the ~~Duck Creek Drainage District~~ a drainage district under ch. 88  
13 if the removal is required, under rules promulgated by the department of  
14 agriculture, trade and consumer protection, in order to conform the drain to  
15 specifications imposed by the department of agriculture, trade and consumer  
16 protection after consulting with the department of natural resources.

17 ~~SECTION 5.~~ 31.02 (7) of the statutes is repealed.

18 **SECTION 6.** 31.02 (7m) of the statutes is amended to read:

19 31.02 (7m) ~~The A~~ A drainage board for the Duck Creek Drainage District shall  
20 operate, repair, and maintain dams, dikes, and other structures in district drains  
21 that the board operates in the ~~Duck Creek Drainage District~~ a drainage district in  
22 compliance with ch. 88 and any rules promulgated by the department of agriculture,  
23 trade and consumer protection under ch. 88. If a county drainage board fails to  
24 perform its duties under this subsection, the department of natural resources may  
25 exercise its authority under ~~subs. sub. (6), (8) and (9).~~

INSERT A

INS 4-23 (cont.) LRB-0605/1 RNK:kmg:km SECTION 7 FROM

1 SECTION 7. 31.02 (8) and (9) of the statutes are repealed.

← INSERT 3A ✓

2 ✓ SECTION 8. 88.01 (8m) of the statutes is repealed.

3 ✓ SECTION 9. 88.11 (1) (f) of the statutes is repealed.

← INSERT 2B ✓

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

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

✓ SECTION 11. 88.31 (1) to (7m) of the statutes are repealed.

✓ SECTION 12. 88.31 (8) (intro.) of the statutes is amended to read:

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

✓ SECTION 13. 88.35 (5m) of the statutes is repealed.

✓ SECTION 14. 88.35 (6) (intro.) of the statutes is amended to read:

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

✓ SECTION 15. 88.62 (3) (a) of the statutes is renumbered 88.62 (3) and amended to read:

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

✓ SECTION 16. 88.62 (3) (b) of the statutes is repealed.

SECTION 17. 88.72 (3) of the statutes is amended to read:

LPS: Because the pencil is partially erased, keep SEC. 8.



1154-23  
(end)

1           88.72 (3) At the hearing on the petition, any interested person may appear and  
2 contest its sufficiency and the necessity for the work. If the drainage board finds that  
3 the petition has the proper number of signers and that to afford an adequate outlet  
4 it is necessary to remove dams or other obstructions from waters and streams which  
5 may be navigable, or to straighten, clean out, deepen, or widen any waters or streams  
6 either within or beyond the limits of the district, the board shall obtain any permit  
7 that is required under ~~this chapter or~~ ch. 30 or 31.

8           ✓ SECTION 18. 88.72 (4) of the statutes is amended to read:

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

16

~~(END)~~

1 **Insert A**

2 **SECTION 1.** 31.02 (7) of the statutes is amended to read:

3 31.02 (7) The department of natural resources shall confer with the  
4 department of agriculture, trade and consumer protection and the drainage  
5 commissioners in each drainage district on the formation of policies for the operation  
6 and maintenance of the dams; ~~in districts.~~ In a district having no commissioners, the  
7 department <sup>of natural resources</sup> shall confer in like manner with the department of agriculture, trade  
8 and consumer protection and with the any committee appointed by the county board,  
9 if any, to represent either such the drainage district, ~~or in.~~ In the event that the a  
10 drainage district is dissolved, ~~to represent the department of natural resources shall~~  
11 confer with any committee appointed by the county board to represent the interests  
12 of the county in all matters whatsoever pertaining to water conservation and control  
13 within the area which theretofore constituted such the drainage district. This  
14 subsection ~~does not apply to the Duck Creek Drainage District.~~

History: 1999 a. 9.

15 **SECTION 2.** 31.02 (7m) of the statutes is amended to read:

16 31.02 (7m) The drainage board for the Duck Creek Drainage District shall  
17 operate, repair and maintain dams, dikes and other structures in district drains that  
18 the board operates in the Duck Creek Drainage District in compliance with ch. 88  
19 and any rules promulgated by the department of agriculture, trade and consumer  
20 protection under ch. 88. ~~If a county~~ Subsection (7) does not apply to <sup>the</sup> Duck Creek  
21 Drainage District unless the drainage board for the district fails to perform its duties  
22 under this subsection, the. If the drainage board ~~does not~~ fails to perform these duties, the

*score space*  
*fails*

1 department of natural resources may exercise its authority under subs. (6), (8) and  
2 (9) and shall perform its duties under sub. (7) and (8).

History: 1999 a. 9.

3 SECTION 3. 31.02 (8) of the statutes is amended to read:

4 31.02 (8) The department of natural resources shall give careful consideration  
5 to the suggestions of made under sub. (7) by the department of agriculture, trade and  
6 consumer protection, the drainage commissioners, or any committee of the county  
7 board, but the final decision in all matters under consideration shall rest with the  
8 department of natural resources

History: 1999 a. 9.

9 SECTION 4. 31.02 (9) of the statutes is amended to read:

10 31.02 (9) So far as seems practicable, the department may designate or employ  
11 the drainage commissioners of any drainage district, or the committee of the county  
12 board above referred to appointed under sub. (7), to operate the dams in such the  
13 district or in the area formerly comprising a drainage district or to perform services  
14 in the repair and maintenance of the dams, dykes dikes and other works.

History: 1999 a. 9.

15 **Insert B**

16 SECTION 5. 88.11 (1) (f) of the statutes is amended to read:

17 88.11 (1) (f) Assist districts in applying for permits under s. 88.31 chs. 30 and  
18 31.

History: 1989 a. 31 ss. 2200d, 2200k; 1991 a. 309; 1993 a. 456.

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

LRB-0605/5dn

MGG: *mg*

1. I did some clean-up work in s. 31.02 (7), (7m), (8)<sup>V</sup> and (9). In reviewing this, note that the exemption for the Duck Creek Drainage District remains.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

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

LRB-0605/5dn  
MGG:kmg:rs

January 18, 2001

1. I did some clean-up work in s. 31.02 (7), (7m), (8), and (9). In reviewing this, note that the exemption for the Duck Creek Drainage District remains.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0605/5  
MGG&RNK:kmg:rs

DOA:.....Grinde - Regulation of drainage districts

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**NATURAL RESOURCES**

**OTHER NATURAL RESOURCES**

Under current law, drainage boards operate one or more drainage districts. A drainage district drains property owned by two or more persons. 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.

DNR regulates construction in navigable waters, including construction relating to the drainage of land. Generally, DNR determines whether a body of water such as a stream is navigable. Current law, however, provides an exemption for a drainage district drain that is located in the Duck Creek Drainage District. Under the exemption, the drain 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. This bill extends this exemption to any other drainage district drain if the drain is used primarily for agricultural purposes.

Current law provides that a person wishing to deposit any material or to 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 exemption 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 exemption to any other structure or deposit to be placed in a drainage district drain if the structure or deposit is used primarily for agricultural purposes.

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 exemptions, 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 exemption to all other drainage district drains if the removal of the material is necessary primarily for agricultural purposes.

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 and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 30.10 (4) (d) of the statutes is renumbered 30.10 (4) (d) 2. and  
2 amended to read:

3           30.10 (4) (d) 2. A drainage district drain located in the Duck Creek Drainage  
4 District and operated by the board for that district or any other drainage district  
5 drain that is used primarily for agricultural purposes is not navigable unless it is  
6 shown, by means of a U.S. geological survey map or other similarly reliable scientific  
7 evidence, that the drain was a navigable stream before it became a drainage district  
8 drain.

9           **SECTION 2.** 30.10 (4) (d) 1. of the statutes is created to read:

1           30.10 (4) (d) 1. In this paragraph, “agricultural purposes” has the meaning  
2 given in s. 29.181 (1b) (a).

3           **SECTION 3.** 30.12 (4m) (title) of the statutes is amended to read:

4           30.12 (4m) (title) ~~DUCK CREEK DRAINAGE DISTRICT~~ CERTAIN DRAINAGE DISTRICT  
5 STRUCTURES AND DEPOSITS.

6           **SECTION 4.** 30.12 (4m) (intro.) of the statutes is renumbered 30.12 (4m) (a)  
7 (intro.) and amended to read:

8           30.12 (4m) (a) (intro.) Subsection (1) does not apply to a qualifying structure  
9 or deposit ~~that the drainage board for the Duck Creek Drainage District places in a~~  
10 ~~drain that the board operates in the Duck Creek Drainage District~~ if either of the  
11 following applies:

12           **SECTION 5.** 30.12 (4m) (a) of the statutes is renumbered 30.12 (4m) (a) 1. and  
13 amended to read:

14           30.12 (4m) (a) 1. The department of agriculture, trade and consumer  
15 protection, after consulting with the department of natural resources, specifically  
16 approves the qualifying structure or deposit.

17           **SECTION 6.** 30.12 (4m) (b) of the statutes is renumbered 30.12 (4m) (a) 2. and  
18 amended to read:

19           30.12 (4m) (a) 2. The qualifying structure or deposit is required, under rules  
20 promulgated by the department of agriculture, trade and consumer protection, in  
21 order to conform the drain to specifications approved by the department of  
22 agriculture, trade and consumer protection after consulting with the department of  
23 natural resources.

24           **SECTION 7.** 30.12 (4m) (c) of the statutes is created to read:



1           30.12 (4m) (c) For purposes of this subsection, a “qualifying structure or  
2 deposit” is either of the following:

3           1. Any structure or deposit that is placed in a drain that is operated in the Duck  
4 Creek Drainage District by the board for the Duck Creek Drainage District.

5           2. Any structure or deposit that is placed in a drain that is not described in subd.  
6 1. if the structure or deposit is used primarily for agricultural purposes, as defined  
7 in s. 29.181 (1b) (a).

8           **SECTION 8.** 30.20 (1) (d) of the statutes is amended to read:

9           30.20 (1) (d) ~~The A drainage board for the Duck Creek Drainage District~~ may,  
10 without a permit under sub. (2) (c), remove qualifying material from a drain that the  
11 board operates in the Duck Creek Drainage District if the removal is required, under  
12 rules promulgated by the department of agriculture, trade and consumer protection,  
13 in order to conform the drain to specifications imposed by the department of  
14 agriculture, trade and consumer protection after consulting with the department of  
15 natural resources.

16           **SECTION 9.** 30.20 (1) (dm) of the statutes is created to read:

17           30.20 (1) (dm) For purposes of this paragraph, “qualifying material” is either  
18 of the following:

19           1. Any material that is removed from a drain that is operated in the Duck Creek  
20 Drainage District by the board for the Duck Creek Drainage District.

21           2. Any material that is removed from a drain that is not described in subd. 1.  
22 if the removal is necessary primarily for agricultural purposes, as defined in s. 29.181  
23 (1b) (a).

24           **SECTION 10.** 31.01 (2m) of the statutes is created to read:

1           31.01 (2m) “Duck Creek Drainage District” has the meaning given in s. 30.01  
2 (1m).

3           **SECTION 11.** 31.02 (7) of the statutes is amended to read:

4           31.02 (7) The department of natural resources shall confer with the  
5 department of agriculture, trade and consumer protection and the drainage  
6 commissioners in each drainage district on the formation of policies for the operation  
7 and maintenance of the dams; ~~in districts.~~ In a district having no commissioners, the  
8 department of natural resources shall confer in like manner with the department of  
9 agriculture, trade and consumer protection and with the any committee appointed  
10 by the county board, ~~if any,~~ to represent either such the drainage district, ~~or in.~~ In  
11 the event that ~~the a~~ drainage district is dissolved, ~~to represent the department of~~  
12 natural resources shall confer with any committee appointed by the county board to  
13 represent the interests of the county in all matters whatsoever pertaining to water  
14 conservation and control within the area which theretofore constituted ~~such the~~  
15 drainage district. ~~This subsection does not apply to the Duck Creek Drainage~~  
16 ~~District.~~

17           **SECTION 12.** 31.02 (7m) of the statutes is amended to read:

18           31.02 (7m) The drainage board for the Duck Creek Drainage District shall  
19 operate, repair and maintain dams, dikes and other structures in district drains that  
20 the board operates in the Duck Creek Drainage District in compliance with ch. 88  
21 and any rules promulgated by the department of agriculture, trade and consumer  
22 protection under ch. 88. If a county Subsection (7) does not apply to the Duck Creek  
23 Drainage District unless the drainage board for the district fails to perform its duties  
24 under this subsection, the. If the drainage board fails to perform these duties, the

1 department of natural resources may exercise its authority under subs. (6), (8) and  
2 (9) and shall perform its duties under subs. (7) and (8).

3 **SECTION 13.** 31.02 (8) of the statutes is amended to read:

4 31.02 (8) The department of natural resources shall give careful consideration  
5 to the suggestions of made under sub. (7) by the department of agriculture, trade and  
6 consumer protection, the drainage commissioners, or any committee of the county  
7 board, but the final decision in all matters under consideration shall rest with the  
8 department of natural resources.

9 **SECTION 14.** 31.02 (9) of the statutes is amended to read:

10 31.02 (9) So far as seems practicable, the department may designate or employ  
11 the drainage commissioners of any drainage district, or the committee of the county  
12 board above referred to appointed under sub. (7), to operate the dams in such the  
13 district or in the area formerly comprising a drainage district or to perform services  
14 in the repair and maintenance of the dams, dykes dikes and other works.

15 **SECTION 15.** 88.01 (8m) of the statutes is repealed.

16 **SECTION 16.** 88.11 (1) (f) of the statutes is amended to read:

17 88.11 (1) (f) Assist districts in applying for permits under ~~s. 88.31~~ chs. 30 and  
18 31.

19 **SECTION 17.** 88.31 (title) of the statutes is amended to read:

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

22 **SECTION 18.** 88.31 (1) to (7m) of the statutes are repealed.

23 **SECTION 19.** 88.31 (8) (intro.) of the statutes is amended to read:

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 20.** 88.35 (5m) of the statutes is repealed.

5           **SECTION 21.** 88.35 (6) (intro.) of the statutes is amended to read:

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

10           **SECTION 22.** 88.62 (3) (a) of the statutes is renumbered 88.62 (3) and amended  
11 to read:

12           88.62 (3) If drainage work is undertaken in navigable waters, the drainage  
13 board shall obtain ~~a permit under s. 30.20 or 88.31 or ch. 31, as directed by the~~  
14 ~~department of natural resources, except as provided in par. (b)~~ any permit that is  
15 required under ch. 30 or 31.

16           **SECTION 23.** 88.62 (3) (b) of the statutes is repealed.

17           **SECTION 24.** 88.72 (3) of the statutes is amended to read:

18           88.72 (3) At the hearing on the petition, any interested person may appear and  
19 contest its sufficiency and the necessity for the work. If the drainage board finds that  
20 the petition has the proper number of signers and that to afford an adequate outlet  
21 it is necessary to remove dams or other obstructions from waters and streams which  
22 may be navigable, or to straighten, clean out, deepen, or widen any waters or streams  
23 either within or beyond the limits of the district, the board shall obtain any permit  
24 that is required under ~~this chapter or~~ ch. 30 or 31.

25           **SECTION 25.** 88.72 (4) of the statutes is amended to read:

1           88.72 (4) Within 30 days after the department of natural resources has issued  
2 all of the permits as required under ~~this chapter and~~ chs. 30 and 31, the board shall  
3 proceed to estimate the cost of the work, including the expenses of the proceeding  
4 together with the damages that will result from the work, and shall, within a  
5 reasonable time, award damages to all lands damaged by the work and assess the  
6 cost of the work against the lands in the district in proportion to the assessment of  
7 benefits then in force.

8

(END)