

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: **06/22/2001**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Jefferson**

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

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - nav. waters**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

ARC:.....Jefferson - AM20,

Topic:

Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rkite 06/25/2001	hhagen 06/25/2001	jfrantze 06/26/2001	_____	lrb_docadmin 06/26/2001		
/2	phurley 06/27/2001	hhagen 06/27/2001	rschluet 06/27/2001	_____	lrb_docadmin 06/27/2001		
/3	rkite 06/27/2001	hhagen 06/27/2001	jfrantze 06/27/2001	_____	lrb_docadmin 06/27/2001		

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Budget Amendments 2001-2003

Statement of Intent

Remove DNR authority to write "best management practices" and administrative rules pertaining to farm and forest roads.

Legislator 1

Ainsworth

Amendment**Legislator 2****Race or Fair****Legislator 3****Spending Cut** **Legislator 4****Staff contact**

Kristina Boardman

Agency

Natural Resources

Summary

Among the provisions of the wetlands bill passed in the Special Session this past spring was statutory language granting the Department of Natural Resources new regulatory authority to write "best management practices" and administrative rules regulating farm roads and forest roads.

This amendment removes the DNR's authority to write best management practices and administrative rules regulating farm roads and forest roads.

Fiscal Impact

None.

Analysis

Jefferson

Request #

295

Representative Ainsworth 2001-03 ARC Budget Amendment

Agricultural Amendment to Isolated Wetlands Act (2001 Wisconsin Act 6)

This amendment removes the Department of Natural Resources' new regulatory authority to write "best management practices" and administrative rules regulating farm roads and forest roads.

2001 Wisconsin Act 6:

281.36 (4) (e) shall read:

"Construction or maintenance of farm roads, forest roads, or temporary mining roads."
{The remainder of (e) shall be deleted}.

281.36 (6) Rules for Exemptions – this section is deleted.

281.36 (8) (bn) shall read:

"The department shall issue general water quality certifications that are identical to all of the general permits issued under 33 USC 1344 (e) that applied on January 8, 2001, to nonfederal wetlands located in this state."

814.04 (1) (b) shall read:

"Except as provided in paragraph (c), no person may discharge dredged or fill material into a nonfederal wetland before the date on which this act is effective unless one of the following applies:"

814.04 (2) Rules Deadline – this section is deleted.

2001 Act 6 is attached with amendment changes noted.

DEPARTMENT: Department of Natural Resources

FISCAL IMPACT: None

May 2001 Special Session
Senate Bill 1

Date of enactment: May 7, 2001
Date of publication*: May 7, 2001

2001 WISCONSIN ACT 6

AN ACT to repeal 23.321 (1) (c); to renumber 23.321 (title) and (1) (title), (a) and (b), 23.321 (1) (d) to (f) and 23.321 (2); to renumber and amend 23.321 (2m) to (5); to amend 281.22 (title), 281.22 (3), 281.69 (3) (b) 2., 281.98 (1), 299.95 and 814.04 (intro.); and to create 281.01 (21), 281.22 (4) and 281.36 of the statutes; relating to: water quality certification for nonfederal wetlands, time limits and procedures for processing applications for water quality certifications that are applicable to wetlands, granting rule-making authority, and providing a penalty.

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

SECTION 1. 23.321 (title) and (1) (title), (a) and (b) of the statutes are renumbered 281.37 (title) and (1) (title), (a) and (b).

SECTION 2. 23.321 (1) (c) of the statutes is repealed.

SECTION 3. 23.321 (1) (d) to (f) of the statutes are renumbered 281.37 (1) (d) to (f).

SECTION 4. 23.321 (2) of the statutes, as created by 1999 Wisconsin Act 147, is renumbered 281.37 (2).

SECTION 5. 23.321 (2m) to (5) of the statutes are renumbered 281.37 (2m) to (5), and 281.37 (2m) (a) and (b) 3., as renumbered, are amended to read:

281.37 (2m) (a) 1. A person who is the holder of a permit or other approval that authorizes a mitigation project shall grant a conservation easement under s. 700.40 to the department to ensure that a wetland that is being restored, enhanced, or created will not be destroyed or substantially degraded by any subsequent owner proprietor of or holder of interest in the property on which the wetland is located. The department shall revoke the permit or other approval if the holder of the permit or other approval fails to take these measures.

2. A person who is restoring, enhancing, or creating a wetland to provide transferable credits as part of a wetlands mitigation bank shall grant a conservation easement under s. 700.40 to the department, to ensure that the wetland will not be destroyed or substantially degraded by any subsequent owner proprietor of or holder of interest in the property on which the wetland is located.

(b) 3. Any subsequent owner proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

SECTION 6. 281.01 (21) of the statutes is created to read:

281.01 (21) "Wetland" has the meaning given in s. 23.32 (1).

SECTION 7. 281.22 (title) of the statutes is amended to read:

281.22 (title) Fees and time limits for water quality determinations for wetlands.

SECTION 8. 281.22 (3) of the statutes is amended to read:

281.22 (3) EXEMPTIONS FROM FEES. This section does Subsections (1), (2) and (2m) do not apply to any federal agency or state agency.

* Section 991.11, WISCONSIN STATUTES 1999-00: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

2001 Wisconsin Act 6

- 2 -

SECTION 9. 281.22 (4) of the statutes is created to read:

281.22 (4) TIME LIMITS. The department shall promulgate a rule to establish time limits for the steps involved in processing, approving, and denying applications for determinations that the department makes as to whether projects comply with the standards of water quality established by rules promulgated under s. 281.15 that are applicable to wetlands other than nonfederal wetlands, as defined in s. 281.36 (1) (c). Upon referral of any proposed rule under this subsection to the presiding officer of each house of the legislature under s. 227.19 (2), the presiding officers shall refer the proposed rule to a senate committee and an assembly committee concerned with the environment.

SECTION 10. 281.36 of the statutes is created to read:

281.36 Water quality certification for nonfederal wetlands. (1) DEFINITIONS. In this section:

(a) "Additional federal law or interpretation" means any of the following:

1. An amendment to 33 USC 1344 (f) that becomes effective after January 9, 2001.

2. Any other federal statutory provision that affects the exemptions under 33 USC 1344 (f) and that becomes effective after January 9, 2001.

3. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that becomes effective after January 9, 2001.

4. A decision issued by a federal district or federal appellate court that affects the application of a federal amendment or provision described in subds. 1. to 3., that applies to wetlands located in this state, and that is issued after January 9, 2001.

(am) "Area of special natural resource interest" has the meaning given in s. 281.37 (1) (a).

(b) "Existing federal law or interpretation" means any of the following:

1. 33 USC 1344 (f), as amended to January 8, 2001.

2. A regulation, rule, memorandum of agreement, guidance letter, interpretive document, or other provision established by a federal agency that is promulgated or adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC 1344 (f), that applies to wetlands located in this state, and that is in effect on January 8, 2001.

3. A decision issued by a federal district or federal appellate court that affects the application of a federal statute or provision described in subd. 1. or 2., that applies to wetlands located in this state, and that is issued on or before January 8, 2001.

(bg) "Federal transportation agency" means the federal aviation administration, the federal highway administration, or the federal railroad administration.

(c) "Nonfederal wetland" means a wetland that is identified as such under sub. (1m).

(cm) "Political subdivision" means a city, village, town, or county.

(cr) "State transportation agency" means the department of transportation or the office of the commissioner of railroads.

(d) "Water quality standards" means water quality standards set under rules promulgated by the department under s. 281.15.

(1m) DETERMINATION OF NONFEDERAL WETLANDS. (a) A wetland is identified as a nonfederal wetland if either of the following applies:

1. Any discharges of dredged or fill material into the wetland are determined not to be subject to regulation under 33 USC 1344 due to the decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 (U.S. Jan. 9, 2001) or any subsequent interpretations of that decision by a federal agency or by a federal district or federal appellate court that applies to wetlands located in this state.

2. The wetland is determined to be a nonnavigable, intrastate, and isolated wetland under the decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, No. 99-1178 (U.S. Jan. 9, 2001) or any subsequent interpretations of that decision by a federal agency or by a federal district or federal appellate court that applies to wetlands located in this state.

(b) For the purpose of identifying wetlands under par. (a):

1. If the U.S. army corps of engineers issues a determination as to whether a wetland is a nonfederal wetland, the department shall adopt that determination.

2. If the U.S. army corps of engineers does not issue a determination as to whether a wetland is a nonfederal wetland, the department shall determine whether the wetland is a nonfederal wetland.

(2) CERTIFICATION REQUIREMENT. (a) No person may discharge dredged or fill material into a nonfederal wetland unless the discharge is authorized by a water quality certification issued by the department under this section. No person may violate any condition imposed by the department in a water quality certification under this section. The department may not issue a water quality certification under this section unless it determines that the discharge will comply with all applicable water quality standards.

(b) 1. The department shall approve or deny a complete application for a water quality certification under this section within 120 days after the date the department

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determines that a complete application for the certification has been submitted unless the applicant and the department agree to extend the time period. The department may not determine an application to be complete until the requirements under s. 1.11 have been met and until all of the items of information for the water quality certification and for any associated permits or other approvals have been submitted to the department. If the department fails to approve or deny the complete application within the applicable time period, the applicant may bring an action for mandamus to compel the department to approve or deny the application. If the court grants the mandamus, the department shall approve or deny the application within 30 days after the mandamus is granted and the court shall award the applicant reasonable attorney fees and court costs incurred in bringing the action.

2. For purposes of subd. 1., the department shall initially determine whether a complete application has been submitted and, no later than 30 days after the application is submitted, notify the applicant in writing about the initial determination of completeness. If the department determines that the application is incomplete, the notice shall state the reason for the determination and the specific items of information necessary to make the application complete. An applicant may supplement and resubmit an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may resubmit an application that the department has determined to be incomplete under this subdivision. The department may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete unless both the department and the applicant agree or unless the applicant makes material additions or alterations to the project for which the the application has been submitted.

(3) DELINEATION PROCEDURES. For purposes of delineating the boundary of a nonfederal wetland, the department and the person who is applying for or who holds a water quality certification under this section shall use the procedures contained in the wetlands delineation manual published by the U.S. army corps of engineers. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document that the U.S. army corps of engineers issues interpreting that manual, unless the U.S. army corps of engineers publishes an edition of the manual after January 9, 2001, and the department by rule designates that edition as the one to be used under this subsection. If the U.S. army corps of engineers issues a guidance document interpreting the edition of the wetlands delineation manual that the department is required to use under this subsection and if that guidance document is issued after the effective date of this paragraph [revisor inserts date], the department shall notify the appropriate standing committee of each house of the legislature, as determined by the speaker of the assembly

and the president of the senate, of the issuance of the guidance document and whether the department intends to promulgate a rule incorporating the provisions of the guidance document.

(4) EXEMPTIONS. Except as provided in sub. (5), the certification requirement under sub. (2) does not apply to any discharge that is the result of any of the following activities:

- (a) Normal farming, silviculture, or ranching activities.
- (b) Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a non-federal wetland.
- (c) Construction or maintenance of farm ponds, stock ponds, or irrigation ditches.
- (d) Maintenance of drainage ditches.

(e) Construction or maintenance of farm roads, forest roads, or temporary mining roads, that is performed in accordance with best management practices, as determined by the department, to ensure all of the following:

- 1. That the flow and circulation patterns and chemical and biological characteristics of the affected nonfederal wetland are not impaired.
- 2. That the reach of the affected nonfederal wetland is not reduced.
- 3. That any adverse effect on the aquatic environment of the affected nonfederal wetland is minimized to the degree required by the department.

(5) INAPPLICABILITY OF EXEMPTIONS. Notwithstanding sub. (4), a discharge that would be exempt under sub. (4) is subject to the certification requirement under sub. (2) if the discharge is incidental to an activity that has as its purpose bringing a nonfederal wetland, or part of a nonfederal wetland, into a use for which it was not previously subject and if the activity may do any of the following:

- (a) Impair the flow or circulation of any nonfederal wetland.
- (b) Reduce the reach of any nonfederal wetland.

(6) RULES FOR EXEMPTIONS. (a) The department shall promulgate rules to interpret and implement the provisions under subs. (4) and (5). In promulgating these rules, the department shall do all of the following:

- 1. Make the rules consistent with existing federal law.
- 2. Incorporate any applicable additional federal law or interpretation into the rules.

(b) Whenever an additional federal law or interpretation is initially incorporated into the rules, the department may modify the additional federal law or interpretation as it determines is necessary, but the department may not otherwise amend or modify any of the rules promulgated under this subsection.

(7) RULES PROHIBITION; DETERMINATIONS OF PUBLIC SAFETY. (a) The department may not promulgate or enforce a rule requiring a person who submits an application for a water quality certification under this section for

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2001 Wisconsin Act 6

the discharge of dredged or fill material into a nonfederal wetland to submit a description of practicable alternatives to the discharge or to submit a description of any investigation conducted to determine the viability of such alternatives if all of the following apply:

1. The wetland is less than one acre in size.
2. The wetland is not in an area of special natural resource interest.
3. The application for the water quality certification includes a copy of a determination that the discharge is necessary for public safety that is made under par. (b) or that is made in response to a request made under par. (bn).

(b) 1. A political subdivision shall make a determination as to whether a discharge into a nonfederal wetland within the boundaries of the political subdivision is necessary for public safety if requested to do so by an applicant for a water quality certification under this section. A state transportation agency shall make a determination as to whether a discharge into a nonfederal wetlands is necessary for public safety if requested to do so by an applicant for a water quality certification under this section.

2. Before a political subdivision or a state transportation agency makes any determination under subd. 1., it shall publish appropriate notice, as determined by the political subdivision or the state transportation agency, to the public that describes the request and that states that it will be making the determination. On or before the date of the publication of the notice, the political subdivision or state transportation agency shall mail or otherwise provide a written copy of the notice to the department. After publication of the notice, the governing body of the political subdivision or the state transportation agency may hold a public hearing to determine whether the discharge is necessary for public safety. Any public hearing held under this subdivision shall be held no later than 30 days after the applicant for the water quality certification made the request for the determination. The governing body of the political subdivision or the state transportation agency shall issue the determination in writing, and the determination shall include a statement of the grounds for making the determination.

3. The department or any person whose substantial interests are adversely affected by a determination issued under subd. 2. by a governing body of a political subdivision or by a state transportation agency may file for judicial review of the determination. Section 68.13 shall apply to the judicial review of a determination made by a political subdivision. Sections 227.52 to 227.58 shall apply to the judicial review of a determination made by a state transportation agency.

(bn) An applicant for a water quality certification may submit a request to a federal transportation agency for a determination as to whether a discharge into a nonfederal wetland is necessary for public safety.

(c) 1. Notwithstanding the fact that an applicant for a water quality certification under this section has received a determination that the discharge is necessary for public safety, the department may conduct an examination of the practicable alternatives to the proposed discharge that will not adversely affect the nonfederal wetland and that will not result in other significant adverse environmental consequences.

2. If the department decides under subd. 1. to conduct an examination, the department shall conduct the examination by first determining, after consulting with the applicant for the water quality certification, whether an alternative to the discharge exists on the parcel of land on which the nonfederal wetland is located that would not conflict with the determination that the discharge is necessary for public safety. At the same time that the department is conducting the examination of the practicable alternatives under this subdivision, the department shall consider the functional value of the nonfederal wetland. If the department determines that such a practicable alternative exists, the department may deny the water quality certification.

3. If the department determines that no practicable alternative exists after conducting the examination under subd 2., the department may proceed with the examination by determining, after consulting with the applicant for the water quality certification, whether an alternative to the discharge exists on the parcel of land on which the nonfederal wetland is not located that would not conflict with the determination that the discharge is necessary for public safety. At the same time that the department is conducting an examination of the practicable alternatives under this subdivision, the department shall consider the functional value of the nonfederal wetland. If the department determines that such a practicable alternative exists, the department may deny the water quality certification.

4. If the department determines that no practicable alternative exists after conducting the examination under subds. 2. and 3., the department may require that the applicant implement a mitigation project under s. 281.37 (2).

(8) GENERAL WATER QUALITY CERTIFICATIONS. (a) In lieu of issuing individual water quality certifications under this section, the department may issue a general water quality certification for types of discharges that the department determines are similar in nature or for the purpose of simplifying the certification process if the discharges meet all of the following standards:

1. The discharges will cause only minimal adverse environmental effects, as determined by the department, if they are performed separately.

2. The cumulative adverse effect on the environment by the discharges will be minimal, as determined by the department.

(b) No general water quality certification issued under par. (a) may be effective for more than 5 years after the date of its issuance.

(bn) 1. The department shall issue general water quality certifications that are ~~consistent with~~ all of the general permits issued under 33 USC 1344 (e) that applied on January 8, 2001, to nonfederal wetlands located in this state.

2. If a general permit as specified in subd. 1. is amended or modified after January 8, 2001, the department shall incorporate the amendments or modifications into the general water quality certification issued under subd. 1. and may not otherwise amend or modify the general water quality certification.

(c) If the department determines that any of the discharges under a general water quality certification issued under par. (a) fails to meet any of the standards in par. (a), the department shall modify the certification so that the discharges meet all of the standards. If the department cannot modify the certification so that all of the standards will be met or if the department determines that the discharges subject to the general certification are more appropriately certified by using individual water quality certifications, the department shall revoke the general certification.

(d) Before issuing, modifying, or revoking a general water quality certification issued under par. (a), the department shall provide notice and a hearing under ss. 227.17 and 227.18.

(e) Subsection (2) (b) does not apply to general water quality certifications issued under this subsection.

(9) INSPECTION AUTHORITY. (a) For purposes of enforcing this section, any employee or other representative of the department, upon presenting his or her credentials, may do any of the following:

1. Enter and inspect any property on which is located a nonfederal wetland, or part of a nonfederal wetland, for which an application for a water quality certification has been submitted to the department.

2. Enter and inspect any property on which is located a nonfederal wetland to investigate a discharge of dredged or fill material that the department has reason to believe is in violation of this section.

3. Gain access to and inspect any records that the department requires a holder of a water quality certification to keep.

(am) An employee or representative of the department may not exercise the authority granted under par. (a) 1. before the date on which the application is submitted. If the application is denied or withdrawn, an employee or representative of the department may not exercise this authority after the date on which the application is denied or withdrawn. If the application is approved, an employee or representative of the department may not exercise this authority after the 30th day immediately following the completion date of the discharge of the

dredged or fill material or the completion date of any conditions imposed under the water quality certification, whichever date is later.

(ar) 1. Before entering and inspecting a property under par. (a) 2., the department shall make at least one of the following requests:

a. A request for consent from the proprietor to enter and inspect the property.

b. A request, orally or in writing, that the proprietor provide an oral or written explanation, as elected by the department, concerning the activity that the department has reason to believe may constitute a violation of this section.

2. a. If the proprietor grants consent for the entry on, and the inspection of, the property to investigate a discharge as authorized under par. (a) 2., the department, upon reasonable advance notice, may enter and inspect the property in compliance with the terms of the consent granted by the proprietor.

b. If the proprietor refuses to grant consent for the entry on, or the inspection of, the property or if the proprietor's explanation or terms of consent are not acceptable to the department of natural resources, the department of natural resources may apply for, obtain, or execute a special inspection warrant under s. 66.0119 or refer the matter to the department of justice for enforcement under s. 299.95.

c. If the proprietor fails to respond to all requests made under subd. 1., an agent of the department of natural resources may apply for, obtain, and execute a special inspection warrant under s. 66.0119.

3. Any employee or representative of the department may make the requests under subd. 1. or enter or inspect property under subd. 2. a. only during reasonable hours.

(b) Any employee or representative of the department may exercise the authority granted under par. (a) 1. or 3. only during reasonable hours and only after the department has provided reasonable advance notice to the proprietor of the property involved or to the holder of the water quality certification.

(c) An employee or representative of the department may not gain access to or inspect any records as authorized under par. (a) 3. unless the holder of the water quality certification, or the holder's designee, is present or unless the holder of the certification waives this requirement.

(10) OTHER REQUIREMENTS. This section does not affect the authority of the department to do any of the following:

(a) Regulate the discharge of dredged or fill material in a nonfederal wetland under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

(b) Issue a water quality certification under rules promulgated under this chapter to implement 33 USC 1341 (a).

identical to

2001 Wisconsin Act 6

SECTION 11. 281.69 (3) (b) 2. of the statutes is amended to read:

281.69 (3) (b) 2. The restoration of a wetland, as defined in s. 23.32 (1), if the restoration will protect or improve a lake's water quality or its natural ecosystem.

SECTION 12. 281.98 (1) of the statutes is amended to read:

281.98 (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any rule promulgated or any plan approval, license or special order, or water quality certification issued under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed, or enjoined, this penalty does not accrue.

SECTION 13. 299.95 of the statutes is amended to read:

299.95 Enforcement; duty of department of justice; expenses. The attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals and permits, and water quality certifications of the department, except those promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as provided in s. 285.86. The circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval or permit, or certification by injunctive and other relief appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval or permit or certification prohibits in whole or in part any pollution, a violation is considered a public nuisance. The department of natural resources may enter into agreements with the department of justice to assist with the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid to the department of justice under these agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

SECTION 14. 814.04 (intro.) of the statutes is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.30 (5m), 106.50 (6) (i) and (6m) (a),

115.80 (9), ~~281.36 (2) (b) 1.~~, 769.313, 814.025, 814.245, 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

SECTION 15. Nonstatutory provisions.

(1) TEMPORARY PROCESS.

(a) In this subsection, "existing federal law or interpretation" has the meaning given in section 281.36 (1) (b) of the statutes, as created by this act.

(b) Except as provided in paragraph (c), no person may discharge dredged or fill material into a nonfederal wetland before the date on which ~~the rules required under section 281.36 (6) of the statutes, as created by this act~~ *leave in* are effective unless one of the following applies:

1. The person demonstrates to the satisfaction of the department of natural resources that the discharge would qualify for an exemption under existing federal law or interpretation.

2. The person receives a water quality certification issued under section 281.36 of the statutes, as created by this act.

3. The person demonstrates to the satisfaction of the department of natural resources that the discharge is exempt from the water quality standards for wetlands set under rules promulgated under section 281.15 of the statutes.

(c) This subsection does not apply after the date on which the rules required under section 281.36 (6) of the statutes, as created by this act, are effective.

~~(2) RULES DEADLINE. The department of natural resources shall submit in proposed form the rules required under section 281.36 (6) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 13th month beginning after the effective date of this subsection.~~ *leave in*

(3) LEGISLATIVE COUNCIL STUDY. The joint legislative council is requested to establish a committee to study the regulation of wetlands.

SECTION 16. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 23.321 (2) of the statutes takes effect on August 1, 2001, or on the day after publication, whichever is later.

Gibson-Glass, Mary

From: Jefferson, Mark
Sent: Friday, June 22, 2001 8:24 AM
To: Gibson-Glass, Mary
Cc: Boardman, Kristina

Importance: High

Mary,

Thank you for your voice mail. I hope this is helpful. If not, you can call me or Kristina Boardman in Rep. Ainsworth's office at 6-3097.

Thanks,
Mark J.



Budget Adendments
1999-2000.h...

this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f) **Non-prohibited discharge of dredged or fill material.** (1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material—

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) [33 USCS § 1288(b)(4)] which meets the requirements of subparagraphs (B) and (C) of such section,

is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act [33 USCS §§ 1311(a), 1342] (except for effluent standards or prohibitions under section 307 [33 USCS § 1317]).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach



soon
D-Note

ARC:.....Jefferson – AM20, Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 492, line 2: after that line insert: insert 492-2

3 2. Page 494, line 8: after that line insert: insert 494-8

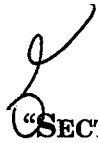
4 3. Page 494, line 19: after that line insert: insert 494-19

5 4. Page 511, line 25: after that line insert: insert 511-25

6 5. Page 512, line 3: after that line insert: insert 512-3

7 6. Page 881, line 4: after that line insert: insert 881-4

8 7. Page 881, line 10: after that line insert: insert 881-10



1 “SECTION 2378m. 88.95 of the statutes is created to read:

2 **88.95 Geographic information system maps.** If a county prepares a
3 geographic information system map in preliminary form and the map includes a
4 stream, ditch, dike, or levee, the county shall furnish each drainage district in which
5 the land is located with a copy of the map. No later than 120 days after the drainage
6 district receives the map, the drainage district shall provide notice to the county if
7 the drainage district determines that there is an error or omission in the map. If the
8 drainage district provides such notice, the county shall correct the error or omission
9 on the map. If the county does not correct the error or omission because it does not
10 concur with the drainage district, the land information board shall resolve the
11 conflict.”.

→ MGG insert

RNK inserts

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

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

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.

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.

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

1240g, Insert 492-2

1 " SECTION ~~2~~ 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.

1240r, ✓

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 ^{1248C ✓} SECTION ~~30.12~~ (4m) (title) of the statutes is amended to read:
Insert 494-8

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

6 ^{1248g ✓} SECTION ~~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 ^{1248n. ✓} SECTION ~~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 ^{1248r. ✓} SECTION ~~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 ^{1248w. ✓} SECTION ~~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 1255g.

Insert 494-19

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 qualifying material from a drain that the
12 board operates in the Duck Creek Drainage District if the removal is required, under
13 rules promulgated by the department of agriculture, trade and consumer protection,
14 in order to conform the drain to specifications imposed by the department of
15 agriculture, trade and consumer protection after consulting with the department of
16 natural resources.

16 SECTION 9/ 30.20 (1) (dm) of the statutes is created to read:
17 1255r.

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:

Insert 511-25

1339m.

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

3 " SECTION ^{1341d.} 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 ^{1341h.} 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~~^{1341 p.} 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~~^{1341 f.} 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~~^{2348 g.} 88.01 (8m) of the statutes is repealed. ^{Insert 881-4}

16 SECTION ~~16~~^{2348 r.} 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~~^{S3 2348 b.} 88.31 (title) of the statutes is amended to read: ^{Insert 881-10}

20 88.31 (title) ~~Special procedure in cases affecting~~ Drainage work in
21 navigable waters. ^{S3}

22 SECTION ~~18~~^{2348 e.} 88.31 (1) to (7m) of the statutes are repealed.

23 SECTION ~~19~~^{2348 g.} 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~~^{23481.} 88.35 (5m) of the statutes is repealed.

5 SECTION ~~21~~^{2353k.} 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~~^{2378m.} 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. ⁵³

16 SECTION ~~23~~^{2378p.} 88.62 (3) (b) of the statutes is repealed.

17 SECTION ~~24~~^{2378r.} 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~~^{2378t. 53} 88.72 (4) of the statutes is amended to read:

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1488/P1ins
MGG:.....

MGG insert

Page 1045, line 11; after that line insert:
3161c ✓

1 SECTION 281.36 (4) (e) (intro.) of the statutes, as created by 2001 Wisconsin
2 Act 6, is amended to read:

3 281.36 (4) (e) (intro.) Construction or maintenance of farm roads, forest roads,
4 or temporary mining roads that is performed in accordance with best management
5 practices, as determined by the department, to ensure all of the following:

6 SECTION 281.36 (4) (e) 3. of the statutes, as created by 2001 Wisconsin Act
7 6, is amended to read:

8 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the
9 affected nonfederal wetland is minimized to the degree required by the department.

10 SECTION 281.36 (6) (a) 1. of the statutes, as created by 2001 Wisconsin Act
11 6, is amended to read:

12 281.36 (6) (a) 1. Make the rules consistent with identical to existing federal law.
3161m ✓

13 SECTION 281.36 (6) (b) of the statutes, as created by 2001 Wisconsin Act 6,
14 is amended to read:

15 281.36 (6) (b) ~~Whenever an Any~~ additional federal law or interpretation is
16 ~~initially that is~~ incorporated into the rules, ~~the department may modify~~ under this
17 ~~subsections~~ shall be identical to the additional federal law or interpretation as it
18 ~~determines is necessary, but the.~~ The department may not otherwise amend or
19 modify any of the rules promulgated under this subsection.

20 SECTION 281.36 (8) (bn) 1. of the statutes, as created by 2001 Wisconsin Act
21 6, is amended to read:

22 281.36 (8) (bn) 1. The department shall issue general water quality
23 certifications that ~~are consistent with~~ identical to all of the general permits issued

plain

1 under 33 USC 1344 (e) that applied on January 8, 2001, to nonfederal wetlands
2 located in this state.

3 ^{31615 ✓} SECTION ~~27~~ 281.36 (8) (bn) 2. of the statutes, as created by 2001 Wisconsin Act
4 6, is amended to read:

5 281.36 (8) (bn) 2. If a general permit as specified in subd. 1. is amended or
6 modified after January 8, 2001, the department shall incorporate the amendments
7 or modifications into the general water quality certification issued under subd. 1.
8 and so that the general water quality certification continues to be identical to the
9 the general permit. The department may not otherwise amend or modify the general
10 water quality certification. "

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1488/P1dn

MGG: *hsh*

Date

If time permits, I would ask that you allow Representative Ainsworth's office a chance to review this draft.

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

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

LRBb1488/1dn
MGG:hmh:jf

June 26, 2001

If time permits, I would ask that you allow Representative Ainsworth's office a chance to review this draft.

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



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1488/A

2
RNK:bmb:jf

redraft
run steps

ARC:.....Jefferson – AM20, Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

D-note

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 492, line 2: after that line insert:

3 "SECTION 1240g. 30.10 (4) (d) of the statutes is renumbered 30.10 (4) (d) 2. and
4 amended to read:

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

1 evidence, that the drain was a navigable stream before it became a drainage district
2 drain.

3 **SECTION 1240r.** 30.10 (4) (d) 1. of the statutes is created to read:

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

6 **2.** Page 494, line 8: after that line insert:

7 **“SECTION 1248c.** 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 1248g.** 30.12 (4m) (intro.) of the statutes is renumbered 30.12 (4m)
11 (a) (intro.) and amended to read:

12 30.12 (4m) (a) (intro.) Subsection (1) does not apply to a qualifying structure
13 or deposit ~~that the drainage board for the Duck Creek Drainage District places in a~~
14 ~~drain that the board operates in the Duck Creek Drainage District~~ if either of the
15 following applies:

16 **SECTION 1248n.** 30.12 (4m) (a) of the statutes is renumbered 30.12 (4m) (a) 1.
17 and amended to read:

18 30.12 (4m) (a) 1. The department of agriculture, trade and consumer
19 protection, after consulting with the department of natural resources, specifically
20 approves the qualifying structure or deposit.

21 **SECTION 1248r.** 30.12 (4m) (b) of the statutes is renumbered 30.12 (4m) (a) 2.
22 and amended to read:

23 30.12 (4m) (a) 2. The qualifying structure or deposit is required, under rules
24 promulgated by the department of agriculture, trade and consumer protection, in

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

4 **SECTION 1248w.** 30.12 (4m) (c) of the statutes is created to read:

5 30.12 (4m) (c) For purposes of this subsection, a “qualifying structure or
6 deposit” is either of the following:

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

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

10 1. if the structure or deposit is used primarily for agricultural purposes, as defined
11 in s. 29.181 (1b) (a).”.

12 **3.** Page 494, line 19: after that line insert:

13 **“SECTION 1255g.** 30.20 (1) (d) of the statutes is amended to read:

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

21 **SECTION 1255r.** 30.20 (1) (dm) of the statutes is created to read:

22 30.20 (1) (dm) For purposes of this paragraph, “qualifying material” is either
23 of the following:

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

3 2. Any material that is removed from a drain that is not described in subd. 1.
4 if the removal is necessary primarily for agricultural purposes, as defined in s. 29.181
5 (1b) (a).”.

6 **4.** Page 511, line 25: after that line insert:

7 “**SECTION 1339m.** 31.01 (2m) of the statutes is created to read:

8 31.01 (2m) “Duck Creek Drainage District” has the meaning given in s. 30.01
9 (1nm).”.

10 **5.** Page 512, line 3: after that line insert:

11 “**SECTION 1341d.** 31.02 (7) of the statutes is amended to read:

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

1 **SECTION 1341h.** 31.02 (7m) of the statutes is amended to read:

2 **31.02 (7m)** The drainage board for the Duck Creek Drainage District shall
3 operate, repair and maintain dams, dikes and other structures in district drains that
4 the board operates in the Duck Creek Drainage District in compliance with ch. 88
5 and any rules promulgated by the department of agriculture, trade and consumer
6 protection under ch. 88. If a county Subsection (7) does not apply to the Duck Creek
7 Drainage District unless the drainage board for the district fails to perform its duties
8 under this subsection, the. If the drainage board fails to perform these duties, the
9 department of natural resources may exercise its authority under subs. (6), ~~(8)~~ and
10 (9) and shall perform its duties under subs. (7) and (8).

11 **SECTION 1341p.** 31.02 (8) of the statutes is amended to read:

12 **31.02 (8)** The department of natural resources shall give careful consideration
13 to the suggestions of made under sub. (7) by the department of agriculture, trade and
14 consumer protection, the drainage commissioners, or any committee of the county
15 board, but the final decision in all matters under consideration shall rest with the
16 department of natural resources.

17 **SECTION 1341t.** 31.02 (9) of the statutes is amended to read:

18 **31.02 (9)** So far as seems practicable, the department may designate or employ
19 the drainage commissioners of any drainage district, or the committee of the county
20 board ~~above referred to~~ appointed under sub. (7), to operate the dams in such the
21 district or in the area formerly comprising a drainage district or to perform services
22 in the repair and maintenance of the dams, ~~dykes~~ dikes and other works.”.

23 **6.** Page 881, line 4: after that line insert:

24 **“SECTION 2348g.** 88.01 (8m) of the statutes is repealed.

1 **SECTION 2348r.** 88.11 (1) (f) of the statutes is amended to read:

2 88.11 (1) (f) Assist districts in applying for permits under ~~s. 88.31~~ chs. 30 and
3 31.”.

4 **7.** Page 881, line 10: after that line insert:

5 “**SECTION 2353b.** 88.31 (title) of the statutes is amended to read:

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

8 **SECTION 2353e.** 88.31 (1) to (7m) of the statutes are repealed.

9 **SECTION 2353g.** 88.31 (8) (intro.) of the statutes is amended to read:

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

13 **SECTION 2353i.** 88.35 (5m) of the statutes is repealed.

14 **SECTION 2353k.** 88.35 (6) (intro.) of the statutes is amended to read:

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

19 **SECTION 2353m.** 88.62 (3) (a) of the statutes is renumbered 88.62 (3) and
20 amended to read:

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

1 **SECTION 2353p.** 88.62 (3) (b) of the statutes is repealed.

2 **SECTION 2353r.** 88.72 (3) of the statutes is amended to read:

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

10 **SECTION 2353t.** 88.72 (4) of the statutes is amended to read:

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

18 **SECTION 2378m.** 88.95 of the statutes is created to read:

19 **88.95 Geographic information system maps.** If a county prepares a
20 geographic information system map in preliminary form and the map includes a
21 stream, ditch, dike, or levee, the county shall furnish each drainage district in which
22 the land is located with a copy of the map. No later than 120 days after the drainage
23 district receives the map, the drainage district shall provide notice to the county if
24 the drainage district determines that there is an error or omission in the map. If the
25 drainage district provides such notice, the county shall correct the error or omission

1 on the map. If the county does not correct the error or omission because it does not
2 concur with the drainage district, the land information board shall resolve the
3 conflict.”.

4 **8.** Page 1045, line 11: after that line insert:

5 “**SECTION 3161c.** 281.36 (4) (e) (intro.) of the statutes, as created by 2001
6 Wisconsin Act 6, is amended to read:

7 281.36 (4) (e) (intro.) Construction or maintenance of farm roads, forest roads,
8 or temporary mining roads that is performed in accordance with best management
9 practices, ~~as determined by the department,~~ to ensure all of the following:

10 **SECTION 3161g.** 281.36 (4) (e) 3. of the statutes, as created by 2001 Wisconsin
11 Act 6, is amended to read:

12 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the
13 affected nonfederal wetland is minimized ~~to the degree required by the department.~~

14 **SECTION 3161j.** 281.36 (6) (a) 1. of the statutes, as created by 2001 Wisconsin
15 Act 6, is amended to read:

16 281.36 (6) (a) 1. Make the rules ~~consistent with~~ identical to existing federal law.

17 **SECTION 3161m.** 281.36 (6) (b) of the statutes, as created by 2001 Wisconsin
18 Act 6, is amended to read:

19 281.36 (6) (b) ~~Whenever an~~ Any additional federal law or interpretation is
20 ~~initially that is~~ incorporated into the rules, the department may modify under this
21 subsection shall be identical to the additional federal law or interpretation ~~as it~~
22 ~~determines is necessary, but the.~~ The department may not otherwise amend or
23 modify any of the rules promulgated under this subsection.

1 **SECTION 3161p.** 281.36 (8) (bn) 1. of the statutes, as created by 2001 Wisconsin
2 Act 6, is amended to read:

3 281.36 (8) (bn) 1. The department shall issue general water quality
4 certifications that are ~~consistent with~~ identical to all of the general permits issued
5 under 33 USC 1344 (e) that applied on January 8, 2001, to nonfederal wetlands
6 located in this state.

7 **SECTION 3161s.** 281.36 (8) (bn) 2. of the statutes, as created by 2001 Wisconsin
8 Act 6, is amended to read:

9 281.36 (8) (bn) 2. If a general permit as specified in subd. 1. is amended or
10 modified after January 8, 2001, the department shall incorporate the amendments
11 or modifications into the general water quality certification issued under subd. 1.
12 and so that the general water quality certification continues to be identical to the
13 general permit. The department may not otherwise amend or modify the general
14 water quality certification.”

15

(END)

D-201e

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1488/2dn
RNK:hmh:jf

Dak

This draft is identical to LRB 1488/1 except that it corrects a typographical error.

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

LRBb1488/2dn
RNK:lmh:rs

June 27, 2001

This draft is identical to LRB 1488/1 except that it corrects a typographical error.

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

Kite, Robin

From: Jefferson, Mark
Sent: Wednesday, June 27, 2001 1:24 PM
To: Kite, Robin
Subject: FW: LRB Draft: 01b1488/2 Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

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

From: Rodriguez, Charlene
Sent: Wednesday, June 27, 2001 12:22 PM
To: Jefferson, Mark
Cc: Boardman, Kristina; Southworth, Scott
Subject: RE: LRB Draft: 01b1488/2 Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

Mark:

Thanks for your patience. There is a minor change to this draft.

Page 8, line 2: after "concur with the drainage district," INSERT "*the county shall notify the drainage district and the land information board and*" then continue (as written) with "the land information board shall resolve the conflict."

Don't hesitate to call me with any questions you may have.

Thanks,

Char
6-3791

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

From: Jefferson, Mark
Sent: Wednesday, June 27, 2001 10:30 AM
To: Rodriguez, Charlene
Subject: FW: LRB Draft: 01b1488/2 Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

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

From: Schlueter, Ron
Sent: Wednesday, June 27, 2001 10:28 AM
To: Jefferson, Mark
Cc: Legislative Fiscal Bureau; Hanaman, Cathlene; Haugen, Caroline
Subject: LRB Draft: 01b1488/2 Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

Following is the PDF version of draft 01b1488/2.

<< File: 01b1488/2 >> << File: 01b1488/2dn >>



ARC:.....Jefferson – AM20, Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 492, line 2: after that line insert:

3 "SECTION 1240g. 30.10 (4) (d) of the statutes is renumbered 30.10 (4) (d) 2. and
4 amended to read:

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

1 evidence, that the drain was a navigable stream before it became a drainage district
2 drain.

3 **SECTION 1240r.** 30.10 (4) (d) 1. of the statutes is created to read:

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

6 **2.** Page 494, line 8: after that line insert:

7 **“SECTION 1248c.** 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 1248g.** 30.12 (4m) (intro.) of the statutes is renumbered 30.12 (4m)

11 (a) (intro.) and amended to read:

12 30.12 (4m) (a) (intro.) Subsection (1) does not apply to a qualifying structure
13 or deposit ~~that the drainage board for the Duck Creek Drainage District places in a~~
14 ~~drain that the board operates in the Duck Creek Drainage District~~ if either of the
15 following applies:

16 **SECTION 1248n.** 30.12 (4m) (a) of the statutes is renumbered 30.12 (4m) (a) 1.
17 and amended to read:

18 30.12 (4m) (a) 1. The department of agriculture, trade and consumer
19 protection, after consulting with the department of natural resources, specifically
20 approves the qualifying structure or deposit.

21 **SECTION 1248r.** 30.12 (4m) (b) of the statutes is renumbered 30.12 (4m) (a) 2.
22 and amended to read:

23 30.12 (4m) (a) 2. The qualifying structure or deposit is required, under rules
24 promulgated by the department of agriculture, trade and consumer protection, in

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

4 **SECTION 1248w.** 30.12 (4m) (c) of the statutes is created to read:

5 30.12 (4m) (c) For purposes of this subsection, a “qualifying structure or
6 deposit” is either of the following:

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

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

12 **3.** Page 494, line 19: after that line insert:

13 **“SECTION 1255g.** 30.20 (1) (d) of the statutes is amended to read:

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

21 **SECTION 1255r.** 30.20 (1) (dm) of the statutes is created to read:

22 30.20 (1) (dm) For purposes of this paragraph, “qualifying material” is either
23 of the following:

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

3 2. Any material that is removed from a drain that is not described in subd. 1.
4 if the removal is necessary primarily for agricultural purposes, as defined in s. 29.181
5 (1b) (a).”.

6 **4.** Page 511, line 25: after that line insert:

7 “**SECTION 1339m.** 31.01 (2m) of the statutes is created to read:

8 31.01 (2m) “Duck Creek Drainage District” has the meaning given in s. 30.01
9 (1nm).”.

10 **5.** Page 512, line 3: after that line insert:

11 “**SECTION 1341d.** 31.02 (7) of the statutes is amended to read:

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

1 **SECTION 1341h.** 31.02 (7m) of the statutes is amended to read:

2 31.02 (7m) The drainage board for the Duck Creek Drainage District shall
3 operate, repair and maintain dams, dikes and other structures in district drains that
4 the board operates in the Duck Creek Drainage District in compliance with ch. 88
5 and any rules promulgated by the department of agriculture, trade and consumer
6 protection under ch. 88. If a county Subsection (7) does not apply to the Duck Creek
7 Drainage District unless the drainage board for the district fails to perform its duties
8 under this subsection, the. If the drainage board fails to perform these duties, the
9 department of natural resources may exercise its authority under subs. (6), (8) and
10 (9) and shall perform its duties under subs. (7) and (8).

11 **SECTION 1341p.** 31.02 (8) of the statutes is amended to read:

12 31.02 (8) The department of natural resources shall give careful consideration
13 to the suggestions of made under sub. (7) by the department of agriculture, trade and
14 consumer protection, the drainage commissioners, or any committee of the county
15 board, but the final decision in all matters under consideration shall rest with the
16 department of natural resources.

17 **SECTION 1341t.** 31.02 (9) of the statutes is amended to read:

18 31.02 (9) So far as seems practicable, the department may designate or employ
19 the drainage commissioners of any drainage district, or the committee of the county
20 board ~~above referred to~~ appointed under sub. (7), to operate the dams in ~~such~~ the
21 district or in the area formerly comprising a drainage district or to perform services
22 in the repair and maintenance of the dams, ~~dykes~~ dikes and other works.”.

23 **6.** Page 881, line 4: after that line insert:

24 **“SECTION 2348g.** 88.01 (8m) of the statutes is repealed.

1 **SECTION 2348r.** 88.11 (1) (f) of the statutes is amended to read:

2 88.11 (1) (f) Assist districts in applying for permits under s. ~~88.31~~ chs. 30 and
3 31.”.

4 **7.** Page 881, line 10: after that line insert:

5 **SECTION 2353b.** 88.31 (title) of the statutes is amended to read:

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

8 **SECTION 2353e.** 88.31 (1) to (7m) of the statutes are repealed.

9 **SECTION 2353g.** 88.31 (8) (intro.) of the statutes is amended to read:

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

13 **SECTION 2353i.** 88.35 (5m) of the statutes is repealed.

14 **SECTION 2353k.** 88.35 (6) (intro.) of the statutes is amended to read:

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

19 **SECTION 2353m.** 88.62 (3) (a) of the statutes is renumbered 88.62 (3) and
20 amended to read:

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

1 **SECTION 2353p.** 88.62 (3) (b) of the statutes is repealed.

2 **SECTION 2353r.** 88.72 (3) of the statutes is amended to read:

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

10 **SECTION 2353t.** 88.72 (4) of the statutes is amended to read:

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

18 **SECTION 2378m.** 88.95 of the statutes is created to read:

19 **88.95 Geographic information system maps.** If a county prepares a
20 geographic information system map in preliminary form and the map includes a
21 stream, ditch, dike, or levee, the county shall furnish each drainage district in which
22 the land is located with a copy of the map. No later than 120 days after the drainage
23 district receives the map, the drainage district shall provide notice to the county if
24 the drainage district determines that there is an error or omission in the map. If the
25 drainage district provides such notice, the county shall correct the error or omission

1 on the map. If the county does not correct the error or omission because it does not
2 concur with the drainage district, the land information board shall resolve the
3 conflict.”.

4 **8.** Page 1045, line 11: after that line insert:

5 “**SECTION 3161c.** 281.36 (4) (e) (intro.) of the statutes, as created by 2001
6 Wisconsin Act 6, is amended to read:

7 281.36 (4) (e) (intro.) Construction or maintenance of farm roads, forest roads,
8 or temporary mining roads that is performed in accordance with best management
9 practices, ~~as determined by the department,~~ to ensure all of the following:

10 **SECTION 3161g.** 281.36 (4) (e) 3. of the statutes, as created by 2001 Wisconsin
11 Act 6, is amended to read:

12 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the
13 affected nonfederal wetland is minimized ~~to the degree required by the department.~~

14 **SECTION 3161j.** 281.36 (6) (a) 1. of the statutes, as created by 2001 Wisconsin
15 Act 6, is amended to read:

16 281.36 (6) (a) 1. Make the rules ~~consistent with~~ identical to existing federal law.

17 **SECTION 3161m.** 281.36 (6) (b) of the statutes, as created by 2001 Wisconsin
18 Act 6, is amended to read:

19 281.36 (6) (b) ~~Whenever an~~ Any additional federal law or interpretation is
20 initially that is incorporated into the rules, the department may modify under this
21 subsection shall be identical to the additional federal law or interpretation as it
22 ~~determines is necessary, but the.~~ The department may not otherwise amend or
23 modify any of the rules promulgated under this subsection.

*the county shall notify the drainage district and
the land information board and*

1 **SECTION 3161p.** 281.36 (8) (bn) 1. of the statutes, as created by 2001 Wisconsin
2 Act 6, is amended to read:

3 281.36 (8) (bn) 1. The department shall issue general water quality
4 certifications that are ~~consistent with~~ identical to all of the general permits issued
5 under 33 USC 1344 (e) that applied on January 8, 2001, to nonfederal wetlands
6 located in this state.

7 **SECTION 3161s.** 281.36 (8) (bn) 2. of the statutes, as created by 2001 Wisconsin
8 Act 6, is amended to read:

9 281.36 (8) (bn) 2. If a general permit as specified in subd. 1. is amended or
10 modified after January 8, 2001, the department shall incorporate the amendments
11 or modifications into the general water quality certification issued under subd. 1.
12 and so that the general water quality certification continues to be identical to the
13 general permit. The department may not otherwise amend or modify the general
14 water quality certification.”.

15

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1488/3
RNK&MGG:hmh:jf

ARC:.....Jefferson – AM20, Restore drainage district regulation, require counties to submit GIS maps, and modification to wetlands regulation

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 492, line 2: after that line insert:

3 “SECTION 1240g. 30.10 (4) (d) of the statutes is renumbered 30.10 (4) (d) 2. and
4 amended to read:

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

1 evidence, that the drain was a navigable stream before it became a drainage district
2 drain.

3 **SECTION 1240r.** 30.10 (4) (d) 1. of the statutes is created to read:

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

6 **2.** Page 494, line 8: after that line insert:

7 **“SECTION 1248c.** 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 1248g.** 30.12 (4m) (intro.) of the statutes is renumbered 30.12 (4m)

11 (a) (intro.) and amended to read:

12 30.12 (4m) (a) (intro.) Subsection (1) does not apply to a qualifying structure
13 or deposit ~~that the drainage board for the Duck Creek Drainage District places in a~~
14 ~~drain that the board operates in the Duck Creek Drainage District~~ if either of the
15 following applies:

16 **SECTION 1248n.** 30.12 (4m) (a) of the statutes is renumbered 30.12 (4m) (a) 1.
17 and amended to read:

18 30.12 (4m) (a) 1. The department of agriculture, trade and consumer
19 protection, after consulting with the department of natural resources, specifically
20 approves the qualifying structure or deposit.

21 **SECTION 1248r.** 30.12 (4m) (b) of the statutes is renumbered 30.12 (4m) (a) 2.
22 and amended to read:

23 30.12 (4m) (a) 2. The qualifying structure or deposit is required, under rules
24 promulgated by the department of agriculture, trade and consumer protection, in

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

4 **SECTION 1248w.** 30.12 (4m) (c) of the statutes is created to read:

5 30.12 (4m) (c) For purposes of this subsection, a “qualifying structure or
6 deposit” is either of the following:

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

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

12 **3.** Page 494, line 19: after that line insert:

13 **“SECTION 1255g.** 30.20 (1) (d) of the statutes is amended to read:

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

21 **SECTION 1255r.** 30.20 (1) (dm) of the statutes is created to read:

22 30.20 (1) (dm) For purposes of this paragraph, “qualifying material” is either
23 of the following:

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

3 2. Any material that is removed from a drain that is not described in subd. 1.
4 if the removal is necessary primarily for agricultural purposes, as defined in s. 29.181
5 (1b) (a).”.

6 **4.** Page 511, line 25: after that line insert:

7 “**SECTION 1339m.** 31.01 (2m) of the statutes is created to read:

8 31.01 (2m) “Duck Creek Drainage District” has the meaning given in s. 30.01
9 (1nm).”.

10 **5.** Page 512, line 3: after that line insert:

11 “**SECTION 1341d.** 31.02 (7) of the statutes is amended to read:

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

1 **SECTION 1341h.** 31.02 (7m) of the statutes is amended to read:

2 31.02 (7m) The drainage board for the Duck Creek Drainage District shall
3 operate, repair and maintain dams, dikes and other structures in district drains that
4 the board operates in the Duck Creek Drainage District in compliance with ch. 88
5 and any rules promulgated by the department of agriculture, trade and consumer
6 protection under ch. 88. If a county Subsection (7) does not apply to the Duck Creek
7 Drainage District unless the drainage board for the district fails to perform its duties
8 under this subsection, the. If the drainage board fails to perform these duties, the
9 department of natural resources may exercise its authority under subs. (6), (8) and
10 (9) and shall perform its duties under subs. (7) and (8).

11 **SECTION 1341p.** 31.02 (8) of the statutes is amended to read:

12 31.02 (8) The department of natural resources shall give careful consideration
13 to the suggestions of made under sub. (7) by the department of agriculture, trade and
14 consumer protection, the drainage commissioners, or any committee of the county
15 board, but the final decision in all matters under consideration shall rest with the
16 department of natural resources.

17 **SECTION 1341t.** 31.02 (9) of the statutes is amended to read:

18 31.02 (9) So far as seems practicable, the department may designate or employ
19 the drainage commissioners of any drainage district, or the committee of the county
20 board ~~above referred to~~ appointed under sub. (7), to operate the dams in ~~such~~ the
21 district or in the area formerly comprising a drainage district or to perform services
22 in the repair and maintenance of the dams, ~~dykes~~ dikes and other works.”.

23 **6.** Page 881, line 4: after that line insert:

24 **SECTION 2348g.** 88.01 (8m) of the statutes is repealed.

1 **SECTION 2348r.** 88.11 (1) (f) of the statutes is amended to read:

2 88.11 (1) (f) Assist districts in applying for permits under s. ~~88.31 chs. 30 and~~
3 31.”.

4 **7.** Page 881, line 10: after that line insert:

5 “**SECTION 2353b.** 88.31 (title) of the statutes is amended to read:

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

8 **SECTION 2353e.** 88.31 (1) to (7m) of the statutes are repealed.

9 **SECTION 2353g.** 88.31 (8) (intro.) of the statutes is amended to read:

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

13 **SECTION 2353i.** 88.35 (5m) of the statutes is repealed.

14 **SECTION 2353k.** 88.35 (6) (intro.) of the statutes is amended to read:

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

19 **SECTION 2353m.** 88.62 (3) (a) of the statutes is renumbered 88.62 (3) and
20 amended to read:

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

1 **SECTION 2353p.** 88.62 (3) (b) of the statutes is repealed.

2 **SECTION 2353r.** 88.72 (3) of the statutes is amended to read:

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

10 **SECTION 2353t.** 88.72 (4) of the statutes is amended to read:

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

18 **SECTION 2378m.** 88.95 of the statutes is created to read:

19 **88.95 Geographic information system maps.** If a county prepares a
20 geographic information system map in preliminary form and the map includes a
21 stream, ditch, dike, or levee, the county shall furnish each drainage district in which
22 the land is located with a copy of the map. No later than 120 days after the drainage
23 district receives the map, the drainage district shall provide notice to the county if
24 the drainage district determines that there is an error or omission in the map. If the
25 drainage district provides such notice, the county shall correct the error or omission

1 on the map. If the county does not correct the error or omission because it does not
2 concur with the drainage district, the county shall notify the drainage district and
3 the land information board and the land information board shall resolve the
4 conflict.”.

5 **8.** Page 1045, line 11: after that line insert:

6 “**SECTION 3161c.** 281.36 (4) (e) (intro.) of the statutes, as created by 2001
7 Wisconsin Act 6, is amended to read:

8 281.36 (4) (e) (intro.) Construction or maintenance of farm roads, forest roads,
9 or temporary mining roads that is performed in accordance with best management
10 practices, ~~as determined by the department,~~ to ensure all of the following:

11 **SECTION 3161g.** 281.36 (4) (e) 3. of the statutes, as created by 2001 Wisconsin
12 Act 6, is amended to read:

13 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the
14 affected nonfederal wetland is minimized ~~to the degree required by the department.~~

15 **SECTION 3161j.** 281.36 (6) (a) 1. of the statutes, as created by 2001 Wisconsin
16 Act 6, is amended to read:

17 281.36 (6) (a) 1. Make the rules ~~consistent with~~ identical to existing federal law.

18 **SECTION 3161m.** 281.36 (6) (b) of the statutes, as created by 2001 Wisconsin
19 Act 6, is amended to read:

20 281.36 (6) (b) ~~Whenever an~~ Any additional federal law or interpretation is
21 ~~initially that is incorporated into the rules, the department may modify under this~~
22 subsection shall be identical to the additional federal law or interpretation as it
23 ~~determines is necessary, but the.~~ The department may not otherwise amend or
24 modify any of the rules promulgated under this subsection.

1 **SECTION 3161p.** 281.36 (8) (bn) 1. of the statutes, as created by 2001 Wisconsin
2 Act 6, is amended to read:

3 281.36 (8) (bn) 1. The department shall issue general water quality
4 certifications that are ~~consistent with~~ identical to all of the general permits issued
5 under 33 USC 1344 (e) that applied on January 8, 2001, to nonfederal wetlands
6 located in this state.

7 **SECTION 3161s.** 281.36 (8) (bn) 2. of the statutes, as created by 2001 Wisconsin
8 Act 6, is amended to read:

9 281.36 (8) (bn) 2. If a general permit as specified in subd. 1. is amended or
10 modified after January 8, 2001, the department shall incorporate the amendments
11 or modifications into the general water quality certification issued under subd. 1.
12 and so that the general water quality certification continues to be identical to the
13 general permit. The department may not otherwise amend or modify the general
14 water quality certification."

15

(END)