

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/24/2001

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Tessmer

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

Addl. Drafters: nelsorp1

Subject: Nat. Res. - nav. waters

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

ARC:.....Tessmer - AM94,

Topic:

Chapter 30 permitting process for Lake Michigan-Green Bay area

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>
/?	gibsom 06/26/2001			_____			
/1	nelsorp1 06/26/2001	hhagen 06/27/2001	pgreensl 06/27/2001	_____	lrb_docadmin 06/27/2001		
	gibsom 06/27/2001			_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/2	nelsorp1 06/28/2001	hhagen 06/28/2001	kfollet 06/28/2001	_____	lrb_docadmin 06/28/2001		
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FE Sent For:

<END>

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Handwritten notes:
Kyl 6/28
Kyl/Ben 6/28

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1?	gibsom	1, kmh 6/27/01	6/27 P8	6/27 P8/BT			

FE Sent For:

<END>

B. Public Access to Private Land Up to the High Water Mark

MBW 1707

Agency affected: DNR

Repeal and recreate 30.134 of the statutes so that the public can only use private land up to the normal high water mark of a navigable waterway when it is necessary to exit the waterway in order to bypass an obstruction.

all for basin/ch. 30 permits except for last sentence of 2.

Fiscal impact: None

Location/Status: New motion, WLC: 0171/1 (Johnsrud, Albers, Rhoades)

Eric
B
Bis

C. Changes to the Chapter 30 permitting process on Lake Michigan/Green Bay

The motion makes several reforms to the Chapter 30 permitting process on Lake Michigan/Green Bay:

- 1. Establish the Lake Shore Basin Committee to provide recommendations to the DNR on Chapter 30 permit applications. The Lake Shore Basin consists of Door, Brown and Kewaunee Counties. The Committee shall consist of five members, one appointed by each of the three county boards and two by the Governor. The DNR would forward all Ch. 30 applications to the Committee for their consideration, and the Committee may provide recommendations for any applications they receive. The Lake Shore Basin Committee's recommendations shall be forwarded to the DNR for consideration in the permitting process, and the Committee will be allowed to participate in any hearing held on an application.

Scott
Stewart
287-0403
* 692-57658

- 2. Applicants would have the option of bypassing the Administrative Law Judge (currently up to 3 years to review a case) and going directly to circuit court for a contested hearing. This option would be offered statewide.

limited to ch. 30

- 3. Currently, every Ch. 30 applicant in Door County for an individual recreational pier is required to complete an Environmental Assessment (EA) for their project. Pier and dredging applicants would not be required to complete an EA for their project unless the DNR provides a written justification for an EA which considers the proposed action in light of the standards in NR 150, Wis. Adm. Code. All applications for Ch. 30, Stats., permits for noncommercial projects will be presumed to be Type III actions under WEPA, NR 150.03 (3), Wis. Adm. Code. Applicants would have the right to file a notice of substitution of an Administrative Law Judge (ALJ) in the same manner as the right of substitution is accorded to litigants in circuit court, 801.58, Stats.

piers and dredging

basin/30 ch

RPN

- 4. Venue for all 227.53, Stats., judicial review shall be the county in which the petitioner has a residence, the county where the property that is involved in the review is located, or any county chosen by the petitioner, except if the petitioner is the agency. In that case, venue will be in the county where the agency's office that issued the decision is located.

- 5. Any person making an objection to the issuance of a permit pursuant to a notice published under 30.02, Stats., must pay a filing fee of \$25 at the time the objection is filed.

- 6. Anyone filing a written objection to the issuance of a permit under the provisions of

30.02(3), Stats. must file an affidavit within 30 days of filing the objection establishing the substantive basis for the objection and committing to appear at a hearing and call witnesses in support of the objection. In a contested case hearing, the burden of proof shall be on those who object to the issuance of the permit.

7. Any person who files an objection to the permit may be required to pay the costs and attorneys fees of an applicant incurred in responding to the objection if the objection is found to be frivolous as provided in 814.025, Stats.
8. The Division of Hearings and Appeals will assign ALJ's to hear cases in a random manner. If the agency does not agree to schedule a hearing within 120 days of an agency denying a permit or contract

Fiscal Impact: None

Location/Status: Adopt ARC Amendment #84 (Bies)

D. Non-Metallic Reclamation Exemption RCT

A nonmetallic mining reclamation ordinance and the standards established do not apply to removal of topsoil, other than soil taken from the bed of a navigable water, from an area the size of which does not exceed the size determined by dividing the total acreage of the contiguous land under common ownership on which the area is located by 40 and multiplying the result by 3, if no other material is removed from the area.

In addition, the department may not charge an annual fee of more than \$100 for a nonmetallic mining site with one to five acres that have not been reclaimed, if the nonmetallic mining site is approved for a wildlife enhancement project, or an annual fee of more than \$300 for any other nonmetallic mining site with one to five acres that have not been reclaimed.

Affected agency: DNR

Fiscal Impact: \$25,500 Loss of Revenue from Environmental Fund SEG

Location/Status: Adopt LRB 3414/P2 (Albers)

E. Chapter 30 revision – Timelines for Complete Applications and Public Hearings

Add language to Section 30.02 to read: 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

M66

1659

Gibson-Glass, Mary

From: Johnson, Dan (Legislature)
Sent: Monday, June 25, 2001 9:15 AM
To: Gibson-Glass, Mary
Subject: enviro package fix up

Changes to the Chapter 30 permitting process on Lake Michigan/Green Bay (page 11)

8. The Division of Hearings and Appeals will assign ALJ's to hear cases in a random manner. If the agency does not agree to schedule a hearing within 120 days of an agency denying a permit ~~or contract~~ under Ch. 30, Stats., the applicant may request that the Division of Hearings and Appeals set a hearing at the earliest available date.

9. An applicant for a Ch. 30, Stats., permit or an ALJ may invoke the procedure in 802.12, Stats., for alternate dispute resolution in lieu of pursuing a contested case hearing.

Dan Johnson
Research Assistant
Clerk, Committee on Environment
State Representative Neal Kedzie
43rd Assembly District
(608) 266-9650



State of Wisconsin
2001 - 2002 LEGISLATURE

down D-N

RMR
LRBb1737/1
MGG&RPN:hah

ARC:.....Tessmer - AM94, Chapter 30 permitting process for Lake Michigan-Green Bay area

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 31, line 15: after that line insert:

3 "SECTION 181m. 15.347 (18) of the statutes is created to read:

4 15.347 (18) LAKESHORE BASIN COUNCIL. There is created in the department of

5 natural resources a lakeshore basin council consisting of all of the following

6 members, appointed for 4-year terms:

7 (a) One resident of Brown county appointed by the county board of Brown
8 county.

9 (b) One resident of Door county appointed by the county board of Door county.

1 (c) One resident of Kewaunee county appointed by the county board of
2 Kewaunee county.

3 (d) Two members appointed by the governor.”.

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

5 **“SECTION 1245^{40b}q.** 30.01 (6c) of the statutes is created to read:

6 30.01 (6c) “Supporting affidavit” means a sworn affidavit that specifies the
7 underlying arguments in support of a substantive written objection and that attests
8 that the person making the substantive written objection will appear, present
9 testimony, and produce any relevant witnesses in support of the substantive written
10 objection in a contested case hearing.

11 **SECTION 1245^{40c}q.** 30.02 (3m) of the statutes is created to read:

12 30.02 (3^m) Instead of submitting an application to the department for a permit,
13 a person may bring an action in circuit court asking that the court order the
14 department to issue a permit.”.

15 **3.** Page 498, line 6: after that line insert:

16 **“SECTION 1261^q.** 30.208 of the statutes is created to read:

17 **30.208^{DD} (Lakeshore basin procedures. (1)^{DD}** The department shall submit each
18 application for a permit that it receives under this chapter for a project or activity
19 at a site located in Brown, Door, or Kewaunee county to the Lakeshore basin council
20 for its recommendations regarding the issuance of the permit. The Lakeshore basin
21 council shall submit its recommendations to the department. Subsections (2) to (8)
22 only apply to permit applications and permits that are for sites that are located in
23 Brown, Door, or Kewaunee county. *(projects or activities)*

1 (2) The department shall give the lakeshore basin council notice of any hearing
2 that is scheduled or ordered on the issuance of a permit.

3 (3) Any application for a permit for a pier or a dredging activity that is part of
4 a noncommercial project shall be treated by the department as Type III action under
5 ch. NR 150, Wis. adm. code, and the person applying for the permit is exempt from
6 the requirement of preparing an environmental assessment under s. 1.11 unless the
7 department provides written determination that an environmental assessment is
8 required under ch. NR 150, Wis. adm. code. (The determination shall state the specific
9 reasons supporting the department's determination.

10 (4) Any person who submits a substantive written objection in response to a
11 permit application shall pay the department a fee of \$25 at the time the substantive
12 written objection is submitted. The person shall also submit a supporting affidavit
13 within 30 days after submitting the substantive written objection. The person who
14 submits the substantive written objection shall have the burden at the hearing to
15 prove that the department should not issue the permit.

16 (5) If a person objects to the issuance of a permit, the hearing examiner or court
17 hearing the objection may order the objecting party to pay the costs, including
18 reasonable attorney fees, incurred by the permit applicant if the examiner or court
19 finds that the objection was frivolous, as described in s. 814.025 (3).

20 (6) The division of hearings and appeals shall randomly assign hearing
21 examiners to conduct hearings regarding permit applications. If the department
22 does not agree to schedule the hearing within 120 after the department has denied
23 a permit and the applicant has requested a hearing, the applicant may request that
24 the division of hearings and appeals schedule the hearing at the earliest date
25 available to the division.

1 (7) If a person other than the department seeks judicial review of any permit
2 application hearing, venue shall be in the county where the plaintiff resides, the
3 county where the property that is involved in the permit is located, or a county chosen
4 by the plaintiff. If the department seeks judicial review of any permit application
5 hearing, venue shall be in the county where the office is located that issued the
6 original decision regarding the permit.

7 (8) The department may permit the use of alternate dispute resolution
8 procedures to resolve a permit application dispute in place of a hearing. The
9 department shall promulgate rules to establish requirements and procedures for the
10 use of alternate dispute resolution procedures to resolve permit application
11 disputes.”.

12 4. Page 1348, line 6: after that line insert:

13 ⁸⁹~~(8)~~ LAKESHORE BASIN COUNCIL. Notwithstanding the length of term specified for
14 the members of the Lakeshore basin council under s. 15.347 (18) (intro.), as created
15 by this act, the initial members shall be appointed for the following terms:

16 (a) The member appointed from Kewaunee county for a term expiring on July
17 1, 2003.

18 (b) The member appointed from Brown county for a term expiring on July 1,
19 2005.

20 (c) The member appointed from Door county for a term expiring on July 1,
21 2007.”.

22 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1737/1dn
MGG&[signature]

Date

The drafting instructions for this draft were not totally clear or internally consistent. Please review this draft carefully to ensure that it is consistent with your intent.

It is possible that a Wisconsin court would find this legislation to be a "private or local bill" which, under Article IV, section 18, of the Wisconsin constitution, must be enacted as single-subject legislation. If this legislation is a "private or local bill," it cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject. In light of this, you may wish to consider introduction of this legislation as a separate bill.

Mary Gibson-Glass
Senior Staff Counsel
267-3215

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

LRBb1737/1dn
MGC:hmh:pg

June 27, 2001

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Senior Staff Counsel
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*Priority
new
stuff
to review*

ARC:.....Tessmer - AM94, Chapter 30 permitting process for Lake Michigan-Green Bay area

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TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 55**

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 **1.** Page 31, line 15: after that line insert:
- 3 **"SECTION 181m.** 15.347 (18) of the statutes is created to read:
- 4 15.347 (18) LAKESHORE BASIN COUNCIL. There is created in the department of
- 5 natural resources a lakeshore basin council consisting of the following members
- 6 appointed for 4-year terms:
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- 8 county.
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1 (c) One resident of Kewaunee county appointed by the county board of
2 Kewaunee county.

3 (d) Two members appointed by the governor.”.

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

5 “SECTION 1240b. 30.01 (6c) of the statutes is created to read:

6 30.01 (6c) “Supporting affidavit” means a sworn affidavit that specifies the
7 underlying arguments in support of a substantive written objection and that attests
8 that the person making the substantive written objection will appear, present
9 testimony, and produce any relevant witnesses in support of the substantive written
10 objection in a contested case hearing.

for the permit

11 **SECTION 1240c.** 30.02 (3m) of the statutes is created to read:

12 30.02 (3m) ~~Instead of submitting an application to~~ the department ~~for~~ a permit, of
13 ~~a person~~ ^{the applicant} may bring an action, in circuit court asking that the court order the
14 department to issue ^{the} permit.”.

schedules or orders a hearing under this section on the issuance of

IF

in lieu of the hearing

15 **3.** Page 498, line 6: after that line insert:

16 “SECTION 1261q. 30.208 of the statutes is created to read:

17 **30.208 Lakeshore basin procedures.** (1) The department shall submit each
18 application for a permit that it receives under this chapter for a project or activity
19 at a site located in Brown, Door, or Kewaunee county to the Lakeshore basin council
20 for its recommendations regarding the issuance of the permit. The Lakeshore basin
21 council shall submit its recommendations to the department. Subsections (2) to (8)
22 only apply to permit applications and permits that are for projects or activities sites
23 that are located in Brown, Door, or Kewaunee county.

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2 hearing that is scheduled or ordered on the issuance of a permit.

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4 a noncommercial project shall be treated by the department as Type III action under
5 ch. NR 150, Wis. Adm. Code, and the person applying for the permit is exempt from
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20 (6) The division of hearings and appeals shall randomly assign hearing
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23 a permit and the applicant has requested a hearing, the applicant may request that
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25 available to the division.

RPN

D-Note

MBG/hmh

has been redrafted

→ I ^{was} ~~not~~ ~~have~~ ~~redrafted~~ ~~this~~ amendment ~~to be~~ ~~the~~

following as follows:

^(CS) SECTION 1240c

1. ~~DA~~ We have redrafted ~~S. 30.02(5)~~

to more closely achieve ~~the~~ what we believe is the intent ^{of} ~~of~~ the drafting instructions we were given.

2. We corrected ~~for~~ an omission in S. 30.208

(6) by adding the word ~~in~~ "days".

MBG

RPN

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

LRBb1737/2dn
MGG&RPN:hmh:kjf

June 28, 2001

This amendment has been redrafted as follows:

1. We have redrafted SECTION 1240c to more closely achieve what we believe is the intent of the drafting instructions we were given.
2. We corrected an omission in s. 30.208 (6) by adding the word "days."

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

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb1737/2
MGG&RPN:hmh:kjf

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