



State of Wisconsin
2001 - 2002 LEGISLATURE

0-131/P2 RM
LRB-4778/P1
Moo/...:ch R
King

Mon
10/14 early a.m.

Mon/first thing
10/28

~~PRELIMINARY DRAFT~~ NOT READY FOR INTRODUCTION

LPS: Proof amended stats. w/FOLIO.
up through SEC. 130.

Gen. Cat.

1 AN ACT to repeal 30.01 (1b), 30.01 (1t), 30.01 (6b), 30.01 (6d), 30.01 (7m), 30.01
2 (9), 30.02, 30.025, 30.03 (title), 30.03 (3), 30.10 (title), 30.10 (1) to (3), 30.10 (4)
3 (title), 30.10 (4) (c), 30.105, 30.123 (5), 30.1255 (4), 30.14 (title), 30.15 (title),
4 30.2035, 30.292, 30.501 (8), 30.537 (4) (e), 30.60, 30.61 (9), 30.62 (2) (f), 30.62
5 (2) (i), 30.62 (9), 30.67 (3) (c), 30.68 (4) (b), 30.68 (12), 30.71 (1), 30.73 (4), 30.74
6 (2) (b), 30.78 (1g), 30.78 (3) and 30.81 (1m) and (2); to renumber subchapter
7 III (title) of chapter 30, subchapter IV (title) of chapter 30, 30.01 (1m), 30.01
8 (3e), 30.01 (3m), 30.01 (3s), 30.01 (10), 30.03 (4), 30.10 (4) (d), 30.103, 30.11
9 (title), 30.11 (6), 30.12 (4m), 30.121 (7), 30.1255 (title) and (1) and (3), 30.13 (3)
10 (title), 30.13 (6), 30.133, 30.14 (1), 30.15 (1) (intro.) and (a) to (c), 30.15 (3), 30.16,
11 30.2025, 30.203, 30.2037, 30.205, 30.21, 30.24, 30.25, 30.26, 30.265, 30.27,
12 30.275, 30.277, 30.29, 30.294, 30.298 (title), 30.298 (4), 30.32, 30.33, 30.50 (2),
13 30.67 (3) (intro.), (a) and (b), 30.742 and 709.03 (form) 27.; to renumber and
14 amend 30.015, 30.027, 30.03 (2), 30.05, 30.056, 30.06, 30.07 (title), 30.07 (1),
15 30.07 (2), 30.10 (4) (a), 30.10 (4) (b), 30.11 (1) to (4), 30.11 (5), 30.12 (4), 30.12

1 (5), 30.121 (title), (2), (3), (3g), (3m), (3r), (4), (5) and (6), 30.122, 30.123 (1),
2 30.124, 30.126 (title) and (2) to (9), 30.126 (10), 30.13 (3), 30.131, 30.14 (2), 30.15
3 (1) (d), 30.196, 30.202, 30.2026, 30.204, 30.206, 30.207, 30.28, 30.298 (1), (2) and
4 (3), 30.298 (5), 30.30, 30.31, 30.34, 30.35, 30.37, 30.38, 30.61 (10), 30.63, 30.635,
5 30.64, 30.67 (1) and (2), 30.67 (3) (title), 30.675 (intro.), (1) and (2), 30.68 (3) (a),
6 30.68 (3) (b) to (d), 30.68 (5m), 30.69 (1) (b) and 30.69 (1) (c); **to amend** 25.29
7 (1) (a), subchapter II (title) of chapter 30 [precedes 30.035], 30.13 (title) and (1)
8 (c), 30.13 (4) (c), 30.135 (2) (a) and (4), 30.50 (4q), 30.501 (9), 30.505, 30.52 (1)
9 (b) 1r., 30.54 (2), 30.571, 30.61 (1), (2) (intro.), (3) (intro.), (4), (6) (b), (7) and (8),
10 30.62 (title), (1) and (2) (b) and (c), 30.62 (2) (d), 30.62 (2) (g) 1. to 3., 30.62 (2m)
11 and (3) (a), 30.62 (4) to (8), 30.625 (1) (intro.) and (2), 30.65 (1) (intro.), (b) and
12 (f) and (2), 30.66 (1), (2) (title) and (3), 30.67 (4), (5) and (6) (b), 30.68 (title) and
13 (2), 30.68 (4) (a), 30.68 (4m) (title) and (5), 30.68 (6) to (8) and (8m) (a), 30.68 (9)
14 and (11), 30.69 (title), (1) (title) and (a), 30.69 (2), 30.69 (3) (a), (b), (c) 1. to 3. and
15 (d), 30.69 (4), 30.70, 30.73 (2) (a), 30.74 (1) (c) and (d), 30.74 (2) (a), 30.74 (3),
16 30.772 (4), 30.78 (1r) and (2), 30.79 (1) (a) and (b) 2., 30.79 (1) (b) 1., (2), (3) and
17 (4), 30.80 (2), 30.80 (3), 30.80 (4), 30.81 (3), 30.81 (4), 30.90, 33.475, 236.16 (3)
18 (d) (intro.) and 299.05 (1) and (2) (a); **to repeal and recreate** 30.12 (title) and
19 (1) to (3), 30.12 (5) (title), 30.123 (title), 30.123 (2) to (4), 30.18, 30.19, 30.195,
20 30.20, 30.77, 30.78 (1) (title) and (intro.) and 30.81 (1) (title) and (intro.); and
21 **to create** 30.01 (1h), 30.035, 30.04, 30.08, 30.12 (5) (a), 30.213 (title), 30.215,
22 30.243 (3) (c), 30.245, 30.253, 30.263 (title), 30.263 (4), 30.265 (1) (title), 30.276,
23 30.353, 30.381 (title), 30.50 (1b), 30.50 (4u), 30.50 (9b), 30.50 (10m), 30.50 (13r),
24 30.5005, 30.605, 30.62 (2) (c) 2., 30.62 (3) (c), 30.66 (3) (c), 30.68 (5g) (c), 30.68
25 (8m) (c), 30.68 (14) (title), 30.69 (1) (c), 30.74 (2) (d), 30.771, subchapter VI (title)

1 of chapter 30 [precedes 30.95], 30.96 (title), 30.98 (title), 30.98 (1) (title), 31.93,
 2 60.782 (1m) and 709.03 (form) 27. of the statutes; **relating to:** recodification of
 3 chapter 30. ~~stat~~ *more to be added later* NOTE:

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

PREFATORY NOTE: This bill ~~draft~~ contains the final recommendation of the joint legislative council's special committee on navigable waters recodification. The special committee was charged by the joint legislative council with recodifying ch. 30, in order to update language and make technical corrections in ch. 30. The special committee determined that the following portions of ch. 30 merit recodification:

~~Subch. I (definitions)~~

~~Subch. II (regulation of structures, deposits, dredging, and other activities that affect navigable waters)~~

~~Subch. V (boating)~~

This bill ~~draft~~ creates a new subch. VI for penalties and enforcement provisions that apply to the entire chapter.

The other 2 subchapters in ch. 30 are not recodified. This bill ~~draft~~ relocates subch. III (harbors) to make room for the renumbered provisions in subch. II, but makes no other changes in either subch. III (harbors) and subch. IV (Lower Wisconsin State Riverway).

The changes made by this bill ~~draft~~ to current statutes are described in detailed notes throughout this bill ~~draft~~. In addition, the report to the legislature regarding this bill ~~draft~~ contains background information, a summary of special committee discussions, and a bibliography of information prepared for and submitted to the special committee. The remainder of the prefatory note contains a brief summary of the key provisions of this bill ~~draft~~.

NAVIGABLE WATERS REGULATION

The bill ~~draft~~

Reorganizes all of the statutes that provide for permits or approvals under subch. II of ch. 30, so that these statutes are in a consistent format, use consistent terminology and have consistent decision-making standards where appropriate.

Requires the department of natural resources (DNR) to develop and make publicly available maps and data that show the results of its determinations of navigability.

Directs the DNR to develop rules that describe the methods it uses for making determinations of navigability.

Requires DNR to promulgate rules that describe the public interest and public rights and the rights of riparian owners for purposes of decisions to approve or deny permits and approvals affecting navigable waters under subch. II of ch. 30.

omitted

center

Codifies the supreme court cases that set forth the kinds of evidence that can be used to determine if a lake or stream is navigable.

Modifies provisions regarding farm drainage ditches to provide an exemption from regulation, rather than an exemption from the definition of "navigable", and clarifies the exemption so that it only applies to projects for an agricultural purpose.

Creates a procedure to request a hearing if the DNR issues an order modifying or rescinding a permit or contract.

Authorizes DNR to issue a permit for a deposit in navigable waters if, among other things, the deposit will promote public rights and interests in navigable waters.

Authorizes additional "short form" permits to simplify the approval process for several of the permit statutes.

Modifies the current notice and hearing process by allowing the DNR to issue a denial directly after receiving a complete permit or contract application.

Requires a person who wishes to challenge a permit or contract in a contested case hearing to make a more detailed showing of the facts and legal standards that support the objection, and requires DNR to find that those facts raise a reasonable doubt that the project, as proposed, complies with the applicable standards in subch. II.

Authorizes mediation between the applicant and persons with an interest in a permit or contract if the applicant, DNR and the other interested parties agree to this process.

Center → STATE BOATING REGULATION

The bill ~~draft~~

Eliminates the authority of DNR to change statutory regulations by administrative rule in order to conform to federal regulations; and requires DNR to submit legislation to conform statutes to federal regulations.

Consolidates and makes consistent the provisions regarding equipment and operation of patrol boats.

Updates references to activities that involve being towed behind a boat.

Updates federal cross-references that are incorrect, and adds federal cross-references where current statutes have a nonspecific reference to federal law.

Extends the current prohibition on retail sale of a boat made in this state that does not comply with noise limits so that this prohibition also applies to retail sale of boats made elsewhere.

Creates a statutory exemption from the requirement to carry a personal flotation device for racing shells, sculls, kayaks and canoes, to duplicate the current exemption in federal law.

Authorizes but does not require that a parent or guardian be liable for a minor's actions in boat operation; violations by a minor are currently deemed to be a violation by the parent or guardian.

Permits operation of a boat within 100 feet from a skin diver's flag or swimmer if there is not sufficient room beyond 100 feet from the flag to maneuver, but boat operation may not exceed slow-no-wake speed.

Center → LOCAL BOATING REGULATION

The bill ~~of~~:

⊗ Authorizes a town, village, or city to enact boating ordinances of clearly local concern, even if another local governmental unit (county, lake district, or town sanitary district) has adopted an ordinance applicable to the same lake or stream.

⊗ Expands county authority so that a county may enact boating ordinances for an inland lake if authorized to do so by the towns, villages, or cities surrounding the lake or if those towns, villages, or cities do not enact a boating ordinance.

Provides that counties may enact boating ordinances for outlying waters contiguous to the county.

Lists state boating regulations that require strict conformity in local ordinances and sets standards for other local ordinances which are required by statute to be consistent with state regulations.

Expands the scope of DNR review so that it applies to all local boating ordinances.

⊗ Authorizes a sheriff or a town, village, or city to issue emergency regulations applicable to boating.

1 SECTION 1. 25.29 (1) (a) of the statutes is amended to read:

2 25.29 (1) (a) Except as provided in ss. 25.293 and 25.295, all moneys accruing
3 to the state for or in behalf of the department under chs. 26, 27, 28, 29¹⁶⁹ and 350,
4 subchs. I and VI of ch. 77₂ and ss. 23.09 to 23.31, 23.325 to 23.42, 23.50 to 23.99, 30.50
5 to ~~30.55~~ 30.578[✓], 70.58, 71.10 (5) ~~and~~ 71.30 (10)^{and 90.21 ✓}, including grants received from the
6 federal government or any of its agencies except as otherwise provided by law.

55-20

INSERT

7 SECTION 2. Subchapter III (title) of chapter 30 of the statutes is renumbered 5-6
8 subchapter IV (title) of chapter 30 ^{stays} [precedes 30.491]. ^{precedes 30.30} ^{more top 55, after line 20}

62-7A

9 SECTION 3. Subchapter IV (title) of chapter 30 of the statutes is renumbered ^{more to p. 62, after}
10 subchapter III (title) of chapter 30 ^{stays} [precedes 30.40] ^{precedes 30.40} line 7

11 SECTION 4. 30.01 (1b) of the statutes is ^{renumbered} ~~repealed~~ 30.18 (1) (a)

NOTE: The definition of "authorized base level of water loss" is moved from here to s. 30.18

12 SECTION 5. 30.01 (1h) of the statutes is created to read:

13 30.01 (1h) "Contested case" has the meaning given in s. 227.01 (3).

INS 5-14

14 SECTION 6. 30.01 (1m) of the statutes is renumbered 30.50 (3m) INSERT 5-13

NOTE: The definition of "designated mooring area" is moved to the boating subchapter, where that term is used. of the statutes

(1nq)

A SECTION 30.01 (1nq) is created to read:
A 30.01 (1nq) "Environmental pollution" has the meaning given in s. 299.01 (4).

INS 01

1

SECTION 7. 30.01 (1t) of the statutes is ~~repealed~~ *renumbered 30.266 (1)(a)*

NOTE: The ~~substance of the~~ definition of "flotation device" is ~~recreated in s. 30.126~~ *relocated to s. 30.266,* (5) (g) as ~~renumbered by this draft.~~

2

SECTION 8. 30.01 (3e) of the statutes is renumbered 30.50 (5g). *where the term is used.*

NOTE: The definition of "mooring" is relocated to the boating statutes, where ~~that~~ the term is used.

3

SECTION 9. 30.01 (3m) of the statutes is renumbered 30.50 (5m).

NOTE: The definition of "mooring anchor" is moved to the boating statutes, where ~~the~~ that term is used.

4

SECTION 10. 30.01 (3s) of the statutes is renumbered 30.50 (5r).

NOTE: The definition of "mooring buoy" is moved to the boating statutes, where ~~that~~ the term is used.

5

SECTION 11. 30.01 (6b) of the statutes is repealed.

NOTE: The definition of "substantive written objection" is repealed. This term is used in s. 30.135, regarding water ski platforms and water ski jumps: a substantive written objection is required to obtain a contested case hearing to challenge issuance of a permit for these structures. However, the DNR determines by rule the reasons that will support a substantive written objection under s. 30.135, making the definition unnecessary for purposes of that section. The only other use of this term is in the general notice and hearing provisions of current s. 30.02, which are substantially modified in this ~~draft~~ *bill* and moved to s. 30.245. The new notice and hearing provision contains additional requirements for objections to a permit or approval that are sufficient to obtain a contested case hearing, rendering this definition unnecessary for purposes of the general notice and hearing provision.

6

SECTION 12. 30.01 (6d) of the statutes is ~~repealed~~ *renumbered 293.01 (27m)*

NOTE: The definition of "surplus water" is only used in s. 30.18. The substance of this definition is incorporated into s. 30.18, ~~in s. 30.18 (3) (e),~~ *(5) (a) 2.* in the new numbering ~~proposed in this draft.~~

7

SECTION 13. 30.01 (7m) of the statutes is ~~repealed~~ *renumbered 30.18 (1)(c).*

NOTE: The definition of "water loss" is relocated to s. 30.18, *where the term is used*

8

SECTION 14. 30.01 (9) of the statutes is ~~repealed~~ *renumbered 30.18 (1)(d).*

NOTE: The definition of "withdrawal" is relocated to s. 30.18, *where that term is used*

9

SECTION 15. 30.01 (10) of the statutes is renumbered ~~30.265~~ *30.265* (1). *(b)*

NOTE: The definition of "Wolf River municipality" is relocated to ~~§ 30.126~~ *bill* of the ~~current statutes~~ *current statute* where that term is used. The new numbering of this statute is s. 30.265 *(le)* as proposed by this ~~draft.~~

10

SECTION 16. 30.015 of the statutes, as created by 2001 Wisconsin Act 16, is ~~repealed~~ *repealed*

11

renumbered 30.251 and amended to read:

The definition is moved to the chapter dealing with metallic mining, where the definition is used by cross-reference.

1 **30.251 Time limits for issuing permit determinations.** In issuing permits
2 under this ~~chapter~~ subchapter, the department shall initially determine whether a
3 complete application for the permit has been submitted and, no later than 60 days
4 after the application is submitted, notify the applicant in writing about the initial
5 determination of completeness. If the department determines that the application
6 is incomplete, the notice shall state the reason for the determination and the specific
7 items of information necessary to make the application complete. An applicant may
8 supplement and resubmit an application that the department has determined to be
9 incomplete. There is no limit on the number of times that an applicant may resubmit
10 an application that the department has determined to be incomplete under this
11 section. The department may not demand items of information that are not specified
12 in the notice as a condition for determining whether the application is complete
13 unless both the department and the applicant agree or unless the applicant makes
14 material additions or alterations to the project for which the application has been
15 submitted.

16 **SECTION 17.** 30.02 of the statutes is repealed.

NOTE: Section 30.02 contains the provisions for notice of hearing under ch. 30.
These provisions are repealed here and recreated, in substantially modified form, in s.
30.245.

17 **SECTION 18.** 30.025 of the statutes is repealed.

NOTE: The procedure in s. 30.025 substantially duplicates the procedure in s.
196.491 (3). It appears that the procedure in s. 196.491 (3) is used rather than the
procedure in s. 30.025, so the latter procedure is repealed.

18 **SECTION 19.** 30.027 of the statutes is renumbered 30.255 and amended to read:

19 **30.255 Lower Wisconsin State Riverway.** For activities in the Lower
20 Wisconsin State Riverway, as defined in s. 30.40 (15), ~~no person obtaining the~~
21 department shall include a condition in a permit under ~~subchs. I, or II or V~~ that the

subch. I

1 person obtaining the permit may not start or engage in the activity for which the
2 permit was issued unless the person obtains any permit that is required for the
3 activity under s. 30.44 or 30.445.

NOTE: The only permits under subch. V are for motorboat races and moorings. Neither of these activities appear to require a permit under s. 30.44 or 30.445. Therefore, the reference to subch. V is deleted.

This provision is rewritten as a permit condition for a permit issued under ch. 30. This shifts the burden to the ~~department of natural resources (DNR)~~ to condition its issuance of a ch. 30 permit upon obtaining any additional permit that may be required if the activity is located in the Lower Wisconsin State Riverway.

4 SECTION 20. 30.03 (title) of the statutes is repealed.

5 SECTION 21. 30.03 (2) of the statutes is renumbered 30.97 and amended to read:

6 **30.97 ~~(title)~~ Enforcement of forfeitures; abatement of nuisances.** The
7 district attorney of the appropriate county or, at the request of the department, the
8 attorney general shall institute proceedings to recover any forfeiture imposed or to
9 abate any nuisance committed under this chapter ~~or ch. 31.~~

NOTE: This ^{B11} ~~draft~~ deletes the cross-reference to ch. 31 and replicates current s. 30.03 (2) as s. 31.93.

*** NOTE: Should the reference in s. 30.97 be to "subchapter" instead of "chapter"?

10 SECTION 22. 30.03 (3) of the statutes is repealed.

NOTE: The current text of s. 30.03 (3) is as follows: "All forfeitures shall be recovered by civil action as provided in ch. 778 and when collected shall be paid directly into the state treasury." This provision is unnecessary.

11 ~~SECTION 23. 30.03 (4) of the statutes is renumbered 30.96.~~ → INSERT 8-11 ✓

12 SECTION 24. Subchapter II (title) of chapter 30 [^Xprecedes 30.035] of the statutes
13 is amended to read:

14 CHAPTER 30

15 SUBCHAPTER II 

16 NAVIGABLE WATERS AND ~~NAVIGATION IN GENERAL~~

17 SECTION 25. 30.035 of the statutes is created to read:

1 **30.035 Department: powers and duties** DETERMINATIONS OF

2 **NAVIGABILITY; MAPS AND DATA.** The department shall develop, and make publicly
3 available maps and data that show the results of determinations of navigability that
4 are made by the department. At a minimum, the maps and data shall include
5 navigability determinations made after the effective date of this subsection
6 [revisor inserts date]. To the extent practicable, within the constraints of available
7 staff and funds, the department shall incorporate past determinations of
8 navigability into the maps and data.

9 **SECTION 26.** 30.04 of the statutes is created to read:

10 **30.04 Department rules.** (1) The department may promulgate rules under

11 this subchapter. *this subchapter includes any rules promulgated under this subchapter, and any reference to*

12 **(3)** Any reference to **(3)** provision of this subchapter includes any rules
13 promulgated under that provision.

14 **(1)** The department shall promulgate rules that describe all of the following:

15 (a) The standards in common law and statutes for determining whether a body
16 of water is a lake or stream.

17 (b) The methods used by the department for making determinations of whether
18 a lake or stream is navigable under s. 30.08.

19 (c) The public interest and public rights and the rights of riparian owners in
20 navigable public trust waters.

21 (d) The methods for evaluating how an activity or structure regulated under
22 this subchapter may promote or be detrimental to the public interest and public
23 rights in navigable public trust waters and to the rights of riparian owners.

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Ins. 10-16

(B)(3)(2)

No A (1) (B)

*in s. 30.035 INS
to s. 30.035 9-8*

(e) The methods for evaluating how an activity or structure regulated under this subchapter may materially obstruct navigation or materially reduce the flood flow capacity of a stream.

Subst
or
the

(f) The specific reasons that will support a substantive written objection.

(g) The kinds of scientific evidence that may be used to show that a farm drainage ditch was a navigable stream before ditching for purposes of s. 30.215.

(2) The department shall promulgate rules that identify the local governmental units that are required to receive notice under this subchapter, where any procedure in this subchapter requires notice to a local governmental unit. At a minimum, notice shall be provided to the following local governmental units, if the project or activity subject to the requirement of a permit or approval, an order, or a hearing is located in the local governmental unit:

- (a) The clerk of a municipality.
- (b) The secretary of a town sanitary district.
- (c) The secretary of a public inland lake protection and rehabilitation district.
- (d) The secretary of a county drainage board.

bill

29.01+(2)(c), OK?

In S.
10-16
Fr. P. 9

NOTE: Section 30.04 (3) uses the language used in s. 30.04 (3), above, is described in the note following s. 30.08, which is created by this draft subchapter to lake beds stream beds under jurisdiction

SECTION 27. 30.05 of the statutes is renumbered 30.233 and amended to read:

30.233 Applicability of chapter to municipally owned submerged shorelands lake beds or stream beds. Nothing in this chapter subchapter relative

to the establishment of bulkhead or pierhead lines or the placing of structures or deposits in navigable waters or the removal of materials from the beds of navigable waters is applicable applies to submerged shorelands in Lake Michigan any lake bed

applies to

lake bed

stream bed

1 the title to which has been granted by the state to a municipality or to any streambed
 2 which the legislature has authorized a municipality to occupy.

NOTE: This statute is amended to apply to other lakes in ^Δ which lakebed grants have
 been made and to authorization to occupy portions of a streambed. ^Δ

3 SECTION 28. 30.056 of the statutes is renumbered 30.261 and amended to read:

4 **30.261 Exemption from certain permit requirements.** Notwithstanding
 5 ss. 30.12, 30.19, 30.195, and ~~30.294~~ [✓] 30.975, [✓] the city of Oak Creek may not be required
 6 to remove any structure [✓] or concrete [✓] or other deposit that was placed in Crayfish
 7 Creek in the city of Oak Creek before June 1, 1991, and may continue to maintain
 8 the structure, concrete, [✓] or deposit without having a permit or other approval from the
 9 department.

10 SECTION 29. 30.06 of the statutes is renumbered 30.331 and amended to read:

11 **30.331 Waiver of certain provisions of this ~~chapter~~** ^{subchapter} The department, by
 12 rule, may waive the applicability to specified navigable waters of the United States
 13 of all or part of those provisions of this ~~chapter~~ ^{subchapter} which relate to the
 14 establishment of bulkhead or pierhead lines or the placing of structures or deposits
 15 in navigable waters or the removal of materials from the beds of navigable waters.

16 The department may promulgate such the rule only after it ^{the department} has entered into ~~an~~
 17 ~~agreement~~ ² with the appropriate federal agency wherein it is agreed ^{an agreement that} providing that ^{requires}

18 the comparable federal law ~~will~~ be enforced on the waters in question in lieu of the
 19 state law ^{that} which is being waived. The objective of such the agreement shall be to avoid

20 duplication of administration with respect to navigable waters over which this state

21 and the U.S. ^{federal} government have concurrent jurisdiction, in those situations wherein

22 administration by a single governmental agency will tend to avoid confusion and the

23 necessity of obtaining permits from both the state and federal governments by those

1 who are subject to the law and at the same time will adequately protect the public
2 interest. The agreement may contain such further provisions as are designed to
3 achieve this objective.

4 ✓ SECTION 30. 30.07 (title) of the statutes is renumbered 30.257 (title) and
5 amended to read:

6 30.257 (title) ~~Limits and conditions~~ Time limits for permits and
7 contracts.

8 SECTION 31. 30.07 (1)^(a) of the statutes is renumbered 30.257⁽¹⁾ and amended to
9 read:

10 30.257 (1) Except as provided in par. (b) sub. (2), every permit or contract issued
11 under ss. ~~30.01 to 30.29~~ this subchapter for which a time limit is not provided by s.

12 ~~30.20 (2) (3)~~ is void unless the project is completed within 3 years after the permit
13 or contract was issued. *PLAIN* *or ✓* *RA;* *check w/ 30.20*

14 30.257 (2) The department may specify a time limit of less than 3 years for a permit
15 or contract issued under ~~ss. 30.01 to 30.29~~ this subchapter. For good cause, the
16 department may extend the time limit for a permit or contract issued under ~~ss. 30.01~~
17 ~~to 30.29~~ this subchapter for no longer than 2 years if the grantee requests an
18 extension prior to expiration of the initial time limit.

19 SECTION 32. 30.07 (2) of the statutes is renumbered 30.249 and amended to
20 read:

21 30.249 (title) Modifying or rescinding a permit or contract. For good
22 cause, the department may issue an order to modify or rescind any permit or contract
23 issued under ~~ss. 30.01 to 30.29~~ this subchapter before its expiration. The department
24 shall schedule a contested case hearing on the order if the holder of the permit or
25 contract objects in writing to the proposal to modify or rescind the permit or contract.

as required

1 and the department receives the objection within 30 days after providing notice of
2 its proposal to the holder of the permit or contract. The department shall give notice
3 of the hearing to each local governmental unit under s. 30.04 ⁽²⁾ ~~1A~~. If a hearing is
4 scheduled, the division of [✓]hearings and appeals shall mail a written notice at least
5 10 days before the hearing to the holder of the permit or contract and to each person
6 receiving notice of the department's proposal.

NOTE: Procedures are added related to modifying or rescinding a permit or contract in order to provide explicitly that the holder of any permit or contract must receive due process in such proceedings.

*****! Review M60 - Review above language to see if it works.*

7 **SECTION 33.** 30.08 of the statutes is created to read:

8 **30.08. Navigability.** (1) ^{DECLARATION} ~~LAKES AND STREAMS~~. ^{All bodies of water} Lakes and streams which are ^{determined to be using the methodology} navigable in fact ^{for any purpose whatsoever} are declared to be navigable waters. ^{Circular w/ definition}

10 (2) ~~ENLARGEMENTS IN NAVIGABLE WATERS.~~ All enlargements in navigable waters, including inner harbors, turning basins, waterways, slips, canals, and outer harbors, are declared to be navigable waters.

13 (3) ~~METHODOLOGY FOR DETERMINING NAVIGABILITY OF STREAMS.~~ (a) A stream is navigable in fact if it is capable of floating any boat, skiff, or canoe of the shallowest draft used for recreational purposes, during recurring periods of high water such as spring freshets. ^{INS 31B}

17 (b) If the department ^{uses actual navigation to determine whether} determines whether or not a stream is navigable in fact by means of actual navigation, the department shall, at a minimum, use a ~~boat~~ ^{place at least} boat, skiff, or canoe of the shallowest draft used for recreational purposes, with one adult in the boat, skiff, or canoe. The department may determine a stream to be navigable even though any of the following apply:

21 1. It is necessary to drag or carry the boat, skiff, or canoe over occasional areas
22 of shallow water or occasional obstructions.
23

INS 13-21

the a... if

1 2. The conditions of navigability are present only in regularly recurring periods
2 of high water, so long as the periods of high water are of sufficient duration to allow
3 recreational use.

4 3. The conditions of navigability are the result of natural or artificial
5 conditions, ~~provided that~~ *if* the natural or artificial conditions are of long standing.

6 (c) The department ~~may determine~~ *also insert* whether a stream is navigable in fact ~~based~~ *stet*
7 on measurements or calculations that predict, to a reasonable scientific certainty, the
8 existence of water in the stream sufficient to allow actual navigation as ~~prescribed~~ *required for*
9 *a determination of navigability under* in par. (b).

10 ~~(d) The department may determine whether a stream is navigable in fact based~~
11 ~~on reliable records that show a history of actual navigation.~~

12 (4) PRESUMPTION OF NAVIGABILITY. A lake or stream is presumed to be navigable,
13 regardless of who makes the determination of navigability, if it is determined to be
14 navigable using the methods described in this section.

NOTE: The determination of whether a lake or stream meets the legal *standard (3)* definition of navigability is critical, both for the public and for riparian property owners, because it is the means for determining whether a project that affects surface waters is subject to the regulations in subch. II of ch. 30, through the statutory system of permits, contracts and other regulations. It is also critical to determining the property rights of and among riparian owners.

INSERT
14-14

The special committee has determined that public confidence in the regulatory system for navigable waters is being undermined by the lack of a clear, publicly accessible statement of: (1) the legal standard used to determine if streams are navigable; and (2) the various methods that the DNR may use to determine if a particular stream meets the legal standard of navigability.

With respect to the first issue, above, the legal standard for determining if a stream is navigable is currently found in court cases and in a very brief description in s. 30.10. To address the concerns regarding the ability of members of the public to locate the legal standard for navigability of a stream, this ~~draft~~ *bill* restates the current test of navigability that is found in court cases and the statutes. In these provisions, the special committee is merely restating and not recommending a change in the legal standard for determining whether a stream is navigable.

With respect to the 2nd issue, above, the methods that the DNR currently uses to determine if a lake or stream is navigable are not currently set forth in any statute or rule. To address the concerns regarding the methods used by DNR to determine if a stream is navigable, this ~~draft~~ *bill* proposes a combination of statutes and rules to expressly state the test of navigability. The DNR is required to make its determinations of navigability

bill

nat (1) bill

using, at a minimum, a boat, skiff, or canoe of the shallowest draft used for recreational purposes, with one adult in the boat, skiff, or canoe. This method of determining navigability is the "test" set forth in Wisconsin supreme court cases. The DNR is also directed to promulgate rules (secs. 30.04 (S) in this draft) describing the methods it uses to determine if a lake or stream is navigable. In addition to the test involving actual navigation, the DNR may also use other methods to determine navigability of streams (such as measurements or calculations), so long as those methods predict sufficient water in the stream to allow for actual navigation during periods of high water.

The special committee's objective in recommending this change is to create a test of navigability for streams that will be applied consistently throughout the state by the DNR. For the first time, this will give the test of navigability for streams a clear public statement, a substantial degree of predictability and repeatability and, from the public perspective, a sense of fairness. This test of navigability will lessen the chance for the application of public rights in navigable waters to depend on the choices made by DNR staff regarding the type of watercraft and the amount of weight carried in the watercraft.

The special committee is not recommending a change in the statutes related to the determination of navigability for lakes. The current statutory standard for lakes is "navigable in fact", and does not appear to cause problems. For consistency, the phrase "for any purpose whatsoever" is applied to lakes under this draft, just as that phrase applies to streams under current s. 30.10 (2). The public concerns regarding the test of navigability relate to streams, particularly those at the margins between navigability and nonnavigability.

The special committee discussed, but chose not to recommend, a test of navigability for streams that involves specification of the size and weight of the canoe, paddlers, and cargo, as well as other aspects of the test. Although court cases mention depth of water, and duration of high water, the courts are referring to evidence that supports determinations of navigability, and not to the test of navigability.

The current legal standard of navigability is summarized in Memo No. 4, *Alternatives for Consideration by the Special Committee: The Definition of Navigability and Related Issues* (November 20, 2000). Memo No. 4 discusses the leading case on the navigability of streams, *DeGayner and Co. v. Department of Natural Resources*. The key provisions of the "test" of navigability in *DeGayner* are that navigability of a stream is tested with the shallowest draft boat available for recreational use, such as a kayak or canoe, and that navigability is determined based on the amount of water in the stream during the periodic and recurring spring runoff.

With respect to the depth of the stream, the supreme court noted that evidence had been presented to the trial court in *DeGayner* that canoes and kayaks used for recreational purposes could be floated in as little as 3 inches of water. With respect to the duration of high water, the supreme court cited an earlier case that had found navigability during periodic rises of a stream from 4 to 13 days duration.

However, it is important to understand that these numeric standards were not adopted by the supreme court as part of the "test" for determining whether a stream is navigable. *DeGayner* was the review of a judgment of the circuit court which had sustained the order of the DNR determining that the stream in question was navigable in fact. Conflicting evidence had been presented to the trial court, including testimony by DNR employees that the stream was not navigable. The legal issue in *DeGayner* was whether there was "substantial evidence" in the record to support the DNR determination. The substantial evidence standard for review of agency determinations does not require the court to find that there was a preponderance of evidence to sustain the agency's findings, but rather that the finding was supported by substantial evidence in view of the entire record. Thus, in referring to 3 inches of water and 4 to 13 days of high water, the court was acknowledging evidence that supported the DNR determination. The court's holding in *DeGayner* did not specify how much water must be available, for

how long, or even require that the determination of navigability be conducted by means of actual navigation.

The special committee's recommendation continues to allow various other testing methods, and to allow the exercise of discretion and judgment by the DNR. The supreme court has not precluded the use of calculations of water depth and duration, consultation of historic records, or any other method of determining navigability, so long as that evidence relates to the potential for actual navigation.

The special committee acknowledges that the current court test of navigability is based on any form of recreational use of waters for boating. It is not appropriate to make the statutory test overly precise, so as to exclude any common methods of or future developments in recreational boating. The special committee determined that a more precise test of navigability would, in fact, involve a change from current law.

Any determination of navigability using the statutory methods is cast as a presumption, which can be rebutted by other evidence of navigability or nonnavigability. It should be noted that the presumption applies to any determination of navigability or nonnavigability, regardless of who makes the determination. Thus, the presumption could apply in a dispute between riparian owners, in which the navigability or nonnavigability of the stream was at issue.

bill

This draft uses "lake" and "stream" in new s. 30.08 and elsewhere in subch. II of ch. 30. There does not appear to be a pattern in the cases or statutes with respect to these terms. Other terms are used throughout the statutes to describe surface waters, including river, slough, bayou, marsh, pond, spring pond, glacial pothole lake, flowage, creek, bay, watercourse, and brook. No legal significance attaches to the use of any of these terms. "Lake" and "stream" are used as collective terms to refer to all such waters.

*** NOTE: Mark if we go with "body of water" this NOTE must be changed.

~~SECTION 34. 30.10 (title) of the statutes is repealed.~~

SECTION 35. 30.10 (1) to (3) of the statutes are repealed.

SECTION 36. 30.10 (4) (title) of the statutes is repealed.

SECTION 37. 30.10 (4) (a) of the statutes is renumbered 30.213 (2) and amended

to read:

30.213 (2) ~~This section~~ Section 30.08 does not impair the powers granted by law under s. 30.123 sub. (1) or by other law to municipalities to construct highway bridges, arches, or culverts over streams.

SECTION 38. 30.10 (4) (b) of the statutes is renumbered 30.09 and amended to

read:

30.09 (title) Boundaries of lands adjoining waters. The boundaries of lands adjoining waters and the rights of the state and of individuals with respect to ~~all such those~~ lands and waters shall be determined in conformity to the common law so far as applicable, but in the case of a lake or stream erroneously meandered in the

body of water

1 original U.S. government survey, the owner of title to lands adjoining the meandered
 2 ~~lake or stream~~ ^{body of water} as shown on ~~such~~ the original survey, is conclusively presumed to own
 3 to the actual shorelines unless it is first established in a suit in equity, brought by
 4 the U.S. ^{federal} government for that purpose, that the government was in fact defrauded by
 5 such survey. If the proper claims of adjacent owners of riparian lots of lands between
 6 meander and actual shorelines conflict, each shall have his or her proportion of ~~such~~
 7 those shorelands.

8 SECTION 39. 30.10 (4) (c) of the statutes is repealed.

NOTE: The provision regarding farm drainage ditches is relocated to new s. 30.215.

9 ~~SECTION 40. 30.10 (4) (d) of the statutes is renumbered 30.268 (2).~~ ^(H)

10 SECTION 41. 30.103 of the statutes is renumbered 30.325.

INSERT
17-9

11 SECTION 42. 30.105 of the statutes is repealed.

NOTE: This provision relates to the method for determining the footage of shoreline for certain specific purposes under ch. 30. The substance of this provision is recreated at several places in this ~~draft~~ ^{bill} where the determination of shoreline footage is part of the statutory procedure.

12 SECTION 43. 30.11 (title) of the statutes is renumbered 30.321 (title).

13 SECTION 44. 30.11 (1) to (4) of the statutes are renumbered 30.321 (1) to (4) and
 14 amended to read:

15 30.321 (1) ~~WHO MUNICIPALITY MAY ESTABLISH.~~ Any municipality may, subject to
 16 the approval of the department, by ordinance establish or reestablish a bulkhead line
 17 and from time to time reestablish the same along any section of the shore of any
 18 ~~body of navigable waters~~ ^{body of water} within its boundaries. A municipality shall establish a bulkhead line

19 (2) STANDARDS FOR ESTABLISHING. ~~Bulkhead lines shall be established~~ in the
 20 public interest and shall conform ^{the bulkhead line} as nearly as practicable to the existing shores,
 21 except that in the case of leases under sub. (5) and s. ~~30.343~~ ^{plain} 24.39 (4) or 30.343 bulkhead

the municipality may allow
the

SECTION 44

If a

line to be located beyond

the line is

1 lines may be approved farther from the existing shoreline if they are consistent with
2 and a part of any lease executed by the board of commissioners of public lands.

ESTABLISHMENT OF LINES

3 (3) ~~HOW ESTABLISHED~~ Whenever any municipality proposes to establish or
4 reestablish a bulkhead line or to reestablish an existing bulkhead line, the
5 municipality shall indicate both the existing shore and the proposed bulkhead line
6 upon a map and shall file with the department for its approval 6 copies of the map
7 and 6 copies of the ordinance establishing the bulkhead line. The map shall use a
8 scale of not less than 100 feet to an inch or any other scale required by the
9 department. The map and a metes and bounds description of the bulkhead line shall
10 be prepared by a land surveyor registered in this state. The department may require
11 the installation of permanent reference markers to ^{for} the bulkhead line. Upon
12 approval by the department, the municipality shall deliver the map, description and
13 ordinance to the office of the register of deeds of the county in which the bulkhead
14 line lies, to be recorded by the register of deeds. ^{The register of deeds shall}
~~record the map and description, and ordinance~~ ^{plain}

15 (4) RIPARIAN RIGHTS PRESERVED. Establishment of a bulkhead line shall not
16 abridge the riparian rights of riparian ^{owners} proprietors. Riparian ^{plain} proprietors ^{owners} may place
17 solid structures or fill up to such the bulkhead line.

18 SECTION 45. 30.11 (5) of the statutes is renumbered 30.343 and 30.343 (title)
19 and (5) (a), as renumbered, are amended to read:

20 30.343 (title) **Finding Lease of submerged land; finding of public**
21 **interest.**

22 (5) (a) Prior to the execution of any lease by the board of commissioners of public
23 lands concerning rights to submerged lands or rights to fill in submerged lands held
24 in trust for the public under s. 24.39, the department shall determine whether the
25 proposed physical changes in the area as a result of the execution of the lease are

1 consistent with the public interest. Thirty days before making its determination, the
 2 department shall notify, in writing, ~~the clerk of the county and clerk of the city, village~~
 3 ~~or town in which the changes are proposed~~ each local governmental unit under s.
 4 30.04 (4) and the U.S. Army Corps of Engineers of the application for the lease. In
 5 making its finding the department shall give consideration to all reports submitted
 6 to it. The department shall not approve a lease applied for under s. 24.39 (4) (a) 2.
 7 if the department determines that the lease may threaten excessive destruction of
 8 wildlife habitat.

9 SECTION 46. 30.11 (6) of the statutes is renumbered 30.321 (5).

10 SECTION 47. 30.12 ~~(title)~~ and (1) ~~to (3)~~ of the statutes, as affected by 2001
 11 Wisconsin Act 16, are repealed and recreated to read:

12 ~~30.12 Structures and deposits in navigable waters prohibited without~~
 13 ~~permit; exceptions; penalty. (1) PERMIT REQUIRED. Unless a permit has been~~
 14 ~~granted by the department under this section or the legislature has authorized the~~
 15 ~~activity, it is unlawful~~ *to do either of the following*

16 (a) ~~To deposit any material or to place any structure upon the bed of any~~
 17 ~~navigable water where no bulkhead line has been established~~ *or*

18 (b) ~~To deposit any material or to place any structure upon the bed of any~~
 19 ~~navigable water beyond a lawfully established bulkhead line.~~ *INS 1/2/01*

20 (1m) ~~(2) EXCEPTIONS.~~ Subsection (1) does not apply *any of* to the following:

21 (a) Activities of the department of transportation carried out in accordance
 22 with s. 30.341.

23 (b) Highway bridges constructed or reconstructed by municipalities under s.
 24 ~~30.213 (1).~~

1 (c) Wharves, piers, and swimming rafts authorized to be constructed and placed
2 without a permit under s. 30.13.

3 (d) Water ski platforms and jumps authorized to be placed without a permit
4 under s. 30.135.

5 (e) Structures or deposits placed by the Duck Creek Drainage District under
6 s. 30.263.

7 (f) Structures in the Wolf and Fox River basins under s. 30.275.

SECTION RC; 30.12(2)
30.12(2)

8 (a) A riparian owner may apply to the department for a permit to build or maintain
9 for the owner's use a structure or to deposit any material for which a permit is
10 required under sub. (1).

11 (a) A riparian owner may apply to the department for a permit to build or maintain
12 for the owner's use a structure or to deposit any material for which a permit is
13 required under sub. (1).
except as provided in sub. (3),

14 (b) The notice and hearing provisions of s. 30.245 apply to a permit applied for
15 under this subsection.
Submitted
application
to build or maintain

16 (c) The department shall grant a permit applied for a structure under this
17 subsection if it finds that *all of the following apply:*
the structure will

- 18 1. Will not materially obstruct navigation;
- 19 2. Will not materially reduce the flood flow capacity of a stream and,
- 20 3. Will not be detrimental to the public interest.

21 (d) The department shall grant a permit for a deposit *to material* under this section if the
22 deposit *all of the following apply*

- 23 1. Is for the purpose of improving habitat or maintaining littoral drift.
- 24 2. Meets the requirements of par. (e).
- 25 3. Promotes *the deposit of the material promotes* public rights and interests in navigable waters.

SECTION 47 PERMITS TO PLACE CERTAIN STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS (a)

A riparian owner may apply to the department for a permit to:

NO... 30.276

30.275

as required under sub. (1)

application

to build or maintain

all of the following apply:

The structure will

The structure will

The structure will

to material

all of the following apply

The material is

INSERT 20
22

CERTAIN ST

AAA

- 1 1. Place a layer of sand or similar material on the bed of a lake adjacent to the
2 owner's property for the purpose of improving recreational use. ^{③ same}
- 3 2. Place a fish crib, spawning reef, wing deflector or similar device on the bed
4 of navigable waters for the purpose of improving fish habitat. ^⑤
- 5 3. Place riprap or similar material on the bed and bank of navigable waters
6 adjacent to an owner's property for the purpose of protecting the bank and adjacent
7 land from erosion.
- 8 4. Place crushed rock or gravel, reinforced concrete planks, adequately secured
9 treated timbers, cast in place concrete or similar material on the bed of a stream that
10 is navigable water for the purpose of developing a ford if an equal amount of material
11 is removed from the stream bed.
- 12 5. Place crushed rock or gravel, reinforced concrete planks, cast in place
13 concrete or similar material on the bed of navigable waters adjacent to the owner's
14 property for the purpose of building a boat landing.
- 15 6. Place a permanent boat shelter adjacent to the owner's property for the
16 purpose of storing or protecting watercraft and associated materials, except that no
17 permit may be granted for a permanent boat shelter which is constructed after May
18 3, 1988, if the property on which the permanent boat shelter is to be located also
19 contains a boathouse within 75 feet of the ordinary high-water mark or if there is
20 a boathouse over navigable waters adjacent to the owner's property.
- 21 7. Place an intake structure and pipe on the bed of a navigable water for the
22 purpose of constructing a dry fire hydrant to supply water for fire protection.
- 23 8. Drive a piling into the bed of a navigable water adjacent to the owner's
24 property for the purpose of deflecting ice, protecting an existing or proposed
25 structure, or providing a pivot point for turning watercraft.

1 9. Place a bird nesting platform, a wood duck house, or similar structure on the
2 bed of a navigable water for the purpose of improving wildlife habitat. ^{⑤ 2m}

3 10. Intake or outfall structures that are less than 6 feet to the water side of the
4 ordinary high water mark and less than 25% of the channel width. — INSERT

5 (b) The department may promulgate rules that identify activities or structures,
6 in addition to those listed in par. (a), that are subject to the permit and procedure in
7 this subsection.

8 (c) The notice and hearing provisions of s. 30.245 do not apply to a permit
9 applied for under this subsection.

10 (d) The department may deny a permit applied for under this subsection if it
11 finds that the structure or deposit will:

- 12 1. Materially impair navigation; or
- 13 2. Be detrimental to the public interest.

14 (e) A riparian owner is exempt from the permit requirements under sub. (1) and
15 this subsection for a structure specified under par. (a) 9. if the riparian owner notifies
16 the department in writing of the location of the structure at least 10 working days
17 before it is placed and places the structure in conformity with standards
18 promulgated as rules by the department. The department shall promulgate rules to
19 establish standards governing the placement of structures specified under par. (a)
20 9.

21 (f) The department may promulgate rules that identify activities or structures,
22 in addition to those listed in par. (e), that are exempt from the permit requirement
23 in sub. (1). Rules under this paragraph shall include standards and procedures for
24 the activity or structure.

30.12(1)(bt)?

1 (g) The department may promulgate rules to carry out the purposes of par. (a)
 2 6., including rules to establish minimum standards to govern the architectural
 3 features of boat shelters and the number of boat shelters that may be constructed
 4 adjacent to a parcel of land. The rules may not govern the aesthetic features or color
 5 of boat shelters. The standards shall be designed to assure the structural soundness
 6 and durability of a boat shelter. A municipality may enact ordinances not
 7 inconsistent with this section or with rules promulgated under this section
 8 regulating the architectural features of boat shelters.

bill

→ INSERT
23-18 ✓

NOTE: Under current law, the DNR does not have general authority to issue a permit under s. 30.12 to "deposit any material". This section allows the DNR to issue a permit to deposit material upon the bed of a navigable water, but uses a different standard for the DNR to make its determination. This draft adds an additional criterion for approval of a permit to deposit material in navigable waters--the deposit must "promote public rights and interests in navigable waters".

move to p. 25, after line 10

NOTE: The criminal penalty in current law for violation of s. 30.12 permit requirements is the only criminal penalty in subch. II. This section keeps the criminal penalty for repeat violators and adds a civil forfeiture as the basic penalty.

25-10

A new "short form" permit is added in new s. 30.12 (4) (a) 10. for intake and outfall structures.

SEC.#. RP; 30.12(4) (title) (a)

9

SECTION 48. 30.12 (4) of the statutes is renumbered 30.341 (2) and 30.341 (1) to

10 (3), (5) and (6), as renumbered, are amended to read:

plain

11 30.341 (2) Activities affecting inland waters of the state as defined in s. 281.01

12 (18) 29.001 (45) or outlying waters as defined in s. 29.001 (63) that are carried out

13 under the direction and supervision of the department of transportation in

14 connection with highway, bridge, or other transportation project design, location,

15 construction, reconstruction, maintenance, and repair are not subject to the

16 prohibitions or permit or approval requirements specified under this section or s.

17 29.601, 30.111, 30.12, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231, or 87.30 or

18 chs. 281 to 285 or 289 to 299, except s. 281.48. However, at the earliest practical time

19 prior to the commencement of these activities, the department of transportation

plain

plain

SECTION # . RA; 30.12(4)(b); 30.341(3)

1 shall notify the department of the location, nature, and extent of the proposed work
2 that may affect the ~~inland or outlying~~ waters of the state plain

3 30.341(2) The exemption under par. (a) sub. (1) does not apply unless the activity is
4 accomplished in accordance with interdepartmental liaison procedures established
5 by the department, ~~and the department of transportation~~ and the department of transportation for the purpose of
6 minimizing the adverse environmental impact, if any, of the activity.

SECTION # . RA; 30.12(4)(c); 30.341(4)

7 30.341(3) If the department determines that there is reasonable cause to believe that
8 an activity being carried out under this subsection section is not in compliance with
9 the environmental protection requirements developed through interdepartmental
10 liaison procedures, it shall notify the department of transportation. If the secretary
11 and the secretary of transportation are unable to agree upon the methods or time
12 schedules to be used to correct the alleged noncompliance, the secretary,
13 notwithstanding the exemption provided in this subsection section, may proceed
14 with enforcement actions as the secretary deems appropriate.

15 30.341(5)(b) Except as may be required otherwise under s. 1.11, no public notice or
16 hearing is required in connection with any interdepartmental consultation and
17 cooperation under this subsection section.

SECTION # . RA; 30.12(4)(f); 30.341(7)

18 30.341(6) This subsection section does not apply to activities in the Lower Wisconsin
19 State Riverway, as defined in s. 30.40 (15).

SECTION 49. 30.12(4m) of the statutes is renumbered 30.263(3). — INSERT 24-20

SECTION 50. 30.12(5) (title) of the statutes is repealed and recreated to read:
30.12(5) (title) PENALTIES.

SECTION 51. 30.12(5) of the statutes is renumbered 30.12(5) (b) and amended
to read:

SECTION # . RA; 30.12(4)(d); 30.341(5)

SECTION # . RA; 30.12(4)(e); 30.341(6)

SECTION # . RA; 30.12(4)(e); 30.341(6)

*** NOTE: Re: 30.12(5). Shouldn't these penalties be in S. 30.381?

1 30.12 (5) (b) Any person violating who violates this section or any term or
2 condition of a permit issued pursuant thereto under this section, and it is alleged in
3 the indictment, information, or complaint, and proved or admitted on trial or
4 ascertained by the court after conviction that the person was previously convicted
5 within a ~~time~~ period of 5 years for a violation of this section or any term or condition
6 of a permit issued under this section, shall be fined punished by a fine of not more
7 than \$1,000 or imprisoned in imprisonment not more than 6 months or both.

6
7

8 *** NOTE: Have MGD or RLC review this language. SECTION 52. 30.12 (5) (a) of the statutes is created to read:

INSERT 25-10 B

9 30.12 (5) (a) Any person who violates this section or any term or condition of
10 a permit issued under this section is subject to the penalty under s. 30.381 (1).

11 SECTION 53. 30.121 (title), (2), (3), (3g), (3m), (3r), (4), (5) and (6) of the statutes,

12 as affected by 2001 Wisconsin Act 16, are renumbered 30.281 (title), (2), (3), (3g),
13 (3m), (3r), (4), (5) and (6) and 30.281 (4), as renumbered, is amended to read:

14 30.281 (4) MAJOR REPAIR, ABANDONED STRUCTURES AND OBSTRUCTIONS TO
15 NAVIGATION. The owner of a boathouse or a fixed houseboat which extends beyond the
16 ordinary high-water mark of any navigable waterway and which is in a major state
17 of disrepair or is a material obstruction to navigation may be ordered by the
18 department to remove the structure from the waterway. The department shall follow
19 the procedures set forth in s. ~~30.03~~ 30.96 (4) (a) for ordering removal of a structure.
20 If such a structure is abandoned and the department, after due diligence, cannot
21 locate the owner, the department shall utilize the procedures set forth in s. 31.187
22 (1) for removing the abandoned structure.

25-10 MATERIAL FROM NOTE FROM PAGE 23, after line 8

23 SECTION 54. 30.121 (7) of the statutes is renumbered 30.381 (3).

24 SECTION 55. 30.122 of the statutes is renumbered 30.217 and amended to read:

2 (2) - INSERT 25-22

1 **30.217 Unauthorized structures.** All permanent alterations, deposits, or
 2 structures affecting navigable waters, other than boathouses, which were
 3 constructed before December 9, 1977 and which did not require a permit at the time
 4 of construction, shall be presumed in conformity with the law, ~~unless a written~~
 5 ~~complaint is filed within 180 days of December 9, 1977.~~ Upon the filing of a
 6 complaint, the department shall proceed with an action to enforce the applicable
 7 statutes.

NOTE: The time period for filing a written complaint has long since expired, and has no bearing on current structures.

8 ~~SECTION 56. 30.123 (title) of the statutes is repealed and recreated to read:~~
 9 **30.123 (title) Bridges prohibited without a permit; exceptions.**

10 ~~SECTION 57. 30.123 (1) of the statutes is renumbered 30.213 (1) and amended~~
 11 ~~to read:~~

12 ~~30.213 (1) Municipalities which construct or reconstruct highway bridges shall~~
 13 ~~not be required to obtain permits under this section or s. 30.10 or 30.12 or 30.123 for~~
 14 ~~such the construction or reconstruction. All municipal highway bridges shall be~~
 15 ~~constructed or reconstructed in accordance with standards developed under s. 84.01~~
 16 ~~(23).~~

17 ~~SECTION 58. 30.123 (2) to (4) of the statutes are repealed and recreated to read:~~
 18 ~~30.123 (2) PERMIT REQUIRED. Unless a permit has been granted by the~~
 19 ~~department under this section, no person may construct or maintain a bridge in, on~~
 20 ~~or over navigable waters.~~

21 ~~(c) (3) EXCEPTIONS. Subsection (1) does not apply to the following:~~
 22 ~~(a) Highway bridges constructed or reconstructed under s. 30.213 by~~
 23 ~~municipalities.~~

Subsections (2) to

1 (b) Bridges constructed and maintained by the department of transportation
2 under s. 30.12 (4).

3 (4) PERMITS TO CONSTRUCT OR MAINTAIN A BRIDGE. (a) A person may apply to the
4 department for a permit to construct or maintain a bridge for which a permit is
5 required under sub. (1).

6 (b) The notice and hearing provisions of s. 30.245 apply to a permit applied for
7 under this section except that no notice and hearing is required for a bridge that
8 ~~would cross navigable waters~~ ^{crossing a} less than 35 feet wide.

9 (c) The department shall grant a permit applied for under this section if it finds
10 that the bridge:

- 11 1. Will not materially obstruct navigation;
- 12 2. Will not materially reduce the effective flood flow capacity of a stream; and
- 13 3. Will not be detrimental to the public interest.

INS
27-13

14 SECTION 59. 30.123 (5) of the statutes is repealed.

NOTE: This repeals a requirement that bridges constructed over navigable streams be maintained in a safe condition, as determined by the DNR. The DNR does not have the expertise to review bridge safety and maintenance.

15 SECTION 60. 30.124 of the statutes ~~as affected by 2001 Wisconsin Act 16,~~ is
16 renumbered 30.351 ^(intro.) and 30.351 (1) (intro.), as renumbered, is amended to read:

INS
27-14

17 30.351 (1) ^(intro.) Notwithstanding ss. 30.12, 30.20, 30.44, and 30.45, and if the
18 department finds that the activity will not adversely affect the public interest or
19 private rights or interests in fish and wildlife populations, navigation, or waterway
20 flood flow capacity and will not result in environmental pollution ^{plain} as defined in s.
21 299.01 (4), the department may do all of the following on public lands or waters:

22 SECTION 61. 30.1255 ^(title) and (1) and ⁽¹⁾ of the statutes ^{is} are renumbered 30.91
23 ^(title) and (1) and ⁽¹⁾.

INS
27-21

(a) (title) and (b) (title)

SECTION 62. 30.1255 (4) of the statutes is repealed.

*** NOTE: S. 30.1255 (4) is repealed.

NOTE: The repealed provision directs DNR to expend moneys in fiscal years 1999-2000 and 2000-01 for educational activities regarding aquatic nuisance species.

30.266

SECTION 63. 30.126 (title) and (2) to (9) of the statutes are renumbered 30.265

(title) and (2) to (9) and 30.265 (5) (g), as renumbered, is amended to read:

30.266

30.265 (5) (g) May not have improper flotation devices. No person may

construct, place, or maintain a fishing raft on authorized portions of the Wolf River

unless each flotation device used on the fishing raft is clean and uncontaminated,

properly attached to the fishing raft, and properly maintained in conformity with

minimum standards established by the department by rule. The department shall

establish minimum standards for the condition, attachment, and maintenance of

flotation devices used on fishing rafts. This paragraph applies to any device used to

provide flotation for a fishing raft, including each individual barrel or styrofoam

coffin. *** NOTE: Why not put this last sentence in s. 30.126 (5) (g), as renumbered, in s. 30.266 (1)?

SECTION 64. 30.126 (10) of the statutes is renumbered 30.381 and amended

to read:

30.381 (3) PENALTIES ~~FISHING RAFTS~~ (a) ~~Violation of statute, rule or department~~

~~order.~~ A person who violates this section, any rule promulgated under this section

s. 30.265 or any order issued by the department under this section s. 30.265 shall

forfeit not less than \$10 nor more than \$250 for each offense. Each day of violation

constitutes a separate offense.

(b) ~~Violation of municipal ordinance or order~~ A person who violates any

ordinance adopted or order issued by the municipality under this section s. 30.265

is subject to the penalty established by ordinance. A Wolf River municipality may

SEC. #. 30.126 (10) (title) of the statutes are repealed.

Why not put this last sentence in s. 30.126 (5) (g), as renumbered, in s. 30.266 (1)?

30.266 ✓

EXTRA REPEALED

1 not establish this penalty at a level which is less severe than the penalty established
2 under par. (a).

3 SECTION 65. 30.13 (title) and (1)(c) of the statutes are amended to read:

4 30.13 (title) Regulation of wharves, piers, and swimming rafts;
5 establishment of pierhead lines. (1)(c) The wharf or pier does not extend beyond
6 any pierhead line which is established under sub. (3) s. 30.323.

fix comp.

SECTION 66. 30.13 (3) (title) of the statutes is renumbered 30.323 (title)

8 SECTION 67. 30.13 (3) of the statutes is renumbered 30.323 (1) and 30.323 (1)
9 (a), as renumbered, is amended to read:

INS
29-6

10 30.323 (1) (a) Any municipality authorized by s. 30.11 30.321 to establish a
11 bulkhead line may also establish a pierhead line in the same manner as it is
12 authorized to establish a bulkhead line, except that a metes and bounds legal
13 description is not required nor is the map required to be prepared by a registered land
14 surveyor and except that if the municipality has created a board of harbor
15 commissioners the municipality must obtain the approval of the board concerning
16 the establishment of the pierhead line in addition to obtaining the approval of the
17 department.

18 SECTION 68. 30.13 (4) (c) of the statutes is amended to read:

19 30.13 (4) (c) *Extends beyond pierhead line; exception.* A wharf or pier which
20 extends into navigable waters beyond any pierhead line established under sub. (3)
21 s. 30.323 constitutes an unlawful obstruction of navigable waters unless a valid
22 permit, license, or authorization for the wharf or pier is granted or unless it is a
23 permissible preexisting wharf or pier. A wharf or pier is a permissible preexisting
24 wharf or pier if it existed prior to the establishment of the pierhead line, if it is not
25 extended or expanded after that date and if the ownership of the land to which it is

INS
29-17

1 attached did not change after that date except that a wharf or pier continues its
 2 status as a permissible preexisting wharf or pier for one year after the date the
 3 change of ownership is recorded. The seasonal removal of a wharf or pier does not
 4 affect its status as a permissible preexisting wharf or pier if it is reestablished in
 5 substantially the same form. Status as a permissible preexisting wharf or pier does
 6 not imply that authorization for the wharf or pier is provided for the purposes of par.
 7 (a) or (b). The owner of a wharf or pier may submit evidence to the municipality that
 8 it is a permissible preexisting wharf or pier at any time after the municipality
 9 establishes the pierhead line.

SECTION # 30.13 (6) (title) is repealed. of the statutes

SECTION 69. 30.13 (6) of the statutes is renumbered 30.323 (2).

11 SECTION 70. 30.131 of the statutes is renumbered 30.283^v and 30.283 (1) (intro.)
 12 and (f) and (2), as renumbered, are amended to read:

13 30.283 (1) (intro.) Notwithstanding s. ~~30.133~~ ^{30.095}^v, a wharf or pier of the type
 14 which does not require a permit under ss. 30.12 (1) and 30.13 that abuts riparian land
 15 and that is placed in a navigable water by a person other than the owner of the
 16 riparian land may not be considered to be an unlawful structure on the grounds that
 17 it is not placed and maintained by the owner if all of the following requirements are
 18 met:

19 (f) The placement of the wharf or pier complies with the provisions of this
 20 ~~chapter, with any rules promulgated under this chapter~~ subchapter and with any
 21 applicable municipal regulations or ordinances.

22 (2) Notwithstanding s. ~~30.133~~ ^{30.095}^v, an easement under sub. (1) may be
 23 conveyed if it is conveyed at the same time, and to the same person, that the land to
 24 which the easement is appurtenant is conveyed.

25 SECTION 71. 30.133^v of the statutes is renumbered 30.095.

*** NOTE: The treatment of s. 30.134 is missing.

INSERT
31-1

SECTION 72. 30.135 (2) (a) and (4) of the statutes are amended to read:

30.135 (2) (a) Upon receipt of a complete permit application, the department shall either order a hearing or provide notice stating that it will proceed on the application without a hearing unless a substantive written objection to issuance of the permit is received within 30 days after publication of the notice. The department shall provide a copy of the notice to the applicant for the permit, the clerk of each municipality in which the water ski platform or water ski jump is to be located, each local governmental unit ^{required to receive notice} (under s. 30.04 (4) and to any other person required by law to receive notice. The department may provide notice to other persons as it considers appropriate. The applicant shall publish the notice as a class 1 notice under ch. 985 in a newspaper designated by the department that is likely to give notice in the area affected. The applicant shall file proof of publication with the department.

(4) EXEMPTION. ~~Section 30.02~~ ^{The notice and hearing provisions of s. 30.245 do} does not apply to ^{applied for} permit applications ^{submitted under this section} ~~submitted under this section~~ ^{Section 30.134 and parts of s. 30.135}

*** NOTE: This appears to be a word missing of the statutes.
SECTION 73. 30.14 (title) of the statutes is repealed.
SECTION #. 30.14 (1) (title) is repealed.
SECTION 74. 30.14 (1) of the statutes is renumbered 30.327.

SECTION 75. 30.14 (2) of the statutes is renumbered 30.247 and amended to read:

30.247 Hearings by department. Upon complaint by any person to the department that any wharf, pier, or other structure exists in navigable water in violation of s. 30.12 or 30.13, or ~~30.207~~ 30.223 or that any wharf, pier, or other structure proposed to be built in navigable water will violate s. 30.12 or 30.13, or ~~30.207~~ 30.223, the department shall investigate and may hold a hearing to determine whether the wharf, pier, or other structure is or would be in violation of

1 those sections. If no hearing is held, the complainant shall be informed of the results
2 of the investigation.

3 SECTION 76. 30.15 (title) of the statutes is repealed.

✓ SECTION R.P.; 30.15(1) (title)

4 SECTION 77. 30.15 (1) (intro.) and (a) to (c) of the statutes are renumbered 30.98
5 (1) (intro.) and (a) to (c).

6 SECTION 78. 30.15 (1) (d) of the statutes is renumbered 30.381 ⁽⁴⁾ and amended
7 to read: ^(B)
⁽⁴⁾

8 30.381 ^(B) ~~(5)~~ Constructs Any person who constructs or places any structure or
9 deposits any material in navigable waters in violation of s. 30.12 or 30.13 shall forfeit
10 not less than \$100 nor more than \$500 for each offense. Each day during which a
11 structure or deposit exists in violation of this subsection is a separate offense.

12 SECTION 79. 30.15 (3) of the statutes is renumbered 30.98 (2).

13 SECTION 80. 30.16 of the statutes is renumbered 30.95.

14 SECTION 81. 30.18 ^{(1) (intro.)} ~~of the statutes is repeated and recreated~~ ^{created} to read:

15 30.18 ~~Diversion of water from lakes and streams.~~ ^(Intro.) (1) DEFINITIONS. In this
16 section:

17 ~~(a) "Authorized base level of water loss" has the meaning given under s. 281.35~~

18 ~~(1)(b).~~

19 ~~(b) "Water loss" has the meaning given under s. 281.35 (1) (L).~~

20 ~~(c) "Withdrawal" has the meaning given under s. 281.35 (1) (m).~~

21 (2) PERMIT REQUIRED. (a) Streams. Unless a permit has been granted by the
22 department under this section, no person may divert water from a stream if:

23 1. The diversion is for the purpose of maintaining or restoring the normal level
24 of a navigable lake or the normal flow of a navigable stream, regardless of whether

INSERT
32-22

1 the lake or stream is located within the watershed of the stream from which the
2 water is diverted.

3 2. The diversion is for the purpose of agriculture or irrigation.

4 (b) ~~Streams or lakes.~~ Unless a permit has been granted by the department
5 under this section, no person may divert water from a lake or stream if the diversion
6 will result in a water loss averaging 2,000,000 gallons per day in any 30-day period
7 above the person's authorized base level of water loss. This paragraph does not apply
8 to a person required to obtain an approval under s. 281.41.

9 ~~(3) (a) Permits for diversions of water.~~ A person may apply to the department
10 for a permit to divert water from ^a lakes or streams for which a permit is required by
11 sub. (2).
bad wording

12 (b) The notice and hearing provisions of s. 30.245 apply to a permit applied for
13 under this section, but not if a hearing on the application under this section is
14 conducted as part of a hearing under s. 293.43.

15 (c) In addition to the notice requirements of par. (b), the department shall mail
16 a copy of the notice under par. (b) to:

17 1. Each owner of land over which water is proposed to be diverted.

18 2. Each local governmental unit under s. 30.04 (A). (2)

19 3. The clerk of the municipality that is the next municipality downstream from
20 the point of the proposed diversion.

21 4. The clerk of each municipality in which the lake or stream from which water
22 is proposed to be diverted is located and which is adjacent to any municipality in
23 which the diversion will take place.

24 5. Each person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

SECTION 81

from a stream for the purpose of agriculture or irrigation

1 (d) An application for a diversion of water under sub. (2) (a) 2. shall include the
2 following:

3 1. Written statements of consent to the diversion from all riparian owners who
4 are making beneficial use of the water proposed to be diverted.

5 2. Evidence of permission or authority to enter any land through which it is
6 proposed to divert the water for the purposes of obtaining information required for
7 drafting the plans for the project.

8 (e) The department shall grant ^{the type of} a permit ^{as required to meet that is required} applied for under sub. (2) (a) if the
9 department determines that:

10 1. The proposed diversion is for use on riparian land.

11 2. The proposed diversion will not be detrimental to the public interest.

12 3. The water to be diverted is either not being beneficially used or all riparians
13 who may be adversely affected by the diversion have consented to the proposed
14 diversion.

15 (f) The department shall grant a permit applied for under sub. (2) (b) if the
16 grounds for granting a permit under s. 281.35 (5) (d) are met and, if a permit is also
17 required under sub. (2) (a), if the department makes the determination in par. (a).

18 (4) PERMIT CONDITIONS; REPORTING; REVIEW. (a) The department shall specify on
19 each permit issued under the section the quantity of water that may be diverted and
20 the times during which water may be diverted. If the permit is issued under sub. (2)
21 (b), the permit shall also specify the factors enumerated in s. 281.35 (6).

22 (b) A person granted a permit under this section shall report to the department
23 the volume and rate of withdrawal and the volume and rate of water loss in the form
24 and at the times specified by the department.

1 (c) If the permit was required under sub. (2) (a) but not under sub. (2) (b) and
2 the permit was issued on or after August 1, 1957, the department shall review the
3 permit at least once every 5 years. If the permit was required under sub. (2) (b), the
4 department shall review the permit as required under s. 281.35 (6) (b).

5 (d) A person issued a permit for the purpose of irrigation or agriculture may use
6 the water on land contiguous to the permittee's riparian land, but may not withdraw
7 more water than the permittee withdrew before August 1, 1957 unless the
8 department approves the additional amount withdrawn by modifying the
9 permittee's permit.

10 (6m)(5) REVOCATION. (a) The department shall revoke a permit issued under sub.
11 (3) (e) which is not subject to sub. (2) (b) if it finds:

12 1. That the water being diverted is ^{has} no longer water that is not being beneficially
13 used, unless all riparians adversely affected by the diversion continue to consent to
14 it; or

15 ^{same} 2. If the diversion is from a stream designated by the department as a trout
16 stream, that the revocation is desirable for conservation purposes.

17 (b) The department may revoke a permit issued under sub. (3) (e) that is not
18 subject to sub. (2) (b) if it finds that the diversion is detrimental to the stream from
19 which the water is diverted.

20 (c) The department may revoke a permit issued under sub. (3) (f) only as
21 provided under s. 281.35 (6).

22 (6) PREREQUISITES TO PROJECT CONSTRUCTION. No work shall be commenced on
23 the canal, headworks or other structures necessary for the project until the plans for
24 those structures have been approved by the department. Any person having received
25 a permit required under sub. (2) (a) may construct upon the land of another the canal

1 and other works authorized by the permit after the damage which will be sustained
 2 by the owner or owners of such land has been satisfied, or has been determined as
 3 provided for in ch. 32, and after the final sum so determined and all costs have been
 4 paid to the persons entitled thereto or to the clerk of the circuit court on their account.

NOTE: Current s. 30.18 (7) allows the applicant to "enter any land through which it is proposed to divert water", after the permit application is filed, to conduct surveys. This provision is deleted, and replaced by a requirement in new s. 30.18 (3)(a) for the applicant to obtain permission or authority to enter the land.

INSERT
36-4A

INSERT
36-4B

5 SECTION 82. 30.19 of the statutes is repealed and recreated to read:

6 **30.19 Enlargement and protection of waterways.** (1) DEFINITION. In this
 7 section, "artificial water body" means a proposed or existing body of water that does
 8 not have a history as part of a lake or stream.

9 (1a) (2) PERMITS REQUIRED. Unless a permit has been granted by the department or
 10 authorization has been granted by the legislature, it is unlawful:

11 AM; (a) To construct, dredge or enlarge any artificial water body that connects with
 12 a navigable waterway or where any part of the artificial water body is located within
 13 500 feet of the ordinary high-water mark of a navigable waterway.

14 AM (b) To connect a navigable waterway or artificial water body with a navigable
 15 waterway by a navigable surface channel.

16 AM (c) To grade or remove top soil from the bank of a navigable waterway where
 17 the area exposed will exceed 10,000 square feet.

18 (1m) (3) EXCEPTIONS. Subsection (2) does not apply to:

19 (a) The construction and repair of public highways.

20 (b) Agricultural uses of land.

21 (c) Work required to maintain the original dimensions of an enlargement of a
 22 artificial water body
 waterway authorized under sub. (2) (a) or (b).

This exemption allows DNR to develop

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~~(4) PERMITS FOR PROJECTS IN OR NEAR WATERWAYS. (a) A person may apply to the department for a permit to engage in activities otherwise prohibited under sub. (2).
(b) The notice and hearing provisions of s. 30.245 apply only to permit applications under sub. (2) (b) and to permit applications under sub. (2) (c) in which there is an effect on navigable waters other than the effect on water quality. In addition to the notice under s. 30.245, notice shall also be provided to the following:~~

NOTE: This provision continues the applicability of notice and hearing provisions only to permit applications under sub. (2) (b) and (c). Under the current statute, the notice and hearing is not required for dredging artificial water bodies for the purpose of connection to a navigable waterway or where part of the artificial water body is within 500 feet of the ordinary high-water mark of the navigable waterway. In addition, an exemption from the notice and hearing is provided for grading or removing topsoil from the bank of navigable waters where the only effect is on water quality. ~~Also~~ a "short form" permit is provided for grading or removing topsoil where advance notice is given to the department and the work conforms to rules of the department that describe methods for such work.

↓
MOVE
to p.
38,
after
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38-8

topsoil from the bank

- ~~1. Each local governmental unit under s. 30.04 (4). (2)~~
- ~~2. The clerks of the municipalities in which the project or affected body of water is located.~~
- ~~3. The secretary of any property owner's associations formed with respect to the bodies of water affected by the project. If no property owner's association exists, notice shall be given to at least 5 persons who own property adjacent to the bodies of water affected by the project or to all such persons if fewer than 5 persons own property affected by the project.~~
- ~~4. The Milwaukee Metropolitan Sewerage District for any permit application for a project that would affect the Milwaukee River, the Menomonee River, the Kinnickinnic River, the Root River or any tributary of those rivers.~~
- ~~(c) The department shall grant a permit applied for under this section if it determines that:
1. The project will not be detrimental to the public interest.~~

2. The project will not cause environmental pollution as defined in s. 299.01 (4).

3. Any enlargement connected to a navigable waterway complies with laws relating to the platting of land and sanitation.

4. No material injury will result to the rights of riparian owners of land on a natural or artificial water body affected by the project.

(5) PERMIT CONDITIONS. A permit to construct an artificial waterway and connect it to a navigable waterway under this section shall provide that the artificial waterway shall be a public waterway.

NOTE: Current s. 30.19, which requires a permit for enlargement and protection of waterways, contains an exception for navigable lakes and streams and any portion of Lake Michigan within Milwaukee County. This exception is not included in this draft so that s. 30.19 will apply uniformly to all navigable waters. However, current s. 30.05 (renumbered s. 30.2237) continues to apply where lakebed grants have been made.

30.195 Changing of stream courses. (1) PERMIT REQUIRED. (a) Unless a permit has been granted by the department under this section or a statute expressly authorizes the activity, no person may change the course of or straighten a navigable stream.

(2) PERMIT TO CHANGE STREAM COURSE. (a) A person may apply to the department for a permit to engage in activities for which a permit is required under sub. (1).

(b) The notice and hearing provisions of s. 30.245 apply to permit applications under this section that involve relocation of more than 500 feet of stream length.

(c) The department shall grant a permit applied for under this section if it determines that:

1. The applicant is the owner of land upon which the stream is located.

2. The proposed change in course or straightening of the stream will improve the economic or aesthetic value of the applicant's land.

LPS:
add both of these
INSERT
38-8V
Material from p. 37

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3. The proposed change in course or straightening of the stream will not adversely affect the flood flow capacity of the stream or otherwise be detrimental to the public interest.

4. The proposed change in course or straightening of the stream will not be detrimental to the rights of other riparians located on the stream or all such riparians have consented to approval of the application.

NOTE: It is not clear whether current s. 30.195 is subject to the requirement of a notice and hearing. Current s. 30.02 provides that the notice and hearing provisions of that statute apply in any proceeding under ch. 30 where public notice is required. Under s. 30.195 (3), the DNR may issue a permit either on its own motion or after a public hearing. This does not appear to be a clear statement that a public hearing is required, and it is therefore uncertain whether the notice and hearing requirement of current s. 30.02 applies. This draft makes the permit under s. 30.195 subject to the notice and hearing requirements of new s. 30.245 for relocation of more than 500 feet of stream length, which corresponds with the division between type II and type III actions regarding stream locations for environmental review under ch. NR 150, Wis. Adm. Code.

INSERT
39-6

bi II

This draft eliminates the current provision in s. 30.195 (4) that states that no common law liability and no liability under any other statute for damages resulting from the change in the course of the stream or straightening a stream is affected by s. 30.195. Nothing in current s. 30.195, or s. 30.195 as amended by this draft, suggests that an exemption from liability is created. Compliance with the provisions in a permit under s. 30.195 may have a bearing on the issue of negligence, but current s. 30.195 (4) is unnecessary. Also, the provision in the current statute that creates a presumption of exercising due care in complying with a permit is better addressed by the court as part of a negligence action.

The exception for land owned by Milwaukee County or a city, village or town in Milwaukee County is deleted. This provision was originally created as part of s. 30.195 when it was adopted in 1961, and was added as a floor amendment. This exception is not included in this draft so that s. 30.195 will apply uniformly to all navigable waters.

7

SECTION 84. 30.196 of the statutes is renumbered 30.313, and 30.313 (intro.),

as renumbered, is amended to read:

30.313 (intro.) A municipality may enclose navigable waters by directing, placing, or restricting navigable waters into an enclosed drain, conduit, storm sewer, or similar structure if the department grants the municipality a permit. The department may grant this permit to a municipality after following the notice and hearing requirements under s. 30.02 (3) and (4) 30.245 if it finds that granting the permit:

BeB *Enclosure of navigable waters; issuance of permits to municipalities.*

if the department