



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -

PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Added To File: 11/06/2003 (Per: MGG)



☞ The 2003 drafting file for LRB 03-3040/1

has been copied/added to the 2003 drafting file for

LRB 03-3599 (compile draft) which was transferred to

LRB 03-3629

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

2003 DRAFTING REQUEST

Bill

Received: 07/30/2003

Received By: rkite

Wanted: Soon

Identical to LRB:

For: Cathy Stepp (608) 266-1832

By/Representing: Jay/Scott

This file may be shown to any legislator: NO

Drafter: mglass

May Contact:

Addl. Drafters: mglass
btradewe
rnelson2

Subject: Nat. Res. - nav. waters

Extra Copies: KMG

Submit via email: YES

Requester's email: Sen.Stepp@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Permitting procedures for navigable waters

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>
/?	rkite 08/06/2003			_____			
/P1	mglass 09/08/2003	kgilfoy 09/09/2003	jfrantze 09/11/2003	_____	mbarman 09/11/2003		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2			chaugen 10/03/2003	_____	lnorthro 10/03/2003		S&L
/P3	mglass 10/13/2003	kgilfoy 10/14/2003	rschluet 10/14/2003	_____	mbarman 10/15/2003		S&L
		kgilfoy 10/14/2003	pgreensl 10/15/2003	_____			
/1	mglass 09/28/2003	kgilfoy 09/30/2003	pgreensl 10/21/2003	_____	lnorthro 10/21/2003		
	mglass 10/20/2003	kgilfoy 10/21/2003		_____			

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 07/30/2003

Received By: rkite

Wanted: Soon

Identical to LRB:

For: Cathy Stepp (608) 266-1832

By/Representing: Jay/Scott

This file may be shown to any legislator: NO

Drafter: mglass

May Contact:

Addl. Drafters: mglass
btradewe
rnelson2

Subject: Nat. Res. - nav. waters

Extra Copies: KMG

Submit via email: YES

email copies of 11 to
① jdeschane@wisbuild.org
② pkent@andersonkent.com

Requester's email: Sen.Stepp@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Permitting procedures for navigable waters

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>
/?	rkite 08/06/2003						
/P1	mglass 09/08/2003	kgilfoy 09/09/2003	jfrantze 09/11/2003	<i>10/21</i>	mbarman 09/11/2003		S&L

11-10/21 KMG
10/21 ps
ps/11/0

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2			chaugen 10/03/2003	_____ _____	Inorthro 10/03/2003		S&L
/P3	mglass 10/13/2003	kgilfoy 10/14/2003	rschluet 10/14/2003	_____ _____	mbarman 10/15/2003		
		kgilfoy 10/14/2003	pgreensl 10/15/2003	_____ _____			
/1	mglass 09/28/2003	kgilfoy 09/30/2003		_____ _____			

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 07/30/2003

Received By: rkite

Wanted: Soon

Identical to LRB:

For: Cathy Stepp (608) 266-1832

By/Representing: Jay/Scott

This file may be shown to any legislator: NO

Drafter: mglass

May Contact:

Add. Drafters: mglass
btradewe
rnelson2

Subject: Nat. Res. - nav. waters

Extra Copies: KMG

Submit via email: YES

Requester's email: Sen.Stepp@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Permitting procedures for navigable waters

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>
/?	rkite 08/06/2003		10/15 p8	10/15			
/P1	mglass 09/08/2003	kgilfoy 09/09/2003	jfrantze 09/11/2003		mbarman 09/11/2003		S&L
		103-10/14 KMG					

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/P2			chaugen	_____	lnorthro		
			10/03/2003	_____	10/03/2003		
/1	mglass	kgilfoy		_____			
	09/28/2003	09/30/2003		_____			

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 07/30/2003

Received By: rkite

Wanted: Soon

Identical to LRB: .

For: Cathy Stepp (608) 266-1832

By/Representing: Jay/Scott

This file may be shown to any legislator: NO

Drafter: mglass

May Contact:

Addl. Drafters: mglass
btradewe
rnelson2

Subject: Nat. Res. - nav. waters

Extra Copies: KMG

Submit via email: YES *or by to P. Kent @ andersonkent.com*

Requester's email: *Sen.Stepp@legis.state.wi.us*

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Permitting procedures for navigable waters

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>
/?	rkite 08/06/2003						
/P1	mglass 09/08/2003	kgilfoy 09/09/2003	jfrantze 09/11/2003	<i>JK 10/3</i>	mbarman 09/11/2003		
	<i>11-9/30 KMG</i>		<i>ch 10-2</i>				

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 07/30/2003

Received By: rkite

Wanted: Soon

Identical to LRB:

For: Cathy Stepp (608) 266-1832

By/Representing: Jay/Scott

This file may be shown to any legislator: NO

Drafter: mglass

May Contact:

Addl. Drafters: mglass
btradewe
rnelson2

Subject: Nat. Res. - nav. waters

Extra Copies: KMG

Submit via email: YES

Requester's email: Sen.Stepp@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Permitting procedures for navigable waters

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>
/?	rkite 08/06/2003			_____			
/P1	mglass 09/08/2003	kgilfoy 09/09/2003	lrb_lps	_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: 07/30/2003

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Cathy Stepp (608) 266-1832

By/Representing: Jay / Scott

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Addl. Drafters: MCG/RCT/RPN

Subject: Nat. Res. - boats snomos ATVs

Extra Copies: KMG

Submit via email: YES

Requester's email: Sen.Stepp@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Revisions to ch. 30

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

1?	rkite	1/1-9/8-9 KMG	9/11	9/11			
----	-------	------------------	------	------	--	--	--

FE Sent For:

<END>

ok to call
this guy, says Jay
RPN

TO: Jerry Deschane 242-5151 if questions
FROM: Paul Kent OK to talk to him 280-6201 246-8500
DATE: July 23, 2003
RE: Chapter 30 Recodification Drafts

Attached to this memo is a first set of draft revisions to Wis. Stat. Chapter 30. These revisions build on the work undertaken by the Legislative Council Committee recodifying Chapter 30 in the last legislative session. While the recodification bill made some significant improvements to the Chapter 30 process, particularly in requiring DNR rulemaking to define standards for the granting of permits, several fundamental problems with Chapter 30 remain. The attached drafts focus on two of the major remaining problems: (1) too many projects with de minimis impacts require individual permits, and (2) the individual permit process is lengthy and unworkable.

1. FOCUSING DEPARTMENT RESOURCES

The Wisconsin Department of Natural Resources issues approximately 5,000 Chapter 30 permits each year. This is a daunting task for any administrative agency even if budget concerns were not an issue. The inevitable result of having to process that many permits is that far too much time is spent on projects with minimal impact and major projects do not get the timely attention they deserve.

To address this concern, the proposed draft utilizes a three-tier system for activities within the Department's Chapter 30 jurisdiction:

- Exemptions—For those activities with de minimis impacts or where the activity is regulated through other Department programs.
- General Permits—For activities which are routine in nature, have modest potential impacts and do not call for individual conditions.
- Individual permits—For projects with potentially significant impacts that require individual review and conditions.

There is nothing new or novel about such an approach. Chapter 30 already utilizes some exemptions, as do most other programs within the Department. However, exemptions for certain de minimis impacts have not been systematically defined. Other states, such as

Anderson & Kent, S.C.

TO: Jerry Deschane
FROM: Paul Kent
DATE: July 23, 2003
PAGE: 2

Michigan, have an extensive list of de minimis activities that do not require regulatory approval. For each of five major permits,¹ this draft exempts those activities with de minimis impact or activities that are already regulated.

General permits are already widely utilized by the Department, including general permits issued for water discharges covered by the federal Clean Water Act. There is no reason why a general permit that is adequate to cover certain wastewater or stormwater discharges to waters of the state cannot be utilized for impacts the same to water resources from the installation of piers, culverts or ponds.

The draft directs the Department to issue general permits within 18 months from the effective date of the statute creating general permit authorization. This is designed to eliminate undue delays in moving this process forward. The draft also specifies the standards that the Department can incorporate into general permits. The value of any general permit can be subverted by the imposition of conditions that recapture the individual permit process, so the draft attempts to define the scope of general permit conditions.

For individual permits, the draft does not attempt to change the current standards. The current standards need more specificity, but some will be provided by rules under the Legislative Council draft. Additional review will be needed in this area. This draft focuses on procedural changes for the individual permits as is noted below.

2. STREAMLINING THE PERMIT PROCESS

For general permits, the permit process utilizes a process similar to that currently utilized for other general permits. Under this draft, a person applies for coverage under a general permit and is able to proceed without further notice unless the Department determines that the project does not qualify for a general permit within 30 days. The section also adds a procedural requirement to help ensure compliance, audit and review by the Department in the form of a requirement for post project certification and photographic documentation that the project proceeded in accordance with the permit.

¹

- Section 30.12 Structures and Deposits
- Section 30.123 Bridges and Culverts
- Section 30.19 Grading and Ponds
- Section 30.195 Stream Relocation
- Section 30.20 Dredging

Anderson & Kent, S.C.

TO: Jerry Deschane
FROM: Paul Kent
DATE: July 23, 2003
PAGE: 3

Two major changes were made in the individual permit process. First, the basic individual permit process was made to conform with that used by other Department permit programs. Under the proposed draft, a request for a hearing results in a public hearing not a contested case hearing. A public hearing process is more accessible, less expensive and can be done in a timely fashion. At that point, an interested party may request a contested case hearing followed by judicial review. Following the public hearing and comment period, the Department issues a decision.

Second, this proposal provides the parties an option of requesting a direct review of the Department decision by the circuit court without going through the administrative hearing process. In such a case, the reviewing court would conduct a "de novo" hearing which means that it would conduct an evidentiary hearing, examine the evidence and make its own determination without giving deference made at the previous proceeding. There are two reasons to offer this as an option for Chapter 30 cases. The primary standards for the granting of a Chapter 30 permit under current law stem from the public trust doctrine and are defined more by case law than they are by administrative rules. In such case, circuit court judges are in as good, if not better, position to determine what is in the public interest than an administrative law judge. Second, allowing de novo judicial review, removes a step in the appeal process. While this approach is somewhat novel, there is precedent for it in the tax appeals context as was recently discussed and approved by the Wisconsin Supreme Court in *Nankin v. Village of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141.

**CHAPTER 30 RECODIFICATION
NOTICE AND HEARING CHANGES**

1 **SECTION 1.** Section 30.015 of the Statutes is repealed.

2 **SECTION 2.** Section 30.02 of the Statutes is repealed and recreated to read as
3 follows:

MGL- 4 **30.02 INDIVIDUAL PERMITS.** (1) A person who seeks to obtain or modify an individual
5 permit under this chapter shall file an application with the department.

6 (2) **TIME LIMITS FOR ISSUING PERMIT DETERMINATIONS.** In issuing permits under
7 this chapter, the department shall initially determine whether a complete application for the
8 permit has been submitted and, no later than 60 days after the application is submitted, notify
9 the applicant in writing about the initial determination of completeness. If the department
10 determines that the application is incomplete, the notice shall state all of the reasons for the
11 determination and the specific items of information necessary to make the application
12 complete. An applicant may supplement and resubmit an application that the department has
13 determined to be incomplete. There is no limit on the number of times that an applicant may
14 resubmit an application that the department has determined to be incomplete under this
15 section. The department may not demand items of information that are not specified in the
16 initial notice as a condition for determining whether the application is complete unless both the
17 department and the applicant agree or unless the applicant makes material additions or
18 alterations to the project for which the application has been submitted. [Based on s. 30.015]

1 **(3) PUBLIC NOTICE AND COMMENT. [Based on § 283.39]**

2 (a) The department shall promulgate by rule procedures for circulating to interested and
3 potentially interested members of the public, notices of each complete application for a permit.

4 Procedures for the circulation of public notices shall include at least the following:

5 1. Publication of the notice as a class 1 notice under ch. 985;

6 2. Mailing of the notice to any person or group upon request.

7 (b) The department shall provide a period of not less than 30 days following the
8 date of the public notice during which time interested persons may submit their written views
9 on the tentative determinations with respect to the permit application. All written comments
10 submitted during the period for comment shall be retained by the department and considered in
11 the formulation of the final determinations for the permit application.

12 (c) The department shall by rule prescribe the form and content of public notices
13 issued under par. (a). Every such notice issued by the department shall include at least the
14 following information:

15 1. The name and address of each applicant;

16 2. A brief description of the applicant's activities which require a permit;

17 3. The name of the waterway in which the activity is planned;

18 4. A statement of the tentative determination to issue or deny a permit for the
19 activity described in the application;

20 5. A brief description of the procedures for the formulation of final determinations,
21 including the 30-day comment period required under par. (b).

22 **(4) PUBLIC HEARING. [Based on § 283.49]**

1 (a) The departmental shall provide an opportunity for the applicant and any interested
2 person to request a public hearing with respect to a permit application. Such request for a
3 public hearing shall be filed with the department within 30 days after the circulation of the
4 public notice of the complete permit application under sub. (3).

5 (b) The department shall hold a public hearing if a timely request is filed or if the
6 department determines that there is a significant public interest in holding such a hearing.

7 (c) Hearings held under this section are not contested cases under s. 227.01(3).

8 (d) The department shall provide public notice of any hearing under this section
9 which shall be circulated in accordance with the notice requirements of section sub. (3).

10 (5) DECISION. Within 30 days after the comment period under sub. (3), or if a
11 hearing is granted under sub. (4), 30 days after the public hearing, the department shall issue
12 a decision granting, denying or modifying the permit application.

13 (6) REVIEW OF PERMIT DECISIONS.

14 (a) Administrative Review.

15 1. Any permit applicant, permittee or 5 or more persons may secure an
16 administrative review of the granting, denial or modification of any permit or term or
17 condition of any permit issued under this chapter.

18 2. Except as provided in par. (c), review shall be secured by filing a petition with
19 the secretary within 30 days after an agency action which is reviewable. The petition shall set
20 forth the interest of the petitioner and the reasons why a hearing is warranted.

21 3. Upon receipt of such a petition, the department shall determine whether the
22 petition sets forth a substantive objection and notify the petitioner and the permit applicant on

1 its decision to grant or deny the hearing. If the department grants the hearing, it shall circulate
2 a notice of the hearing at least 30 days in advance of the hearing in accordance with notice
3 provisions of sub. (3).

4 4. The hearing shall be conducted as a contested case hearing in accordance with
5 the procedures in Chapter 227.

6 (b) Judicial review of administrative decisions. Decisions of the department issued
7 following a hearing under sub. (6)(a) are subject to judicial review as provided in Chapter 227.

8 (c) De novo judicial proceeding.

9 1. In lieu of seeking review under pars. (a) and (b), any permit applicant,
10 permittee, or any other person with legal standing may commence an action in circuit court for
11 the county in which the riparian property that is the subject of the permit decision in sub. (5) is
12 located. Such review shall be a de novo evidentiary proceeding and shall be commenced by
13 filing a petition for de novo judicial review.

14 2. Any proceeding commenced under par. (a) by any party may be removed by any
15 other party to circuit court for the county in which the riparian land that is the subject of the
16 permit decision in sub. (5) is located. Such review shall be a de novo evidentiary proceeding
17 and shall be commenced by filing a notice of removal together with a copy of the initial
18 petition under pars. (a) or (b). Such a notice must be filed within 30 days of the decision to
19 grant an administrative hearing under par. (a)3.

20 **SECTION 3.** Section 30.206(1) of the Statutes is repealed and recreated to read as
21 follows:

22 **(1) ADOPTION OF GENERAL PERMITS.**

1 (a) The department shall issue a general permit for each activity for which a general
2 permit is authorized under this chapter within 18 months from the effective date of enactment.

3 (b) Before issuing general permits, the department shall provide, after an
4 environmental analysis, a notice and hearing under ss. 227.17 and 227.18.

5 (c) To ensure that the cumulative adverse impact of the activities authorized by a
6 general permit is insignificant and that the issuance of the general permit will not injure public
7 rights or interests, cause environmental pollution or result in material injury to riparian
8 owners, the department may prescribe conditions that conform to the following:

9 1. Construction and design standards not inconsistent with the purpose of the designated
10 activity.

11 2. Location standards to ensure that the activity does not interfere with navigation or
12 have an adverse impact on the riparian property rights of adjacent riparian owners.

13 3. Restrictions to protect outstanding or exceptional resource waters, shoreland
14 wetlands, natural areas or scientific areas.

15 **SECTION 4.** Section 30.206(2) of the Statutes is repealed and recreated to read as
16 follows:

17 **(2) PROCEDURES FOR COVERAGE UNDER GENERAL PERMITS.**

18 (a) An applicant seeking coverage under a general permit shall provide a
19 notification to the department to be covered under the applicable general permit no less than 30
20 days prior to commencement of the activity authorized by the general permit. The notification
21 shall provide information describing the project and establishing that the activity falls with the
22 scope of the general permit.

1 (b) The activity shall be deemed approved and the applicant may proceed without
2 further notice or hearing unless the DNR requires an individual permit or requests additional
3 information about the activity within 30 days of submittal of the notification under par. (a).

4 The department may require an individual permit only if it determines that the proposed
5 activity is outside the scope of the general permit or will not meet the permit conditions in the
6 general permit.

7 (c) Following completion of the activity, the applicant shall provide to the
8 department of natural resources a certification that the activity complies with the general permit
9 and a photograph of the activity.

10 **SECTION 5.** Sections 30.206(3), (3m) and (4) of the Statutes are repealed.

[END]

CHAPTER 30 RECODIFICATION
STRUCTURE AND DEPOSIT PERMITS ' ' 30.12, 30.13

1 SECTION 1. Section 30.12 of the Statutes is repealed and recreated to read as
2 follows:

3 30.12 STRUCTURES AND DEPOSITS IN NAVIGABLE WATERS. (1) PERMIT REQUIRED.

4 Unless a permit has been granted by the department under this section or the legislature has
5 authorized the activity, it is unlawful:

6 (a) To deposit any material or to place any structure upon the bed of any navigable
7 water where no bulkhead line has been established; or

8 (b) To deposit any material or to place any structure upon the bed of any navigable
9 water beyond a lawfully established bulkhead line.

10 (2) EXEMPTIONS. Subsection (1) does not apply to the following:

11 (a) Activities of the department of transportation carried out in accordance with s.

12 30.341. [WLC renumbering, current ' 30.12(4)]

13 (b) Highway bridges constructed or reconstructed by municipalities under s. 30.213

14 (1). [WLC renumbering, current ' 30.123(1)]

15 (c) Water ski platforms and jumps authorized to be placed without a permit under s.

16 30.135.

17 (d) Structures or deposits placed by the Duck Creek Drainage District under s.

18 30.263. [WLC renumbering, current ' 30.12(4m)]

later
omit per my LC draft do ON

no wharves, piers, or swimming rafts

1 (e) Structures in the Wolf and Fox River basins under s. 30.275. [WLC } omit
2 renumbering, current '30.12(3)(bn)]

3 ~~EXEMPTION~~ (f) The following *de minimis* activities provided that the activities do not occur in a } not
4 an outstanding or exceptional resource water, a shoreland wetland, a natural area or scientific } in
5 area, do not interfere with the rights of the riparian owners or public navigation, and are } LC
6 undertaken by the riparian owner: [New] } draft

7 1. Deposits of sand, gravel or stone constituting less than 2 cubic yards in any 5- "
8 year period. [New]

9 2. Seasonal structures less than 100 square feet within 200 feet of shore. [New, but "
10 see NR 326 and '30.13]

11 3. Placement of a fish crib, spawning reef, wing deflector or similar device on the
12 bed of navigable waters for the purpose of improving fish habitat. [Current short form of
13 '30.12(3)(a)2.]

14 4. Placement of a bird nesting platform, a wood duck house or similar structure on
15 the bed of a navigable water for the purpose of improving wildlife habitat. [Current short form
16 of '30.12(3)(a)2m.]

17 5. The placement of seasonal boat shelter or boat hoist adjacent to the owner=s
18 pier, wharf or shoreline. [New, but see NR 326]

19 6. The placement of piers no more than 6 feet wide, that extend no further than
20 the 3-foot depth level or the depth required for the mooring of a boat or use of a boat hoist,
21 and have no more than two slips for the first 50 feet of shoreline and one additional slip for
22 each 50 feet of shoreline. [New but consistent with pier planner]

1 7. Wharfs [ADD]

2 8. Intake and outfall structures required as part of a stormwater management plan
3 or wastewater facilities plan approved or authorized by the department under ch. 283.

4 [Modified from current short form '30.12(3)(a)7.]

5 (3) GENERAL PERMITS.

in addition to 30.206?

6 (a) The department shall develop general permits authorizing a riparian owner to:

7 1. Place a layer of sand or similar material on the bed of a lake adjacent to the
8 owner=s property for the purpose of improving recreational use. [Current short form
9 '30.12(3)(a)1.]

Current

10 2. Place riprap or similar material on the bed and bank of navigable waters
11 adjacent to an owner=s property for the purpose of protecting the bank and adjacent land from
12 erosion. [Current short form '30.12(3)(a)3.]

*RN 2.
From 4.*

13 3. Place crushed rock or gravel, reinforced concrete planks, adequately secured
14 treated timbers, cast in place concrete or similar material on the bed of a stream that is
15 navigable water for the purpose of developing a ford if an equal amount of material is removed
16 from the stream bed. [Current short form §30.12(3)(a)4.]

17 4. Place crushed rock or gravel, reinforced concrete planks, cast in place concrete,
18 adequately secured treated timbers, or similar material on the bed of navigable waters adjacent
19 to the owner=s property for the purpose of building a boat landing. [Current short form
20 '30.12(3)(a)5.]

21 5. Place a permanent boat shelter adjacent to the owner=s property for the purpose
22 of storing or protecting watercraft and associated materials, except that no permit may be

1 granted for a permanent boat shelter which is constructed after May 3, 1988, if the property on
2 which the permanent boat shelter is to be located also contains a boathouse within 75 feet of
3 the ordinary high water mark or if there is a boathouse over navigable waters adjacent to the
4 owner's property. The department may condition this general permit to establish minimum
5 standards to govern the architectural features of boat shelters and the number of boat shelters
6 that may be constructed adjacent to a parcel of land. The conditions may not govern the
7 aesthetic features or color of boat shelters. The conditions shall be designed to assure the
8 structural soundness and durability of a boat shelter. A municipality may enact ordinances not
9 inconsistent with this section or with general permit conditions promulgated under this section
10 regulating the architectural features of boat shelters. [Modified current short form from
11 '30.12(3)(a)6 and (3)(c)]

12 6. Place an intake structure and pipe on the bed of a navigable water for the
13 purpose of constructing a dry fire hydrant to supply water for fire protection. [Current short
14 form '30.12(3)(a)7.]

15 7. Drive a piling into the bed of a navigable water adjacent to the owner's
16 property for the purpose of deflecting ice, protecting an existing or proposed structure, or
17 providing a pivot point for turning watercraft. [Current short form '30.12(3)(a)8.]

18 8. Intake or outfall structures that are less than 6 feet to the water side of the
19 ordinary high water mark and less than 25% of the channel width. [WLC draft]

20 (b) The department may promulgate rules that identify activities or structures, in
21 addition to those listed in par. (a), that may be authorized by general permits. [WLC draft]

22 (4) INDIVIDUAL PERMITS TO PLACE STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS.

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

4 (b) The notice and hearing provisions of s. 30.02 apply to a permit applied for
5 under this subsection.

6 (c) The department shall grant a permit applied for a structure under this subsection
7 if it finds that the structure:

- 8 1. Will not materially obstruct navigation;
- 9 2. Will not materially reduce the flood flow capacity of a stream; and
- 10 3. Will not be detrimental to the public interest.

11 (d) The department shall grant a permit for a deposit under this section if the
12 deposit:

- 13 1. Is for the purpose of improving habitat or maintaining littoral drift.
- 14 2. Meets the requirements of par. (c).
- 15 3. Promotes public rights and interests in navigable waters. [Modified WLC draft]

16 SECTION 2. Section 30.13(1) and (2) of the statutes are repealed.

[END]

**CHAPTER 30 RECODIFICATION
BRIDGES AND CULVERTS ' 30.123**

1 **SECTION 1.** Section 30.123 (title) of the Statutes is repealed and recreated to read as
2 follows:

3 **30.123 (title) BRIDGES AND CULVERTS.**

4 **SECTION 2.** Section 30.123 (1) to (4) of the Statutes is repealed and recreated to read
5 as follows:

6 (1) **PERMIT REQUIRED.** Unless a permit has been granted by the department under
7 this section or the Legislature has authorized the activity, no person may construct or maintain
8 a bridge in, on or over navigable waters.

9 (2) **EXEMPTIONS.** Subsection (1) does not apply to the following:

10 (a) Municipalities which construct or reconstruct highway bridges. All municipal
11 highway bridges shall be constructed or reconstructed in accordance with standards developed
12 under s. 84.01 (23).

13 (b) Bridges constructed and maintained by the department of transportation under s.
14 30.12 (4).

15 (c) Culverts up to 48" in diameter for private road or driveway crossings.

16 (3) **GENERAL PERMITS.**

17 (a) The department shall develop general permits authorizing a riparian owner to:

18 1. Place a bridge that would cross navigable waters less than 35-feet wide.

1 2. The placement or replacement of culverts not exceeding [ADD]

2 (b) The department may promulgate rules that identify activities or structures in
3 addition to those listed in par. (a) that may be authorized by general permits.

4 (4) INDIVIDUAL PERMITS.

5 (a) A person may apply to the department for a permit to construct or maintain a
6 culvert or bridge for which a permit is required under sub. (1).

7 (b) The notice and hearing provisions of s. 30.02 apply to a permit applied for
8 under this subsection.

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

[END]

Enlargements

**PERSONAL AND CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGE**

**CHAPTER 30 RECODIFICATION
GRADING. POND AND CONNECTION PERMITS ' 30.19**

1 **SECTION 1.** Section 30.19 of the Statutes is repealed and recreated to read as
2 follows:

3 **30.19 ENLARGEMENT AND PROTECTION OF WATERWAYS. (1) DEFINITION.** In this
4 section, Artificial water body^o means a proposed or existing body of water that does not have
5 a history as part of a lake or stream. [WLC draft]

6 **(2) PERMITS REQUIRED.** Unless a permit has been granted by the department or the
7 legislature has authorized the activity, it is unlawful:

8 **(a)** To construct, dredge or enlarge any artificial water body that connects with a
9 navigable waterway or where any part of the artificial water body is located within 500 feet of
10 the ordinary high^Bwater mark of a navigable waterway.

11 **(b)** To connect a navigable waterway or artificial water body with a navigable
12 waterway by a navigable surface channel.

13 **(c)** To grade or remove top soil from the bank of a navigable waterway where the
14 area exposed will exceed 10,000 square feet. [WLC draft]

15 **(3) EXEMPTIONS.** Subsection (2) does not apply to:

16 **(a)** The construction and repair of public highways. [' 30.19(lm)(a)]

17 **(b)** Agricultural uses of land. [' 30.19(lm)(b)]

18 **(c)** Work required to maintain the original dimensions of an enlargement of a

1 waterway authorized under sub. (2) (a) or (b). [' 30.19(1m)(e)]

2 (d) The construction, dredging, or enlargement of any artificial waterbody within
3 500 feet of the ordinary high water mark of a navigable waterbody that does not have a surface
4 connection to a navigable waterway other than an overflow device, provided it is part of a
5 stormwater management plan or wastewater facilities plan approved or authorized by the
6 department under ch. 283. [New]

7 (e) Activities under sub. (2)(c) that are subject to a stormwater permit issued by the
8 department or the department of commerce, or are subject to a shoreland zoning permit issued
9 by a county, town, city or village, unless the navigable waterway is an outstanding or
10 exceptional resource water, a shoreland wetland, a natural area or scientific area.

11 (4) GENERAL PERMITS.

12 (a) The department shall issue general permits authorizing the following activities:

13 1. Activities under sub. (2)(a) or (b) not exempt, that are part of a stormwater
14 management plan or wastewater facility plan approved or authorized by the department under
15 ch. 283.

16 2. Activities under sub. (2)(a) that are designed to enhance water fowl habitat,
17 wetlands, or wildlife habitat.

18 3. Activities under sub. (2)(c) not exempt.

19 (b) The department may promulgate rules that identify activities or structures in
20 addition to those listed in par. (b) that may be authorized by general permits.

21 (5) INDIVIDUAL PERMITS FOR PROJECTS IN OR NEAR WATERWAYS. (a) A person may
22 apply to the department for a permit to engage in activities otherwise prohibited under sub. (2).

1 (b) The notice and hearing provisions of s. 30.02 apply to a permit application
2 under this section.

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

5 1. The project will not be detrimental to the public interest.

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

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

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

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

[END]

CHAPTER 30 RECODIFICATION
STREAM COURSE ALTERATIONS ' 30.195

1 SECTION 1. Section 30.195 of the Statutes is repealed and recreated to read as
2 follows:

3 30.195 CHANGING OF STREAM COURSES. (1) PERMIT REQUIRED. (a) Unless a permit has
4 been granted by the department under this section or the legislature has authorized the activity,
5 no person may change the course of a navigable stream.

6 (2) GENERAL PERMIT.

7 (a) The department shall develop general permits authorizing a riparian owner to
8 change the course of a navigable stream under the following circumstances:

9 1. The application involves a relocation of less than 500 feet.

10 2. The application involves a relocation of a stream with an average flow of less
11 than _____.

12 (b) The department may promulgate rules that identify stream segments in addition
13 to those in par. (a) that may be authorized by general permits.

14 (3) INDIVIDUAL PERMIT.

15 (a) A person may apply to the department for an individual permit to engage in
16 activities for which a permit is required under sub. (1).

17 (b) The notice and hearing provisions of s. 30.02 apply to permit applications under
18 this section that involve relocation of more than 500 feet of stream length.

- 1 (c) The department shall grant a permit applied for under this section if it
2 determines that:
- 3 1. The applicant is the owner of land upon which the stream is located.
 - 4 2. The proposed change in course or straightening of the stream will improve the
5 economic or aesthetic value of the applicant=s land.
 - 6 3. The proposed change in course or straightening of the stream will not adversely
7 affect the flood flow capacity of the stream or otherwise be detrimental to the public interest.
 - 8 4. The proposed change in course or straightening of the stream will not be
9 detrimental to the rights of other riparians located on the stream or all such riparians have
10 consented to approval of the application.

[END]

CHAPTER 30 RECODIFICATION
DREDGING PERMITS ' 30.20

1 **SECTION 1.** Section 30.20 of the Statutes is repealed and recreated to read as
2 follows:

3 **30.20 REMOVAL OF MATERIAL FROM BEDS OF NAVIGABLE WATERS. (1) CONTRACT OR**
4 **PERMIT REQUIRED.** (a) Unless a contract has been entered into with the department under this
5 section, or the legislature has authorized the activity, no person may remove material from the
6 bed of a natural navigable lake or from the bed of outlying waters of this state.

7 (b) Unless a permit has been granted by the department or the legislature has
8 authorized the activity, no person may remove material from the bed of a lake or navigable
9 stream not described in par. (a).

10 **(2) EXEMPTION.** Subsection (1) does not apply to:

11 (a) The removal of material from a farm drainage ditch, as provided in s. 30.215.
12 This exemption does not apply if the department finds that the proposed removal may have a
13 longBterm adverse effect on coldBwater fishery resources or may destroy fish spawning beds
14 or nursery areas. A person who proposes to remove material that may be exempt from the
15 permit requirement under this paragraph but that may affect coldBwater fishery resources, fish
16 spawning beds or nursery areas shall notify the department at least 10 days prior to the
17 removal.

18 (b) Dredging for the maintenance of previously dredged areas that do not exceed

1 3000 cubic yards or the dredging of areas not previously dredged that do not exceed 300 cubic
2 yards provided the materials dredged do not contain hazardous substances, all dredging spoils
3 will be removed to an upland area and the dredging is not in an outstanding or exceptional
4 resource water, a shoreland wetland, a natural area or scientific area.

5 (c) Dredging activities in non-navigable lakes or streams.

6 (3) GENERAL PERMITS.

7 (a) The department shall develop general permits authorizing a riparian owner to:

8 1. Dredge for the maintenance of previously dredged areas when the amount
9 exceeds 3000 cubic yards.

10 2. Dredge between 300 and 3000 cubic yards in areas where no previous dredging
11 has occurred.

12 (b) The department may promulgate rules that identify dredging activities in
13 addition to those in par. (a) that may be authorized by general permits.

14 (4) CONTRACTS AND INDIVIDUAL PERMITS. (a) The department may enter into a
15 contract on behalf of the state for removal and lease or sale of material for which a contract is
16 required under sub. (1) (a) if the contract is consistent with public rights. Each contract under
17 this paragraph shall contain any conditions that are necessary for the protection of the public
18 interest and the interest of the state. Each contract under this paragraph shall also fix the
19 amount of compensation to be paid to the state for the material removed, except no
20 compensation shall be required for material if not for resale. No contract entered under this
21 paragraph may run for more than 5 years.

22 (b) The department may enter into a contract on behalf of the state for removal and

1 lease or sale of minerals, ore and materials from beneath the bed of public trust waters if the
2 contract would be consistent with public rights and if the waters would not be disturbed in the
3 removal operation. Each contract under this paragraph shall contain any conditions that are
4 necessary for the protection of the public interest and the interests of the state. Each contract
5 under this paragraph shall also fix the amount of compensation to be paid to the state for the
6 material, mineral and ore removed. Should any doubt exist as to whether the state in fact owns
7 such lake bed or stream bed such contract or lease shall be for such interests, if any, as the
8 state may own. Title to the royalties to be paid when mining operations are begun shall be
9 determined at such future time as royalties for ore so sold are paid or are due and payable. No
10 contract entered under this paragraph may run for more than 75 years.

11 (c) The department may grant a permit to remove material from the bed of a lake or
12 stream not described in sub. (1) (a) if the permit will be consistent with the public interest in
13 the water affected by the removal. A permit under this paragraph may be granted by the
14 department for up to 10 years if the applicant notifies the department at least 30 days before
15 removing any material.

16 (d) The notice and hearing provisions of s. 30.02 apply to permit or contract
17 applications under this section.

[END]