

1 2. The imposition of, or failure to impose, a term or condition on any individual
2 permit issued under this subchapter.

3 (b) A petition under this subsection shall be filed with the department within
4 30 days after the date on which the department has given notice of its decision under
5 par. (a) 1. and 2. The department shall grant an administrative hearing if the
6 department finds that the petition includes a statement that gives specific reasons
7 why the department's decision may violate state law.

8 (c) If the department grants an administrative hearing under par. (b), the
9 department shall provide a notice of ^{the hearing shall be provided} at least 30 days before the date of the hearing
10 in compliance with all of the applicable rules promulgated under s. 30.208 (5).

11 (d) ~~The department shall provide the notice required under par. (c) to the~~
12 ~~applicant for or holder of the permit and each petitioner, if other than the applicant~~
13 ~~or holder, in addition to any other persons required to receive notice under the rules~~
14 ~~promulgated under s. 30.208 (5) (a).~~

INS 35-14

15 (e) The administrative hearing shall be conducted as a contested case hearing
16 in accordance with the procedures under ch. 227.

17 ^{of a department decision} (2) JUDICIAL REVIEW. (a) ^{Administrative} ~~in lieu of seeking review under par. (1),~~ any applicant
18 ^{or other} for or holder of an individual permit ~~or any other person with standing~~ may
19 commence an action in circuit court for the county in which the riparian property that
20 is subject to the department's decision under sub. (1) (a) is located. ^(b) The review by
21 the court ^{under this subsection} shall include the examination of witnesses and the taking of evidence
22 before the court. ^{any other person}

23 ~~(c) (b)~~ Any administrative review petitioned for under sub. (1) may be removed ~~by~~
24 ~~any party~~ to the circuit court for the county in which the riparian property that is
25 subject to the department's decision under sub. (1) (a) is located. ^(d) The review by the

^{the applicant for any one of the following:}
INS 35-25

under this subsection
 1 court shall include the examination of witnesses and the taking of evidence before
 2 the court. The review shall be commenced by filing a motion for removal together
 3 with a copy of the petition under sub. (1). The motion must be filed within 30 days
 4 after the department provides the notice *is provided* under sub. (1) (c).

~~***NOTE: Note that s. 30.209 does not apply to contracts under s. 30.20.~~

INS
36-4

5 **SECTION 123.** 30.215 of the statutes is created to read:

6 **30.215 Farm drainage ditches.** Except as provided in s. 30.20 (1g) (a), an
 7 activity or project that is for an agricultural purpose and is located in or adjacent to
 8 a farm drainage ditch is exempt from the requirement for a permit, contract, or
 9 approval under this subchapter unless it is shown, by means of a U.S. geological
 10 survey map or other reliable scientific evidence, that the farm drainage ditch was a
 11 stream that was a navigable water prior to ditching.

12 **SECTION 124.** 30.28 (1) of the statutes is amended to read:

13 **30.28 (1) FEES REQUIRED.** The department shall charge a permit or approval fee
 14 for carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and
 15 30.21 to 30.27. The permit or approval fee shall accompany the permit application,
 16 notice or request for approval.

17 ~~**SECTION 125.** 30.28 (2) (a) of the statutes is renumbered 30.28 (2).~~

18 ~~**SECTION 126.** 30.28 (2) (b) of the statutes is repealed.~~

19 **SECTION 127.** 30.28 (2m) (a) of the statutes is amended to read:

20 **30.28 (2m) (a)** The department shall refund a permit or approval fee if the
 21 applicant requests a refund before the department determines that the application
 22 for the permit or approval is complete. ~~Except as provided in par. (am),~~ the The
 23 department may not refund a permit or approval fee after the department
 24 determines that the application is complete.

1 ~~SECTION 128. 30.28 (2m) (am) of the statutes is repealed.~~

2 ~~SECTION 129. 30.28 (2m) (b) of the statutes is repealed.~~

3 SECTION 130. 30.28 (2m) (c) of the statutes is amended to read:

4 30.28 (2m) (c) If more than one fee under sub. (2) (a) or s. 31.39 (2) (a) or 281.22
5 is applicable to a project, the department shall charge only the highest fee of those
6 that are applicable.

7 SECTION 131. 30.28 (2m) (d) of the statutes is amended to read:

8 30.28 (2m) (d) The department, by rule, may increase any fee specified in sub.
9 (2) (a). ~~The department, by rule, may increase a fee specified in sub. (2) (b) only if~~
10 ~~the increase is necessary to meet the costs incurred by the department in acting on~~
11 ~~general permits or on notices submitted under s. 30.207.~~

12 SECTION 132. 30.28 (2r) (b) of the statutes is amended to read:

13 30.28 (2r) (b) If the department promulgates a rule under par. (a), the rule shall
14 contain a time limit for each type of permit or approval classified under sub. (2) (a)
15 for determining whether the department will grant the permit or approval.

16 SECTION 133. 30.28 (3) (b) of the statutes is amended to read:

17 30.28 (3) (b) This section does not apply to a permit issued under s. 30.12 (3)
18 (a) ~~2., 2m. or 3. or (4) (c) or (d).~~

~~****NOTE: I just mechanically changed the above cross-references in s. 30.28 (3) (b).
Please review; you may want other changes.~~

19 SECTION 134. 30.29 (3) (d) of the statutes is amended to read:

20 30.29 (3) (d) *Activities for which a permit is issued.* A person or agent of a person
21 who is issued a permit by the department while the person or agent is engaged in
22 activities related to the purpose for which the permit is issued as authorized under

1 a general or individual permit issued under this subchapter or as authorized under
2 a contract entered into under this subchapter.

3 SECTION 135. 30.298 (3) of the statutes is amended to read:

4 30.298 (3) Any person who violates a general permit under s. 30.206 shall
5 forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit not
6 less than \$50 nor more than \$500 upon conviction of the same offense a 2nd or
7 subsequent time.

8 SECTION 136. 31.39 (2m) (c) of the statutes is amended to read:

9 31.39 (2m) (c) If more than one fee under sub. (2) (a) or s. 30.28 (2) (a) or 281.22
10 is applicable to a project, the department shall charge only the highest fee of those
11 that are applicable.

12 SECTION 137. 84.18 (6) of the statutes is amended to read:

13 84.18 (6) EXECUTION AND CONTROL OF WORK. Subject to s. ~~30.12 (4)~~ 30.2022 and
14 the control exercised by the United States, the construction under this section of any
15 local bridge project shall be wholly under the supervision and control of the
16 department. The secretary shall make and execute all contracts and have complete
17 supervision over all matters pertaining to such construction and shall have the
18 power to suspend or discontinue proceedings or construction relative to any bridge
19 project at any time in the event any county, city, village or town fails to pay the
20 amount required of it for any project eligible for construction under this section, or
21 if the secretary determines that sufficient funds to pay the state's part of the cost of
22 such bridge project are not available. All moneys provided by counties, cities,
23 villages and towns shall be deposited in the state treasury, when required by the
24 secretary, and paid out on order of the secretary. Any of the moneys deposited for a
25 project eligible for construction under this section which remain in the state treasury

1 after the completion of the project shall be repaid to the respective county, city, village
2 or town in proportion to the amount each deposited.

3 **SECTION 138.** 236.16 (3) (d) (intro.) of the statutes is amended to read:

4 236.16 (3) (d) (intro.) All of the owners of all of the land adjacent to a public
5 access established under par. (a) to an inland lake, as defined in s. 30.92 (1) (bk), may
6 petition the city, village, town or county that owns the public access to construct
7 shoreline erosion control measures. Subject to par. (e), the city, village, town or
8 county shall construct the requested shoreline erosion control measures or request
9 the department of natural resources to determine the need for shoreline erosion
10 control measures. Upon receipt of a request under this paragraph from a city, village,
11 town or county, the department of natural resources shall follow the notice and
12 hearing procedures in s. ~~30.02 (3) and (4)~~ 30.208 (3) to (6). Subject to par. (e), the city,
13 village, town or county shall construct shoreline erosion control measures as
14 required by the department of natural resources if the department of natural
15 resources determines all of the following:

16 **SECTION 139.** 281.22 (2) (c) of the statutes is amended to read:

17 281.22 (2) (c) If more than one fee under this section or s. 30.28 (2) ~~(a)~~ or 31.39
18 (2) (a) is applicable to a project, the department shall charge only the highest fee of
19 those that are applicable.

20 **SECTION 140. Initial applicability.**

21 (1) The treatment of sections 30.208 and 30.209 of the statutes first applies to
22 applications for individual permits that are submitted to the department of natural
23 resources on the effective date of this subsection.

1 (2) The treatment of section 30.208 of the statutes first applies to applications
2 for contracts under section 30.20 of the statutes that are submitted to the
3 department of natural resources on the effective date of this subsection.

4

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This bill makes changes in the permitting, decision, notice, hearing, and court procedures that apply to permits and contracts given by the Department of Natural Resources (DNR) in regulating structures, deposits, and other activities that occur in or near navigable waterways (riparian activities).

Permitting changes in general

With limited exemptions, under current law, an owner of waterfront property (riparian owner) may not engage in a riparian activity unless the riparian owner has first obtained a permit or contract from DNR that is specific to the riparian activity (an individual approval) or unless the riparian activity is authorized under a general permit issued by DNR.

Current law also provides an abbreviated procedure for reviewing certain permit applications for permits to place structures or deposit material in navigable waterways (placement permits). For placement permits, DNR may approve or disapprove the application for a permit without giving notice or conducting the hearing. Types of permit applications to which this abbreviated procedure applies include permit applications to place sand to improve recreational use and permit applications to place devices to improve fish habitat.

This bill restructures the substantive requirements for individual permits, general permits, and contracts for removing material from navigable waterways. It also creates exemptions from both of these ~~types~~ ^{types} of permits and from these contracts for certain riparian activities. The types of permits that are affected by these new general and individual permitting, contracting, and exemption provisions are permits to place structures or deposit material (placement permits), permits to construct or maintain bridges (bridge permits), permits to enlarge or connect waterways or to grade or remove top soil from banks along navigable rivers and streams (enlargement permits), permits to change the courses of streams and rivers (stream course permits) and permits and contracts to remove material from beds of navigable waterways (removal approvals).

General permits

Under current law, DNR may, but is not required to, issue general permits for riparian activities that are covered by the abbreviated procedure described above and for certain activities that require an enlargement permit. Under current law, general permits may be issued in certain designated areas of the state for any riparian activity that requires a general permit. The bill expands the use of general permits by requiring DNR to issue statewide general permits for certain riparian activities and to allow DNR to promulgate rules to specify additional riparian activities that may be authorized under a general permit. The bill allows DNR to impose certain construction and design requirements, location requirements, and environmental restrictions on the general permits. Under current law, a person seeking to conduct a riparian activity under a general permit must notify DNR not less than 20 days before starting the activity. The bill requires this notification to be in writing and increases the 20 days to 30 days. If DNR does not act within 30 days of the notification, the riparian activity is considered to be authorized.

Placement permits

exceptions

Under the bill, certain riparian activities are exempt from general and individual placement permits if they do not interfere with the public rights in navigable waterways or with the rights of other riparian owners and if ~~the~~ are located outside an area of special natural resource interest (minor riparian activities). The bill defines an area of special natural resource interest to be a state natural area or an area identified by DNR ~~as possess~~ scientific value or ~~to be~~ an outstanding or ~~exceptional~~ resource water. Examples of such waters include wild and scenic rivers and certain trout streams. If an activity is not a minor riparian activity, the riparian owner must apply for an individual permit unless the riparian activity is covered by a general permit. Activities that are subject to the nonabbreviated permitting requirements under current law and ~~which~~ ^{that} are considered minor riparian activities under the bill include:

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1. A deposit of sand, gravel, or stone that totals less than ^{two} cubic yards in a ^{five} year period.
2. A boat shelter or boat hoist or lift that is placed on a seasonal basis adjacent to the pier or wharf or the shoreline of the riparian owner.

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Riparian activities such as the placement of small structures such as fish cribs and bird nesting platforms are subject to the abbreviated permitting procedure under current law. Under the bill, they are exempt from the placement permits if they are considered minor riparian activities. The bill requires that all of the other riparian activities that are subject to the abbreviated permitting procedure be authorized by general permits regardless of whether ~~there~~ are minor riparian activities. These other riparian activities include certain deposits such as sand, gravel, or riprap and certain structures such as permanent boat shelters and certain pilings.

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Under current law, a riparian owner must be issued a permit to place an intake or outlet structure in a navigable waterway. Under the bill, DNR must issue a general permit authorizing intake and outlet structures that ~~are~~ meet certain location and size requirements.

Under current law, a riparian owner may construct a wharf or pier beyond the ordinary high-water mark or an established bulkhead line without a placement permit if the wharf or pier ~~meets~~ does not interfere with the rights of other riparian owners or with the public interest in navigable waterways, if it allows the free movement of water underneath the structure, and if it meets other requirements. This bill eliminates this exemption. Instead, certain riparian piers and wharves are exempt from general and individual placement permits if the placement of the pier or wharf is a minor riparian activity and meets certain size limitations. For an exempt pier, the bill also imposes a limit on the number of boat slips based on the amount of shoreline owned by the riparian owner.

The bill also requires DNR to issue individual placement permits if the structure or deposit will not materially obstruct navigation, will not be detrimental to the public interest, and will not ~~materially~~ reduce the flood flow capacity of any stream involved. Under current law, DNR may, but is not required to, issue individual placement permits that meet these requirements.

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Enlargement permits

Under current law, a person must be issued an enlargement permit to do any of the following:

1. construct, dredge or enlarge any artificial waterway in order to connect it with an existing navigable waterway (connection permit requirement). The bill limits this permit requirement to those artificial waterways that are already connected to the navigable waterway or that will connect with navigable waterway upon completion of the construction.

2. connect an artificial or natural waterway, whether or not navigable, with an existing navigable waterway (channel permit requirement). The bill limits this permitting requirement to connections made by surface channels, imposes a requirement that the artificial or natural waterway be navigable.

3. construct, dredge, or enlarge any part of an artificial waterway that is located within 500 feet of an existing navigable stream (500-foot permit requirement).

4. grade or remove top soil from the bank of a navigable waterway if the exposed area will exceed 10,000 square feet (top soil permit requirement).

The bill creates an exemption from the 500-foot permit requirement, if any artificial waterway involves only surface connection to a navigable waterway is an overflow device and the construction, dredging or enlargement is authorized by a storm water discharge permit or a water sewerage and facility plan authorized by DNR (storm water-sewerage projects).

The bill creates an exemption from the top soil permit requirement if the grading or removal of top soil is not located in an area of special natural resource interest and is authorized by a storm water discharge permit, by a shoreland or wetland zoning ordinance, or by a construction site erosion control plan.

The bill requires DNR to issue a general permit to meet the 500-foot permit requirement for construction, dredging and enlargements that are part of an approved storm water-sewerage project, but that are not covered by the exemption described above. The bill requires DNR to issue a general permit to meet the connection permit requirement, the 500-foot requirement, and the channel requirement for construction, dredging and enlargements that are designed to enhance wildlife habitat or wetlands. The bill requires DNR to issue a general permit to meet the top soil permit requirement for any grading or removing of top soil that is not covered by the exemption described above.

Finally, the bill repeals the exemption from this permitting requirement for navigable waterways located in Milwaukee County.

As to individual enlargement permits, the bill imposes the additional requirement that the activity not be detrimental to the public interest.

Bridge permits → bill makes the

The following changes are made to current permitting procedures for the construction and maintenance of bridges:

1. Allows bridge construction and maintenance to be authorized by the legislature.

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1. ² Continues to allow any person to apply for an individual permit, but allows only riparian owners to construct and maintain bridges under general permits.
2. ³ Subjects bridges ~~that~~ that cross navigable streams that are less than 35 feet wide to the general permitting provisions. Under current law, such bridges are exempt from the bridge permitting requirements.
3. ⁴ Changes the permitting provisions to specifically cover the placement of culverts.
4. ⁵ Subjects culverts with diameters of less than 60 inches to the general permitting provisions.
5. ⁶ Exempts culverts ~~with~~ that have a diameter of less than 48 inches and that are part of private roads or driveways from all of the bridge permitting requirements.
6. ⁷ Repeals the requirement that the holder of a bridge permit construct and maintain a bridge that is used by the public to be in a safe condition.

Stream course permits

Under current law, a person must be issued a stream course permit to change or straighten the course of a stream or river. The bill requires DNR to issue a general permit under which riparian owners may change or straighten the course of streams or rivers if the change or straightening involves a relocation of less ~~than~~ a total of 500 feet or a relocation of a stream with an average flow of less than 2 cubic feet per second. The bill also repeals an exemption for municipal or county lands in Milwaukee county and a provision that states that compliance with a stream course permit is a presumption of the exercise of due care. The bill also allows the legislature to authorize the changing or straightening of stream or river courses.

Removal approvals

The following changes ^{The bill makes} are made to current provisions regarding removal approvals.

1. Allows the removal of materials to be authorized by the legislature.
2. Exempts removals for certain specified amounts if the removals are not from an area of natural resource interest, do not contain hazardous substances, and will be placed in an upland area.
3. Requires DNR to issue permits for other removals that are within specified amounts.

Boathouses

Current law, with some exceptions, imposes a prohibition on placing a boathouse beyond the ordinary high-water mark of a navigable waterway. This bill creates an exemption for the construction, repair, or maintenance of a boathouse that is used exclusively for commercial purposes, is on land zoned exclusively for commercial or industrial purposes or is in a brownfield area and is located in a commercial harbor or on a tributary of Lake Michigan or Lake Superior. Current law defines a "brownfield" to be industrial or commercial facility, the expansion or redevelopment of which is complicated by environmental contamination.

Notice, hearing, and decision provisions for individual permits

Under current law, for individual placement permits, bridge permits, removal permits, stream course permits, and enlargement permits, DNR must order a public hearing to be held within 60 days after receiving a complete application for the permit or provide notice (notice of applicator) that DNR will proceed on the application without a public hearing unless a substantive written objection is received within 30 days after the notice is published. DNR must provide the notice of applicator to various parties and to the applicant who in turn must publish notice. Current law defines a "substantive written objection" to be one that gives the reasons why the issuance of the proposed permit will violate state law and that states that the person objecting will appear at the public hearing to present information supporting the objection. The applicant must publish the notice in a newspaper that is likely to give notice in the area where the riparian activity will be located (area newspaper).

If DNR does not receive a substantive written objection within the 30-day period, DNR proceeds on the permit application. If DNR ~~does~~ receive such an objection, the public hearing must be held within 60 days after being ordered. At least 10 days before the hearing, the division of hearings and appeals the Department of Administration must mail a notice of the public hearing to the applicant, all of the parties who received the notice of application, and anyone who submitted a substantive written objection. The applicant again must publish the notice in an area newspaper.

Under current law, DNR may also use this notice and hearing procedure when it is not specifically required if DNR determines that substantial interests of any party may be adversely affected by the granting of the permit.

Under the bill, upon receipt of a complete application for an individual permit, DNR must provide notice of the application within 30 days after its receipt. The notice must grant a period of not less than 30 days during which any person may submit written comments and may also request a public hearing. The applicant may also request a hearing, and DNR may on its own initiative schedule a hearing within this 30-day comment period. DNR is required to render its decision within 30-days after the hearing or within the 30-day comment period if no hearing is held. The bill requires DNR to establish procedures for providing notices of applications and of hearing. **Revisit about who provides/pays for notice after talking to Paul Kent.**

The changes to the applicability of the hearing and notice procedures for individual permits under the bill include the following:

1. The procedure applies to removal approvals and stream course permits, as well as the permits covered under current law.
2. The procedure applies to permits to place water ski jumps, replacing the procedures that apply to these permits under current law.
3. The procedure applies to all types of enlargement permits. Under current law, the procedure applies only to enlargement permits issued to meet channel permit requirements and top soil permit requirements.

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4. The bill repeals the authority that ~~allow~~ ^{were} DNR to use these notice and hearing procedures when they ~~are~~ ^{allowed} not required to do so in making determinations that affect ^{ed} navigable waters and navigation.

5. The procedures specifically apply to applications for ^e modifications of individual permits.

Administrative and court review of DNR decisions on individual permits

Under current law, if a substantial interest of a person is injured by an agency action and there is a dispute of material fact, that person has the right to an administrative hearing before an impartial hearing officer. ✓ The notice requirements, procedures, rules of evidence, records, and right to judicial review are specified in detail under current law.

Under this bill, an applicant for or holder of an individual permit, or ^{five} or more persons, may ask DNR for an administrative hearing regarding the issuance, denial, or modification of an individual permit, or regarding a term or condition of an individual permit. If DNR determines that the request for a hearing gives specific reasons why the department's decision violates state law, DNR is required to hold an administrative hearing. The bill requires that the hearing be conducted as a contested case hearing and be subject to ~~the~~ current law's administrative hearing requirements regarding contested case hearings, including the procedures, rules of evidence, records, and right to judicial review.

Instead of requesting an administrative hearing to review the DNR decision, the bill allows an applicant for or holder of an individual permit or a person with standing to bring a court action to review DNR's decision. The bill requires the court to review the evidence and examine witnesses, rather than review the record of DNR's action. In addition, the bill allows a party to the administrative hearing to stop an administrative hearing and have the court take jurisdiction over the issues raised in the hearing. If an administrative hearing is removed to a court, that court is required by the bill to review the evidence and examine witnesses, independent of DNR's evidence review and witness examination.

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

Insert 3-10 ←

SECTION 1. 30.01 (1p) of the statutes is amended to read:

30.01 (1p) "Fishing raft" means any raft, float or structure, including a raft or float with a superstructure and including a structure located or extending below or beyond the ordinary high-water mark of a water, which is designed to be used or is normally used for fishing, which is not normally used as a means of transportation on water and which is normally retained in place by means of a permanent or semipermanent attachment to the shore or to the bed of the waterway. "Fishing raft"

does not include a boathouse or fixed houseboat regulated under s. 30.121 nor a wharf or pier regulated under ~~s. ss. 30.12~~ and 30.13. → s. → 30.12 ✓

History: 1983 a. 189; 1985 a. 243, 332; 1987 a. 374 ss. 1 to 9, 25, 34, 35, 46 to 49, 70, 76; 1987 a. 403; 1989 a. 56; 1993 a. 236; 1995 a. 227; 1997 a. 27, 248; 1999 a. 9.

Insert 5-3 ✓

SECTION 2. 30.11 (4) of the statutes is amended to read:

30.11 (4) RIPARIAN RIGHTS PRESERVED. Establishment of a bulkhead line shall not abridge the riparian rights of riparian ~~proprietors~~ owners. Riparian ~~proprietors~~ owners may place solid structures or fill up to such line.

History: 1987 a. 374; 1991 a. 32.

Insert 11-22 ✓

SECTION 3. 30.121 (3w) of the statutes is created to read:

30.121 (3w) EXCEPTION; COMMERCIAL BOATHOUSES. Notwithstanding subs. (2) and (3), a person may construct, repair, or maintain a boathouse if all of the following apply:

(a) The boathouse is used exclusively for commercial purposes and does not contain any living quarters.

(b) The boathouse is located on land zoned exclusively for commercial or industrial purposes or the boathouse qualifies as a brownfield, as defined in s. 71.07 (2dx) (a) 1. ✓

(c) The ~~boathouse~~ is located within a harbor that is being operated as a commercial enterprise or is located on a river that is a tributary of Lake Michigan or Lake Superior.

(d) The person has been issued any applicable individual permits under this subchapter and is in compliance with any applicable general permitting requirements under this subchapter.

Insert 14-10A ✓

SECTION 4. 30.13 (1m) (intro.) of the statutes is amended to read: ✓

30.13 (1m) SWIMMING RAFTS ALLOWED WITHOUT PERMIT UNDER CERTAIN CIRCUMSTANCES. (intro.) A riparian ~~proprietor~~ owner may place a swimming raft in a navigable waterway for swimming and diving purposes without obtaining a permit under s. 30.12 if all of the following conditions are met:

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133.

SECTION 5. 30.13 (1m) (b) of the statutes is amended to read:

30.13 (1m) (b) The swimming raft does not interfere with rights of other riparian ~~proprietors~~ owners.

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133.

Insert 14-10B ✓

SECTION 6. 30.13 (4) (a) of the statutes is amended to read:

30.13 (4) (a) *Interferes with public rights.* A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless ~~a permit is issued for the wharf or pier~~ is authorized under a permit issued under s. 30.12 or unless other authorization for the wharf or pier is expressly provided. ✓

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133.

SECTION 7. 30.13 (4) (b) of the statutes is amended to read:

30.13 (4) (b) *Interferes with riparian rights.* A wharf or pier which interferes with ~~rights~~ ^{the} rights of other riparian ~~proprietors~~ owners constitutes an unlawful obstruction of navigable waters unless ~~a permit is issued for the wharf or pier~~ is authorized under a permit issued under s. 30.12 or unless other authorization for the wharf or pier is expressly provided. ✓

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133.

Insert 14-16 ✓

SECTION 8. 30.135 (1) (a) 1. of the statutes is renumbered 30.135 (1) (a). ✓

SECTION 9. 30.135 (1) (a) 2. of the statutes is renumbered 30.135 (1) (b) and amended to read:

30.135 (1) (b) The platform or jump does not interfere with rights of other riparian proprietors owners.

~~the~~ (I like "the" here)

History: 1997 a. 27.

SECTION 10. 30.135 (1) (a) 3. of the statutes is renumbered 30.135 (1) (c).

Insert 24-11

fix component → **SECTION 11.** 30.20 (1) (c) 1. and 2. of the statutes are consolidated, renumbered 30.20 (1g) (a) and amended to read: (1)

30.20 (1g) (a) ~~Except as provided under subd. 2., a person may remove~~ A person is exempt from the permit and contract requirements under this section for removal of material from the bed of a farm drainage ditch which was not a navigable stream before ditching. ~~2. The department may require a permit under sub. (2) (c) for a removal under subd. 1. only if it~~ unless the department finds that the proposed removal may have a long-term adverse effect on cold-water fishery resources or may destroy fish spawning beds or nursery areas.

SECTION 12. 30.20 (1) (c) 3. of the statutes is renumbered 30.20 (1g) (a) 2.

fix comp. → **SECTION 13.** 30.20 (1) (d) of the statutes is renumbered 30.20 (1g) (c) and amended to read:

30.20 (1g) (c) The drainage board for the Duck Creek Drainage District ~~may, without a permit under sub. (2) (c), remove~~ is exempt from the permit and contract requirements under subs. (1r) (and (2) for removal of material from a drain that the board operates in the Duck Creek Drainage District if the removal is required, under rules promulgated by the department of agriculture, trade and consumer protection, in order to conform the drain to specifications imposed by the department of

agriculture, trade and consumer protection after consulting with the department of natural resources.

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

Insert 24-19 ✓

SECTION 14. 30.20 (1g) (title) of the statutes created to read:

30.20 (1g) (title) EXEMPTIONS.

Insert 31-20 ✓

SECTION 15. 30.206 (7) of the statutes is amended to read:

30.206 (7) This section does not apply to an application for a general permit for the Wolf River and Fox River basin area or any area designated under s. 30.207 (1m) if the application for the general permit may be submitted under s. 30.207.

History: 1987 a. 374; 1995 a. 227; 1997 a. 174.

Insert 32-8 ✓

SECTION 16. 30.207 (5) of the statutes is amended to read:

30.207 (5) HEARING REQUIREMENTS. If an activity for which an application for which a general permit has been submitted would be subject to the hearing and notice provisions under s. 30.02 (3) and (4) 30.208 (3) to (6) for the issuance of an individual permit, the department shall comply with those provisions. Notice and hearing shall be required on an application for a general permit under this section only if a notice and hearing are required under s. 30.02 (3) and (4) for the activity as part of an application for an individual permit under this chapter.

History: 1997 a. 174; 2001 a. 16, 103.

Insert 35-14 ✓

(c) If the department grants an administrative hearing under par. (b), a notice of the hearing shall be provided at least 30 days before the date of the hearing to ~~the~~ all of the following:

1. The applicant for or the holder of the permit.

2. Each petitioner, if other than the applicant or holder.

3. Any other persons required to receive notice under the rules promulgated under ^{s.} 30.208 (5) (a).

(d) The notice under par. (c) shall be in compliance with all of the other applicable rules promulgated under s. 30.208 (5).

~~Insert 35-25~~ *77 - goal, not needed*

Insert 36-4 ✓

(2) JUDICIAL REVIEW. (a) Any applicant for or holder of an individual permit or any other person with standing may commence an action in circuit court to ~~review~~ review ~~any~~ of the decisions given by the department that are specified in sub. (1) (a) 1. and 2. *stet*

(b) An action filed under par. (a) by an applicant for or holder of an individual permit shall be in lieu of the applicant or holder seeking review under sub. (1).

(c) Any administrative review petitioned ~~for~~ under sub. (1) may be removed to the *stet* circuit court by the applicant for the permit, the holder of the permit, or the department. The review shall be commenced by filing a motion for removal together with a copy of the petition filed under sub. (1). The motion must be filed within 30 days after notice is provided under sub. (1) (c).

(d) An action or review commenced under this subsection shall be filed in the circuit court for the county in which the riparian property that is subject to a decision by the department, as specified in sub. (1) (a) 1. and 2., is located.

(e) A review under par. (c) or (d) shall include the examination of witnesses and the taking of evidence before the court.

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

LRB-3040/P3/in
MGG/RPN/RCT:kmg:jf *p2*

There are quite a few changes that I thought necessary when I prepared the analysis. Although some of them are listed below, it is impossible to list them all. Therefore, I recommend that someone come to our office to review the drafting file to see all of the changes between LRB-3040/P1 and this version.

Also, please review the analysis for accuracy. This bill contains many complicated changes, and I would appreciate any suggestions to the analysis if inaccuracies are found.

Please specifically review the following:

1. In s. 30.19 ~~(1)~~ (a) 1. I deleted the cross-references to s. 30.19 (1g) (a) and (b) because 30.19 ~~(1g)~~ (a) deals only with the 500-foot limitation which is only found in s. 30.19 (1g) (am), not s. 30.19 (1g) (a) or (b). *(3r)* ✓ *for changes*

2. Regarding the scope of s. 30.20: *start* Based on the draft *that* I was provided, it appears that the intent is to limit s. 30.20 only to natural, navigable waters. I, therefore, have made that more clear in the treatment of s. 30.20 (1) (a) and (b) and have deleted the exemption for nonnavigable lakes and streams that was found in the /P1 draft under s. 30.20 (1g) (b) 3. ✓

3. The bill provides no time limit for conducting the public hearing on an application after either there has been a request for such a hearing or DNR has determined the hearing is necessary. *See* s. 30.208 (4) (b). Was this intentional? If not, what time limit do you want? *that*

4. Note the additional language in s. 30.208 (4) (b) and other changes in s. 30.208 or 30.208. They deal with who determines which "public members" are to receive notices of application, who is to pay for the distribution and publication of notices. ✓ *and*

5. Note that the persons who may seek administrative review under s. 30.209 (1) (a), the persons who may bring a court action upon their own initiative under s. 30.209 (2) (a), and the persons who may remove an administrative petition to circuit court under s. 30.209 (2) (c) are not all the same. Please review. ✓ *9 yes*

6. Although I addressed this in the earlier drafter's note, please again review who is entitled to be exempt, to act under a general permit, and to apply for an individual

permit for each of the 5 permit or contract applications affected in this bill. As drafted, these can be summarized as follows:

- a. The overall prohibitions apply to "persons".
- b. The exemptions apply to "persons" or activities, as opposed to "riparian owners" except for permits under s. 30.12.
- c. The general permit provisions apply to only riparian owners under ss. 30.12, 30.123, 30.195, and 30.20 and to "persons" under s. 30.19.
- d. The individual permit provisions apply to "persons" under ss. 30.123, 30.19, and 30.20. They apply only to riparian owners under s. 30.12. As to s. 30.195, ~~the~~ they apply to "persons" except that the applicant must be the owner of the land, which it seems would be the same as a riparian owner.

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

they

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

LRB-3040/P2dn
MGG:kmg:ch

October 3, 2003

There are quite a few changes that I thought necessary when I prepared the analysis. Although some of them are listed below, it is impossible to list them all. Therefore, I recommend that someone come to our office to review the drafting file to see all of the changes between LRB-3040/P1 and this version.

Also, please review the analysis for accuracy. This bill contains many complicated changes, and I would appreciate any suggestions for changes to the analysis if inaccuracies are found.

Please specifically review the following:

1. In s. 30.19 (3r) (a) 1., I deleted the cross-references to s. 30.19 (1g) (a) and (b) because 30.19 (1g) (a) deals only with the 500-foot limitation which is only found in s. 30.19 (1g) (am), not s. 30.19 (1g) (a) or (b).
2. Regarding the scope of s. 30.20: based on the draft that I was provided, it appears that the intent is to limit s. 30.20 only to natural, navigable waters. I, therefore, have made that more clear in the treatment of s. 30.20 (1) (a) and (b) and have deleted the exemption for nonnavigable lakes and streams that was found in the /P1 draft under s. 30.20 (1g) (b) 3.
3. The bill provides no time limit for conducting the public hearing on an application after either there has been a request for such a hearing or DNR has determined that the hearing is necessary. See s. 30.208 (4) (b). Was this intentional? If not, what time limit do you want?
4. Note the additional language in s. 30.208 (4) (b) and other changes in s. 30.208 or 30.209. They deal with who determines which "public members" are to receive notices of application, and who is to pay for the distribution and publication of notices.
5. Note that the persons who may seek administrative review under s. 30.209 (1) (a), the persons who may bring a court action upon their own initiative under s. 30.209 (2) (a), and the persons who may remove an administrative petition to circuit court under s. 30.209 (2) (c) are not all the same. Please review.
6. Although I addressed this in the earlier drafter's note, please again review who is entitled to be exempt, to act under a general permit, and to apply for an individual permit for each of the 5 permit or contract applications affected in this bill. As drafted, these can be summarized as follows:

- a. The overall prohibitions apply to "persons."
- b. The exemptions apply to "persons" or activities, as opposed to "riparian owners" except for permits under s. 30.12.
- c. The general permit provisions apply to only riparian owners under ss. 30.12, 30.123, 30.195, and 30.20 and to "persons" under s. 30.19
- d. The individual permit provisions apply to "persons" under ss. 30.123, 30.19, and 30.20. They apply only to riparian owners under s. 30.12. As to s. 30.195, they apply to "persons" except that the applicant must be the owner of the land, which it seems would be the same as a riparian owner.

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

Gibson-Glass, Mary*Instructions
for P-3*

From: Paul Kent
Sent: Monday, October 06, 2003 5:25 PM
To: mary.glass@legis.state.wi.us
Cc: scott.manley@legis.state.wi.us
Subject: Changes to Draft LRB-3040/P2
Mary,

This memo should summarize the more substantive changes to the current "P/2" draft that we discussed this morning.

1. Page 11 In 15 delete "or with public rights in navigable waters." The exemptions deal with impacts that are by definition minor and consistent with public rights.
2. Page 12. Add two additional general permit categories for small piers. The first would allow the repair or replacement of a pier in existence for 10 years where the pier does not exceed 10 feet in width and does not exceed more than 400 square feet in area. The second would allow the placement of piers in lakes of 500 acres or more where the pier does not exceed more than 400 square feet in area.
3. Page 17 In 11. Would clarify the definition of brownfield and provide that it is a boathouse on land that qualifies as a brownfield.
4. Page 19 In 10. Change the reference from riparian owners to persons, consistent with current law.
5. Page 23 Ins 8-13. Delete section 30.19(1)(b) because it is redundant with section (1)(a). Any connection of a navigable waterbody to another navigable waterbody necessarily involves either construction, dredging or enlargement of an artificial waterway. To the extent that the work involves the dredging of a navigable water, that is covered by section 30.20.
6. Page 25 Ins 16-17. Add reference to include activities under (1g)(a) as eligible for a general permit and delete the reference to (1m)(g) so that the reference is simply (1m).
7. Page 25 In 22. Add an additional basis for a general permit "waterbodies less than one acre of surface area."
8. Page 28 In 7. Change the reference from "person" to "riparian owner". While the term riparian owner is not used in section 30.195 currently, only persons that own property adjacent to navigable waters are eligible to apply for stream relocation permits. Therefore reference to riparians is appropriate.
9. Page 28 Ins 11-12. Delete the last clause, "if the activity subject..." because the notice and hearing apply to all eligible activities.
10. Page 30 In 8. Delete the terms "natural navigable" so that the section applies to any lake. Note that as amended 30.20(1)(a) would apply the contract language for removal of materials from natural lakes, because lakebeds are owned by the state. All other navigable waters such as streams, and impoundments can utilize the more conventional permit procedure. The primary change in this section is the removal of non-navigable streams from coverage.
11. Page 31 In 20. Change the term riparian owners to persons, since non-riparians can apply for dredging permits.
12. Page 31 In 21-22 Clarify that persons are eligible for a general permit for removal of more than 1,000 yards where material has been previously removed. This is the maintenance dredging provision.
13. Page 38 In 14-21. Delete the provisions of Section 30.207(5). The cross reference no longer makes sense. If

10/11/2003

there is a general permit, the procedures in (7) should apply anyway rather than a contested case hearing procedure.

14. Page 39 In 24. Add a provision to require that the public hearing shall be scheduled within 30 days of the public notice of the public hearing.

15. Page 41. In 16-18. Modify the language for when an administrative hearing shall be granted to more closely parallel that used in Chapter 283. The language would delete the second sentence in (1)(b) and substitute the following; "The petition shall indicate the interest of the petitioner, the specific issues sought to be reviewed and the reasons why a hearing is warranted."

16. Page 42 In 6. Modify the language that refers to "standing" and refer to the requirements of section 227.52.

17. I also had a suggestion that the introductory analysis include an overview of the regulatory scheme of exemptions, general permits and individual permits. I also thought a reference should be made to the procedures in chapter 283. While these are not used directly, the bill makes use of that scheme rather than the current chapter 30 contested case hearing scheme.

Please let me know if you have any questions, comments or clarifications.

Paul G. Kent
Anderson & Kent, S.C.
1 N. Pinckney Street, Suite 200
Madison, WI 53703
(608) 246-8500 Telephone
(608) 246-8511 Fax
pkent@andersonkent.com

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Paul Kent

From: Paul Kent
Sent: Friday, October 10, 2003 8:35 AM
To: 'mary.glass@legis.state.wi.us'
Subject: Chapter 30

Mary,

I hope your move went well.

I can either stop by or you can call at 9:00. As with any draft like this, the more you look at it the more you see. While I do not want to do anything to delay getting this draft out, I did have three minor (really) items that came to my attention after our meeting. If they can be made now without impacting the timing, great. If not, we can do so later.

1. In the boathouse section, what about using the term blighted area as defined in 66.1331(3)(a), either in addition to or in lieu of brownfield since the term blighted is a more widely accepted term.
2. On the pier general permit language that I had in my last note, could we change 400 square feet to 500 square feet in both sections.
3. Could we add an exemption in 30.12(1g) on page 12 for riprap as follows: "The placement of up to 300 linear feet of riprap to repair or replace riprap previously installed, or the placement of up to 75 linear feet of riprap in any area where riprap had not been previously installed for the purpose of protecting the bank and adjacent land from erosion." I'm sorry about this one. I missed this because riprap was not specifically called out in the draft since it was one of those short form permits we made a general permit.

I look forward to talking with you.

Paul

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to
OK to just talk
about place or replace
of riprap not to
exceed 300 feet.

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Gibson-Glass, Mary

From: Paul Kent
Sent: Monday, October 13, 2003 9:41 AM
To: scott.manley@legis.state.wi.us
Cc: mary.glass@legis.state.wi.us
Subject: FW: Chapter 30 Follow up
See prior email for background.

Paul G. Kent
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-----Original Message-----

From: Paul Kent
Sent: Friday, October 10, 2003 11:23 AM
To: 'mary.glass@legis.state.wi.us'
Subject: Chapter 30 Follow up

Mary,

Thanks for meeting. Good questions on procedure. I look forward to your redraft there.

I had one additional question raised upon my return this morning relative to the 30.19 grading permits. Current has an exemption for Milwaukee County in section 30.19(1m)(c) and (d). Those paragraphs were deleted in the Leg Council draft that I used. To reduce extraneous issues, those two paragraphs should be reinserted, so that current law on that issue remains in effect. Let me know if that is a problem. Thanks.

Paul

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10/13/2003

1 (6) DECISION. Within 30 days after a public hearing is scheduled as required
2 under sub. (4) (b) or, if no hearing is scheduled, within 30 days after the last day of
3 the 30-day comment period under sub. (3) (b), the department shall render a decision
4 issuing, denying, or modifying the application submitted under sub. (1).

5 SECTION 131. 30.209 of the statutes is created to read:

6 **30.209 Individual permits; administrative and judicial review. (1)**

7 ADMINISTRATIVE REVIEW. (a) An applicant for or holder of an individual permit, or 5
8 or more persons, may file a petition for administrative review of any of the following
9 decisions given by the department:

- 10 1. The issuance, denial, or modification of any individual permit issued under
11 this subchapter.
- 12 2. The imposition of, or failure to impose, a term or condition on any individual
13 permit issued under this subchapter.

14 (b) A petition under this subsection shall be filed with the department within
15 30 days after the date on which the department has given notice of its decision under
16 par. (a) 1. and 2. ~~The department shall grant an administrative hearing if the~~
17 ~~department finds that the petition includes a statement that gives specific reasons~~
18 ~~why the department's decision may violate state law.~~

19 (c) If the department grants an administrative hearing under par. (b), a notice
20 of the hearing shall be provided at least 30 days before the date of the hearing to all
21 of the following:

- 22 1. The applicant for or the holder of the permit.
- 23 2. Each petitioner, if other than the applicant or holder.
- 24 3. Any other persons required to receive notice under the rules promulgated
25 under s. 30.208 (5) (a).

283

The petition shall indicate the intent of the petitioner, the specific issue sought to be reviewed and the reasons why an administrative hearing is warranted.

The dep.

the notice the issuance modify or denial is unreasonable or unnecessary

283.63(1)(a)

1 closer to the shoreline, and which has no more than 2 boat slips for the first 50 feet
2 of riparian owner's shoreline footage and no more than one additional boat slip for
3 each additional 50 feet of the riparian owner's shoreline.

4 (g) A wharf that extends no more than 30 feet.

5 (h) An intake or outfall structure that is authorized by a storm water discharge
6 permit approved by the department under ch. 283 or a facility plan approved by the
7 department under s. 281.41.

8 SECTION 15. 30.12 (2) of the statutes is repealed.

9 SECTION 16. 30.12 (3) (title) of the statutes is repealed and recreated to read:
10 30.12 (3) (title) GENERAL PERMITS.

11 SECTION 17. 30.12 (3) (a) (intro.) of the statutes is repealed and recreated to
12 read:

13 30.12 (3) (a) (intro.) The department shall issue statewide general permits
14 under s. 30.206 that authorize riparian owners to do all of the following:

15 SECTION 18. 30.12 (3) (a) 2. of the statutes is renumbered 30.12 (1g) (c) and
16 amended to read:

17 30.12 (1g) (c) ~~Place a~~ A fish crib, spawning reef, wing deflector, or similar
18 device that is placed on the bed of navigable waters for the purpose of improving fish
19 habitat.

20 SECTION 19. 30.12 (3) (a) 2m. of the statutes is renumbered 30.12 (1g) (d) and
21 amended to read:

22 30.12 (1g) (d) ~~Place a~~ A bird nesting platform, ~~a~~ wood duck house, or similar
23 structure that is placed on the bed of a navigable water for the purpose of improving
24 wildlife habitat.

25 SECTION 20. 30.12 (3) (a) 6. of the statutes is amended to read:

Place - Repair or replace a pier that has been in existence prior to [10 years ~~from~~
before the date of enactment], does not exceed 10 feet in width and does
not exceed more than 400 square feet in area.
- A pier in lakes 500 acres in area or more *when the pier has* ~~that~~ *does not* exceed 400 square feet.