



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

☞ Appendix A ... segment V

LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB-1446/1 (For: Senator Kedzie)

has been copied/added to the drafting file for

☞ **2011 LRB-3169** (For: Sen. Fitzgerald)

&

2011 LRB-3170 (For: Rep. Fitzgerald) (please refer to the drafting file for LRB-3169)

☞ Are These “Companion Bills” ?? ... Yes



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 10/12/2011 (Per: RNK)

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



(Goon)
State of Wisconsin
2011 - 2012 LEGISLATURE



RM
run
p4

LRB-1446/P3
RNK&MGG:cjs:jf

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in
7/7

D-N

SA ✓

Gen Cat

1 AN ACT ~~to repeal~~ 30.12 (1k) (b) 1., 30.12 (1k) (b) 2., 30.12 (1k) (b) 3. and 30.12
2 (1k) (c); **to renumber and amend** 30.12 (3) (a) 6. and 30.20 (1t) (a); **to amend**
3 30.01 (1am) (c), 30.12 (1g) (f), 30.12 (1k) (b) (intro.), 30.12 (1k) (cm) 1., 30.12 (1k)
4 (cm) 2., 30.12 (1k) (e) 2., 30.121 (3), 30.121 (3g), 30.121 (3r), 30.2095 (1) (b),
5 281.344 (9) (b) 1. a., 281.346 (9) (b) 1. a., 283.39 (1) (a), 283.53 (1), 285.61 (5) (c),
6 285.62 (3) (c), 285.76 (2) (a), 289.25 (3), 289.31 (4) (a), 289.41 (1m) (g) 1., 291.87
7 (3), 291.87 (6) (a) and 292.31 (3) (f); and **to create** 30.102, 30.106, 30.11 (4m),
8 30.12 (1h), 30.12 (1k) (b) 1m., 30.12 (1k) (b) 2m., 30.12 (3) (a) 6. c., 30.12 (3) (a)
9 14., 30.12 (3) (d), 30.121 (1), 30.121 (3c), 30.19 (1m) (f), 30.19 (1m) (g), 30.20 (1g)
10 (b) 3., 30.20 (1t) (a) 2., 30.20 (1t) (a) 3., 31.12 (5), 281.41 (5), 285.63 (11) and
11 299.17 of the statutes; **relating to:** information required to be published on the
12 Department of Natural Resources Internet Web site; identification of areas of
13 significant scientific value for purposes of regulating the placement of deposits
14 and structures on the beds of navigable waters and the removal of materials
15 from the beds of navigable waters; repair and maintenance of boat houses;

requirements for the placement of certain piers and
wharves;

and
boat
houses

placement of fill or structures within a bulkhead line

acting on

1 permit exemptions for land grading activities and for persons who place piers
 2 and wharves in navigable waters; time limits for certain ~~permits and contracts~~ ^{applications for} approval
 3 ~~for navigable waters activities and projects~~; expedited procedures for plan
 4 approvals for dams and for water and sewerage systems; and granting ^{issued by the Department of Natural Resources}
 5 rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

6 SECTION 1. 30.01 (1am) (c) of the statutes is amended to read:

7 30.01 (1am) (c) An area that possesses significant scientific value, as identified
8 by the department under s. 30.106.

9 SECTION 2. 30.102 of the statutes is created to read:

10 **30.102 Navigability determination and ordinary high-water mark**
11 **identification.** If the department makes a determination that a waterway is
12 navigable or is not navigable or identifies the ordinary high-water mark of a
13 navigable waterway, the department shall publish that information on the
14 department's Internet Web site. Any person may rely on the information posted
15 under this section as accurate.

16 SECTION 3. 30.106 of the statutes is created to read:

17 **30.106 Areas of significant scientific value.** In identifying areas that
18 possess significant scientific value, the department may include only the following:

19 (1) Specific portions of waters that contain critical habitat for endangered or
20 threatened species or that directly affect that habitat.

1 (2) Wild rice waters as identified in a written agreement between the
2 department and the Great Lakes Indian Fish and Wildlife Commission.

3 (3) Waters in areas identified in a special area management plan approved by
4 the U.S. Army Corps of Engineers, or identified in a special wetland inventory study
5 conducted by the department.

6 (4) Waters in ecologically significant coastal wetlands along Lakes Michigan
7 and Superior as identified in the most recent assessment conducted by the
8 department of the coastal wetlands of Lakes Michigan and Superior.

9 (5) Rivers that are included in the national wild and scenic rivers system and
10 rivers that are designated as wild rivers under s. 30.26.

11 **SECTION 4.** 30.11 (4m) of the statutes is created to read:

12 30.11 (4m) PLACEMENT OF FILL AND STRUCTURES. (a) A riparian owner may place
13 additional fill or a structure on the filled bed of a navigable water landward of an
14 established bulkhead line without obtaining an approval under this chapter if the
15 bed of the navigable water was filled before the effective date of this paragraph
16 [LRB inserts date], and the filled area is not subject to a lease under s. 24.39.

17 (b) If the bed of a navigable water landward of an established bulkhead line was
18 not filled before the effective date of this paragraph [LRB inserts date], a riparian
19 owner may place fill or a structure on the bed of that navigable water without
20 obtaining an approval under this chapter if the riparian owner places the fill or the
21 structure in an area that is not subject to a lease under s. 24.39 and places the fill
22 or structure for a public purpose.

 ****NOTE: The term "public purpose" is not defined. Do you want to include a
definition or otherwise describe this term?

23 **SECTION 5.** 30.12 (1g) (f) of the statutes is amended to read:

1 30.12 (1g) (f) A pier or wharf that is no more than 6 feet wide, that extends no
 2 further than to a point where the water is 3 feet at its maximum depth, or to the point
 3 where there is adequate depth for mooring a boat or using a boat hoist or boat lift,
 4 whichever is farther from the shoreline, and that has no more than 2 boat slips for
 5 the first 50 feet of riparian owner's shoreline footage and no more than one additional
 6 boat slip for each additional 50 feet of the riparian owner's shoreline. The
 7 department shall determine adequate depth in a manner that allows at least one foot
 8 of water clearance under the deepest point of the boat at the pier or wharf or under
 9 the deepest point of the boat hoist or boat lift, whichever depth is greater.
 10 Notwithstanding the width limitation in this paragraph, a pier may have an area as
 11 a loading platform that is more than 6 feet wide if the platform is not more than 8
 12 feet wide, it extends perpendicular to one or both sides of the pier, and it is located
 13 at the lakeward end of the pier or at the end of the pier that extends into a stream
 14 immediately adjacent to the riparian owner's shoreline and the surface area of the
 15 platform does not exceed 200 square feet. Notwithstanding the allowable number
 16 of boat slips specified under this paragraph, a riparian owner may moor 2 additional
 17 personal watercraft at the pier or wharf.

INS.
4-17

18 SECTION 6. 30.12 (1h) of the statutes is created to read:

19 30.12 (1h) EXEMPTION FOR RIPRAP. The exemptions under sub. (1g) (i) and (j)
 20 apply regardless of whether the existing riprap was authorized by permit.

21 SECTION 7. 30.12 (1k) (b) (intro.) of the statutes is amended to read:

22 30.12 (1k) (b) (intro.) In addition to the exemptions under sub. (1g), a riparian
 23 owner of a pier or wharf that was placed on the bed of a navigable water on or before
 24 February 6, 2004, is exempt from the permit requirements under this section if all
 25 for the placement of a pier or wharf, if the placement of the pier or wharf does not

1 interfere with the riparian rights of other riparian owners and the pier or wharf is
2 any of the following apply:

3 SECTION 8. 30.12 (1k) (b) 1. of the statutes is repealed.

4 SECTION 9. 30.12 (1k) (b) 1m. of the statutes is created to read:

5 30.12 (1k) (b) 1m. A pier or wharf that is open to the general public or to which
6 the public may gain admission for a fee, that is in substantially the same size and
7 configuration as it was on February 6, 2004.

8 SECTION 10. 30.12 (1k) (b) 2. of the statutes is repealed.

9 SECTION 11. 30.12 (1k) (b) 2m. of the statutes is created to read:

10 30.12 (1k) (b) 2m. A solid pier, as defined in sub. (3m) (d) 1., that was placed
11 on the bed of an outlying water on or before February 6, 2004.

12 SECTION 12. 30.12 (1k) (b) 3. of the statutes, as affected by 2011 Wisconsin Act
13 25, is repealed. ✓

14 SECTION 13. 30.12 (1k) (c) of the statutes is repealed.

15 SECTION 14. 30.12 (1k) (cm) 1. of the statutes is amended to read:

16 30.12 (1k) (cm) 1. A structure for which the department has issued a permit
17 under this section ~~on or before February 6, 2004~~, if the structure is in compliance with
18 that permit.

19 SECTION 15. 30.12 (1k) (cm) 2. of the statutes is amended to read:

20 30.12 (1k) (cm) 2. A structure for which the department has issued a written
21 authorization ~~on or before February 6, 2004~~, if the structure is in compliance with
22 that written authorization.

23 SECTION 16. 30.12 (1k) (e) 2. of the statutes is amended to read:

24 30.12 (1k) (e) 2. If the exempt structure is a pier or wharf, relocate or
25 reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf,

1 ~~the riparian owner registered the pier or wharf with the department under par. (b)~~
2 ~~3. and, before relocating or reconfiguring the pier or wharf, the riparian owner~~
3 ~~registers the reconfigured or relocated pier or wharf with the department under this~~
4 ~~subdivision.~~

5 **SECTION 17.** 30.12 (3) (a) 6. of the statutes is renumbered 30.12 (3) (a) 6. (intro.)
6 and amended to read:

7 30.12 (3) (a) 6. (intro.) Place a permanent boat shelter adjacent to the owner's
8 property for the purpose of storing or protecting watercraft and associated materials,
9 except that no general or individual permit may be issued for a permanent boat
10 shelter that is constructed after May 3, 1988, if the any of the following apply:

11 a. The property on which the permanent boat shelter is to be located also
12 contains a boathouse within 75 feet of the ordinary high-water mark ~~or if there,~~

13 b. There is a boathouse over navigable waters adjacent to the owner's property.

14 **SECTION 18.** 30.12 (3) (a) 6. c. of the statutes is created to read:

15 30.12 (3) (a) 6. c. The permanent boat shelter extends beyond the length of the
16 pier.

****NOTE: Please review this language carefully to ensure that it meets your intent.
Your proposed language included the phrase "whichever is less" but didn't indicate what
the other comparative standard should be.

17 **SECTION 19.** 30.12 (3) (a) 14. of the statutes is created to read:

18 30.12 (3) (a) 14. Place a pier on the bed of a navigable water that is in, or that
19 would directly affect, an area of special natural resource interest and that is adjacent
20 to the owner's property if the pier meets the requirements of sub. (1g) (f).

21 **SECTION 20.** 30.12 (3) (d) of the statutes is created to read:

1 30.12 (3) (d) The department may impose conditions on general permits issued
2 under par. (a) 14. but may not prohibit a riparian owner who meets those conditions
3 from placing a pier as specified under par. (a) 14.

4 **SECTION 21.** 30.121 (1) of the statutes is created to read:

5 30.121 (1) DEFINITION. In this section, the terms “maintain” and “repair”
6 include replacing structural elements, including roofs, doors, walls, windows,
7 beams, porches, and floors.

8 **SECTION 22.** 30.121 (3) of the statutes is amended to read:

9 30.121 (3) **MAINTENANCE AND REPAIR.** The riparian owner of any boathouse or
10 fixed houseboat extending beyond the ordinary high-water mark of any navigable
11 waterway may repair ~~and or~~ maintain the boathouse or fixed houseboat if the cost
12 of the repair or maintenance to repair or maintain the boathouse or fixed houseboat
13 does not exceed 50% of the equalized assessed value of the boathouse or fixed
14 houseboat. If the boathouse or fixed houseboat is not subject to assessment, the
15 owner may ~~make repairs~~ repair or maintain the boathouse or the fixed houseboat if
16 the cost of the repair or maintenance does not exceed 50% of the current fair market
17 value of the boathouse or fixed houseboat.

18 **SECTION 23.** 30.121 (3c) of the statutes is created to read:

19 30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES. Subsection (3) does not apply to
20 repairing or maintaining a boathouse if the boathouse was in existence on December
21 16, 1979, and the repairing or maintaining does not affect the size, location, or
22 configuration of the boathouse and does not result in the boathouse being converted
23 into living quarters.

24 **SECTION 24.** 30.121 (3g) of the statutes is amended to read:

1 **30.121 (3g) EXCEPTION; HISTORICAL OR CULTURAL VALUE.** Subsection (3) does not
2 apply to the repair or maintenance of repairing or maintaining a boathouse or a fixed
3 houseboat if the boathouse or fixed houseboat has a historic or cultural value, as
4 determined by the state historical society or a local or county historical society
5 established under s. 44.03.

6 **SECTION 25.** 30.121 (3r) of the statutes is amended to read:

7 **30.121 (3r) EXCEPTION; DAMAGES AFTER JANUARY 1, 1984.** Subsections (2) and (3)
8 do not apply to the repair or reconstruction of repairing or reconstructing a damaged
9 boathouse if the boathouse was damaged by violent wind, vandalism or fire and if the
10 damage occurs after January 1, 1984.

***NOTE: This redraft of s. 30.121 contains the changes discussed at the meeting
on May 3rd.

11 **SECTION 26.** 30.19 (1m) (f) of the statutes is created to read:

12 **30.19 (1m) (f)** Any land grading activity authorized under a stormwater
13 discharge permit issued under s. 283.33.

14 **SECTION 27.** 30.19 (1m) (g) of the statutes is created to read:

15 **30.19 (1m) (g)** Any land grading activity authorized by a permit issued by a
16 county under a shoreland zoning ordinance enacted under s. 59.692.

17 **SECTION 28.** 30.20 (1g) (b) 3. of the statutes is created to read:

18 **30.20 (1g) (b) 3.** The amount of material removed is less than 10 cubic yards,
19 the removal is necessary to allow access to place or remove a pier or wharf, and the
20 removal occurs not more than once per year.

21 **SECTION 29.** 30.20 (1t) (a) of the statutes is renumbered 30.20 (1t) (a) (intro.)
22 and amended to read:

1 30.20 (1t) (a) (intro.) The department shall issue statewide general permits
2 under s. 30.206 that authorize any all of the following:

3 1. Any person to remove material for maintenance purposes from an area from
4 which material has been previously removed.

5 **SECTION 30.** 30.20 (1t) (a) 2. of the statutes is created to read:

6 30.20 (1t) (a) 2. Any riparian owner to remove 50 cubic yards or less of material
7 from a lake or stream adjacent to the riparian owner's property, by means other than
8 blasting, for the purpose of placing or maintaining a boatlift on a pier or wharf.

9 **SECTION 31.** 30.20 (1t) (a) 3. of the statutes is created to read:

10 30.20 (1t) (a) 3. Any person to annually remove not more than 3000 cubic yards
11 of plant or animal nuisance deposits, as defined by the department by rule, from a
12 stream, inland lake, or outlying waters if the plant or animal nuisance deposits
13 impede navigation.

INS.
9-13

14 **SECTION 32.** 30.2095 (1) (b) of the statutes is amended to read:

15 30.2095 (1) (b) The department may specify a time limit of less than 3 years
16 for a permit or contract issued under ss. 30.01 to 30.29. ~~For good cause, the~~ The
17 department ~~may~~ shall extend the time limit for a permit or contract issued under ss.
18 30.01 to 30.29 for no longer than ~~2~~ an additional 5 years if the grantee requests an
19 extension prior to expiration of the initial time limit.

20 **SECTION 33.** 31.12 (5) of the statutes is created to read:

21 31.12 (5) The department shall promulgate rules that establish an expedited
22 procedure for approval of plans for low hazard dams, as defined in s. 31.19 (1g) (b),
23 under this section. The expedited procedure shall apply, in lieu of the procedure
24 under this section, if all of the following are satisfied:

1 (a) The plan design is of a common construction and size or is for a minor
2 addition to an existing dam.

3 (b) The plan design is submitted by a registered professional engineer.

4 (c) The plan design is submitted by a person who has designed similar dams
5 and none of those similar dams has caused adverse impacts to the environment.

6 (d) The plan design contains no unusual siting requirements or other unique
7 design features.

8 **SECTION 34.** 281.344 (9) (b) 1. a. of the statutes is amended to read:

9 281.344 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
10 or as a notice on its Internet Web site.

11 **SECTION 35.** 281.346 (9) (b) 1. a. of the statutes is amended to read:

12 281.346 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
13 or as a notice on its Internet Web site.

14 **SECTION 36.** 281.41 (5) of the statutes is created to read:

15 281.41 (5) The department shall promulgate rules that establish an expedited
16 procedure for approval of plans under this section. The expedited procedure shall
17 apply, in lieu of the procedure under sub. (1) (b) if all of the following are satisfied:

18 (a) The plan design is of a common construction and size or is for a minor
19 addition to an existing facility.

20 (b) The plan design is submitted by a registered professional engineer.

21 (c) The plan design is submitted by a person who has designed similar facilities
22 and none of those similar facilities has caused adverse impacts to the environment.

23 (d) The plan design contains no unusual siting requirements or other unique
24 design features.

****NOTE: My notes from the May 3rd meeting indicate that more information will be provided in order to make these criteria more narrow in scope.

1 **SECTION 37.** 283.39 (1) (a) of the statutes is amended to read:

2 283.39 (1) (a) Publication of the notice as a class 1 notice under ch. 985 or as
3 a notice on its Internet Web site;

4 **SECTION 38.** 283.53 (1) of the statutes is amended to read:

5 283.53 (1) No permit issued by the department under s. 283.31 or 283.33 shall
6 have a an initial term for more than 5 years. Upon the request of a permit holder,
7 the department may renew the permit. There is a no limit on the number of times
8 that a permit may be renewed.

9 **SECTION 39.** 285.61 (5) (c) of the statutes is amended to read:

10 285.61 (5) (c) *Newspaper notice.* The department shall publish a class 1 notice
11 under ch. 985, or shall publish notice on its Internet Web site, announcing the
12 opportunity for written public comment and the opportunity to request a public
13 hearing on the analysis and preliminary determination.

14 **SECTION 40.** 285.62 (3) (c) of the statutes is amended to read:

15 285.62 (3) (c) The department shall publish the notice prepared under par. (a)
16 as a class 1 notice under ch. 985 in a newspaper published in the area that may be
17 affected by emissions from the stationary source, or shall publish the notice on its
18 Internet Web site.

19 **SECTION 41.** 285.63 (11) of the statutes is created to read:

20 285.63 (11) MODELING. The department is not required to use air dispersion
21 modeling as a basis for making its findings under subs. (1) to (3).

22 **SECTION 42.** 285.76 (2) (a) of the statutes is amended to read:

1 285.76 (2) (a) Publish a class 1 notice, under ch. 985, of the proposed
2 redesignation and request for consultation with the state in a newspaper of general
3 circulation in the area that would be affected by the redesignation, as determined
4 using standards established by the federal environmental protection agency, or
5 publish a notice on the department's Internet Web site; and publish a class 1 notice,
6 under ch. 985, in the official state newspaper; and provide a written statement
7 concerning the proposed redesignation to ~~those newspapers~~ each newspaper in
8 which it publishes a class 1 notice under this subsection.

9 **SECTION 43.** 289.25 (3) of the statutes is amended to read:

10 289.25 (3) NOTIFICATION ON FEASIBILITY REPORT AND PRELIMINARY ENVIRONMENTAL
11 IMPACT STATEMENT DECISIONS. Immediately after the department issues a preliminary
12 determination that an environmental impact statement is not required or, if it is
13 required, immediately after the department issues the environmental impact
14 statement, the department shall publish a class 1 notice under ch. 985 in the official
15 newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper
16 likely to give notice in the area of the proposed facility, or shall publish a notice on
17 its Internet Web site. The notice shall include a statement that the feasibility report
18 and the environmental impact statement process are complete. The notice shall
19 invite the submission of written comments by any person within 30 days after the
20 notice for a solid waste disposal facility or within 45 days after the notice for a
21 hazardous waste facility is published. The notice shall describe the methods by
22 which a hearing may be requested under ss. 289.26 (1) and 289.27 (1). The
23 department shall distribute copies of the notice to the persons specified under s.
24 289.32.

25 **SECTION 44.** 289.31 (4) (a) of the statutes is amended to read:

1 289.31 (4) (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
2 to give notice in the area where the facility is located or publishing a notice on its
3 Internet Web site.

4 **SECTION 45.** 289.41 (1m) (g) 1. of the statutes is amended to read:

5 289.41 (1m) (g) 1. The owner of an approved mining facility may apply, at any
6 time at least 40 years after the closing of the facility, to the department for
7 termination of the owner's obligation to maintain proof of financial responsibility for
8 long-term care of the facility. Upon receipt of an application under this subdivision,
9 the department shall publish a class 1 notice under ch. 985 in the official newspaper
10 designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give
11 notice in the area of the facility, or shall publish a notice on its Internet Web site. The
12 notice shall include a statement that the owner has applied to terminate the owner's
13 obligation to maintain proof of financial responsibility for the long-term care of the
14 facility. The notice shall invite the submission of written comments by any person
15 within 30 days after the notice is published. The notice shall describe the methods
16 by which a hearing may be requested under subds. 2. and 3. The department shall
17 distribute a copy of the notice to the owner of the facility. In any hearing on the
18 matter, the burden is on the owner to prove by a preponderance of the evidence that
19 continuation of the requirement to provide proof of financial responsibility for
20 long-term care is not necessary for adequate protection of human health or the
21 environment. Within 120 days after the publication of the notice or within 60 days
22 after any hearing is adjourned, whichever is later, the department shall determine
23 whether proof of financial responsibility for long-term care of the facility continues
24 to be required. A determination that proof of financial responsibility for long-term
25 care is no longer required terminates the owner's obligation to maintain proof of

1 financial responsibility for long-term care. The owner may not submit another
2 application under this subdivision until at least 5 years after the previous
3 application has been rejected by the department.

4 **SECTION 46.** 291.87 (3) of the statutes is amended to read:

5 291.87 (3) If the licensee requests a hearing within 45 days after receiving the
6 notice under sub. (2), the department shall schedule a hearing and give notice of the
7 hearing by publishing a class 1 notice, under ch. 985, or by publishing a notice on its
8 Internet Web site, at least 45 days prior to the date scheduled for the hearing. If the
9 licensee requests a contested case hearing and if the conditions specified under s.
10 227.42 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a
11 contested case; otherwise, the department shall conduct the hearing as an
12 informational hearing. There is no statutory right to any hearing concerning the
13 denial, suspension or revocation of a license for the reasons stated under sub. (1m)
14 (b) to (f) except as provided under this subsection.

15 **SECTION 47.** 291.87 (6) (a) of the statutes is amended to read:

16 291.87 (6) (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
17 to give notice in the area where the facility is located or publishing a notice on its
18 Internet Web site.

19 **SECTION 48.** 292.31 (3) (f) of the statutes is amended to read:

20 292.31 (3) (f) *Notice; hearing.* The department shall publish a class 1 notice,
21 under ch. 985 or shall publish a notice on its Internet Web site, prior to taking
22 remedial action under this subsection and subs. (1) and (7), which describes the
23 proposed remedial action and the amount and purpose of any proposed expenditure.
24 Except as provided under par. (d), the department shall provide a hearing to any
25 person who demands a hearing within 30 days after the notice is published for the

1 purpose of determining whether the proposed remedial action and any expenditure
2 is within the scope of this section and is reasonable in relation to the cost of obtaining
3 similar materials and services. The department is not required to conduct more than
4 one hearing for the remedial action proposed at a single site or facility.
5 Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case.
6 The decision of the department to take remedial action under this section is a final
7 decision of the agency subject to judicial review under ch. 227.

INS
15-7

8 SECTION 49. 299.17 of the statutes is created to read:

9 **299.17 Web site information.** The department shall publish on the
10 department's Internet Web site the current status of any application filed with the
11 department for a permit, license, or other approval under chs. 30, 281 to 285, or 289
12 to 299. The information shall include notice of any hearing scheduled by the
13 department with regard to the application.

14 (END)

d-note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/P4ins.
RNK:.....

INSERT 4-17

1 SECTION 1. 30.12 (1g) (f) of the statutes is renumbered 30.12 (1g) (f) 1. (intro.)
2 and amended to read:

3 apply 30.12 (1g) (f) 1. (intro.) A pier or wharf ~~that is no~~ to which all of the following
4 applies:

5 a. It is no more than 6 feet wide, ~~that extends~~ .

6 b. It extends no further than to a point where the water is 3 feet at its maximum
7 depth, or to the point where there is adequate depth for mooring a boat or using a boat
8 hoist or boat lift, whichever is farther from the shoreline, ~~and that has~~ . The
9 department shall determine adequate depth under this subdivision in a manner that
10 allows at least one foot of water clearance under the deepest point of the boat at the
11 pier or wharf or under the deepest point of the boat hoist or boat lift, whichever depth
12 is greater.

13 c. It has no more than 2 boat slips for the first 50 feet of riparian owner's
14 shoreline footage and no more than one additional boat slip for each additional 50
15 feet of the riparian owner's shoreline.

16 2. Notwithstanding the width limitation in ~~this paragraph subd. 1.~~, a pier may
17 have an area as a loading platform that is more than 6 feet wide if ~~the~~ any of the
18 following applies: ¹

19 a. If the pier is placed on or after the effective date of this subdivision ... [LRB
20 inserts date] ~~the platform is not more than 8 feet wide, it extends perpendicular to~~
21 ~~one or both sides of the pier, and it is located at the lakeward end of the pier or at the~~
22 ~~end of the pier that extends into a stream immediately adjacent to the riparian~~

1 owner's shoreline and the surface area of the platform does not exceed 200 square
2 feet.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390, 425; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204; 2011 a. 5.

3 **SECTION 2.** 30.12 (1g) (f) 1. ~~g~~^d of the statutes is created to read:

4 30.12 (1g) (f) 1. ~~g~~^d It has no more than 2 areas, other than boat slips, for mooring
5 no more than a total of 2 personal watercraft at those areas.

****NOTE: Please note that this provision does not affect current law under which
a mooring permit may be required. See s. 30.772, stats. ✓

6 **SECTION 3.** 30.12 (1g) (f) 2. b. of the statutes is created to read:

7 30.12 (1g) (f) 2. b. If the pier was placed before the effective date of this
8 subdivision [LRB inserts date], the surface area of the platform does not exceed
9 300 square feet.

INSERT 9-13

10 **SECTION 4.** 30.208 (2) of the statutes is amended to read:

11 30.208 (2) PROCEDURE FOR COMPLETING APPLICATIONS. In issuing individual
12 permits or entering contracts under this subchapter, the department shall initially
13 determine whether a complete application for the permit or contract has been
14 submitted and, no later than 30 days after the application is submitted, notify the
15 applicant in writing about the initial determination of completeness. If the
16 department determines that the application is incomplete, the notice shall state the
17 reason for the determination and the specific items of information necessary to make
18 the application complete. An applicant may supplement and resubmit an
19 application that the department has determined to be incomplete. There is no limit
20 on the number of times that an applicant may resubmit an application that the
21 department has determined to be incomplete under this section. The department

1 deny the application within 30 days after the mandamus is granted and the court
2 shall award the applicant reasonable attorney fees and court costs incurred in
3 bringing the action.

4 2. For purposes of subd. 1., the department shall initially determine whether
5 a complete application has been submitted and, no later than 30 14 days after the
6 application is submitted, notify the applicant in writing about the initial
7 determination of completeness. If the department determines that the application
8 is incomplete, the notice shall state the reason for the determination and the specific
9 items of information necessary to make the application complete. An applicant may
10 supplement and resubmit an application that the department has determined to be
11 incomplete. There is no limit on the number of times that an applicant may resubmit
12 an application that the department has determined to be incomplete under this
13 subdivision. The department may not demand items of information that are not
14 specified in the notice as a condition for determining whether the application is
15 complete unless both the department and the applicant agree or unless the applicant
16 makes material additions or alterations to the project for which the the application
17 has been submitted.

INSERT 15-7

X

18 SECTION 24. 299.05 of the statutes is repealed and recreated to read:

19 **299.05 Deadlines for action on certain applications. (1) DEADLINES.** The
20 department, by rule, shall establish periods within which the department intends to
21 approve or disapprove an application for any of the following:

- 22 (a) A well driller or pump installer registration under s. 280.15. ✓
- 23 (b) A water system, wastewater treatment plant, or septage servicing vehicle
24 operator certification under s. 281.17 (3). ✓
- 25 (c) A license for servicing septic tanks and similar facilities under s. 281.48 (3). ✓

INS. to
INS.
31-24

SENATE BILL 246

but not under the federal clean air act

- 1 (d) A solid waste incinerator operator certification under s. 285.51 (2). ✓
- 2 ~~(e) An ozone-depleting refrigerant removal approval under s. 285.59.~~
- 3 ~~(em)~~ (e) An air pollution control permit ^{required} under s. 285.60. ✓
- 4 (f) A solid waste disposal facility operator certification under s. 289.42 (1). ✓
- 5 (g) A hazardous waste transportation service license under s. 291.23.
- 6 (h) A metallic mining exploration license under s. 293.21. ✓
- 7 (i) An oil or gas exploration license under s. 295.33 (1). ✓
- 8 (j) A laboratory certification or registration under s. 299.11. ✓
- 9 (k) A medical waste transportation license under s. 299.51 (3) (c). ✓

10 (2) FAILURE TO MEET DEADLINE. (a) Subject to sub. (4), the department shall
 11 refund fees paid by the applicant for a license or other approval specified in sub. (1)
 12 if the department fails to provide the applicant with written notice that the
 13 department has approved or disapproved the application for the license or other
 14 approval, including the specific facts upon which any disapproval is based, before the
 15 expiration of the period established under sub. (1) for the license or other approval. ✓

16 (b) Subject to sub. (4), if the department fails to provide the applicant for a
 17 license or other approval specified in sub. (1) with written notice that the department
 18 has approved or disapproved the application before the expiration of the period
 19 established under sub. (1) for the license or other approval, the applicant may choose
 20 to proceed under ch. 227 as though the department had disapproved the application
 21 by providing the department with written notice of that choice no later than 45 days
 22 after the expiration of the period established under sub. (1). ✓

23 (c) The department may not disapprove an application for a license or other
 24 approval solely because the department is unable to complete its review of the
 25 application within the period established under sub. (1). ✓

1 may not demand items of information that are not specified in the notice as a
 2 condition for determining whether the application is complete unless both the
 3 department and the applicant agree or unless the applicant makes material
 4 additions or alterations to the activity or project for which the application has been
 5 submitted. The rules promulgated under s. ~~299.05~~ [✓]299.06 apply only to applications
 6 for individual permits or contracts under this subchapter that the department has
 7 determined to be complete.

History: 2003 a. 118 ss. 6, 149; 2007 a. 227.

INSERT 31-24 (INSERT to INSERT)
15-7

****NOTE: My notes from the May 3rd meeting with regard to this draft indicate that the water system referenced in this provision should refer only to a "domestic" water system. I did not make that change because I don't know what makes a water system a "domestic" water system. Do you have more information on this issue?

8 (a) In this subsection, "approval" means a permit, contract, approval, or other
 9 determination specified in sub. (1). (1m)

(B) (C) (1) DEFINITION. INSERT 31-24 (INSERT TO INSERT) 33-18 15-7

X

SENATE BILL 246

1 (3) NOTICE OF DEADLINE. Upon receiving an application for a license or other
2 approval specified in sub. (1), the department shall inform the applicant of the period
3 established under sub. (1) for the license or other approval. ✓

4 (4) PERMITTED EXTENSION OF DEADLINE. The department may extend the period
5 established under sub. (1) because an application is incomplete if all of the following
6 apply: ✓

7 (a) Within 14 days after receiving the application, the department provides
8 written notice to the applicant describing specifically the information that must be
9 provided to complete the application.

10 (b) The information under par. (a) is directly related to eligibility for the license
11 or other approval or to terms or conditions of the license or other approval.

12 (c) The information under par. (a) is necessary to determine whether to approve
13 the application or is necessary to determine the terms or conditions of the license or
14 other approval.

15 (d) The extension is not longer than the ^{period equal to the} number of days from the day on which
16 the department provides the notice under par. (a) to the day on which the department
17 receives the information.

18 SECTION 25. 299.06 of the statutes is created to read: ✓

19 **299.06 Automatic approval of certain applications.** (1) DEADLINES. The
20 department, by rule, shall establish periods within which the department intends to
21 approve or disapprove an application for any of the following: ✓

22 (a) A high-capacity well approval under s. ~~281.17 (1)~~ 281.34(2)

23 (b) A water pollution discharge permit under s. 283.31 or 283.33.

24 (d) A solid waste facility determination of feasibility under s. 289.29. ✓

25 (e) A solid waste facility operating license under s. 289.31. ✓

(9) (bg) A stormwater discharge permit under s. 283.33.

INS.
33-18

(1m)

SENATE BILL 246

(i) Determinations of navigability under s. 30.10.

1 (f) A hazardous waste facility operating license under s. 291.25. ✓

2 (g) A prospecting permit under s. 293.45. ✓

3 (h) An oil or gas production license under s. 295.33 (2). ✓

4 *(i) Individual*
5 ~~(i) Permits and other~~ determinations under ss. ~~30.10~~, 30.12, 30.123, 30.18,
30.195, and 30.20. *Contracts and exemption*

*INS.
F.P.
I.U.S.
B.H.T.*

6 (2) FAILURE TO MEET DEADLINE. *(a)* Subject to subs. (4) (b) and (5), failure by the ✓
7 department to provide the applicant for a ~~permit~~ *an* approval or other ~~determination~~

8 ~~specified in sub. (1)~~ with written notice that the department has approved or
9 disapproved the application for the ~~permit~~ approval or other ~~determination~~. *Comma stays*

10 including the specific facts upon which any disapproval is based, before the
11 expiration of the period established under sub. *(1m)* ~~(1)~~ for the ~~permit~~ approval or other

12 ~~determination~~ constitutes approval of the application. *An* A ~~permit~~ approval or other
13 ~~determination~~ approved under this paragraph is subject to any terms or conditions

14 specified by statute or rule for the ~~permit~~ approval or other ~~determination~~ and the
15 department may suspend, limit, revoke, or withdraw the ~~permit~~ approval or other

16 ~~determination~~ for substantial failure to comply with those terms or conditions. The
17 department may not make the ~~permit~~ approval or other ~~determination~~ subject to

18 any term or condition that is not specified by statute or rule. Within 30 days after
19 the expiration of the period established under sub. *(1m)* ~~(1)~~ for the ~~permit~~ approval or

20 ~~other determination~~ the department shall provide the applicant with a statement
21 showing that the ~~permit~~ approval or other ~~determination~~ is approved and

22 specifying any terms and conditions that apply to that ~~permit~~ approval or other
23 ~~determination~~

1 (b) The department may not disapprove an application for ~~a permit, approval,~~
2 ~~or other determination~~ solely because the department is unable to complete its
3 review of the application within the period established under sub. (1). (1) (1m)

4 (3) NOTICE OF DEADLINE. Upon receiving an application for ~~a permit, approval,~~
5 ~~or other determination specified in sub. (1),~~ the department shall inform the
6 applicant of the period established under sub. (1) ~~for the permit, approval, or other~~
7 ~~determination.~~ (1) (1m)

8 (4) OPTIONAL PROVISIONS OF RULES. The department may include any of the
9 following in the rules required under sub. (1). (1) (1m)

10 (a) A longer period under sub. (1) ~~for an application for a permit, approval, or~~
11 ~~other determination~~ for which an environmental impact statement is required under
12 s. 1.11 than for other applications. (1) (1m)

13 (b) Extensions of the period established under sub. (1) ~~because the applicant~~
14 makes a material modification to the application if the department notifies the
15 applicant in writing of the extension within 30 days after the applicant makes the
16 modification. (1) (1m)

17 (c) Deadlines for the department to complete intermediate steps in the process
18 of completing its review of an application.

19 (5) EXTENSIONS AUTHORIZED. (a) During the period established under sub. (1) ~~(1)~~ (1m)
20 the department and the applicant may jointly agree to a different period for acting
21 on an application for ~~a permit, approval, or other determination than that specified~~
22 ~~under sub. (1).~~ The department may not require an applicant to agree to a different
23 period as a condition of approving an application. (1) (1m)

24 (b) The department may extend ~~the~~ ^a period established under sub. (1) ~~because~~
25 an application is incomplete if all of the following apply: (1) (1m)

1 1. Within 14 days after receiving the application, the department provides
2 written notice to the applicant describing specifically the information that must be
3 provided to complete the application.

4 2. The information under subd. 1. is directly related to eligibility for the permit,
5 approval, or other determination or to terms or conditions of the permit, approval,
6 or other determination.

7 3. The information under subd. 1. is necessary to determine whether to approve
8 the application or is necessary to determine the terms or conditions of the permit,
9 approval, or other determination.

10 4. The extension is not longer than the number of days from the day on which
11 the department provides the notice under subd. 1. to the day on which the
12 department receives the information.

13 (c) The department may extend the period established under sub. (a) for an
14 application by not more than 30 days if, within the period established under sub. (a),
15 the department finds that there is a substantial likelihood that the activity proposed
16 to be conducted under the application would result in substantial harm to human
17 health or human safety and that the department cannot adequately review the
18 application within the period established under sub. (a) and, upon making those
19 findings, provides written notice to the applicant that states with particularity the
20 facts on which those findings are based.

21 SECTION 26. 341.19 (4) of the statutes is amended to read:

22 341.19 (4) The department shall promulgate rules to implement this section
23 and shall promulgate any rule required under s. 85.16 (3).

24 SECTION 27. 343.02 (1) of the statutes is amended to read:

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

LRB-1446/P4dn

RNK:/:.....

gjs

- late -

This redraft clarifies the allowable size of a pier platform both before and after the effective date of this proposal. It also includes provisions that require the Department of Natural Resources to promulgate rules establishing deadlines for acting on certain applications for licenses, permits, and other determinations. Under this draft, if DNR does not meet the deadline with regard to certain approval applications, DNR must refund the application fees and the applicant may request an administrative hearing as if the application had been disapproved. For certain other approval applications, DNR's failure to meet the deadline for acting on an application constitutes an approval. These provisions are based upon provisions contained in 2003 Senate Bill 246. Please note the following:

1. The requirement for DNR to promulgate rules establishing deadlines for the specified ch. 30 approvals does not apply, under this draft, to general permits under s. 30.206, stats. I did not include general permits because s. 30.206, stats. already establishes time periods under which DNR must take action with regard to general permits. If you intended to change the time periods in current law under s. 30.206, please let me know. stats. ↗

2. This draft includes provisions that specify conditions under which DNR may extend a deadline because an application is incomplete. Those provisions are inconsistent with the provisions in current law under s. 30.208, stats. with regard to determinations of complete applications for individual ch. 30 permits. Consequently, the provisions in the draft that specify conditions under which DNR may extend a deadline because an application is not complete (see s. 299.06 (5), as created in the draft), do not apply to applications for an individual ch. 30 permit. If you wish to make the provisions in current law with regard to ch. 30 permits consistent with the provisions in the draft as they concern determinations of completeness for other approvals, please let me know and I will redraft accordingly.

3. As with the previous version of this draft, this version contains embedded notes that raise issues that must be resolved before the draft can be put in final form.

Please feel free to contact me if you have questions with regard to this draft.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/P4dn
RNK:cjs:rs

July 13, 2011

This redraft clarifies the allowable size of a pier platform both before and after the effective date of this proposal. It also includes provisions that require the Department of Natural Resources to promulgate rules establishing deadlines for acting on certain applications for licenses, permits, and other determinations. Under this draft, if DNR does not meet the deadline with regard to certain approval applications, DNR must refund the application fees and the applicant may request an administrative hearing as if the application had been disapproved. For certain other approval applications, DNR's failure to meet the deadline for acting on an application constitutes an approval. These provisions are based upon provisions contained in 2003 Senate Bill 246. Please note the following:

1. The requirement for DNR to promulgate rules establishing deadlines for the specified ch. 30 approvals does not apply, under this draft, to general permits under s. 30.206, stats. I did not include general permits because s. 30.206, stats., already establishes time periods under which DNR must take action with regard to general permits. If you intended to change the time periods in current law under s. 30.206, stats., please let me know.
2. This draft includes provisions that specify conditions under which DNR may extend a deadline because an application is incomplete. Those provisions are inconsistent with the provisions in current law under s. 30.208, stats., with regard to determinations of complete applications for individual ch. 30 permits. Consequently, the provisions in the draft that specify conditions under which DNR may extend a deadline because an application is not complete (see s. 299.06 (5), as created in the draft), do not apply to applications for an individual ch. 30 permit. If you wish to make the provisions in current law with regard to ch. 30 permits consistent with the provisions in the draft as they concern determinations of completeness for other approvals, please let me know and I will redraft accordingly.
3. As with the previous version of this draft, this version contains embedded notes that raise issues that must be resolved before the draft can be put in final form.

Please feel free to contact me if you have questions with regard to this draft.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Revisions to LRB 1446/P4

MBG

Page 3, line 4; after "...species or", insert, "areas immediately adjacent to and"

11

Page 3, lines 7-9; Delete those lines

11

Page 3, line 12; delete the material after "department"

✓ Page 3, line 17; after "structure", insert, "for any purpose"

✓ Page 4, line 9; after "depth", insert, "measured at summer low levels"

✓ Page 4, lines 10-14; after "shoreline", delete the material beginning with "The" on line 10 and ending with "greater" on line 14.

✓ Page 4, lines 15-17; Senator Kedzie would like to add the language regarding the mooring of personal watercraft here and have it match the language regarding additional boat slips for each additional 50 feet. In other words, for every boat slip a person is allowed, that is how many personal watercraft they are allowed to moor.

✓ Page 4, line 22; before "the platform", insert, "the surface area of"; delete "is not"

✓ Page 5, lines 1-2; delete, "immediately adjacent to the riparian owner's shoreline and the surface area of the platform"

amended
no

Page 5, lines 4-6; delete those lines.

✓ Page 5, lines 7-10; The **new intent** is to grandfather everything prior to the effective date of the bill. Thus, delete references to 300 square feet and create new language to allow for any configuration and size of a pier, as well as the number of slips the riparian owner had prior to the effective date of this bill. In addition, a riparian owner may repair or rebuild the grand-fathered pier if necessary, so long as it maintains the same size and configuration.

MBG

Page 5, lines 12-13; Revise Section 8 in the following manner:

30.12 **(1h)** EXEMPTION FOR RIPRAP. The exemptions under sub. (1g) (i) and (j) applies if the riprap was in place before January 1, 2011 or if the riprap was placed under a permit granted under this section.

✓ Page 6, lines 1-3; Delete those lines

✓ Page 7, lines 19-20; after "owner", delete, "who meet those conditions"; and after "pier", delete, "as specified under par. (a) 14."

✓ Page 10, lines 2-5; revise this section to read: "The department shall issue a general permit to any person to remove no more than 500 cubic yards of plant or animal nuisance deposits, as defined by the department by rule, from a stream, inland lake, or outlying waters if the plant or animal nuisance deposits impede navigation or access."

✓ Page 10, Section 34; Delete this section. (lines 7-24)

✓ Page 11, line 17; add one more criteria under this section to read: (e) The proposed impoundment is solely contained on the applicant's land, or an easement has been obtained by the impacted property owner."

✓ Page 17, lines 3-4; Delete those lines.

✓ Page 17, line 7; Delete that line.

✓ Page 19, lines 5-9; Delete those lines.

✓ Page 19, line 12; Delete that line.

Additions to LRB 1446/P4

Revise 30.1235 in the following manner:

30.1235 Municipal bridge construction-transportation projects. ~~Municipalities which construct or reconstruct highway bridges shall not be required to obtain permits under s. 30.12 or 30.123 for that construction or reconstruction.~~

- (1) The department may issue statewide general permits under s.30.206 that authorize transportation projects carried out under the direction and supervision of a municipality or regional transportation authority.
- (2) All municipal highway bridges shall be constructed or reconstructed in accordance with technical standards developed under s. 84.01 (23).

Finally, Senator Kedzie would like to incorporate the provisions of **Assembly Bill 177 (as amended by AA 1)** into this draft bill, if at all possible. We understand this may create some conflicts which would need to be reconciled through drafting, thus if you believe it may be too difficult to do so, please let me know.

Gibson-Glass, Mary

From: Kite, Robin
Sent: Tuesday, August 30, 2011 3:54 PM
To: Gibson-Glass, Mary
Subject: FW: LRB 1446/P4 revision

I think this means that we can delete my references to ch. 30 and the put your bill into the draft. Nice.

Robin

From: Johnson, Dan
Sent: Tuesday, August 30, 2011 3:51 PM
To: Gibson-Glass, Mary; Kite, Robin
Subject: LRB 1446/P4 revision

Hi Mary and Robin,

In regards to our conversation earlier today on LRB 1446/P4, delete lines 13-14 on page 19 of the draft.

Thanks again, and please call or write with any additional concerns.

Dan Johnson
Chief of Staff
State Senator Neal Kedzie
11th Senate District
608.266.2635

Gibson-Glass, Mary

From: Johnson, Dan
Sent: Thursday, September 01, 2011 9:09 AM
To: Gibson-Glass, Mary
Subject: LRB 1446/P4 revision

Hi Mary,

As per our phone conversation yesterday, and after conferring with the DNR, please revise 30.1235 in the following manner:

30.1235(2)

All municipal highway bridges shall be constructed or reconstructed in accordance with design and construction standards developed under s. 84.01 (23).

Thank you!

Dan Johnson
State Senator Neal Kedzie
11th Senate District
608.266.2635