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State of Wisconsin
2011 - 2012 LEGISLATURE



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LRB-1446/01
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In
2/26

SAV

Ger Cat

1 **AN ACT to repeal** 30.12 (1k) (b), 30.12 (1k) (c) and 30.12 (1k) (cm) 3.; **to renumber**
2 **and amend** 30.12 (3) (a) 6. and 30.20 (1t) (a); **to amend** 30.01 (1am) (c), 30.12
3 (1g) (f), 30.12 (1k) (cm) 1., 30.12 (1k) (cm) 2., 30.12 (1k) (e) (intro.), 30.12 (1k)
4 (e) 2., 30.2095 (1) (b), 281.344 (9) (b) 1. a., 281.346 (9) (b) 1. a., 281.36 (2) (b),
5 283.39 (1) (a), 283.53 (1), 285.61 (5) (c), 285.62 (3) (c), 285.76 (2) (a), 289.25 (3),
6 289.31 (4) (a), 289.41 (1m) (g) 1., 291.87 (3), 291.87 (6) (a) and 292.31 (3) (f); **to**
7 **repeal and recreate** 299.05; and **to create** 30.102, 30.106, 30.12 (3) (a) 6. c.,
8 30.12 (3) (a) 14., 30.121 (3c), 30.19 (1m) (f), 30.19 (1m) (g), 30.20 (1g) (b) 3., 30.20
9 (1t) (a) 2., 30.20 (1t) (a) 3., 31.12 (5), 281.41 (5), 285.63 (11) and 299.17 of the
10 statutes; **relating to:** information required to be published on the Department
11 of Natural Resources Internet Web site; identification of areas of significant
12 scientific value for purposes of regulating the placement of deposits and
13 structures on the beds of navigable waters and the removal of materials from
14 the beds of navigable waters; permit exemptions for land grading activities and
15 for persons who place piers and wharves in navigable waters; time limits for

1 certain permits and contracts for navigable waters activities and projects;
2 expedited procedures for plan approvals for dams and for water and sewerage
3 systems; water quality certification procedures for certain wetlands; and
4 granting 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:

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

6 30.01 (1am) (c) An area that possesses significant scientific value, as identified
7 by the department under s. 30.106.

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

9 **30.102 Navigability determination and ordinary high-water mark**
10 **identification.** If the department makes a determination that a waterway is
11 navigable or identifies the ordinary high-water mark of a navigable waterway, the
12 department shall publish that information on the department's Internet Web site.

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

14 **30.106 AREAS OF SIGNIFICANT SCIENTIFIC VALUE.** In identifying areas that possess
15 significant scientific value, the department may include only the following:

16 (1) Waters or portions of waters that contain endangered or threatened species
17 or aquatic elements.

****NOTE: By removing the qualifying phrase relating to the Wisconsin Natural Heritage Inventory, "aquatic element" becomes a very vague term. OK?

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.

 ****NOTE: Although a specific document may appear in the rules relating to areas
of significant scientific value, putting such language in the statutes is discouraged
because it may be unconstitutional as a improper delegation of legislative authority. Also,
I think there is a later assessment than the 2000 version. I have drafted this so that the
most recent version is the one to be used.

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.

 ****NOTE: I have omitted a reference to DNR or the DNR board being able to
designate additional waters by rule because, as I understand it, the only waters that may
be identified as having significant scientific value are the ones listed in this newly created
statutory provision.

11 **SECTION 4.** 30.12 (1g) (f) of the statutes is amended to read:

12 **30.12 (1g) (f)** A pier or wharf that is no more than 6 8 feet wide, that extends
13 no further than to a point where the water is 3 feet at its maximum depth, or to the
14 point where there is adequate depth for mooring a boat or using a boat hoist or boat
15 lift, whichever is farther from the shoreline, and that has no more than 2 boat slips
16 for the first 50 feet of riparian owner's shoreline footage and no more than one
17 additional boat slip for each additional 50 feet of the riparian owner's shoreline. The
18 department shall determine adequate depth under this paragraph based upon
19 normal summer time low levels on the relevant waterway or upon summer minimum
20 levels that are established by an order issued by the department and taking into

SECTION 4

1 account the wave action on the relevant waterway from wind, currents, wakes, and
2 other typical causes of wave action. Notwithstanding the width limitation in this
3 paragraph, a pier may have an area as a loading platform that is more than 6 8 feet
4 wide if the platform is ~~not more than 8 feet wide, it extends perpendicular to one or~~
5 ~~both sides of the pier, and it is located at the lakeward end of the pier or at the end~~
6 ~~of the pier that extends into a stream~~ does not have more than 300 feet in surface
7 area.

****NOTE: I recognize that the underscored language is based on a provision in DNR rules but I do not think that the language is as clear as it could be. For example, the use of the term "summer" and "summer time" in the same sentence is confusing. Do they mean different things? And are "low levels" different than "minimum levels"? Finally, what kind of "order" does DNR issue with regard to minimum levels?

8 **SECTION 5.** 30.12 (1k) (b) of the statutes is repealed.

9 **SECTION 6.** 30.12 (1k) (c) of the statutes is repealed.

10 **SECTION 7.** 30.12 (1k) (cm) 1. of the statutes is amended to read:

11 30.12 (1k) (cm) 1. A structure for which the department has issued a permit
12 under this section ~~on or before February 6, 2004~~, if the structure is in compliance with
13 that permit.

14 **SECTION 8.** 30.12 (1k) (cm) 2. of the statutes is amended to read:

15 30.12 (1k) (cm) 2. A structure for which the department has issued a written
16 authorization ~~on or before February 6, 2004~~, if the structure is in compliance with
17 that written authorization.

18 **SECTION 9.** 30.12 (1k) (cm) 3. of the statutes is repealed.

19 **SECTION 10.** 30.12 (1k) (e) (intro.) of the statutes is amended to read:

20 30.12 (1k) (e) (intro.) A riparian owner who is exempt under ~~par. (b) from the~~
21 ~~permit requirements under this section or who is exempt under par. (cm) from~~
22 enforcement action under this chapter may do all of the following:

1 **SECTION 11.** 30.12 (1k) (e) 2. of the statutes is amended to read:

2 30.12 (1k) (e) 2. If the exempt structure is a pier or wharf, relocate or
3 reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf,
4 ~~the riparian owner registered the pier or wharf with the department under par. (b)~~
5 ~~3. and, before relocating or reconfiguring the pier or wharf, the riparian owner~~
6 ~~registers the reconfigured or relocated pier or wharf with the department under this~~
7 ~~subdivision.~~

8 **SECTION 12.** 30.12 (3) (a) 6. of the statutes is renumbered 30.12 (3) (a) 6. (intro.)
9 and amended to read:

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

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

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

17 **SECTION 13.** 30.12 (3) (a) 6. c. of the statutes is created to read:

18 30.12 (3) (a) 6. c. The permanent boat shelter extends beyond the length of the
19 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.

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

21 30.12 (3) (a) 14. Place a pier or wharf on the bed of a navigable water that is
22 in, or that would immediately affect, an area of special natural resource interest and

1 that is adjacent to the owner's property if the pier or wharf meets the requirements
2 of sub. (1g) (f).

****NOTE: I think that additional language may be needed in this provision. What makes an effect "immediate?" And what kind of effect must there be?

3 **SECTION 15.** 30.121 (3c) of the statutes is created to read:

4 30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES. Subsection (3) does not apply to the
5 repair or maintenance of a boathouse if the boathouse was in existence on December
6 16, 1979, and the repair or maintenance does not expand the footprint, height, or
7 area of the boathouse and the repair and maintenance does not result in the
8 boathouse being converted into living quarters.

****NOTE: The general limitation on the maintenance and repair of boathouses needs to be kept in current law because it interacts with the existing exceptions under s. 30.121 (3g), (3m), (3r), and (3w).

****NOTE: This exception applies only to boathouses and not houseboats. OK?

9 **SECTION 16.** 30.19 (1m) (f) of the statutes is created to read:

10 30.19 (1m) (f) Any land grading activity authorized under a stormwater
11 discharge permit issued under s. 283.33.

12 **SECTION 17.** 30.19 (1m) (g) of the statutes is created to read:

13 30.19 (1m) (g) Any land grading activity authorized by a permit issued by a
14 county under a shoreland zoning ordinance enacted under s. 59.692.

15 **SECTION 18.** 30.20 (1g) (b) 3. of the statutes is created to read:

16 30.20 (1g) (b) 3. The amount of material removed is less than 10 cubic yards
17 and the removal is necessary to allow access to a pier or wharf.

18 **SECTION 19.** 30.20 (1t) (a) of the statutes is renumbered 30.20 (1t) (a) (intro.)
19 and amended to read:

20 30.20 (1t) (a) (intro.) The department shall issue statewide general permits
21 under s. 30.206 that authorize any all of the following:

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

3 **SECTION 20.** 30.20 (1t) (a) 2. of the statutes is created to read:

4 **30.20 (1t) (a) 2.** Any riparian owner to remove 50 cubic yards or less of material
5 from a lake or stream adjacent to the riparian owner's property, by means other than
6 blasting, for the purpose of placing a pier or wharf or of providing access to a pier or
7 wharf.

8 **SECTION 21.** 30.20 (1t) (a) 3. of the statutes is created to read:

9 **30.20 (1t) (a) 3.** Any person to annually remove not more than 3000 cubic yards
10 of plant or animal nuisance deposits from a stream, inland lake, or outlying waters
11 if the plant or animal nuisance deposits impede navigation.

 ****NOTE: This language needs clarification. Is it intended to apply only to riparian
owners? Does the "annual" requirement mean that the person can conduct removal only
once a year or does it mean that removal can occur only once a year on a given waterway?
Also, I think the phrase "plant or animal nuisance deposits" needs a definition. I'm not
sure what constitutes a "plant or animal nuisance deposit." Finally, should this provision
refer simply to a "navigable water" rather than to a "stream, inland lake, or outlying
waters"?

12 **SECTION 22.** 30.2095 (1) (b) of the statutes is amended to read:

13 **30.2095 (1) (b)** The department may specify a time limit of less than 3 years
14 for a permit or contract issued under ss. 30.01 to 30.29. ~~For good cause, the~~ The
15 department may extend the time limit for a permit or contract issued under ss. 30.01
16 to 30.29 for no longer than 2 an additional 5 years if the grantee requests an
17 extension prior to expiration of the initial time limit.

 ****NOTE: Please let me know if you want to keep the "good cause" requirement in
this provision.

18 **SECTION 23.** 31.12 (5) of the statutes is created to read:

1 31.12 (5) The department shall promulgate rules that establish an expedited
2 procedure for approval of plans under this section. The expedited procedure shall
3 apply, in lieu of the procedure under this section, if all of the following are satisfied:

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

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

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

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

 ****NOTE: Please see the note after s. 281.41 (5). Also, do you want to limit the
expedited procedure to only low hazard dams or dams that are not large dams (see s.
31.19, stats.), as suggested by Russell Rasmussen at DNR?

11 **SECTION 24.** 281.344 (9) (b) 1. a. of the statutes is amended to read:

12 281.344 (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 25.** 281.346 (9) (b) 1. a. of the statutes is amended to read:

15 281.346 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
16 or as a notice on its Internet Web site.

17 **SECTION 26.** 281.36 (2) (b) of the statutes is amended to read:

18 ~~281.36 (2) (b) 1. The department shall approve or deny a complete application
19 for a water quality certification under this section within ~~120~~ 21 days after the date
20 the department determines that a complete application for the certification has been
21 submitted unless the applicant and the department agree to extend the time period.
22 The department may not determine an application to be complete until the
23 requirements under s. 1.11 have been met and until all of the items of information~~

1 for the water quality certification and for any associated permits or other approvals
2 have been submitted to the department. If the department fails to approve or deny
3 the complete application within the applicable time period, the applicant may bring
4 an action for mandamus to compel the department to approve or deny the
5 application. If the court grants the mandamus, the department shall approve or
6 deny the application within 30 days after the mandamus is granted and the court
7 shall award the applicant reasonable attorney fees and court costs incurred in
8 bringing the action.

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

23 **SECTION 27.** 281.41 (5) of the statutes is created to read:

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

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

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

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

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

 ****NOTE: These criteria are very general in nature. You may want to consider
making them somewhat more narrow in scope. For example, when is an addition
"minor"? Does that refer to the size of the addition, the cost of the addition, the purpose
of the addition, or something else entirely?

11 **SECTION 28.** 283.39 (1) (a) of the statutes is amended to read:

12 283.39 (1) (a) Publication of the notice as a class 1 notice under ch. 985 or as
13 a notice on its Internet Web site;

14 **SECTION 29.** 283.53 (1) of the statutes is amended to read:

15 283.53 (1) No permit issued by the department under s. 283.31 or 283.33 shall
16 have a an initial term for more than 5 years. Upon the request of a permit holder,
17 the department may extend the term of the initial permit by not more than 5
18 additional years.

 ****NOTE: You had asked that this draft also authorize DNR to extend "wetlands
permits" by an amount up to 5 years. I assume that you are referring to water quality
certifications for wetlands that are issued by DNR. I could not find any references in the
statutes or administrative code that suggests that water quality certifications are issued
for a limited time period. Consequently, this draft does not authorize DNR to extend
"wetlands permits." Please let me know if you have additional information on this issue.
Also, do you want the amended language to allow a permit holder to request more than
one extension? The language is not clear on this issue.

19 **SECTION 30.** 285.61 (5) (c) of the statutes is amended to read:

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

5 **SECTION 31.** 285.62 (3) (c) of the statutes is amended to read:

6 285.62 (3) (c) The department shall publish the notice prepared under par. (a)
7 as a class 1 notice under ch. 985 in a newspaper published in the area that may be
8 affected by emissions from the stationary source, or shall publish the notice on its
9 Internet Web site.

10 **SECTION 32.** 285.63 (11) of the statutes is created to read:

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

13 **SECTION 33.** 285.76 (2) (a) of the statutes is amended to read:

14 285.76 (2) (a) Publish a class 1 notice, under ch. 985, of the proposed
15 redesignation and request for consultation with the state in a newspaper of general
16 circulation in the area that would be affected by the redesignation, as determined
17 using standards established by the federal environmental protection agency, or
18 publish a notice on the department's Internet Web site; and publish a class 1 notice,
19 under ch. 985, in the official state newspaper; and provide a written statement
20 concerning the proposed redesignation to ~~those newspapers~~ each newspaper in
21 which it publishes a class 1 notice under this subsection.

22 **SECTION 34.** 289.25 (3) of the statutes is amended to read:

23 289.25 (3) NOTIFICATION ON FEASIBILITY REPORT AND PRELIMINARY ENVIRONMENTAL
24 IMPACT STATEMENT DECISIONS. Immediately after the department issues a preliminary
25 determination that an environmental impact statement is not required or, if it is

1 required, immediately after the department issues the environmental impact
2 statement, the department shall publish a class 1 notice under ch. 985 in the official
3 newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper
4 likely to give notice in the area of the proposed facility, or shall publish a notice on
5 its Internet Web site. The notice shall include a statement that the feasibility report
6 and the environmental impact statement process are complete. The notice shall
7 invite the submission of written comments by any person within 30 days after the
8 notice for a solid waste disposal facility or within 45 days after the notice for a
9 hazardous waste facility is published. The notice shall describe the methods by
10 which a hearing may be requested under ss. 289.26 (1) and 289.27 (1). The
11 department shall distribute copies of the notice to the persons specified under s.
12 289.32.

13 **SECTION 35.** 289.31 (4) (a) of the statutes is amended to read:

14 289.31 (4) (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
15 to give notice in the area where the facility is located or publishing a notice on its
16 Internet Web site.

17 **SECTION 36.** 289.41 (1m) (g) 1. of the statutes is amended to read:

18 289.41 (1m) (g) 1. The owner of an approved mining facility may apply, at any
19 time at least 40 years after the closing of the facility, to the department for
20 termination of the owner's obligation to maintain proof of financial responsibility for
21 long-term care of the facility. Upon receipt of an application under this subdivision,
22 the department shall publish a class 1 notice under ch. 985 in the official newspaper
23 designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give
24 notice in the area of the facility, or shall publish a notice on its Internet Web site. The
25 notice shall include a statement that the owner has applied to terminate the owner's

1 obligation to maintain proof of financial responsibility for the long-term care of the
2 facility. The notice shall invite the submission of written comments by any person
3 within 30 days after the notice is published. The notice shall describe the methods
4 by which a hearing may be requested under subds. 2. and 3. The department shall
5 distribute a copy of the notice to the owner of the facility. In any hearing on the
6 matter, the burden is on the owner to prove by a preponderance of the evidence that
7 continuation of the requirement to provide proof of financial responsibility for
8 long-term care is not necessary for adequate protection of human health or the
9 environment. Within 120 days after the publication of the notice or within 60 days
10 after any hearing is adjourned, whichever is later, the department shall determine
11 whether proof of financial responsibility for long-term care of the facility continues
12 to be required. A determination that proof of financial responsibility for long-term
13 care is no longer required terminates the owner's obligation to maintain proof of
14 financial responsibility for long-term care. The owner may not submit another
15 application under this subdivision until at least 5 years after the previous
16 application has been rejected by the department.

17 **SECTION 37.** 291.87 (3) of the statutes is amended to read:

18 291.87 (3) If the licensee requests a hearing within 45 days after receiving the
19 notice under sub. (2), the department shall schedule a hearing and give notice of the
20 hearing by publishing a class 1 notice, under ch. 985, or by publishing a notice on its
21 Internet Web site, at least 45 days prior to the date scheduled for the hearing. If the
22 licensee requests a contested case hearing and if the conditions specified under s.
23 227.42 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a
24 contested case; otherwise, the department shall conduct the hearing as an
25 informational hearing. There is no statutory right to any hearing concerning the

1 denial, suspension or revocation of a license for the reasons stated under sub. (1m)
2 (b) to (f) except as provided under this subsection.

3 **SECTION 38.** 291.87 (6) (a) of the statutes is amended to read:

4 291.87 (6) (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
5 to give notice in the area where the facility is located or publishing a notice on its
6 Internet Web site.

7 **SECTION 39.** 292.31 (3) (f) of the statutes is amended to read:

8 292.31 (3) (f) *Notice; hearing.* The department shall publish a class 1 notice,
9 under ch. 985 or shall publish a notice on its Internet Web site, prior to taking
10 remedial action under this subsection and subs. (1) and (7), which describes the
11 proposed remedial action and the amount and purpose of any proposed expenditure.
12 Except as provided under par. (d), the department shall provide a hearing to any
13 person who demands a hearing within 30 days after the notice is published for the
14 purpose of determining whether the proposed remedial action and any expenditure
15 is within the scope of this section and is reasonable in relation to the cost of obtaining
16 similar materials and services. The department is not required to conduct more than
17 one hearing for the remedial action proposed at a single site or facility.
18 Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case.
19 The decision of the department to take remedial action under this section is a final
20 decision of the agency subject to judicial review under ch. 227.

21 **SECTION 40.** 299.05 of the statutes is repealed and recreated to read:

22 **299.05 Deadlines for action on certain applications. (1) DEADLINES.** The
23 department, by rule, shall establish periods within which the department intends to
24 approve or disapprove an application for any of the following:

25 (a) An approval under s. 30.10, 30.12, 30.123, 30.18, 30.19, or 30.20.

- 1 (b) A well driller or pump installer registration under s. 280.15.
- 2 (c) A water system, wastewater treatment plant, or septage servicing vehicle
3 operator certification under s. 281.17 (3).
- 4 (d) A license for servicing septic tanks and similar facilities under s. 281.48 (3).
- 5 (e) A solid waste incinerator operator certification under s. 285.51 (2).
- 6 (f) An ozone-depleting refrigerant removal approval under s. 285.59.
- 7 (g) An air pollution control permit under s. 285.60.
- 8 (h) A solid waste disposal facility operator certification under s. 289.42 (1).
- 9 (i) A hazardous waste transportation service license under s. 291.23.
- 10 (j) A metallic mining exploration license under s. 293.21.
- 11 (k) An oil or gas exploration license under s. 295.33 (1).
- 12 (L) A laboratory certification or registration under s. 299.11.
- 13 (m) A medical waste transportation license under s. 299.51 (3) (c).
- 14 **(2) FAILURE TO MEET DEADLINE.** (a) Subject to sub. (4), the department shall
15 refund fees paid by the applicant for a license or other approval specified in sub. (1)
16 if the department fails to provide the applicant with written notice that the
17 department has approved or disapproved the application for the license or other
18 approval, including the specific facts upon which any disapproval is based, before the
19 expiration of the period established under sub. (1) for the license or other approval.
- 20 (b) Subject to sub. (4), if the department fails to provide the applicant for a
21 license or other approval specified in sub. (1) with written notice that the department
22 has approved or disapproved the application before the expiration of the period
23 established under sub. (1) for the license or other approval, the applicant may choose
24 to proceed under ch. 227 as though the department had disapproved the application

1 by providing the department with written notice of that choice no later than 45 days
2 after the expiration of the period established under sub. (1).

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

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

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

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

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

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

20 (d) The extension is not longer than the number of days from the day on which
21 the department provides the notice under par. (a) to the day on which the department
22 receives the information.

****NOTE: This provision, which comes from 2003 SB 246, seems to require DNR
to make a decision on an application on the same day that DNR receives the additional
information. Is this consistent with your intent?

23 **SECTION 41.** 299.17 of the statutes is created to read:

Paul - 212-1729 - cell
Kent

✓ Navigability -
add language that prop owner can rely on
this determination.
relevance info - include
if determin. not navig. - also include

~~30 sq ft~~
date of bill - 7/81

Piers -
✓ keep grandfathered piers @ 8 ft w/ plat 300 sq. ft.
no registration
going forward @ 6 ~~ft~~ ft. w/ plat 200 sq. ft.

can't interfere w/ riparians
take out language about lakeward end etc...
say that platform cannot be immediately
adjacent to the ~~shore~~ land (or something
like that)

✓ add that in addition to 2 slips (ie current law) -
can have 2 additional jet skis

✓ - include \bar{o} - piers + wharves + other structures -
pier - commercial structure; public benefit
grandfather them -
if use charges grandfathering ends -
been in place ~~26~~ years - 1977

any maintenance, repair replacement but not replacement
solid piers - in outlying waters
built before 2004

same concept as w/ boat houses (ht. is not relevant) - size, location, & configuration

Internet notice -
15 days from posting - >

Internet posting - include ch. 30 - many will do

High cap. wells (potable water) -

ch 299 -

change to presumptive approval not denial

dept. may request add'l info one time

take out provision that applicant gets money back

Bulkhead lines -

filled ones - allow deposits, structures etc.

don't include anything re: unfilled ones

Paul Kent will provide more info. -

5/24/2011

Tel. conf w/ Paul Kent

DNR's position:

only place that area up to bulkhead
line can have fill or structures is
area subject to a bulkhead lease
under 30.11(5)

Boathouse Repair and Maintenance ○

Appears in LRB 1446/2 on Page 6, line 4-8.

Allow existing boathouses to be repaired and maintained by deleting, or creating an exception to, the 50% cost of repair condition under ss. 30.121(3).

Grading/Land Disturbance Regulations ✓

Appears in LRB 1446/2 on Pages/Lines: 6, lines 9-14

Drafting Instructions: Amend s. 30.19 (1g)(c) and s. 283.33, Wis. Stats. to eliminate duplicative regulation of grading/land disturbance activities similar to NR 216.42(6).

The amendment should eliminate the need to get a grading permit under s. 30.19 if the permit coverage has already been obtained under s. 283.33. (Notice of Intent pursuant to NR 216).

Amend s. 30.19 (1g)(c), Wis. Stats. to eliminate the need for a department-issued grading permit if the grading is regulated and a permit has been issued pursuant to shoreland zoning regulations (NR 115) by a local unit of government.

General Permits for Dredging Relating to Pier and Boathouse Access ○

Appears in LRB 1446/2 on Page 6-7, lines 15-21 and lines 1-11

Modify ss. 30.20 (1t) to create general permits to allow for minor dredging to access piers, and general permits for the removal of animal and plant deposits. Also, create an exemption in ss. 30.20 (1g)(b) to allow for the moving of rocks or materials in order to provide access to a pier or wharf involving less than 10 cubic yards of material.

Create the new GP in ss. 30.20 (1t) Wis. Stats. as follows:

(ar) The department shall issue a statewide general permit that authorizes any riparian owner to remove up to 50 cubic yards of material from lakes or streams within the riparian zone for the purpose of placing a pier or wharf or providing access to a pier or wharf.

Create the new exemption in ss. 30.20 (1g)(b) Wis. Stats. as follows:

The removal relocates rock within the riparian zone for the purpose of providing access to a pier or wharf and involves less than 10 cubic yards of material.

Extensions for Waterway Permits ✓

Appears in LRB 1446/2 on Page 7, lines 12-17

Allow businesses and other state water permit holders to request extensions to their existing permits for up to five years from permit issuance. Extensions would be applicable to Chapter 30 permits, wetlands, and construction site storm water permits.

Drafting Instructions: Revise ss. 30.2095, 281.22, and 283.53 Wis. Stats. to allow extensions beyond the current permit time limits.

Plan and Specification Reviews for Minor or Repeat Projects ✓

Appears in LRB 1446/2 on Page 8-9, lines 1-10, lines 17-23, and lines 1-4

The DNR provides detailed engineering review of the design of structures proposed to be constructed as part of a permitted facility. Some of these reviews are for facilities of standard design in areas posing a lower level of environmental risk. In that regard, the review process should be expedited.

Drafting Instructions: Create an expedited engineering review process in statute for structure designs that meet the following criteria:

- The design is for a commonly built facility in size and scope or for a minor addition to an existing facility;
- The plans are submitted by an engineer with a professional engineer accreditation;
- The engineer or consulting firm submitting the plans has designed similar facilities that have been constructed and have not been the subject of failure resulting in adverse environmental impacts;
- There are no unusual site or other features that would require unique design characteristics.

Modeling Requirements for Air Permits ✓

Appears in LRB 1446/2 on Page 10, lines 6-7

Provide that the DNR is not required in all cases to use air dispersion modeling analysis as a basis for determining that proposed minor source air permit is eligible for approval.

Drafting Instructions: Revise s. 285.63(1)(b)

Public Notice System for Environmental Permits ✓

Appears in LRB 1446/2 on Pages/Lines: 8, lines 12-16; page 9, lines 6-7 and line 15; page 10, lines 3-4, 13-16, and 24-25; page 11, lines 10-11 and line 19; page 12, lines 15-16; page 13, lines 2-3 and line 6; page 15-16, lines 21-23 and lines 1-3.

Change the current requirement to Public Notice permits as a Class 1 public notice to allow for an equivalent Web-based public notice system. The Web-based system would become the DNR's "Public Notice Page" where projects would be continuously displayed along with the applications/permit status until the decision is complete.

Drafting Instructions: The process would require revisions to Chapter 985 to allow a 15 day Web-Based Public Notice System as equivalent to a Class 1 Public Notice.

Deadlines for Various DNR Permits 0

Appears in LRB 1446/2 on Page 13-15, lines 19-25, lines 1-23, and lines 1-20.

Direct the DNR to establish deadlines for certain permits and activities, and the appropriate sanctions for not meeting those deadlines, which include presumptive approval and refund of fees for said permit applications.

Drafting Instructions: **Redraft sections 24 and 25 in 2003 SB 246** in regards to establishing deadlines by rule, sanctions for failure to meet deadlines, and the ability for the DNR to extend deadlines.

- Approvals for which failure to act by a deadline results in automatic approval include: high-capacity well approvals, water pollution permits, solid or hazardous waste facility operating licenses, and permits and other determinations related to structures and deposits in navigable waters issued by the DNR. *non-domestic* *EPA?* *- No* *OK*
 - [30.10 Declarations of navigability, 30.12 Structures and deposits in navigable waters., 30.123 Bridges and culverts, 30.18 Withdrawal of water from lakes and streams, 30.19 Enlargement and protection of waterways, and 30.20 Changing of stream courses.]
- Approvals for which the consequence of failure to act on an application within the period established by rule is a refund of fees include: air pollution permits and well driller registrations.

Seawalls in the Winnebago Pool 0

Drafted in LRB 1713/P1

Modify ss. 30.2023 Wis. Stats. to provide that when a seawall is placed above the OHWM, any temporary enlargement does not require a permit under ss. 30.19 (1g)(a) Wis. Stats.

Riprap in the Winnebago Pool 0

Drafted in LRB 1713/P1

Create a riprap exemption and general permit for the Winnebago Pool system that incorporates many of the key construction components of NR 328, but provides for greater flexibility in determining erosion and in the construction conditions to address severe conditions without having to go to an individual permit.

Streamline Wetland Permitting for Small Business

~~Issue and Intent: Establish a two-year jobs emergency for streamlined wetland permitting for any small business that demonstrates job growth for projects proposing to fill wetlands that have low functional values.~~

~~Drafting Instructions: Revise Chapter 281 to reflect that intent. Create a simplified wetland permitting process whereby a small business (as defined by law) would be allowed to fill low value wetlands without extensive analysis of practical alternatives.~~

~~The business would need to certify that it is creating jobs through its proposal and that it had designed the project to avoid and minimize the wetland impact as much as practicable. No additional alternatives would be required for the business to obtain a permit to fill the wetland.~~

Wetlands Permit Process/Wetland Mitigation

~~Intent and Issue: Provide additional flexibility to reduce paperwork and review time needed to make decisions for impact to low functioning wetlands, including expanding when mitigation can be considered.~~

~~Drafting Instructions: Revise c. 281, Wis. Stats. to clarify and override current administrative rules, regarding these four components:~~

- ~~1. Mitigation — Expand the Department's ability to consider mitigation for any project proposal and establish the purchase of credits from an approved mitigation on in-lieu fee program as the preferred form of compensation.~~
- ~~2. Scope of Alternative — Allow the Department to consider a streamlined scope of alternatives for project proposals that impact low functioning wetlands.~~
- ~~3. Net Environmental Benefit — Allow the Department to make a net environmental benefit determination to consider other environmental consequences and alternatives to the proposed wetland fill.~~
- ~~4. Process Steps — Establish permit process steps for low functioning wetlands that allow the Department to consider avoid and minimize alternatives at the same time as wetland impacts of the proposed project. Also, modify the procedures for individual 401 Wetland Water Quality Certifications so they are consistent with Chapter 30 Individual Waterway.~~

Air Construction and Operating Permitting for Minor Sources

~~Issue and Intent: The current registration permit threshold of 25 tons per pollutant limits the ability of existing business to make minor process changes, and inhibits start up businesses.~~

~~Drafting Instructions: Revise s. 285.60(2g) Wis. Stats. to increase the threshold for registration operation permits and registration construction permits from 25 to 79 tons per year.~~

Bulkhead Lines – Draft Request 4.22.11 0

30.12 Structures and deposits in navigable waters.

(1) Permits required. Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following:

(a) Deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established.

(b) Deposit any material or place any structure upon the bed of any navigable water beyond a lawfully established bulkhead line.

(c) Deposit any material or place any structure upon the bed of any navigable water within a bulkhead line with respect to any area landward of the bulkhead line that was not filed prior to [insert effective date] and is not authorized under s. 30.11(4r)(c).

30.11 Establishment of bulkhead lines.

(1) Who may establish. Any municipality may, subject to the approval of the department, by ordinance establish a bulkhead line and from time to time reestablish the same along any section of the shore of any navigable waters within its boundaries.

(2) Standards for establishing.

(a) Bulkhead lines shall be established in the public interest and shall conform as nearly as practicable to the existing shores, except that in the case of leases under sub. (5) and s. 24.39 (4) bulkhead lines may be approved farther from the existing shoreline if they are consistent with and a part of any lease executed by the board of commissioners of public lands.

(b) After [insert effective date], no bulkhead line may be approved without a lease under sub. (5) and s. 24.39(4) executed by the board of commissioners of public lands.

(3) How established. Whenever any municipality proposes to establish a bulkhead line or to reestablish an existing bulkhead line, the municipality shall indicate both the existing shore and the proposed bulkhead line upon a map and shall file with the department for its approval 6 copies of the map and 6 copies of the ordinance establishing the bulkhead line. The map shall use a scale of not less than 100 feet to an inch or any other scale required by the department. The map and a metes and bounds description of the bulkhead line shall be prepared by a land surveyor registered in this state. The department may require the installation of permanent reference markers to the bulkhead line. Upon approval by the department, the municipality shall deliver the map,

description and ordinance to the office of the register of deeds of the county in which the bulkhead line lies, to be recorded by the register of deeds.

(4) Riparian rights preserved.

Establishment of a bulkhead line shall not abridge the riparian rights of riparian owners. Riparian owners may place solid structures or fill up to any such line subject only to restrictions set forth under sub (4r).

(4r) Existing bulkhead areas

(a) Bulkhead leases. If an area subject to a bulkhead line is subject to the terms and conditions of a bulkhead lease under sub (5), then those terms and conditions continue to apply.

(b) Filled areas. If an area subject to a bulkhead line is not subject to bulkhead lease under sub (5) and the area landward of the bulkhead line has been filled prior to [insert effective date], then the riparian owner shall be deemed to have qualified title to the filled area up to the bulkhead line and the riparian shall have the right to place fill or structures on the filled area without further approval from the department.

(c) Unfilled municipal areas. To the extent that the area landward of the bulkhead line has not been filled prior to [insert effective date], and the riparian owner is a municipality as defined in s. 30.01, then the municipality may place fill and structures up to the bulkhead line provided that the fill and structures are for a public purpose and the municipality remains the riparian owner of any lands between the ordinary high water mark and the bulkhead line. For purposes of this section, public purpose includes but is not limited to environmental protection, public access and recreation, aesthetic enhancement, and economic development and redevelopment involving both public and private project elements.

(d) Unfilled private areas. To the extent that the area landward of the bulkhead line has not been filled prior to [insert effective date], and the riparian owner is not a municipality, the riparian owner shall obtain a permit under s. 30.12(1)(c) for the placement of any structures or fill below the ordinary high water mark, but the department shall consider its prior determination in approving the bulkhead line in evaluating whether to grant such a permit.

Regulatory Reform Preliminary Draft Meeting May 3, 2011

Data Systems for Ordinary High Water Mark and Navigability Determinations ✓

Appears in LRB 1446/2 on Pages/Lines: 2, line 9-12

Require the DNR to create a publicly-accessible electronic data system for ordinary high-water mark and navigability determinations.

Drafting Instructions: Revise s. 30.10, Wis. Stats.

Clarify The Scope Of ASNRI Waters For Threatened Or Endangered Species ○

Appears in LRB 1446/2 on Pages/Lines: 2-3, lines 14-17 and lines 1-10

Drafting Instructions: Create ss. 30.106 Wis. Stats. – **Determination of areas of significant scientific value.**

1. In identifying areas that possess significant scientific value, the department may only include the following:
 - a. Those portions of waters that contain critical habitat for endangered or threatened species or for aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory.
 - b. Wild rice water as identified in a written agreement between the department and the Great Lakes Indian Fish and Wildlife Commission.
 - c. Waters in areas identified in a special management plan approved by the US Army Corps of Engineer, or special wetland inventory study.
 - d. Waters in ecologically significant coastal wetlands along Lakes Michigan and Superior as identified in Publication #ER-002-00, Data Compilation and Assessment of Coastal Wetlands of Wisconsin's Great Lakes, March 2000.
 - e. Federal or state, under ss. 30.26 and 30.27, Stats., designated wild or scenic rivers.
 - f. Specific waters or portions of waters designated by the Natural Resources Board by rule.

Pier Regulations Revision 0

Appears in LRB 1446/2 on Pages/Lines: 3-6, lines 12-20, 1-22, and lines 1-7

Simplify pier regulations created under 2007 Act 204, as it relates to the size of the platform and the registration requirements. Maximum platform size for an exempt pier shall be 300 square in surface area, and registration requirements shall be repealed, with forms returned to registrants. Finally, remove certain references to February 6, 2004.

Drafting Instructions: Under 30.12 (1k)(b):

1. Delete: "that was placed on the bed of a navigable water on or before February 6, 2004"
2. Delete: "If the platform has a surface area of 200 square feet or less, the platform may be of any width."
3. Delete: "If the platform has a surface area of more than 200 square feet but not more than 300 square feet, the platform may not be more than 10 feet wide."
4. Delete: The riparian owner registers the pier or wharf with the department, in the manner and form required by the department, no later than April 1, 2011.
5. Delete: The department shall make available to riparian owners a form for registration of a pier or wharf under par. (b) 3. that is designed so that it may be recorded with the register of deeds. A riparian owner may, but is not required to, record the registration form with the register of deeds of the county where the pier or wharf is located. The register of deeds may charge the fee under s. 59.43 (2) (ag) for the recording of a pier or wharf registration under par. (b) 3. The department may not charge a fee for the registration of a pier or wharf under par. (b) 3.
6. Revise: A structure for which the department has issued a written authorization on or before ~~February 6, 2004~~ the effective date of this subdivision if the structure is in compliance with that written authorization.

Maximum Depth for Piers 0

Appears in LRB 1446/2 on Pages/Lines: 3-4, lines 17-20 and lines 1-2

"Maximum depth" for the purpose of placing piers in navigable water is determined based on normal summer time low levels on the waterway or summer minimum levels where established by department order, and takes into account wave action from wind, current, boat wakes, and other common causes.

General Permit for Piers 0

Appears in LRB 1446/2 on Pages/Lines: 5-6, lines 21-22 and lines 1-2

14. Place a pier or wharf that meets the requirements of sub(1g)(f) but is located in an area of special natural resource interest.

Dr Paul Kent - 5/24/2011

Bulkhead Lines

30.12 Structures and deposits in navigable waters.

(1) **Permits required.** Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following:

(a) Deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established.

(b) Deposit any material or place any structure upon the bed of any navigable water beyond a lawfully established bulkhead line.

30.11 Establishment of bulkhead lines.

(1) **Who may establish.** Any municipality may, subject to the approval of the department, by ordinance establish a bulkhead line and from time to time reestablish the same along any section of the shore of any navigable waters within its boundaries.

(2) **Standards for establishing.**

Bulkhead lines shall be established in the public interest and shall conform as nearly as practicable to the existing shores, except that in the case of leases under sub. (5) and s. 24.39 (4) bulkhead lines may be approved farther from the existing shoreline if they are consistent with and a part of any lease executed by the board of commissioners of public lands.

(3) **How established.** Whenever any municipality proposes to establish a bulkhead line or to reestablish an existing bulkhead line, the municipality shall indicate both the existing shore and the proposed bulkhead line upon a map and shall file with the department for its approval 6 copies of the map and 6 copies of the ordinance establishing the bulkhead line. The map shall use a scale of not less than 100 feet to an inch or any other scale required by the department. The map and a metes and bounds description of the bulkhead line shall be prepared by a land surveyor registered in this state. The department may require the installation of permanent reference markers to the bulkhead line. Upon approval by the department, the municipality shall deliver the map, description and ordinance to the office of the register of deeds of the county in which the bulkhead line lies, to be recorded by the register of deeds.

(4) **Riparian rights preserved.**

Establishment of a bulkhead line shall not abridge the riparian rights of riparian owners. Riparian owners may place solid structures or fill up to such line.

(4r) **Existing bulkhead areas**

new
↓

(a) Filled areas. If an area subject to a bulkhead line is not subject to a bulkhead lease under sub (5) and the area landward of the bulkhead line has been filled prior to [insert effective date], then riparian owner shall have the right to place any fill or structures on the filled area for any purpose.

(b) Unfilled areas. If an area subject to a bulkhead line is not subject to a bulkhead lease under sub (5) and the area landward of the bulkhead line has not been filled prior to [insert effective date], then riparian owner shall only have the right to place any fill or structures on the filled area provided that the fill and structures are for any public purpose.

Kite, Robin

From: Johnson, Dan
Sent: Friday, May 06, 2011 1:50 PM
To: Kite, Robin
Cc: Gibson-Glass, Mary
Subject: RE: LRB 1446 and LRB 1713

Robin,

You are correct on all points. In addition to those, I am forwarding to you and Mary the further drafting instructions, both for LRB 1446 and LRB 1713, and the new language regarding bulkhead lines. All of this comes from Paul Kent, and hopefully, this covers everything for both drafts.

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

Draft LRB-1446/P2

1. **Section 3.** We discussed modifying 30.106(1) to read something along the following lines:

(1) Those specific ~~waters or~~ portions of waters that contain critical habitat for threatened or endangered species or areas in which activities would directly affect such habitat ~~or aquatic elements.~~

✓ 2. **Section 4.** We discussed simplifying the adequate depth provisions, which I think is still best in a definition section rather than the pier planner exemption provision. The proposal below follows Ken Johnson's suggestion of a performance standard. The proposed performance standard is designed to account for wave action by providing a standard one foot clearance for moored boats at piers or wharfs:

The department shall determine adequate depth under this paragraph based upon ~~normal average~~ summer time low levels on the relevant waterway or upon summer minimum levels that are established by an order issued by the department and provide a one foot of water clearance under the deepest point of the boat at the pier or wharf. ~~taking into account the wave action on the relevant waterway from wind, currents, wakes and other typical causes of wave action.~~

or boat lift

✓ 3. **Section 18.** We discussed a timetable to limit this to an annual basis. That and a minor clarification would be as follows:

The amount of material removed is less than 10 cubic yards, ~~and~~ the removal is necessary to allow access to place or maintain a pier or wharf, and the removal occurs no more than once per year.

✓ 4. **Section 20.** We discussed a performance standard so that the 50 cubic yards was more limited in application. The following would address the primary issue we raised:

Any riparian owner to remove 50 cubic yards or less of material from a lake or stream adjacent to the riparian owner's property by means other than blasting for the purpose of placing or maintaining a boatlift on a pier or wharf ~~or providing access to a pier or wharf.~~

5. **Section 21.** We discussed the problems associated the term "plant or animal nuisance" and the concern that it may allow dredging of natural deposits. This section was designed largely to address the problems currently in NR 345.04(2)(im). There is a definition in NR 345.03(10r) that provides as follows:

(10r) "Plant and animal nuisance deposit" means a recent and natural deposit within the swash zone of a waterway of mussels, dead fish, Cladophora or similar natural, biological-based material caused by wave action in a quantity that is causing an annoyance, damage, or health issue to the public or waterway.

Note: "Plant and animal nuisance deposit" does not include the natural deposition of the native lakebed material like sand, cobble, silt, detritus, and other organic material.

Given that existing definition, the issue we discussed could be addressed by amending the language in Section 21 of the draft as follows:

Any person to annually remove not more than 3000 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.

6. **New Section: Pier grandfather for public facilities.** We discussed adding a grandfather exemption for piers serving public or quasi-public functions which may not qualify for the grandfather in Wis. Stat. §30.12 (1k). These are typically commercial facilities (club houses, restaurants, etc.) that have been in existence for a long time. We had talked about several possible dates for these structures. I would suggest we use the Act 118 date of February 6, 2004 for two reasons: (1) it is consistent with other provisions and (2) even though many of these structures have been around for decades, having proof of what pier dimensions might have been in 1977 or earlier may be a challenge. I would suggest we use the term public building under the building code which is a defined term that would encompass public restaurants and private clubs open to public membership. My suggestion would be to add the following language in 30.12(1k) or create a new sub-section immediately following (1k). I would suggest that the key terms be something along the following lines:

ss. Place, maintain, repair or replace an existing a pier or wharf that meets the following criteria:

- a. The pier or wharf is associated with a public building as defined in s. 101.01(12).
- b. The wharf or pier is substantially the same size and configuration as it was on February 6, 2004.
- c. Any maintenance, repair or replacement may not expand the pier or wharf or substantially alter its size, configuration or location.

7. **New Section: Repair or replacement of existing solid piers.** We discussed adding a grandfather exemption for solid piers in outlying waters.

ss. Place, maintain, repair or replace an existing pier or wharf that meets the following criteria:

- a. The pier or wharf is a solid pier that is located in an outlying water.
- b. The pier has been located on the property since February 6, 2004.
- c. Any maintenance, repair or replacement may not expand the pier or wharf or substantially alter its size, configuration or location.

8. **Additional Comment to Section 2.** We talked about several clarifying changes to this section. One

additional thought. The Corps of Engineers sets the OHWM for Great Lakes and certain other waters, and the counties often set OHWM for inland lakes. Where those are published shouldn't the public be able to rely on those as well.

Draft LRB 1713/P1.

This is the seawall and riprap in the Winnebago pool provision. I have previously discussed specific changes on the seawall section and will not repeat those here.

We also discussed the issue of riprap and the need for broader reform than just the Winnebago pool. One option was a non-statutory section requiring revisions to NR 328. At the same time, I think there was support for some more immediate relief on the simple question of riprap repair and replacement. The background on this is important to note. We established exemptions and general permits for repair and replacement of riprap in 2003 Act 118. See Wis. Stat. s. 30.12 (1g)(i) and (1g)(j). Unfortunately, in the rule process, the department limited the use of those exemptions to existing riprap that was "previously permitted." See, e.g. NR 328.04(5)(f) [repair exemption], and NR 328.04(6)(e) [replacement exemption]. The problem is that until 1975 there was no mention of riprap in Wis. Stat. s. 30.12 and the use of riprap permits was not common until the 1980s. Thus, a great deal of existing riprap was placed when there was no permit requirement, and therefore not "previously permitted."

Therefore, to address the limitation on exemptions noted above, Wis. Stat. s. 30.12 (1g)(i) and (1g)(j) could be amended as follows:

- (i) Riprap in an amount not to exceed 100 linear feet that is placed to replace existing riprap located in an inland lake or Great Lakes water body regardless of whether it was previously permitted, and that includes the replacement of filter fabric or base substrate.
- (j) Riprap in an amount not to exceed 300 linear feet that is placed to repair existing riprap located in an inland lake or Great Lakes water body, regardless of whether it was previously permitted and that consists only of the placement of additional rock or the redistribution of existing rock within the footprint of the existing riprap.

Bulkhead Lines

We discussed clarifying the current law. Currently Wis. Stat. s. 30.11(4) provides as follows:

Riparian rights preserved. Establishment of a bulkhead line shall not abridge the riparian rights of riparian owners. **Riparian owners may place solid structures or fill up to such line.** (Emphasis added)

That section is already pretty clear. However, in recent years, DNR has taken the position that when riparians want to construct, modify private structures within bulkhead line areas, they cannot do so unless the structure or use is related to navigation or public use. The result is that riparian owners, who have had private residential, commercial or industrial structures on bulkhead line areas for 20 years or more, cannot construct, modify, or rebuild structures in these areas. Municipalities owning land subject to bulkhead lines are being thwarted in efforts to redevelop such properties.

The group was willing to confirm that filled areas to be used for any purpose but was reluctant to allow broader uses in unfilled areas. To address those concerns, we are proposing a more limited draft to clarify existing law. It leaves existing statutory sections intact and clarifies how existing filled bulkhead areas are to be treated. In my

opinion the language restricting unfilled areas to public purposes is a restriction over the existing provision in 30.11 (4).

(4r) Existing bulkhead areas.

(a) Filled areas. If an area subject to a bulkhead line is not subject to a bulkhead lease under sub (5) and the area landward of the bulkhead line has been filled prior to [insert effective date], then riparian owner shall have the right to place any fill or structures on the filled area for any purpose.

(b) Unfilled areas. If an area subject to a bulkhead line is not subject to a bulkhead lease under sub (5) and the area landward of the bulkhead line has not been filled prior to [insert effective date], then riparian owner shall only have the right to place any fill or structures on the filled area provided that the fill and structures are in furtherance of any public purpose.

From: Kite, Robin
Sent: Friday, May 06, 2011 10:03 AM
To: Johnson, Dan
Subject: LRB-1446

Dan:

As I work through the redraft of LRB-1446 I wanted to make sure that I understood the items on which I am awaiting additional information:

1. Section 4: I have a note indicating that I will get more detail on what is considered "adequate depth" under s. 30.12 (1g) (f).
2. Section 20: There was discussion on whether the reference to "50 cubic yards" was appropriate. My note indicates that there will be further clarification of this issue.
3. Section 21: My notes indicate that I will get additional instructions on the issue of the removal of "plant and animal nuisance deposits."
4. New instructions with regard to bulkhead lines: Paul Kent stated that he would provide additional clarification and proposed language on this issue.

Please let me know if my understanding above is correct.

Thanks.
Robin

Robin N. Kite
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 E. Main St., Suite 200
Madison, WI 53703
(608) 266-7291



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-1446/P2
RNK&MGG:cjs:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to repeal* 30.12 (1k) (b), 30.12 (1k) (c) and 30.12 (1k) (cm) 3.; *to renumber*
2 *and amend* 30.12 (3) (a) 6. and 30.20 (1t) (a); *to amend* 30.01 (1am) (c), 30.12
3 (1g) (f), 30.12 (1k) (cm) 1., 30.12 (1k) (cm) 2., 30.12 (1k) (e) (intro.), 30.12 (1k)
4 (e) 2., 30.2095 (1) (b), 281.344 (9) (b) 1. a., 281.346 (9) (b) 1. a., 283.39 (1) (a),
5 283.53 (1), 285.61 (5) (c), 285.62 (3) (c), 285.76 (2) (a), 289.25 (3), 289.31 (4) (a),
6 289.41 (1m) (g) 1., 291.87 (3), 291.87 (6) (a) and 292.31 (3) (f); *to repeal and*
7 *recreate* 299.05; and *to create* 30.102, 30.106, 30.12 (3) (a) 6. c., 30.12 (3) (a)
8 14., 30.121 (3c), 30.19 (1m) (f), 30.19 (1m) (g), 30.20 (1g) (b) 3., 30.20 (1t) (a) 2.,
9 30.20 (1t) (a) 3., 31.12 (5), 281.41 (5), 285.63 (11) and 299.17 of the statutes;
10 **relating to:** information required to be published on the Department of
11 Natural Resources Internet Web site; identification of areas of significant
12 scientific value for purposes of regulating the placement of deposits and
13 structures on the beds of navigable waters and the removal of materials from
14 the beds of navigable waters; permit exemptions for land grading activities and
15 for persons who place piers and wharves in navigable waters; time limits for

1 certain permits and contracts for navigable waters activities and projects;
2 expedited procedures for plan approvals for dams and for water and sewerage
3 systems; water quality certification procedures for certain wetlands; and
4 granting 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:

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

6 30.01 **(1am)** (c) An area that possesses significant scientific value, as identified
7 by the department under s. 30.106.

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

9 **30.102 Navigability determination and ordinary high-water mark**
10 **identification.** If the department makes a determination that a waterway is
11 navigable or identifies the ordinary high-water mark of a navigable waterway, the
12 department shall publish that information on the department's Internet Web site.

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

14 **30.106 AREAS OF SIGNIFICANT SCIENTIFIC VALUE.** In identifying areas that possess
15 significant scientific value, the department may include only the following:

16 **(1)** Waters or portions of waters that contain endangered or threatened species
17 or aquatic elements.

****NOTE: By removing the qualifying phrase relating to the Wisconsin Natural Heritage Inventory, "aquatic element" becomes a very vague term. OK?

ARF
refer to specific
portions that
are critical to
habitat -
not entire
water body

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.

 ****NOTE: Although a specific document may appear in the rules relating to areas
of significant scientific value, putting such language in the statutes is discouraged
because it may be unconstitutional as a improper delegation of legislative authority. Also,
I think there is a later assessment than the 2000 version. I have drafted this so that the
most recent version is the one to be used.

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.

 ****NOTE: I have omitted a reference to DNR or the DNR board being able to
designate additional waters by rule because, as I understand it, the only waters that may
be identified as having significant scientific value are the ones listed in this newly created
statutory provision.

11 **SECTION 4.** 30.12 (1g) (f) of the statutes is amended to read:

12 30.12 **(1g)** (f) A pier or wharf that is no more than ~~6~~ **8** feet wide, that extends
13 no further than to a point where the water is 3 feet at its maximum depth, or to the
14 point where there is adequate depth for mooring a boat or using a boat hoist or boat
15 lift, whichever is farther from the shoreline, and that has no more than 2 boat slips
16 for the first 50 feet of riparian owner's shoreline footage and no more than one
17 additional boat slip for each additional 50 feet of the riparian owner's shoreline. The
18 department shall determine adequate depth under this paragraph based upon
19 normal ^{average} summer time low levels on the relevant waterway or upon summer minimum
20 levels that are established by an order issued by the department and taking into

will
get
more
info
on this

SECTION 4

1 account the wave action on the relevant waterway from wind, currents, wakes, and
2 other typical causes of wave action. Notwithstanding the width limitation in this
3 paragraph, a pier may have an area as a loading platform that is more than ~~6~~ 8 feet
4 wide if the platform is ~~not more than 8 feet wide, it extends perpendicular to one or~~
5 ~~both sides of the pier, and it is located at the lakeward end of the pier or at the end~~
6 ~~of the pier that extends into a stream~~ does not have more than 300 feet in surface
7 area.

****NOTE: I recognize that the underscored language is based on a provision in DNR rules but I do not think that the language is as clear as it could be. For example, the use of the term “summer” and “summer time” in the same sentence is confusing. Do they mean different things? And are “low levels” different than “minimum levels”? Finally, what kind of “order” does DNR issue with regard to minimum levels?

8 **SECTION 5.** 30.12 (1k) (b) of the statutes is repealed.

9 **SECTION 6.** 30.12 (1k) (c) of the statutes is repealed.

10 **SECTION 7.** 30.12 (1k) (cm) 1. of the statutes is amended to read:

11 30.12 **(1k)** (cm) 1. A structure for which the department has issued a permit
12 under this section ~~on or before February 6, 2004~~, if the structure is in compliance with
13 that permit.

14 **SECTION 8.** 30.12 (1k) (cm) 2. of the statutes is amended to read:

15 30.12 **(1k)** (cm) 2. A structure for which the department has issued a written
16 authorization ~~on or before February 6, 2004~~, if the structure is in compliance with
17 that written authorization.

18 **SECTION 9.** 30.12 (1k) (cm) 3. of the statutes is repealed.

19 **SECTION 10.** 30.12 (1k) (e) (intro.) of the statutes is amended to read:

20 30.12 **(1k)** (e) (intro.) A riparian owner who is exempt under ~~par. (b) from the~~
21 ~~permit requirements under this section or who is exempt under~~ par. (cm) from
22 enforcement action under this chapter may do all of the following:

1 **SECTION 11.** 30.12 (1k) (e) 2. of the statutes is amended to read:

2 30.12 **(1k)** (e) 2. If the exempt structure is a pier or wharf, relocate or
3 reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf,
4 ~~the riparian owner registered the pier or wharf with the department under par. (b)~~
5 ~~3. and, before relocating or reconfiguring the pier or wharf, the riparian owner~~
6 ~~registers the reconfigured or relocated pier or wharf with the department under this~~
7 subdivision.

8 **SECTION 12.** 30.12 (3) (a) 6. of the statutes is renumbered 30.12 (3) (a) 6. (intro.)
9 and amended to read:

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

- 14 a. The property on which the permanent boat shelter is to be located also
- 15 contains a boathouse within 75 feet of the ordinary high-water mark ~~or if there.~~
- 16 b. There is a boathouse over navigable waters adjacent to the owner's property.

17 **SECTION 13.** 30.12 (3) (a) 6. c. of the statutes is created to read:

18 30.12 **(3)** (a) 6. c. The permanent boat shelter extends beyond the length of the
19 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.

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

21 30.12 **(3)** (a) 14. Place a pier ~~or wharf~~ on the bed of a navigable water that is
22 in, or that would immediately affect, an area of special natural resource interest and

dept. can impose conditions but cannot deny the right to put in a pier

1 that is adjacent to the owner's property if the pier or wharf meets the requirements
2 of sub. (1g) (f).

***NOTE: I think that ^{direct} additional language may be needed in this provision. What makes an effect "immediate?" And what kind of effect must there be?

3 **SECTION 15.** 30.121 (3c) of the statutes is created to read:

4 30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES. Subsection (3) does not apply to the
5 repair or maintenance of a boathouse if the boathouse was in existence on December
6 16, 1979, and the repair or maintenance does not expand the footprint, height, or
7 area of the boathouse and the repair and maintenance does not result in the
8 boathouse being converted into living quarters.

***NOTE: The general limitation on the maintenance and repair of boathouses needs to be kept in current law because it interacts with the existing exceptions under s. 30.121 (3g), (3m), (3r), and (3w).

***NOTE: This exception applies only to boathouses and not houseboats. OK?

9 **SECTION 16.** 30.19 (1m) (f) of the statutes is created to read:

10 30.19 (1m) (f) Any land grading activity authorized under a stormwater
11 discharge permit issued under s. 283.33.

12 **SECTION 17.** 30.19 (1m) (g) of the statutes is created to read:

13 30.19 (1m) (g) Any land grading activity authorized by a permit issued by a
14 county under a shoreland zoning ordinance enacted under s. 59.692.

15 **SECTION 18.** 30.20 (1g) (b) 3. of the statutes is created to read:

16 30.20 (1g) (b) 3. The amount of material removed is less than 10 cubic yards
17 and the removal is necessary to allow access to a pier or wharf.

18 **SECTION 19.** 30.20 (1t) (a) of the statutes is renumbered 30.20 (1t) (a) (intro.)

19 and amended to read:

20 30.20 (1t) (a) (intro.) The department shall issue statewide general permits
21 under s. 30.206 that authorize any all of the following:

*add
that this is
yearly
(i.e. annual)*

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

3 **SECTION 20.** 30.20 (1t) (a) 2. of the statutes is created to read:

4 30.20 (1t) (a) 2. Any riparian owner to remove 50 cubic yards or less of material
5 from a lake or stream adjacent to the riparian owner's property, by means other than
6 blasting, for the purpose of placing a pier or wharf or of providing access to a pier or
7 wharf.

will get more info.

8 **SECTION 21.** 30.20 (1t) (a) 3. of the statutes is created to read:

9 30.20 (1t) (a) 3. Any person to annually remove not more than 3000 cubic yards
10 of plant or animal nuisance deposits from a stream, inland lake, or outlying waters
11 if the plant or animal nuisance deposits impede navigation.

needs more clarification look at NR 300 will get back -

****NOTE: This language needs clarification. Is it intended to apply only to riparian owners? Does the "annual" requirement mean that the person can conduct removal only once a year or does it mean that removal can occur only once a year on a given waterway? Also, I think the phrase "plant or animal nuisance deposits" needs a definition. I'm not sure what constitutes a "plant or animal nuisance deposit." Finally, should this provision refer simply to a "navigable water" rather than to a "stream, inland lake, or outlying waters"?

12 **SECTION 22.** 30.2095 (1) (b) of the statutes is amended to read:

13 30.2095 (1) (b) The department may specify a time limit of less than 3 years
14 for a permit or contract issued under ss. 30.01 to 30.29. For good cause, the The
15 department *shall* extend the time limit for a permit or contract issued under ss. 30.01
16 to 30.29 for no longer than 2 an additional 5 years if the grantee requests an
17 extension prior to expiration of the initial time limit.

****NOTE: Please let me know if you want to keep the "good cause" requirement in this provision.

Keep as drafted

18 **SECTION 23.** 31.12 (5) of the statutes is created to read:

SECTION 23

1 31.12 (5) The department shall promulgate rules that establish an expedited
2 procedure for approval of plans under this section. The expedited procedure shall
3 apply, in lieu of the procedure under this section, if all of the following are satisfied:

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

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

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

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

***NOTE: Please see the note after s. 281.41 (5). Also, do you want to limit the expedited procedure to only low hazard dams or dams that are not large dams (see s. 31.19, stats.), as suggested by Russell Rasmussen at DNR?

11 **SECTION 24.** 281.344 (9) (b) 1. a. of the statutes is amended to read:

12 281.344 (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 25.** 281.346 (9) (b) 1. a. of the statutes is amended to read:

15 281.346 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
16 or as a notice on its Internet Web site.

17 **SECTION 26.** 281.41 (5) of the statutes is created to read:

18 281.41 (5) The department shall promulgate rules that establish an expedited
19 procedure for approval of plans under this section. The expedited procedure shall
20 apply, in lieu of the procedure under sub. (1) (b) if all of the following are satisfied:

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

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

*limit
to
low
hazard
dams*

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

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

****NOTE: These criteria are very general in nature. You may want to consider making them somewhat more narrow in scope. For example, when is an addition "minor"? Does that refer to the size of the addition, the cost of the addition, the purpose of the addition, or something else entirely?

will get back to me on this

5 SECTION 27. 283.39 (1) (a) of the statutes is amended to read:

6 283.39 (1) (a) Publication of the notice as a class 1 notice under ch. 985 or as
7 a notice on its Internet Web site;

8 SECTION 28. 283.53 (1) of the statutes is amended to read:

9 283.53 (1) No permit issued by the department under s. 283.31 or 283.33 shall
10 have a an initial term for more than 5 years. Upon the request of a permit holder,
11 the department may extend the term of the initial permit by not more than 5
12 additional years.

can request several for permits of 5 years

****NOTE: You had asked that this draft also authorize DNR to extend "wetlands permits" by an amount up to 5 years. I assume that you are referring to water quality certifications for wetlands that are issued by DNR. I could not find any references in the statutes or administrative code that suggests that water quality certifications are issued for a limited time period. Consequently, this draft does not authorize DNR to extend "wetlands permits." Please let me know if you have additional information on this issue. Also, do you want the amended language to allow a permit holder to request more than one extension? The language is not clear on this issue.

13 SECTION 29. 285.61 (5) (c) of the statutes is amended to read:

14 285.61 (5) (c) *Newspaper notice.* The department shall publish a class 1 notice
15 under ch. 985, or shall publish notice on its Internet Web site, announcing the
16 opportunity for written public comment and the opportunity to request a public
17 hearing on the analysis and preliminary determination.

18 SECTION 30. 285.62 (3) (c) of the statutes is amended to read:

SECTION 30

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

5 **SECTION 31.** 285.63 (11) of the statutes is created to read:

6 285.63 **(11)** MODELING. The department is not required to use air dispersion
7 modeling as a basis for making its findings under subs. (1) to (3).

8 **SECTION 32.** 285.76 (2) (a) of the statutes is amended to read:

9 285.76 **(2)** (a) Publish a class 1 notice, under ch. 985, of the proposed
10 redesignation and request for consultation with the state in a newspaper of general
11 circulation in the area that would be affected by the redesignation, as determined
12 using standards established by the federal environmental protection agency, or
13 publish a notice on the department's Internet Web site; and publish a class 1 notice,
14 under ch. 985, in the official state newspaper; and provide a written statement
15 concerning the proposed redesignation to ~~those newspapers~~ each newspaper in
16 which it publishes a class 1 notice under this subsection.

17 **SECTION 33.** 289.25 (3) of the statutes is amended to read:

18 289.25 **(3)** NOTIFICATION ON FEASIBILITY REPORT AND PRELIMINARY ENVIRONMENTAL
19 IMPACT STATEMENT DECISIONS. Immediately after the department issues a preliminary
20 determination that an environmental impact statement is not required or, if it is
21 required, immediately after the department issues the environmental impact
22 statement, the department shall publish a class 1 notice under ch. 985 in the official
23 newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper
24 likely to give notice in the area of the proposed facility, or shall publish a notice on
25 its Internet Web site. The notice shall include a statement that the feasibility report

1 and the environmental impact statement process are complete. The notice shall
2 invite the submission of written comments by any person within 30 days after the
3 notice for a solid waste disposal facility or within 45 days after the notice for a
4 hazardous waste facility is published. The notice shall describe the methods by
5 which a hearing may be requested under ss. 289.26 (1) and 289.27 (1). The
6 department shall distribute copies of the notice to the persons specified under s.
7 289.32.

8 **SECTION 34.** 289.31 (4) (a) of the statutes is amended to read:

9 289.31 **(4)** (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
10 to give notice in the area where the facility is located or publishing a notice on its
11 Internet Web site.

12 **SECTION 35.** 289.41 (1m) (g) 1. of the statutes is amended to read:

13 289.41 **(1m)** (g) 1. The owner of an approved mining facility may apply, at any
14 time at least 40 years after the closing of the facility, to the department for
15 termination of the owner's obligation to maintain proof of financial responsibility for
16 long-term care of the facility. Upon receipt of an application under this subdivision,
17 the department shall publish a class 1 notice under ch. 985 in the official newspaper
18 designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give
19 notice in the area of the facility, or shall publish a notice on its Internet Web site. The
20 notice shall include a statement that the owner has applied to terminate the owner's
21 obligation to maintain proof of financial responsibility for the long-term care of the
22 facility. The notice shall invite the submission of written comments by any person
23 within 30 days after the notice is published. The notice shall describe the methods
24 by which a hearing may be requested under subs. 2. and 3. The department shall
25 distribute a copy of the notice to the owner of the facility. In any hearing on the

1 matter, the burden is on the owner to prove by a preponderance of the evidence that
2 continuation of the requirement to provide proof of financial responsibility for
3 long-term care is not necessary for adequate protection of human health or the
4 environment. Within 120 days after the publication of the notice or within 60 days
5 after any hearing is adjourned, whichever is later, the department shall determine
6 whether proof of financial responsibility for long-term care of the facility continues
7 to be required. A determination that proof of financial responsibility for long-term
8 care is no longer required terminates the owner's obligation to maintain proof of
9 financial responsibility for long-term care. The owner may not submit another
10 application under this subdivision until at least 5 years after the previous
11 application has been rejected by the department.

12 **SECTION 36.** 291.87 (3) of the statutes is amended to read:

13 291.87 (3) If the licensee requests a hearing within 45 days after receiving the
14 notice under sub. (2), the department shall schedule a hearing and give notice of the
15 hearing by publishing a class 1 notice, under ch. 985, or by publishing a notice on its
16 Internet Web site, at least 45 days prior to the date scheduled for the hearing. If the
17 licensee requests a contested case hearing and if the conditions specified under s.
18 227.42 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a
19 contested case; otherwise, the department shall conduct the hearing as an
20 informational hearing. There is no statutory right to any hearing concerning the
21 denial, suspension or revocation of a license for the reasons stated under sub. (1m)
22 (b) to (f) except as provided under this subsection.

23 **SECTION 37.** 291.87 (6) (a) of the statutes is amended to read:

1 291.87 (6) (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 38.** 292.31 (3) (f) of the statutes is amended to read:

5 292.31 (3) (f) *Notice; hearing.* The department shall publish a class 1 notice,
6 under ch. 985 or shall publish a notice on its Internet Web site, prior to taking
7 remedial action under this subsection and subs. (1) and (7), which describes the
8 proposed remedial action and the amount and purpose of any proposed expenditure.
9 Except as provided under par. (d), the department shall provide a hearing to any
10 person who demands a hearing within 30 days after the notice is published for the
11 purpose of determining whether the proposed remedial action and any expenditure
12 is within the scope of this section and is reasonable in relation to the cost of obtaining
13 similar materials and services. The department is not required to conduct more than
14 one hearing for the remedial action proposed at a single site or facility.
15 Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case.
16 The decision of the department to take remedial action under this section is a final
17 decision of the agency subject to judicial review under ch. 227.

18 **SECTION 39.** 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) An approval under s. 30.10, 30.12, 30.123, 30.18, 30.19, or 30.20. *and 30.195*

23 (b) A well driller or pump installer registration under s. 280.15.

24 (c) A water system, wastewater treatment plant or septage servicing vehicle
25 operator certification under s. 281.17 (3).

non-domestic

1 (d) A license for servicing septic tanks and similar facilities under s. 281.48 (3).

2 (e) A solid waste incinerator operator certification under s. 285.51 (2).

3 (f) An ozone-depleting refrigerant removal approval under s. 285.59.

4 (g) An air pollution control permit under s. 285.60. } only state issued -

5 (h) A solid waste disposal facility operator certification under s. 289.42 (1). non-federal

6 (i) A hazardous waste transportation service license under s. 291.23.

7 (j) A metallic mining exploration license under s. 293.21.

8 (k) An oil or gas exploration license under s. 295.33 (1).

9 (L) A laboratory certification or registration under s. 299.11.

10 (m) A medical waste transportation license under s. 299.51 (3) (c).

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

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

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

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

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

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

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

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

18 (d) The extension is not longer than the number of days from the day on which
19 the department provides the notice under par. (a) to the day on which the department
20 receives the information.

 ****NOTE: This provision, which comes from 2003 SB 246, seems to require DNR
to make a decision on an application on the same day that DNR receives the additional
information. Is this consistent with your intent?

21 **SECTION 40.** 299.17 of the statutes is created to read:

22 **299.17 Web site information.** The department shall publish on the
23 department's Internet Web site the current status of any application filed with the

SECTION 40

1 department for a permit, license, or other approval under chs. 281 to 285 or 289 to
2 299. The information shall include notice of any hearing scheduled by the
3 department with regard to the application.

4 (END)

5-9-2011

Called Dan Johnson re. questions

I had about Paul Kent's suggested
language

Dan told me to talk directly w/ Paul

I told Dan that I would talk to
him again after talking w/ Paul

259-2669

Tel conf w/ Paul Kent:

Public restaurant - like ledge water
Yacht clubs - open but must be member
explained to Paul that def. of "public building" is
too broad

can argue that some permit requirements
existed before 1977 - that is why the
exemption under 30.122 is not adequate

draft as permit exemption - not just as an
exemption re enforcement

Al Sica may have talked about getting more
detail re: 281.41(5) as created in draft
boat house - structural elements -