

9/19 MON AM
State of Wisconsin
2011 - 2012 LEGISLATURE



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LRB-1446/P4
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to repeal* 30.12 (1k) (b) 1., 30.12 (1k) (b) 2., 30.12 (1k) (b) 3. and 30.12
2 (1k) (c); *to renumber and amend* 30.12 (1g) (f), 30.12 (3) (a) 6. and 30.20 (1t)
3 (a); *to amend* 30.01 (1am) (c), 30.12 (1k) (b) (intro.), 30.12 (1k) (cm) 1., 30.12
4 (1k) (cm) 2., 30.12 (1k) (e) 2., 30.121 (3), 30.121 (3g), 30.121 (3r), 30.208 (2),
5 30.2095 (1) (b), 281.344 (9) (b) 1. a., 281.346 (9) (b) 1. a., 283.39 (1) (a), 283.53
6 (1), 285.61 (5) (c), 285.62 (3) (c), 285.76 (2) (a), 289.25 (3), 289.31 (4) (a), 289.41
7 (1m) (g) 1., 291.87 (3), 291.87 (6) (a) and 292.31 (3) (f); *to repeal and recreate*
8 299.05; and *to create* 30.102, 30.106, 30.11 (4m), 30.12 (1g) (f) 1. d., 30.12 (1g)
9 (f) 2. b., 30.12 (1h), 30.12 (1k) (b) 1m., 30.12 (1k) (b) 2m., 30.12 (3) (a) 6. c., 30.12
10 (3) (a) 14., 30.12 (3) (d), 30.121 (1), 30.121 (3c), 30.19 (1m) (f), 30.19 (1m) (g),
11 30.20 (1g) (b) 3., 30.20 (1t) (a) 2., 30.20 (1t) (a) 3., 31.12 (5), 281.41 (5), 285.63
12 (11), 299.06 and 299.17 of the statutes; **relating to:** information required to be
13 published on the Department of Natural Resources Internet Web site;
14 identification of areas of significant scientific value for purposes of regulating
15 the placement of deposits and structures on the beds of navigable waters and

INS REL ✓

1 the removal of materials from the beds of navigable waters; requirements for
 2 the placement of certain piers and wharves; repair and maintenance of boat
 3 houses and fixed houseboats; permit exemptions for land grading activities and
 4 for persons who place piers and wharves in navigable waters; placement of fill
 5 or structures within a bulkhead line; ~~time limits for acting on applications for~~
 6 ~~certain approvals issued by the Department of Natural Resources;~~ expedited
 7 procedures for plan approvals for dams and for water and sewerage systems;
 8 and 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:

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

10 30.01 (1am) (c) An area that possesses significant scientific value, as identified
 11 by the department under s. 30.106.

← INS 2-11

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

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

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

1 **30.106 Areas of significant scientific value.** In identifying areas that
2 possess significant scientific value, the department may include only the following:

3 (1) Specific portions of waters that contain critical habitat for endangered or
4 threatened species ~~or that directly affect that habitat.~~ *period stays*

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

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

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

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

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

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

21 (b) If the bed of a navigable water landward of an established bulkhead line was
22 not filled before the effective date of this paragraph [LRB inserts date], a riparian
23 owner may place fill or a structure on the bed of that navigable water without
24 obtaining an approval under this chapter if the riparian owner places the fill or the

24 (2) Specific portions of waters that are immediately
adjacent to an area of critical habitat for
endangered or threatened species and that directly
affect that habitat.

as measured at summer low levels

1 structure in an area that is not subject to a lease under s. 24.39 and places the fill
2 or structure for a public purpose.

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

3 SECTION 5. 30.12 (1g) (f) of the statutes is renumbered 30.12 (1g) (f) 1. (intro.)
4 and amended to read:

5 30.12 (1g) (f) 1. (intro.) A pier or wharf ~~that is no~~ to which all of the following
6 apply:

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

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

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

18 2. Notwithstanding the width limitation in this paragraph subd. 1., a pier may
19 have an area as a loading platform that is more than 6 feet wide if ~~the~~ ^{no} ~~any of the~~ ^{strike}
20 following applies: no fl plain

21 a. If the pier is placed on or after the effective date of this subdivision ... [LRB
22 inserts date], surface area of the platform is not more than 8 feet wide, it extends perpendicular to
23 one or both sides of the pier, and it is located at the lakeward end of the pier or at the

1 end of the pier that extends into a stream immediately adjacent to the riparian
2 owner's shoreline and the surface area of the platform does not exceed 200 square
3 feet.

4 SECTION 6. 30.12 (1g) (f) 1. d. of the statutes is created to read:

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

INS.
5-6

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

7 SECTION 7. 30.12 (1g) (f) 2. b. of the statutes is created to read:

8 30.12 (1g) (f) 2. b. If the pier was placed before the effective date of this
9 subdivision [LRB inserts date], the surface area of the platform does not exceed
10 300 square feet.

11 SECTION 8. 30.12 (1h) of the statutes is created to read:

12 30.12 (1h) EXEMPTION FOR RIPRAP. The exemptions under sub. (1g) (i) and (j)
13 apply ~~regardless of whether the existing riprap was authorized by permit.~~

14 SECTION 9. 30.12 (1k) (b) (intro.) of the statutes is amended to read:

15 30.12 (1k) (b) (intro.) In addition to the exemptions under sub. (1g), a riparian
16 owner of a pier or wharf that was placed on the bed of a navigable water on or before
17 February 6, 2004, is exempt from the permit requirements under this section if all
18 for the placement of a pier or wharf, if the placement of the pier or wharf does not
19 interfere with the riparian rights of other riparian owners and the pier or wharf is
20 any of the following apply:

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

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

only if the riprap was placed before January 1, 2011,
or the riprap was placed pursuant to a permit
issued under this section

INSERT 6-1

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

4 SECTION 12. ~~30.12 (1k) (b) 2. of the statutes is repealed.~~

5 SECTION 13. ~~30.12 (1k) (b) 2m. of the statutes is created to read:~~

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

8 SECTION 14. 30.12 (1k) (b) 3. of the statutes, as affected by 2011 Wisconsin Act
9 25, is repealed.

10 SECTION 15. 30.12 (1k) (c) of the statutes is repealed.

11 SECTION 16. 30.12 (1k) (cm) 1. of the statutes is amended to read:

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

15 SECTION 17. 30.12 (1k) (cm) 2. of the statutes is amended to read:

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

19 SECTION 18. 30.12 (1k) (e) 2. of the statutes is amended to read:

20 30.12 (1k) (e) 2. If the exempt structure is a pier or wharf, relocate or
21 reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf,
22 ~~the riparian owner registered the pier or wharf with the department under par. (b)~~
23 ~~3. and, before relocating or reconfiguring the pier or wharf, the riparian owner~~
24 registers the reconfigured or relocated pier or wharf with the department under this
25 subdivision.

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INS.
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1 SECTION 19. 30.12 (3) (a) 6. of the statutes is renumbered 30.12 (3) (a) 6. (intro.)

2 and amended to read:

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

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

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

10 SECTION 20. 30.12 (3) (a) 6. c. of the statutes is created to read:

11 30.12 (3) (a) 6. c. The permanent boat shelter extends beyond the length of the
12 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.

13 SECTION 21. 30.12 (3) (a) 14. of the statutes is created to read:

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

17 SECTION 22. 30.12 (3) (d) of the statutes is created to read:

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18 30.12 (3) (d) The department may impose conditions on general permits issued
19 under par. (a) 14. but may not prohibit a riparian owner who meets those conditions
20 from placing a pier as specified under par. (a) 14.

21 SECTION 23. 30.121 (1) of the statutes is created to read:

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

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

5 30.121 (3) **MAINTENANCE AND REPAIR.** The riparian owner of any boathouse or
6 fixed houseboat extending beyond the ordinary high-water mark of any navigable
7 waterway may repair ~~and~~ or maintain the boathouse or fixed houseboat if the cost
8 ~~of the repair or maintenance to repair or maintain the boathouse or fixed houseboat~~
9 does not exceed 50% of the equalized assessed value of the boathouse or fixed
10 houseboat. If the boathouse or fixed houseboat is not subject to assessment, the
11 owner may ~~make repairs~~ repair or maintain the boathouse or the fixed houseboat if
12 the cost of the repair or maintenance does not exceed 50% of the current fair market
13 value of the boathouse or fixed houseboat.

14 **SECTION 25.** 30.121 (3c) of the statutes is created to read:

15 30.121 (3c) **EXCEPTION; CERTAIN BOATHOUSES.** Subsection (3) does not apply to
16 repairing or maintaining a boathouse if the boathouse was in existence on December
17 16, 1979, and the repairing or maintaining does not affect the size, location, or
18 configuration of the boathouse and does not result in the boathouse being converted
19 into living quarters.

20 **SECTION 26.** 30.121 (3g) of the statutes is amended to read:

21 30.121 (3g) **EXCEPTION; HISTORICAL OR CULTURAL VALUE.** Subsection (3) does not
22 apply to ~~the repair or maintenance of~~ repairing or maintaining a boathouse or a fixed
23 houseboat if the boathouse or fixed houseboat has a historic or cultural value, as
24 determined by the state historical society or a local or county historical society
25 established under s. 44.03.

1 **SECTION 27.** 30.121 (3r) of the statutes is amended to read:

2 30.121 (3r) EXCEPTION; DAMAGES AFTER JANUARY 1, 1984. Subsections (2) and (3)
3 do not apply to ~~the repair or reconstruction of repairing or reconstructing~~ a damaged
4 boathouse if the boathouse was damaged by violent wind, vandalism or fire and if the
5 damage occurs after January 1, 1984. ← **INSERT** 9-5a, ✓

6 **SECTION 28.** 30.19 (1m) (f) of the statutes is created to read:

7 30.19 (1m) (f) Any land grading activity authorized under a stormwater
8 discharge permit issued under s. 283.33. **9-5b,**
9-5c,
9-5d

9 **SECTION 29.** 30.19 (1m) (g) of the statutes is created to read:

10 30.19 (1m) (g) Any land grading activity authorized by a permit issued by a
11 county under a shoreland zoning ordinance enacted under s. 59.692. **INSERT** ✓

12 **SECTION 30.** 30.20 (1g) (b) 3. of the statutes is created to read: ← **9-11**

13 30.20 (1g) (b) 3. The amount of material removed is less than 10 cubic yards,
14 the removal is necessary to allow access to place or remove a pier or wharf, and the
15 removal occurs not more than once per year.

16 **SECTION 31.** 30.20 (1t) (a) of the statutes is renumbered 30.20 (1t) (a) (intro.)
17 and amended to read:

18 30.20 (1t) (a) (intro.) The department shall issue statewide general permits
19 under s. 30.206 that authorize any all of the following:

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

22 **SECTION 32.** 30.20 (1t) (a) 2. of the statutes is created to read:

23 30.20 (1t) (a) 2. Any riparian owner to remove 50 cubic yards or less of material
24 from a lake or stream adjacent to the riparian owner's property, by means other than
25 blasting, for the purpose of placing or maintaining a boatlift on a pier or wharf.

1 SECTION 33. 30.20 (1t) (a) 3. of the statutes is created to read:

2 30.20 (1t) (a) 3. Any person to annually remove not more than ~~3000~~⁵⁰⁰ cubic yards
3 of plant or animal nuisance deposits, as defined by the department by rule, from a
4 stream, inland lake, or outlying waters if the plant or animal nuisance deposits
5 impede navigation *or access to the stream, inland lake, or*
outlying waters

6 SECTION 34. 30.208 (2) of the statutes is amended to read:

7 30.208 (2) PROCEDURE FOR COMPLETING APPLICATIONS. In issuing individual
8 permits or entering contracts under this subchapter, the department shall initially
9 determine whether a complete application for the permit or contract has been
10 submitted and, no later than 30 days after the application is submitted, notify the
11 applicant in writing about the initial determination of completeness. If the
12 department determines that the application is incomplete, the notice shall state the
13 reason for the determination and the specific items of information necessary to make
14 the application complete. An applicant may supplement and resubmit an
15 application that the department has determined to be incomplete. There is no limit
16 on the number of times that an applicant may resubmit an application that the
17 department has determined to be incomplete under this section. The department
18 may not demand items of information that are not specified in the notice as a
19 condition for determining whether the application is complete unless both the
20 department and the applicant agree or unless the applicant makes material
21 additions or alterations to the activity or project for which the application has been
22 submitted. ~~The rules promulgated under s. 299.05 (299.06) apply only to applications~~
23 ~~for individual permits or contracts under this subchapter that the department has~~
24 ~~determined to be complete.~~

INS 10-24

25 STAYS → SECTION 35. 30.2095 (1) (b) of the statutes is amended to read:

**** NOTE: The merging of 2011 AB 117, as amended, and this draft results in s. 30.20 general permit being discretionary. OK*

1 ↓ 30.2095 (1)(b) The department may specify a time limit of less than 3 years
 2 for ~~a~~ an individual permit or contract issued under ss. 30.01 to 30.29. ~~For good cause, the~~ The
 3 department ~~may~~ shall extend the time limit for ~~a~~ an individual permit or contract issued under ss.
 4 30.01 to 30.29 for no longer than ~~2~~ an additional 5 years if the grantee requests an
 5 extension prior to expiration of the initial time limit.

④ → ***** NOTE: I redrafted this to be limited to individual permits in light of 30.206(1)(b) as created in this draft.**

6 **SECTION 36.** 31.12 (5) of the statutes is created to read:
 7 31.12 (5) The department shall promulgate rules that establish an expedited in
 8 procedure for approval of plans for low hazard dams, as defined in s. 31.19 (1g) (b), this
 9 under this section. The expedited procedure shall apply, in lieu of the procedure draft.
 10 under this section, if all of the following are satisfied:

- 11 (a) The plan design is of a common construction and size or is for a minor
- 12 addition to an existing dam.
- 13 (b) The plan design is submitted by a registered professional engineer.
- 14 (c) The plan design is submitted by a person who has designed similar dams
- 15 and none of those similar dams has caused adverse impacts to the environment.
- 16 (d) The plan design contains no unusual siting requirements or other unique
- 17 design features.

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18 **SECTION 37.** 281.344 (9) (b) 1. a. of the statutes is amended to read:
 19 281.344 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
 20 or as a notice on its Internet Web site.

21 **SECTION 38.** 281.346 (9) (b) 1. a. of the statutes is amended to read:
 22 281.346 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
 23 or as a notice on its Internet Web site.

24 **SECTION 39.** 281.41 (5) of the statutes is created to read:

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SECTION 39

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

11 **SECTION 40.** 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 41.** 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 renew the permit. There is a no limit on the number of times
18 that a permit may be renewed.

19 **SECTION 42.** 285.61 (5) (c) of the statutes is amended to read:

20 285.61 (5) (c) *Newspaper notice.* The department shall publish a class 1 notice
21 under ch. 985, or shall publish notice on its Internet Web site, announcing the
22 opportunity for written public comment and the opportunity to request a public
23 hearing on the analysis and preliminary determination.

1 **SECTION 43.** 285.62 (3) (c) of the statutes is amended to read:

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

6 **SECTION 44.** 285.63 (11) of the statutes is created to read:

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

9 **SECTION 45.** 285.76 (2) (a) of the statutes is amended to read:

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

18 **SECTION 46.** 289.25 (3) of the statutes is amended to read:

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

1 its Internet Web site. The notice shall include a statement that the feasibility report
2 and the environmental impact statement process are complete. The notice shall
3 invite the submission of written comments by any person within 30 days after the
4 notice for a solid waste disposal facility or within 45 days after the notice for a
5 hazardous waste facility is published. The notice shall describe the methods by
6 which a hearing may be requested under ss. 289.26 (1) and 289.27 (1). The
7 department shall distribute copies of the notice to the persons specified under s.
8 289.32.

9 **SECTION 47.** 289.31 (4) (a) of the statutes is amended to read:

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

13 **SECTION 48.** 289.41 (1m) (g) 1. of the statutes is amended to read:

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

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

13 **SECTION 49.** 291.87 (3) of the statutes is amended to read:

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

24 **SECTION 50.** 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 51.** 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 52.** 299.05 of the statutes is repealed and recreated to read:

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

22 (a) A well driller or pump installer registration under s. 280.15.

23 (b) A water system or septage servicing vehicle operator certification under s.
24 281.17 (3).

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

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

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

X 3 (e) An air pollution control permit required under s. 285.60 but not under the
4 federal clean air act.

X 5 (f) A solid waste disposal facility operator certification under s. 289.42 (1).

X 6 (g) A hazardous waste transportation license under s. 291.23.

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

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

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

X 10 (k) 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 period equal to the number of days from
19 the day on which the department provides the notice under par. (a) to the day on
20 which the department receives the information.

21 **SECTION 53.** 299.06 of the statutes is created to read:

22 **299.06 Automatic approval of certain applications.** (1) DEFINITION. In
23 this section, "approval" means a permit, contract, approval, or other determination
24 specified in sub. (1m).

1 **(1m) DEADLINES.** The department, by rule, shall establish periods within which
2 the department intends to approve or disapprove an application for any of the
3 following:

4 (a) A high-capacity well approval under s. 281.34 (2).

5 (b) A water pollution discharge permit under s. 283.31.

6 (bg) A storm water discharge permit under s. 283.33.

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

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

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

10 (g) A prospecting permit under s. 293.45.

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

12 (i) Determinations of navigability under s. 30.10.

13 (j) Individual permits, contracts, and exemption determinations under ss.
14 30.12, 30.123, 30.18, 30.19, 30.195, and 30.20.

15 **(2) FAILURE TO MEET DEADLINE.** (a) Subject to subs. (4) (b) and (5), failure by the
16 department to provide the applicant for an approval with written notice that the
17 department has approved or disapproved the application for the approval, including
18 the specific facts upon which any disapproval is based, before the expiration of the
19 period established under sub. (1m) for the approval constitutes approval of the
20 application. An approval approved under this paragraph is subject to any terms or
21 conditions specified by statute or rule for the approval and the department may
22 suspend, limit, revoke, or withdraw the approval for substantial failure to comply
23 with those terms or conditions. The department may not make the approval subject
24 to any term or condition that is not specified by statute or rule. Within 30 days after
25 the expiration of the period established under sub. (1m) for the approval, the

1 department shall provide the applicant with a statement showing that the approval
2 is approved and specifying any terms and conditions that apply to that approval.

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

6 (3) NOTICE OF DEADLINE. Upon receiving an application for an approval the
7 department shall inform the applicant of the period established under sub. (1m) for
8 the approval.

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

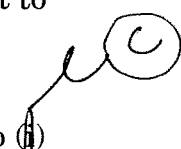
11 (a) A longer period under sub. (1m) for an application for an approval for which
12 an environmental impact statement is required under s. 1.11 than for other
13 applications.

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

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

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

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



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

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

6 3. The information under subd. 1. is necessary to determine whether to approve
7 the application or is necessary to determine the terms or conditions of the approval.

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

11 (c) The department may extend a period established under sub. (1m) (a) to (d)
12 for an application by not more than 30 days if, within the period established under
13 sub. (1m) (a) to (d), the department finds that there is a substantial likelihood that
14 the activity proposed to be conducted under the application would result in
15 substantial harm to human health or human safety and that the department cannot
16 adequately review the application within the period established under sub. (1m) (a)
17 to (d) and, upon making those findings, provides written notice to the applicant that
18 states with particularity the facts on which those findings are based.

19 **SECTION 54.** 299.17 of the statutes is created to read:

20 **299.17 Web site information.** The department shall publish on the
21 department's Internet Web site the current status of any application filed with the
22 department for a permit, license, or other approval under chs. 30, 281 to 285, or 289
23 to 299. The information shall include notice of any hearing scheduled by the
24 department with regard to the application.

25 (END)

←

INS 21-
24 ✓

d-note

INS
10-22

1 30.209 (2) (c) ~~A~~ An administrative hearing under this section shall be
2 completed within 90 days after receipt of the referral of the petition under sub. (1m)
3 (g), unless all parties agree to an extension of that period. In addition, a hearing
4 examiner may grant a one-time extension for the completion of the hearing of up to
5 60 days on the motion of any party and a showing of good cause demonstrating
6 extraordinary circumstances justifying an extension.

7 **SECTION 34.** 30.209 (2) (d) (intro.) of the statutes is amended to read:

8 30.209 (2) (d) (intro.) Notwithstanding s. 227.44 (1), the department shall
9 provide a notice of the administrative hearing at least 30 days before the date of the
10 hearing to all of the following:

11 **SECTION 35.** 30.209 (2) (e) of the statutes is created to read:

12 30.209 (2) (e) In an administrative hearing under this section, the petitioner
13 shall proceed first with the presentation of evidence and shall have the burden of
14 proof.

(end)

15 **SECTION 36.** 227.01 (13) (rt) of the statutes is amended to read:

16 227.01 (13) (rt) Is a general permit issued under s. 30.206 or 30.2065.

INS 11-17
C

17 ~~**SECTION 37.** 299.05 (2) (a) of the statutes is amended to read:~~

18 ~~299.05 (2) (a) Permits, contracts, and other approvals under ss. 30.10 to 30.205~~
19 ~~and 30.21 to 30.27, except for individual permits and contracts to which s. 30.208~~
20 ~~applies.~~

21 **SECTION 38. Initial applicability.**

22 (1) The treatment of sections 30.18 (4) (a), 30.208 (3) (a), (b), (c), (e), and (f), (4)
23 (a), (4m), and (5) (a) (intro.) and (b) (intro.), 4., and 5. and 299.05 (2) (a) of the statutes,
24 the renumbering and amendment of section 30.208 (2) of the statutes, and the
25 creation of section 30.208 (2) (d) of the statutes first apply to applications for

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21-24

d

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1 individual permits or contracts that are submitted on the effective date of this
2 subsection.

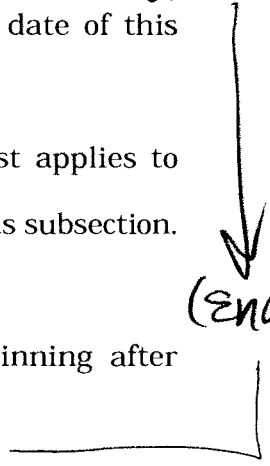
3 (2) The treatment of section 30.209 (2) (e) of the statutes first applies to
4 administrative hearings that are commenced on the effective date of this subsection.

5 **SECTION 39. Effective date.**

6 (1) This act takes effect on first day of the 4th month beginning after
7 publication.

8 (END)

(end)





State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0175/1
MGG:cjs:ph

ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2011 ASSEMBLY BILL 177

SA ✓

1 AN ACT *to repeal* 30.12 (3) (br), 30.123 (7) (b), 30.19 (3r) (b), 30.20 (1t) (b), 30.206
 2 (1g) and 30.206 (1m); *to renumber* 30.123 (7) (a) and 30.19 (3r) (a); *to*
 3 *renumber and amend* 30.208 (2); *to amend* 30.12 (1j) (c), 30.18 (4) (a), 30.206
 4 (1) (a), 30.208 (3) (a), 30.208 (3) (b), 30.208 (3) (c), 30.208 (3) (e), 30.208 (4) (a),
 5 30.208 (5) (a) (intro.), 30.208 (5) (a) 1., 30.208 (5) (b) (intro.), 30.208 (5) (b) 4.,
 6 30.208 (5) (b) 5., 30.209 (2) (a), 30.209 (2) (b), 30.209 (2) (c), 30.209 (2) (d) (intro.),
 7 227.01 (13) (rt) and 299.05 (2) (a); and *to create* 30.206 (1) (am) and (ar), 30.206
 8 (1) (b), 30.206 (1r), 30.206 (2b), 30.206 (2m), 30.208 (2) (d), 30.208 (3) (f), 30.208 ✓
 9 (4m) and 30.209 (2) (e) of the statutes; *relating to:* procedures for issuing
 10 individual permits, contracts, and general permits and contracts for structures, IWS
 11 deposits, and other activities in or near navigable waters. ; REL

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

6

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/P5insMG
MGG:.....

1 **Insert 2-11**

2 **SECTION 1.** 30.10 (4) (a) of the statutes is amended to read:

3 30.10 (4) (a) This section does not impair the powers granted by law ~~under s.~~
4 ~~30.1235 or by other law~~ to municipalities to construct highway bridges, arches, or
5 culverts over streams.

History: 1977 c. 190, 272, 418; 1981 c. 339; 1991 a. 316; 1999 a. 9; 2003 a. 118.

****NOTE: Section 30.10 (4) (a) has to be amended to delete the cross reference to s. 30.1235. I am not sure that this provision has any effect; you may wish to repeal it.

6 **Insert ~~5-1A~~ 9-5 a**

7 **SECTION 2.** 30.123 (6) (a) of the statutes is repealed.

Insert 9-5 c Δ

8 **SECTION 3.** 30.1235 of the statutes is repealed.

****NOTE: I repealed this section. General permitting for municipal bridges is authorized under the general authority found in s. 30.206 (1) (am). The last sentence of s. 30.1235, with changes, is moved to s. 84.01 (23). Note that the mandatory general permits for bridges will also apply to "municipal" bridges.

(See changes to note on following page)

Insert 11-17B

Shall be

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SECTION 4. 84.01 (23) of the statutes is amended to read:

84.01 (23) BRIDGE STANDARDS. The department shall adopt standards and specifications for the design and construction of county, town, village, and city bridges, arches or culverts. The standards and specifications shall be developed after consultation with the department of natural resources, and shall be directed at preventing undue impairment of public rights in navigable waters. All highway bridges, arches, and culverts constructed or reconstructed by a county, town, village, or city done in accordance with these standards and specifications.

town

****NOTE: I made changes in this language to make it consistent.

18 ~~Cross-reference: Cross-reference: Cross-reference: See also ch. Trans 207, Wis. adm. code. Cross-reference:~~

History: 1971 c. 40, 125; 1973 c. 12; 1973 c. 243 s. 82; 1975 c. 189; 1977 c. 29 ss. 918 to 924, 1654 (1), (8) (a), (f), 1656 (43); 1977 c. 190, 272; 1979 c. 221, 314; 1981 c. 346 s. 38; 1983 a. 27, 130; 1985 a. 29, 300; 1987 a. 27; 1989 a. 31, 125, 345; 1993 a. 246; 1995 a. 225, 338; 1997 a. 27, 106; 1999 a. 9; 2001 a. 16; 2005 a. 25, 89, 392, 410; 2007 a. 20, 97, 125; 2009 a. 28; 2011 a. 32.

1 configuration of the boathouse and does not result in the boathouse being converted
2 into living quarters.

3 **SECTION 28.** 30.121 (3g) of the statutes is amended to read:

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

9 **SECTION 29.** 30.121 (3r) of the statutes is amended to read:

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

14 **SECTION 30.** 30.123 (6) (a) of the statutes is repealed.

15 **SECTION 31.** 30.123 (7) (a) of the statutes is renumbered 30.123 (7).

16 **SECTION 32.** 30.123 (7) (b) of the statutes is repealed.

17 **SECTION 33.** 30.1235 of the statutes is repealed.

SS. 30.123 (6)(a) and 30.1235.
****NOTE: I repealed ~~any section~~ General permitting for municipal bridges is
authorized under the general authority found in s. 30.206 (1) (am). The last sentence of
s. 30.1235, with changes, is moved to s. 84.01 (23). Note that the mandatory general
permits for bridges will also apply to "municipal" bridges. *Municipal bridges*
will no longer be exempt from individual or general permits. OK?

18 **SECTION 34.** 30.18 (4) (a) of the statutes is amended to read:

19 30.18 (4) (a) ~~Upon receipt of a complete application, the department shall~~
20 ~~follow the notice and hearing procedures under s. 30.208 (3) to (5) The notice and~~
21 hearing provisions of s. 30.208 (3) to (5) shall apply to an application under sub. (3).

22 In addition to providing notice as required under s. 30.208 (3) to (5), the department
23 shall mail a copy of the notice to every person upon whose land any part of the canal

1 SECTION 1. 30.12 (1j) (c) of the statutes is amended to read:

2 30.12 (1j) (c) If the riparian owner or owners of a property described in par. (a)
3 are eligible and propose to place a pier or wharf with the number of boat slips
4 specified in par. (a), the riparian owner or owners shall apply to the department for
5 an individual permit under s. 30.208 authorizing the configuration of the pier or
6 wharf unless the configuration is authorized by the department under a general
7 permit under s. 30.206 (1g). The department may not deny the permit on the basis
8 of the number of slips proposed by the riparian owner or owners if the number of slips
9 proposed does not exceed the number allowed under par. (a). A riparian owner or
10 owners who apply for a permit under this paragraph shall be presumed to be entitled
11 to the number of slips allowed under par. (a).

INSERT

6-1

INS 7-6

12 SECTION 2. 30.12 (3) (br) of the statutes is repealed.

13 SECTION 3. 30.123 (7) (a) of the statutes is renumbered 30.123 (7).

INSERT 9-5k

14 SECTION 4. 30.123 (7) (b) of the statutes is repealed.

15 SECTION 5. 30.18 (4) (a) of the statutes is amended to read:

INSERT 9-5d

16 30.18 (4) (a) ~~Upon receipt of a complete application, the department shall~~
17 ~~follow the notice and hearing procedures under s. 30.208 (3) to (5)~~ The notice and
18 hearing provisions of s. 30.208 (3) to (5) shall apply to an application under sub. (3).
19 In addition to providing notice as required under s. 30.208 (3) to (5), the department
20 shall mail a copy of the notice to every person upon whose land any part of the canal
21 or any other structure will be located, to the clerk of the next town downstream, to
22 the clerk of any village or city in which the lake or stream is located and which is
23 adjacent to any municipality in which the withdrawal will take place and to each
24 person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

25 SECTION 6. 30.19 (3r) (a) of the statutes is renumbered 30.19 (3r).

INS 9-11



1 **SECTION 7.** 30.19 (3r) (b) of the statutes is repealed.

INSERT
9-11 (end)

2 **SECTION 8.** 30.20 (1t) (b) of the statutes is repealed.

INSERT
10-24

3 **SECTION 9.** 30.206 (1) (a) of the statutes is amended to read:

4 30.206 (1) (a) The department shall issue the statewide general permits as
5 ~~rules promulgated under ch. 227 required under ss. 30.12 (3) (a), 30.123 (7) (a), 30.19~~
6 ~~(3r), and 30.20 (1t) (a). The statewide general permits required under ss. 30.12 (3)~~
7 ~~(a), 30.123 (7) (a), and 30.20 (1t) (a) shall be promulgated within 540 days after~~
8 ~~February 6, 2004. The department shall submit in proposed form the rule containing~~
9 ~~the statewide general permit under s. 30.19 (3r) (a) and the rule under s. 30.19 (1d)~~
10 ~~to the legislative council staff under s. 227.15 (1) no later than August 1, 2004.~~
11 ~~General permits issued under s. 30.206, 2001 stats., shall remain valid until the date~~
12 ~~upon which the rules issuing these statewide general permits are promulgated~~
13 ~~under this paragraph.~~

14 **SECTION 10.** 30.206 (1) (am) and (ar) of the statutes are created to read:

15 30.206 (1) (am) Upon compliance with the requirements under subs. (2b) and
16 (2m) and in addition to the general permits required under par. (a), the department
17 may issue a general permit authorizing an activity for which an individual permit
18 is issued, or a contract is entered into, under this subchapter.

19 (ar) A permit issued under par. (a) or (am) is in lieu of any permit or contract
20 that would otherwise be required for that activity under this subchapter.

21 **SECTION 11.** 30.206 (1) (b) of the statutes is created to read:

22 30.206 (1) (b) A general permit issued under par. (a) or (am) is valid for a period
23 of 5 years, and an activity that the department determines is authorized by a general
24 permit remains authorized under the general permit until the activity is completed
25 regardless of whether the general permit expired before the activity is completed.



INS
10-24
(cont.)

1 The department may renew or modify, or revoke a general permit issued under par.
2 (a) or (am) upon compliance with the requirements under subs. (2b) and (2m); and
3 until such renewal, modification, or revocation, the general permit shall remain in
4 effect.

5 SECTION 12. 30.206 (1g) of the statutes is repealed.

6 SECTION 13. 30.206 (1m) of the statutes is repealed.

7 SECTION 14. 30.206 (1r) of the statutes is created to read:

8 30.206 (1r) TRANSITIONS BETWEEN PERMITS. Any general permit issued under
9 this subchapter that is valid on the effective date of this subsection [LRB inserts
10 date], shall remain valid until the date upon which a general permit issued under
11 sub. (1) (a) or (am) that authorizes the same activity becomes effective.

12 SECTION 15. 30.206 (2b) of the statutes is created to read:

13 30.206 (2b) PUBLIC NOTICE. (a) The department shall circulate to interested
14 and potentially interested members of the public notices of its intention to issue a
15 general permit under sub. (1) (a) or (am). Procedures for providing public notices
16 shall include all of the following:

17 1. A procedure for publishing a class 1 notice under ch. 985 or circulating the
18 notice by use of an electronic notification system established by the department.

19 2. A procedure under which a copy of the notice is provided to any person or
20 group upon request of the person or group.

21 (b) The department shall provide a period of not less than 30 days following the
22 date of the public notice during which time interested persons may submit their
23 written views on the department's intention to issue a general permit under sub. (1)
24 (a) or (am). All written comments submitted during the period for comment shall be
25 retained by the department and considered in the issuance of the general permit.



1 (c) Every notice issued by the department of the department's intention to issue *ins*
2 a general permit under sub. (1) (a) or (am) shall include a description of the activities *10-21*
3 proposed to be authorized under the general permit. *com*

4 **SECTION 16.** 30.206 (2m) of the statutes is created to read:

5 30.206 **(2m)** PUBLIC HEARING. (a) 1. The department shall provide an
6 opportunity for any interested state agency or federal agency or person or group of
7 persons to request a public hearing with respect to the department's intention to
8 issue a general permit under sub. (1) (a) or (am). Such request for a public hearing
9 shall be filed with the department within 30 days after the circulation of the public
10 notice under sub. (2b) and shall indicate the interest of the party filing the request
11 and the reasons why a hearing is warranted.

12 2. The department shall hold a public hearing upon a request under subd. 1.
13 if the department determines that there is a significant public interest in holding
14 such a hearing. Hearings held under this section are not contested cases under s.
15 227.01 (3).

16 (b) Public notice of any hearing held under this subsection shall be circulated
17 in accordance with the requirements under sub. (2b).

18 **SECTION 17.** 30.208 (2) of the statutes is renumbered 30.208 (2) (a) and
19 amended to read:

20 30.208 **(2)** (a) Review; no additional information required. In issuing
21 individual permits or entering contracts under this subchapter, the department shall
22 ~~initially determine whether a complete application for the permit or contract has~~
23 ~~been submitted and, no later than~~ review an application, and within 30 days after
24 the application is submitted, the department shall determine that either the
25 application is complete or that additional information is needed. If the department


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10-24
(cont.)

1 determines that the application is complete, the department shall notify the
2 applicant in writing about the initial determination of completeness of that fact
3 within the 30-day period, and the date on which the notice under this paragraph is
4 sent shall be considered the date of closure for purposes of sub. (3) (a).

5 (b) *Additional information requested.* If the department determines that the
6 application is incomplete, the department shall notify the applicant in writing and
7 may make only one request for additional information during the 30-day period
8 specified in par. (a). Within 10 days after receiving all of the requested information
9 from the applicant, the department shall notify the applicant in writing as to
10 whether the application is complete. The date on which the 2nd notice under this
11 paragraph is sent shall be set as the date of closure for purposes of sub. (3) (a). The
12 department may request additional information from the applicant to supplement
13 the application, but the department may not request items of information that are
14 outside the scope of the original request unless the applicant and the department
15 both agree. A request for any such additional information may not affect the date
16 of closure.

17 (c) *Specificity of notice; limits on information.* Any notice stating that an
18 application has been determined to be incomplete or any other request for
19 information that is sent under par. (b) shall state the reason for the determination
20 or request and the specific items of information necessary to make the application
21 complete. An applicant may supplement and resubmit an application that the
22 department has determined to be incomplete. There is no limit on the number of
23 times that an applicant may resubmit an application that the department has
24 determined to be incomplete under this section. The department may not demand
25 items of information that are not specified in the notice as a condition for determining



1 ~~whether the application is complete unless both the department and the applicant~~ 1NS
2 ~~agree or unless the applicant makes material additions or alterations to the activity~~ 10-24
3 ~~or project for which the application has been submitted. The rules promulgated~~ (cont)
4 ~~under s. 299.05 apply only to applications for individual permits or contracts under~~
5 ~~this subchapter that the department has determined to be complete~~ that are still
6 needed.

7 SECTION 18. 30.208 (2) (d) of the statutes is created to read:

8 30.208 (2) (d) *Failure to meet time limits.* If the department fails to meet the
9 30-day time limit under par. (a) or 10-day time limit under par. (b), the application
10 shall be considered to have a date of closure that is the last day of that 30-day or
11 10-day time period for purposes of sub. (3) (a).

12 SECTION 19. 30.208 (3) (a) of the statutes is amended to read:

13 30.208 (3) (a) ~~Upon determination by the department under sub. (2), that an~~
14 ~~application submitted under sub. (1) is complete~~ Within 15 days after the date of
15 closure, as determined under sub. (2) (a) or (b), the department shall provide notice
16 of ~~complete~~ pending application to interested and potentially interested members of
17 the public, as determined by the department. ~~The department shall provide the~~
18 ~~notice within 15 days after the determination that the application is complete.~~ If the
19 applicant has requested a public hearing as part of the submitted application, a
20 notice of public hearing shall be part of the notice of ~~complete~~ pending application.

21 SECTION 20. 30.208 (3) (b) of the statutes is amended to read:

22 30.208 (3) (b) If the notice of ~~complete~~ pending application does not contain a
23 notice of public hearing, any person may request a public hearing in writing or the
24 department may decide to hold a public hearing with or without a request being

INS
10-24
(cont.)

1 submitted if the department determines that there is a significant public interest in
2 holding a hearing. 20

3 SECTION 21. 30.208 (3) (c) of the statutes is amended to read:

4 30.208 (3) (c) A request for a public hearing under par. (b) must be submitted
5 to the department or the department's decision to hold a public hearing must occur
6 within ~~30~~ 20 days after the department ~~completes providing~~ provides the notice of
7 ~~complete pending~~ application. The department shall provide notice of public hearing
8 within 15 days after the request for public hearing is submitted or the department
9 makes its ~~determination~~ decision to hold a public hearing.

10 SECTION 22. 30.208 (3) (e) of the statutes is amended to read:

11 30.208 (3) (e) Within ~~30~~ 20 days after the ~~public hearing is held~~ period for public
12 comment under sub. (4) (b) has ended or if no public hearing is held, within 30 days
13 of the 30-day comment period under sub. (4) (a), the department shall render a
14 decision, issuing, denying, or modifying the permit or approving or disapproving the
15 contract that is the subject of the application submitted under sub. (1).

16 SECTION 23. 30.208 (3) (f) of the statutes is created to read:

17 30.208 (3) (f) If the department fails to comply with the time periods under sub.
18 (3) (e), a decision issuing the permit, modifying the permit, or approving the contract
19 shall be considered to be rendered. The permit that is issued or is modified, or the
20 contract that is approved, shall authorize the activity as proposed by the applicant,
21 but the department may impose terms and conditions on the permit or contract that
22 are consistent with the applicant's basic proposal.

23 SECTION 24. 30.208 (4) (a) of the statutes is amended to read:

24 30.208 (4) (a) The department shall provide a period for public comment after
25 the department has provided a notice of ~~complete pending~~ application under sub. (3)

INS
10-24
(cont.)

1 (a), during which time any person may submit written comments with respect to the
2 application for the permit or contract. The department shall retain all of the written
3 comments submitted during this period and shall consider all of the comments in the
4 formulation of the final decision on the application. The period for public comment
5 shall end on the 30th day following the date on which the department completes
6 providing the notice of ~~complete~~ pending application, except as provided in par. (b).

7 **SECTION 25.** 30.208 (4m) of the statutes is created to read:

8 30.208 (4m) DENIALS. If a decision is issued by the department under this
9 section that denies a permit or a modification of a permit or disapproves a contract,
10 the notice of denial or disapproval shall set forth the specific reasons as to how the
11 applicable provisions of this subchapter were not met. The notice of denial or
12 disapproval may not be based on a determination that the application for the permit
13 or contract was incomplete.

14 **SECTION 26.** 30.208 (5) (a) (intro.) of the statutes is amended to read:

15 30.208 (5) (a) (intro.) The department shall, by rule, establish procedures for
16 providing notices of ~~complete~~ pending applications and notices of public hearings to
17 be provided under sub. (3), and notices of administrative hearings to be provided
18 under s. 30.209 (1m). The procedures shall require all of the following:

19 **SECTION 27.** 30.208 (5) (a) 1. of the statutes is amended to read:

20 30.208 (5) (a) 1. That the notice be published as a class 1 notice under ch. 985
21 or by an electronic notification system established by the department.

22 **SECTION 28.** 30.208 (5) (b) (intro.) of the statutes is amended to read:

23 30.208 (5) (b) (intro.) The department shall, by rule, prescribe the form and
24 content of notices of ~~complete~~ pending applications and notices of public hearings to

1 MS
10-20
24
(cont.)

1 be provided under sub. (3), and notices of administrative hearings to be provided
2 under s. 30.209 (1m). Each notice shall include all of the following information:

3 SECTION 29. 30.208 (5) (b) 4. of the statutes is amended to read:

4 30.208 (5) (b) 4. For a notice of ~~complete~~ pending application and a notice of
5 public hearing under sub. (3), a statement of the tentative determination to issue,
6 modify, or deny a permit for the activity or project described in the application.

7 SECTION 30. 30.208 (5) (b) 5. of the statutes is amended to read:

8 30.208 (5) (b) 5. For a notice of ~~complete~~ pending application and a notice of
9 public hearing under sub. (3), a brief description of the procedures for the
10 formulation of final determinations, including a description of the comment period
11 required under sub. (4).

12 SECTION 31. 30.209 (2) (a) of the statutes is amended to read:

13 30.209 (2) (a) An administrative hearing under this ~~subsection~~ section shall be
14 treated as a contested case under ch. 227.

15 SECTION 32. 30.209 (2) (b) of the statutes is amended to read:

16 30.209 (2) (b) If a stay under sub. (1m) (c) is in effect, the hearing examiner
17 shall, within 30 days after receipt of the referral under sub. (1m) (g), determine
18 whether continuation of the stay is necessary to prevent significant adverse impacts
19 or irreversible harm to the environment pending completion of the administrative
20 hearing. The hearing examiner shall make the determination based on the request
21 under sub. (1m) (c), any response from the applicant under sub. (1m) (e), and any
22 testimony at a public hearing or any public comments. The determination shall be
23 made without a hearing.

24 SECTION 33. 30.209 (2) (c) of the statutes is amended to read:



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

LRB-1446/P5dn

RNK: /:.....

gs

Rite

This redraft remains in preliminary form. There are still some embedded notes in the draft that raise questions or issues that must be resolved before the draft can be finalized. Feel free to give me a call if you have any questions about this redraft.

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2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/P5ins.
RNK:.....

INSERT 5-6

1 *no q* personal watercraft for the first 50 feet of the riparian owner's shoreline footage
2 and no more than one additional area for mooring personal watercraft for each
3 additional 50 feet of the riparian owner's shoreline footage

INSERT 6-7

4 SECTION 1. 30.12 (1k) (b) (intro.) of the statutes is renumbered 30.12 (1k) (b)
5 and amended to read:

6 30.12 (1k) (b) (intro.) In addition to the exemptions under sub. (1g), a riparian
7 owner of a pier or wharf that was placed on the bed of a navigable water on or before
8 February 6, 2004 the effective date of this paragraph ... [LRB inserts date], is exempt
9 from the permit requirements under this section if ~~all of the following apply: the pier~~
10 or wharf does not interfere with the riparian rights of other riparian owners.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204; 2011 a. 25.

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

12 SECTION 3. 30.12 (1k) (b) 2. of the statutes is repealed.

INSERT 6-18

13 SECTION 4. 30.12 (1k) (d) of the statutes is repealed.

INSERT 6-10

14 SECTION 5. 30.12 (1k) (cm) (intro.) of the statutes is amended to read:



1 30.12 (1k) (cm) (intro.) ~~Except as provided in par. (d), the~~ The department may
2 not take any enforcement action under this chapter against a riparian owner for the
3 placement of any of the following:

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204; 2011 a. 25.

INSERT 11-17A

4 (e) The plan design is for a dam that is located entirely on land that the permit
5 grantee owns or that is located entirely on land for which the permit grantee has
6 acquired an easement.

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

LRB-1446/P5dn
RNK:cjs:jf

September 19, 2011

This redraft remains in preliminary form. There are still some embedded notes in the draft that raise questions or issues that must be resolved before the draft can be finalized. Feel free to give me a call if you have any questions about this redraft.

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LRB 1446/P5 Final Revisions Request
September 27, 2011

✓ Page 3, line 10: After "accurate." Insert, "Nothing in this section prevents a person from challenging the department's determination."

✓ Page 3, line 16: After "area", insert, "that contains." Strike the word "of" on line 16.

Revise Section 5 on page 4, lines 3-15 in the following manner:

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

✓ (b) If the bed or portion of the bed of a navigable water within landward of an established bulkhead line was not filled before the effective date of this paragraph [LRB inserts date], a riparian owner may place fill or a structure on the bed of that navigable water without obtaining an approval under this chapter if the riparian owner places the fill or the structure in an area that was is not subject to a lease under s. 24.39 before the effective date of this paragraph. and places the fill or structure for a public purpose. Nothing in this paragraph precludes the riparian owner from seeking to place a fill or structure for other purposes pursuant to an approval or exemption under this chapter.

take out per Dan

MGG Page 5, lines 16-19; Delete those lines (Delete Section 8)

total? Page 5, line 13: Before "personal watercraft", insert, "no more than 2"

? Page 5, line 14: Before "personal watercraft", insert, "no more than 1"

✓ Page 8, line 7: After, "par. (a) 14.", insert, "related to the installation, construction, design and location of a pier"

MGG In regards to the Drafter's Note on Page 9, line 17, we request a provision in 30.123 (7), (perhaps a new 30.123(7) (b)), that reads:

The department shall issue a statewide general permit under s. 30.206 that authorizes transportation projects carried out under the direction and supervision of a municipality or regional transportation authority.

Explained to Dan that when statute provides an exemption we don't typically add language that provides that a person may apply for a permit for some other activity that falls outside scope of exemption.

Or, put another way:

SECTION 30. 30.123 (6) (a) of the statutes is repealed.

SECTION 31. 30.123 (7) (a) of the statutes is renumbered 30.123 (7).

MGG
SECTION 32. 30.123 (7) (b) of the statutes is repealed and replaced with: The department shall issue a statewide general permit under s. 30.206 that authorizes transportation projects carried out under the direction and supervision of a municipality or regional transportation authority. *delete per Dan*

SECTION 33. 30.1235 of the statutes is repealed.

✓ Page 11, line 6: Delete, "as defined by the Department by rule"

✓ Page 20, line 4: Delete, "promulgate rules that"

✓ Page 21, line 1²: Delete, "promulgate rules that"

✓ Page 26, lines 14, 15 and 17: Rather than require DNR to write rules for deadlines for hazardous waste transportation licenses, oil or gas exploration licenses, and medical waste transportation licenses, set the time period for approval/disapproval of these three license applications to 30 days.

✓ Page 28, line 13: Rather than require DNR to write rules for time periods of an oil and gas production license approval/disapproval, set the time period for this license application to 60 days.

✓ Page 30, line 20: Before "The", insert, "To the greatest extent possible,"

- The intent here is to deal with an issue raised by the DNR that it simply may not be feasible or even possible to publish the status of **all** applications

There are several provisions in the draft that refer to a "pier or wharf", and others that just refer to a "pier". We request the draft bill be revised to refer to a "pier or wharf" throughout. Such a revision would be required on:

- *Page 5, line 6 - don't need*
- Page 7, line 24
- Page 8, line 1
- Page 8, line 3
- Page 8, line 7

New Addition: Create 30.133(1)(a) to read: Any riparian right granted by easement or by similar conveyance prior to April 9, 1994 shall be a legal and effective easement or conveyance.

Responses to Drafter's Notes

✓ NOTE: Section 30.10 (4) (a) has to be amended to delete the cross reference to s. 30.1235. I am not sure that this provision has any effect; you may wish to repeal it.

Response: Do not repeal.

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

Response: No.

meah
NOTE: I repealed ss. 30.123 (6) (a) and 30.1235. General permitting for municipal bridges is authorized under the general authority found in s. 30.206 (1) (am). The last sentence of s. 30.1235, with changes, is moved to s. 84.01 (23). Note that the mandatory general permits for bridges will also apply to "municipal" bridges. "Municipal bridges" will no longer be exempt from individual or general permits. OK?

Response: Please see the requested revision on this issue.

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

Response: The DNR has not provided our office with any additional information to make the criteria more narrow in scope.

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

Response: The DNR has not provided our office with more information on this issue.