



10/11 TUE
State of Wisconsin
2011 - 2012 LEGISLATURE



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LRB-1446 P6
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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., 30.12 (1k)
2 (c), 30.12 (1k) (d), 30.12 (3) (br), 30.123 (6) (a), 30.123 (7) (b), 30.1235, 30.19 (3r)
3 (b), 30.20 (1t) (b), 30.206 (1g) and 30.206 (1m); *to renumber* 30.123 (7) (a),
4 30.133 (1) and 30.19 (3r) (a); *to renumber and amend* 30.12 (1g) (f), 30.12 (1k)
5 (b) (intro.), 30.12 (3) (a) 6., 30.20 (1t) (a) and 30.208 (2); *to amend* 30.01 (1am)
6 (c), 30.10 (4) (a), 30.12 (1j) (c), 30.12 (1k) (cm) (intro.), 30.12 (1k) (cm) 1., 30.12
7 (1k) (cm) 2., 30.12 (1k) (e) 2., 30.121 (3), 30.121 (3g), 30.121 (3r), 30.18 (4) (a),
8 30.206 (1) (a), 30.208 (3) (a), 30.208 (3) (b), 30.208 (3) (c), 30.208 (3) (e), 30.208
9 (4) (a), 30.208 (5) (a) (intro.), 30.208 (5) (a) 1., 30.208 (5) (b) (intro.), 30.208 (5)
10 (b) 4., 30.208 (5) (b) 5., 30.209 (2) (a), 30.209 (2) (b), 30.209 (2) (c), 30.209 (2) (d)
11 (intro.), 30.2095 (1) (b), 84.01 (23), 227.01 (13) (rt), 281.344 (9) (b) 1. a., 281.346
12 (9) (b) 1. a., 283.39 (1) (a), 283.53 (1), 285.61 (5) (c), 285.62 (3) (c), 285.76 (2) (a),
13 289.25 (3), 289.31 (4) (a), 289.41 (1m) (g) 1., 291.87 (3), 291.87 (6) (a) and 292.31
14 (3) (f); *to repeal and recreate* 299.05; and *to create* 30.102, 30.106, 30.11
15 (4m), 30.12 (1h), 30.12 (3) (a) 6. c., 30.12 (3) (a) 14., 30.12 (3) (d), 30.121 (1),

1 30.121 (3c), 30.123 (7) (d), 30.133 (1) (b), 30.19 (1m) (f), 30.19 (1m) (g), 30.20 (1g)
2 (b) 3., 30.20 (1t) (a) 2., 30.20 (1t) (a) 3., 30.206 (1) (am) and (ar), 30.206 (1) (b),
3 30.206 (1r), 30.206 (2b), 30.206 (2m), 30.208 (2) (d), 30.208 (3) (f), 30.208 (4m),
4 30.209 (2) (e), 31.12 (5), 281.41 (5), 285.63 (11), 299.06 and 299.17 of the
5 statutes; **relating to:** the issuance of, and exemptions from, certain individual
6 permits, contracts, and general permits for structures, deposits, and other
7 activities in or near navigable waters; areas of significant scientific value that
8 are areas of special natural resource interest; repair and maintenance of
9 boathouses and fixed houseboats; easements and similar conveyances of
10 riparian rights; information required to be published on the Department of
11 Natural Resources Internet Web site; expedited procedures for certain plan
12 approvals; deadlines for action on certain approval applications; and granting
13 rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) regulates certain activities that occur in or near navigable waterways. DNR also administers environmental laws, including laws relating to air and water quality.

REGULATION OF ACTIVITIES IN OR NEAR NAVIGABLE WATERWAYS

In order for a person to conduct an activity in or near a navigable waterway, the person may be required to obtain one or more permits from DNR. Among the permits that DNR issues are permits to place structures or deposit material into navigable waters, and permits to remove material from the beds of navigable waters. Under current law, some activities are exempted from these permitting requirements, some activities require that the person be issued an individual permit for the activity, and some activities are authorized under general permits. Under current law, a person must seek authorization from DNR to proceed under a general permit. If DNR does not inform the person within a certain time frame that an individual permit is required, the person may conduct the activity pursuant to the general permit. DNR may also require that a person be issued an individual permit for an exempt activity or for an activity authorized under a general permit under certain circumstances.

Procedures in issuing individual permits

In issuing an individual permit, DNR reviews the application, determines whether it is complete, and notifies the applicant within 30 days after receiving the application whether the application is complete (30-day review period). If the application is incomplete, the applicant may supplement the application, but DNR may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete, with limited exceptions. Current law imposes no time limits on this process for determining whether an application is complete other than the 30-day review period.

Once DNR determines the application is complete, current law imposes time limits on the notice and public hearing procedures that apply to the application. Within 15 days, DNR must provide notice to the public that the application is complete (application notice). If the applicant has requested a public hearing as part of the application, a notice of public hearing must be included in the application notice.

If the application notice does not contain a notice of public hearing, any person may request a public hearing, or DNR may decide on its own to hold a public hearing if DNR determines that there is a significant public interest in holding a hearing. The public hearing request must be submitted by the interested person, or DNR's decision to hold a public hearing must occur, within 30 days after DNR provides the application notice. Within 15 days after the public hearing request is submitted by an interested person or DNR makes its decision, DNR must give notice of the public hearing (separate notice of hearing). DNR must hold the hearing within 30 days after the notice of public hearing is issued either as part of the application notice or as an independent separate notice of hearing.

Also, DNR must provide a period to receive public comments. This period lasts for 30 days after the date on which DNR provides notice to the public that the application is complete or for ten days after the date that a public hearing ends, if one is held. Within 30 days after the public hearing is held or, if no public hearing is held, within 30 days of the 30-day comment period, DNR must render a decision either to issue or not to issue the individual permit or contract.

Under the bill, the time limits for giving application notice and notice of public hearing are not totally dependent on the date that the application is determined by DNR to be complete. If, upon reviewing the application, DNR determines that the application is complete and that no additional information is needed, DNR must notify the applicant of that fact within the 30-day review period. The date on which this notice is sent triggers the time limits for the public hearing process and for receiving public comments.

If DNR determines that the application is not complete, it may make only one request for additional information during the 30-day review period. There is no time limit on the applicant for providing the additional information but once it is submitted, DNR must notify the applicant within ten days as to whether the application is complete. Even if the application is not complete, the date on which this second notice is sent triggers the time limits for the public hearing process and for receiving public comments. Under the bill, the term used for such a date that

triggers the time limits is "date of closure." DNR may ask for information to supplement the one-time request for information, but such a request may not affect the date of closure.

The bill shortens the 30-day time period for an interested party to request a public hearing or for DNR to make a decision on its own to hold a public hearing to 20 days.

Under the bill, if DNR fails to comply with 30-day and ten-day time limits relating to determining whether an application is complete, the date of closure shall be the last day of the 30-day or ten-day time period. If DNR fails to comply with the time limits relating to the public hearing and comment process, the application for the permit or contract shall be considered to have been approved.

Procedures in issuing general permits

Under current law, DNR is required to issue by rule statewide general permits authorizing placement of certain structures and deposits in navigable waters, the construction and maintenance of certain bridges, enlargement and connection of waterways, and removal of material from the beds of navigable waters. Current law allows DNR to issue general permits for certain other waterway activities.

Under this bill, DNR must reissue the four required statewide general permits for these waterway activities without using the rule-making process. The permits that were issued by rule will remain in effect until the new permits are issued. The bill also gives DNR authority to issue a general permit outside of the rule-making process for any other waterway activity for which an individual permit is issued.

The bill requires DNR to circulate a public notice of its intention to issue a general permit. This includes a procedure for circulating the notice, for receiving comments, and holding a public hearing. These procedures are in lieu of those that occur under the rule-making process. Under the procedures, DNR must provide up to 30 days after the date of the public notice for interested persons to submit written comments on the proposed general permit and must hold a public hearing if a request for a public hearing is received within 30 days of the circulation of the notice and DNR determines that there is significant public interest in holding a public hearing.

Piers and wharves

This bill modifies current law under which a waterfront property owner (riparian owner) may obtain an exemption to the general permit requirement for placing a pier or wharf on the bed of a navigable water. Under current law, in order for the permit exemption to apply, the pier or wharf may not be in an area of special natural resource interest, may not extend beyond a specified point, may not interfere with the riparian rights of other riparian owners, and may only have a specified number of boat slips. Current law also specifies that for the exemption to apply, the pier or wharf must comply with width limitations except that the pier may have an area as a loading platform that exceeds these limitations if the platform meets certain other size and configuration requirements.

The bill changes the size and configuration requirements for loading platforms on piers. Under the bill, a loading platform meets the exemption requirements, regardless of its configuration, as long as the surface area of the platform does not exceed 200 square feet. The bill also provides that a riparian owner may secure a

specified number of personal watercraft to a pier without affecting the riparian owner's eligibility for the exemption.

Current law also grants an exemption to a riparian owner of a pier or wharf that was placed on the bed of a navigable water on or before February 6, 2004, if the pier or wharf meets certain size and configuration requirements and does not interfere with the riparian rights of other riparian owners and the riparian owner registers the pier or wharf with DNR no later than April 1, 2011 (grandfathering exemption).

This bill changes the grandfathering exemption so that any pier or wharf that was placed on the bed of a navigable water before the effective date of this bill is exempt from the permit requirement if the pier or wharf does not interfere with the riparian rights of other riparian owners. The bill eliminates the requirement that the pier or wharf be registered to be eligible for the grandfathering exemption.

Current law also prohibits DNR from taking any enforcement action against a riparian owner (enforcement exemption) for the placement of a pier, wharf, boat shelter, boat hoist, or boat lift (structure) on the bed of a navigable water before February 6, 2004, if DNR issued a permit or written authorization for the structure before that date and the structure is in compliance with the permit or authorization. This bill provides that the enforcement exemption applies regardless of the date on which DNR issued the permit or written authorization for the structure provided that the structure is in compliance with the permit or authorization.

Current law also requires DNR to issue statewide general permits that allow a riparian owner to conduct certain activities on the bed of a navigable water. This bill requires DNR to issue a statewide general permit to allow a riparian owner to place a pier or wharf on the bed of a navigable water that is in, or that would directly affect, an area of special natural resource interest if the pier or wharf meets the requirements for an exemption for the placement of a pier by a riparian owner. The bill also specifies that DNR may impose conditions relating to a pier or wharf that is placed under the authority of a general permit but may not prohibit placement if the pier or wharf meets the requirements of the general permit.

Placement of fill or structures within a bulkhead line

Generally, under current law, no person may, without a permit, deposit any material or place any structure on the bed of a navigable water beyond a lawfully established bulkhead line. A bulkhead line is a shoreline established by a municipality by ordinance. This bill allows a riparian owner, under certain circumstances, to place fill or structures on the bed of a navigable water within a bulkhead line without obtaining an approval from DNR.

Land grading activities and removal of materials

Current law prohibits, with certain exceptions, a person from engaging in construction, dredging, or enlargement activities with regard to certain artificial water bodies and navigable waterways without a permit. This bill creates an additional permit exemption. The bill allows a person to engage in land grading activity that is authorized under a stormwater discharge permit or under a permit issued by a county under a shoreland zoning ordinance.

Current law also requires, with certain exceptions, a person to have a permit in order to remove any material from the bed of a lake or navigable stream. This bill

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creates an additional exemption to the permit requirement for a removal of no more than a specified amount of material if the removal is necessary to allow access to place or remove a pier or wharf. The bill also requires the department to issue a general permit for the removal of a specified amount of material by a riparian owner for the purpose of placing or maintaining a boat lift and for the removal of not more than a specified amount of plant or animal deposits that impede navigation or access to a stream, inland lake, or outlying water.

Bridges and culverts

Under current law, a city, village, town, or county is exempt from the individual and general permitting requirements for the construction or reconstruction of a highway bridge. This bill repeals this exemption. Instead, DNR must issue a general permit authorizing the construction and maintenance of bridges and culverts that are part of a transportation project that is carried out under the direction and supervision of a city, village, town, or county

Areas of special natural resource interest

Under current law, certain exemptions for waterway activities do not apply in areas of special natural resource interest (ASNRI). Current law defines, for purposes of exempting certain waterway activities from the individual and permitting requirements, an ASNRI to be a state natural area, a trout stream or other surface water that is identified by DNR as being an outstanding or exceptional resource water, or an area that has significant scientific value as identified by DNR. DNR has identified by rule various areas as having significant scientific value, including wild rice waters, waters that contain endangered or threatened species, and coastal wetlands. This bill incorporates into the statutes most of these areas designated by rule as having significant scientific value and prohibits DNR from identifying waters other than the ones specified in the statutes.

OTHER CHANGES

Deadlines for action on certain approvals

This bill makes various changes to procedures that DNR is required to follow in issuing certain licenses, permits, registrations, and other approvals (approvals).

Under current law, DNR is required to promulgate rules to establish periods within which it intends to approve or disapprove applications for most environmental approvals. Current law provides that if DNR fails to make a determination on an application within the specified period, DNR must refund the fees paid by the applicant for the approval.

This bill specifies that for certain environmental approvals for which DNR establishes approval periods by rule, and for certain other environmental approvals for which a specific approval period is established in the bill, DNR must provide the applicant with written notice that the department has approved or disapproved the application, including the specific facts upon which any disapproval is based. The bill requires DNR to provide this notice before the expiration of the relevant approval period. The bill specifies that if DNR fails to provide this notice, DNR must refund the fees paid by the applicant and the applicant may seek administrative review of the application as if the application had been denied. The bill provides that for

certain other approval applications, the failure to meet the deadline for approval or disapproval of an application constitutes approval of the application.

Expedited procedures

Under current law, a person to whom DNR issues a permit to construct a dam must submit specified documents and information to DNR including detailed plans and specifications for the proposed dam. Current law establishes a procedure under which DNR must examine this information and determine whether it is satisfactory or whether modifications are required before DNR approves the plans and specifications. Current law also establishes a procedure for the approval by DNR of plans for water and sewerage systems and sewage and refuse disposal plants (water and sewage plants). This bill requires DNR to establish an expedited procedure for the approval of plans for low hazard dams and for the approval of plans for water and sewage plants.

Internet publication

Current law requires DNR to publish a newspaper notice containing specified information relating to certain laws that it administers. The types of notices that DNR must publish include notices of scheduled hearings, of the opportunity to submit a written comment, and of the opportunity to request a public hearing and notices that provide certain other information to the public. This bill allows DNR, instead of publishing these notices in the newspaper, to publish these notices on its Internet Web site.

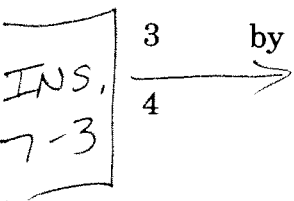
This bill also requires DNR to publish on its Internet Web site any determination that it makes that a waterway is navigable or not navigable, any determination that it makes that identifies the ordinary high-water mark of a navigable water, and, to the greatest extent possible, the current status of any application filed with DNR for a permit, license, or other approval relating to navigable waters or the environment.

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

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

1 SECTION 1. 30.01 (1am) (c) of the statutes is amended to read:
2 30.01 (**1am**) (c) An area that possesses significant scientific value, as identified
3 by the department under s. 30.106.

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

1 30.10 (4) (a) This section does not impair the powers granted by law ~~under s.~~
2 ~~30.1235 or by other law~~ to municipalities to construct highway bridges, arches, or
3 culverts over streams.

4 **SECTION 3.** 30.102 of the statutes is created to read:

5 **30.102 Web site information. (1) NAVIGABILITY DETERMINATION AND ORDINARY**
6 **HIGH-WATER MARK IDENTIFICATION.** If the department makes a determination that a
7 waterway is navigable or is not navigable or identifies the ordinary high-water mark
8 of a navigable waterway, the department shall publish that information on the
9 department's Internet Web site. Any person may rely on the information posted
10 under this section as accurate. This section does not restrict the ability of a person
11 to challenge the accuracy of the information posted under this section.

12 **(2) APPLICATION STATUS.** To the greatest extent possible, the department shall
13 publish on the department's Internet Web site the current status of any application
14 filed with the department for a permit, license, or other approval under ch. 30. The
15 information shall include notice of any hearing scheduled by the department with
16 regard to the application.

17 **SECTION 4.** 30.106 of the statutes is created to read:

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

20 **(1)** Specific portions of waters that contain critical habitat for endangered or
21 threatened species.

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

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

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

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

8 **SECTION 5.** 30.11 (4m) of the statutes is created to read:

9 **30.11 (4m) PLACEMENT OF FILL AND STRUCTURES.** (a) A riparian owner may place
10 additional fill or a structure on the filled portion of a bed of a navigable water within
11 an established bulkhead line for any purpose without obtaining an approval under
12 this chapter if the filled portion of the bed of the navigable water was filled before
13 the effective date of this paragraph [LRB inserts date], and the filled portion was
14 not subject to a lease under s. 24.39 before the effective date of this paragraph
15 [LRB inserts date].

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

23 **SECTION 6.** 30.12 (1g) (f) of the statutes is renumbered 30.12 (1g) (f) 1. (intro.)
24 and amended to read:

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

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

4 b. It extends no further than to a point where the water is 3 feet at its maximum
5 depth as measured at summer low levels, or to the point where there is adequate
6 depth for mooring a boat or using a boat hoist or boat lift, whichever is farther from
7 the shoreline, ~~and that has,~~

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

11 2. Notwithstanding the width limitation in ~~this paragraph subd. 1.~~, a pier may
12 have an area as a loading platform that is more than 6 feet wide if the surface area
13 of the platform is not more than 8 feet wide, it extends perpendicular to one or both
14 sides of the pier, and it is located at the lakeward end of the pier or at the end of the
15 pier that extends into a stream does not exceed 200 square feet.

16 **SECTION 7.** 30.12 (1h) of the statutes is created to read:

17 **30.12 (1h) PERSONAL WATERCRAFT SECURED TO PIERS ALLOWED.** A riparian owner
18 may secure to a pier or wharf up to 2 personal watercraft for the first 50 feet of the
19 riparian owner's shoreline footage and one additional personal watercraft for each
20 additional 50 feet of the riparian owner's shoreline footage without affecting the
21 riparian owner's eligibility for an exemption under sub. (1g) (f). For the purpose of
22 this subsection, "personal watercraft" has the meaning given in s. 30.50 (9d).

23 **SECTION 8.** 30.12 (1j) (c) of the statutes is amended to read:

24 **30.12 (1j) (c)** If the riparian owner or owners of a property described in par. (a)
25 are eligible and propose to place a pier or wharf with the number of boat slips

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

9 **SECTION 9.** 30.12 (1k) (b) (intro.) of the statutes is renumbered 30.12 (1k) (b)
10 and amended to read:

11 30.12 (1k) (b) In addition to the exemptions under sub. (1g), a riparian owner
12 of a pier or wharf that was placed on the bed of a navigable water ~~on or~~ before
13 ~~February 6, 2004~~ the effective date of this paragraph [LRB inserts date], is exempt
14 from the permit requirements under this section if ~~all of the following apply:~~ the pier
15 or wharf does not interfere with the riparian rights of other riparian owners.

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

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

18 **SECTION 12.** 30.12 (1k) (b) 3. of the statutes, as affected by 2011 Wisconsin Act
19 25, is repealed. ✓

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

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

22 30.12 (1k) (cm) (intro.) ~~Except as provided in par. (d), the~~ The department may
23 not take any enforcement action under this chapter against a riparian owner for the
24 placement of any of the following:

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

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

4 **SECTION 16.** 30.12 (1k) (cm) 2. of the statutes is amended to read:

5 30.12 (1k) (cm) 2. A structure for which the department has issued a written
6 authorization ~~on or before February 6, 2004~~, if the structure is in compliance with
7 that written authorization.

8 **SECTION 17.** 30.12 (1k) (d) of the statutes is repealed.

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

10 30.12 (1k) (e) 2. If the exempt structure is a pier or wharf, relocate or
11 reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf,
12 ~~the riparian owner registered the pier or wharf with the department under par. (b)~~
13 ~~3. and, before relocating or reconfiguring the pier or wharf, the riparian owner~~
14 ~~registers the reconfigured or relocated pier or wharf with the department under this~~
15 ~~subdivision.~~

16 **SECTION 19.** 30.12 (3) (a) 6. of the statutes is renumbered 30.12 (3) (a) 6. (intro.)
17 and amended to read:

18 30.12 (3) (a) 6. (intro.) Place a permanent boat shelter adjacent to the owner's
19 property for the purpose of storing or protecting watercraft and associated materials,
20 except that no general or individual permit may be issued for a permanent boat
21 shelter that is constructed after May 3, 1988, if the any of the following apply:

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

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

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

1 30.12 (3) (a) 6. c. The permanent boat shelter extends beyond the waterward
2 end of the owner's pier or the waterward side of the owner's wharf.

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

4 30.12 (3) (a) 14. Place a pier or wharf on the bed of a navigable water that is
5 in, or that would directly affect, an area of special natural resource interest and that
6 is adjacent to the owner's property if the pier or wharf meets the requirements of sub.
7 (1g) (f).

8 **SECTION 22.** 30.12 (3) (br) of the statutes is repealed.

9 **SECTION 23.** 30.12 (3) (d) of the statutes is created to read:

10 30.12 (3) (d) The department may impose conditions relating to the location,
11 design, construction, and installation of a pier or wharf placed under the authority
12 of a general permit issued under par. (a) 14., but may not prohibit a riparian owner
13 from placing a pier or wharf that meets the requirement of the general permit.

14 **SECTION 24.** 30.121 (1) of the statutes is created to read:

15 30.121 (1) DEFINITION. In this section, the terms "maintain" and "repair"
16 include replacing structural elements, including roofs, doors, walls, windows,
17 beams, porches, and floors.

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

19 30.121 (3) **MAINTENANCE AND REPAIR.** The riparian owner of any boathouse or
20 fixed houseboat extending beyond the ordinary high-water mark of any navigable
21 waterway may repair ~~and or~~ or maintain the boathouse or fixed houseboat if the cost
22 ~~of the repair or maintenance to repair or maintain the boathouse or fixed houseboat~~
23 does not exceed 50% of the equalized assessed value of the boathouse or fixed
24 houseboat. If the boathouse or fixed houseboat is not subject to assessment, the
25 owner may ~~make repairs~~ repair or maintain the boathouse or the fixed houseboat if

1 the cost of the repair or maintenance does not exceed 50% of the current fair market
2 value of the boathouse or fixed houseboat.

3 **SECTION 26.** 30.121 (3c) of the statutes is created to read:

4 30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES. Subsection (3) does not apply to
5 repairing or maintaining a boathouse if the boathouse was in existence on December
6 16, 1979, and the repairing or maintaining does not affect the size, location, or
7 configuration of the boathouse and does not result in the boathouse being converted
8 into living quarters.

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

10 30.121 (3g) EXCEPTION; HISTORICAL OR CULTURAL VALUE. Subsection (3) does not
11 apply to ~~the repair or maintenance of~~ repairing or maintaining a boathouse or a fixed
12 houseboat if the boathouse or fixed houseboat has a historic or cultural value, as
13 determined by the state historical society or a local or county historical society
14 established under s. 44.03.

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

16 30.121 (3r) EXCEPTION; DAMAGES AFTER JANUARY 1, 1984. Subsections (2) and (3)
17 do not apply to ~~the repair or reconstruction of~~ repairing or reconstructing a damaged
18 boathouse if the boathouse was damaged by violent wind, vandalism or fire and if the
19 damage occurs after January 1, 1984.

20 **SECTION 29.** 30.123 (6) (a) of the statutes is repealed.

21 **SECTION 30.** 30.123 (7) (a) of the statutes is renumbered 30.123 (7).

22 **SECTION 31.** 30.123 (7) (b) of the statutes is repealed.

23 **SECTION 32.** 30.123 (7) (d) of the statutes is created to read:

reconstructs

1 30.123 (7) (d) Construct and maintain bridges and culverts that are part of a
2 transportation project that is carried out under the direction and supervision of a
3 municipality.

****NOTE: The suggested language exceeds the scope of s. 30.123, which is limited only to bridges and culverts. I did not include the concept of "reconstruction" since that is found in repealed s. 30.1235. I assume, for purposes of s. 30.123, either "construction" or "maintenance" includes reconstruction. If you want to add the term "reconstruction," the other provisions in s. 30.123 will need to be amended for consistency.

****NOTE: The renumbering of s. 30.123 (7) (a) to 30.123 (7) is necessary because there no longer a par. (b). This automatically results in s. 30.123 (7) (a) 1., 2., and 3. becoming pars. (a), (b), and (c). Paragraph (d) is then created to require a general permit for municipal bridges. The required permits under 30.123 (7) (a) 1., 2., and 3. remain in current law. Is that the desired intent?

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

X 5 **SECTION 34.** 30.133 (1) of the statutes is renumbered 30.133 (1) (a).

X 6 **SECTION 35.** 30.133 (1) (b) of the statutes is created to read:

7 30.133 (1) (b) The prohibition under par. (a) does not apply to an easement or
8 similar conveyance that was granted before April 9, 1994.

****NOTE: Paragraph (b) seems redundant. If there is a specific problem to be addressed, this probably needs to be redrafted. The proposed language is too broad. For example, an easement granted before the April date could be invalid for various reasons such as the grantor of the easement was not the owner of the property.

9 **SECTION 36.** 30.18 (4) (a) of the statutes is amended to read:

10 30.18 (4) (a) ~~Upon receipt of a complete application, the department shall~~
11 ~~follow the notice and hearing procedures under s. 30.208 (3) to (5)~~ The notice and
12 hearing provisions of s. 30.208 (3) to (5) shall apply to an application under sub. (3).
13 In addition to providing notice as required under s. 30.208 (3) to (5), the department
14 shall mail a copy of the notice to every person upon whose land any part of the canal
15 or any other structure will be located, to the clerk of the next town downstream, to
16 the clerk of any village or city in which the lake or stream is located and which is

1 adjacent to any municipality in which the withdrawal will take place and to each
2 person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

3 **SECTION 37.** 30.19 (1m) (f) of the statutes is created to read:

4 30.19 (1m) (f) Any land grading activity authorized under a stormwater
5 discharge permit issued under s. 283.33.

6 **SECTION 38.** 30.19 (1m) (g) of the statutes is created to read:

7 30.19 (1m) (g) Any land grading activity authorized by a permit issued by a
8 county under a shoreland zoning ordinance enacted under s. 59.692.

9 **SECTION 39.** 30.19 (3r) (a) of the statutes is renumbered 30.19 (3r).

10 **SECTION 40.** 30.19 (3r) (b) of the statutes is repealed.

11 **SECTION 41.** 30.20 (1g) (b) 3. of the statutes is created to read:

12 30.20 (1g) (b) 3. The amount of material removed is less than 10 cubic yards,
13 the removal is necessary to allow access to place or remove a pier or wharf, and the
14 removal occurs not more than once per year.

15 **SECTION 42.** 30.20 (1t) (a) of the statutes is renumbered 30.20 (1t) (a) (intro.)
16 and amended to read:

17 30.20 (1t) (a) (intro.) The department shall issue statewide general permits
18 under s. 30.206 that authorize any all of the following:

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

21 **SECTION 43.** 30.20 (1t) (a) 2. of the statutes is created to read:

22 30.20 (1t) (a) 2. Any riparian owner to remove 50 cubic yards or less of material
23 from a lake or stream adjacent to the riparian owner's property, by means other than
24 blasting, for the purpose of placing or maintaining a boatlift on a pier or wharf.

25 **SECTION 44.** 30.20 (1t) (a) 3. of the statutes is created to read:

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

5 **SECTION 45.** 30.20 (1t) (b) of the statutes is repealed.

6 **SECTION 46.** 30.206 (1) (a) of the statutes is amended to read:

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

17 **SECTION 47.** 30.206 (1) (am) and (ar) of the statutes are created to read:

18 30.206 (1) (am) Upon compliance with the requirements under subs. (2b) and
19 (2m) and in addition to the general permits required under par. (a), the department
20 may issue a general permit authorizing an activity for which an individual permit
21 is issued, or a contract is entered into, under this subchapter.

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

24 **SECTION 48.** 30.206 (1) (b) of the statutes is created to read:

1 30.206 (1) (b) A general permit issued under par. (a) or (am) is valid for a period
2 of 5 years, and an activity that the department determines is authorized by a general
3 permit remains authorized under the general permit until the activity is completed
4 regardless of whether the general permit expired before the activity is completed.
5 The department may renew or modify, or revoke a general permit issued under par.
6 (a) or (am) upon compliance with the requirements under subs. (2b) and (2m); and
7 until such renewal, modification, or revocation, the general permit shall remain in
8 effect.

9 **SECTION 49.** 30.206 (1g) of the statutes is repealed.

10 **SECTION 50.** 30.206 (1m) of the statutes is repealed.

11 **SECTION 51.** 30.206 (1r) of the statutes is created to read:

12 **30.206 (1r) TRANSITIONS BETWEEN PERMITS.** Any general permit issued under
13 this subchapter that is valid on the effective date of this subsection [LRB inserts
14 date], shall remain valid until the date upon which a general permit issued under
15 sub. (1) (a) or (am) that authorizes the same activity becomes effective.

16 **SECTION 52.** 30.206 (2b) of the statutes is created to read:

17 **30.206 (2b) PUBLIC NOTICE.** (a) The department shall circulate to interested
18 and potentially interested members of the public notices of its intention to issue a
19 general permit under sub. (1) (a) or (am). Procedures for circulating public notices
20 shall include all of the following:

21 1. A procedure for publishing a class 1 notice under ch. 985 or circulating the
22 notice by use of an electronic notification system established by the department. ^{publishing a} ^{on}

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

the department's Internet Website

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

6 (c) Every notice issued by the department of the department's intention to issue
7 a general permit under sub. (1) (a) or (am) shall include a description of the activities
8 proposed to be authorized under the general permit.

9 **SECTION 53.** 30.206 (2m) of the statutes is created to read:

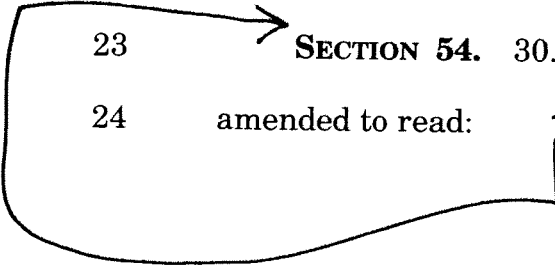
10 30.206 (2m) PUBLIC HEARING. (a) 1. The department shall provide an
11 opportunity for any interested state agency or federal agency or person or group of
12 persons to request a public hearing with respect to the department's intention to
13 issue a general permit under sub. (1) (a) or (am). Such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

17 2. The department shall hold a public hearing upon a request under subd. 1.
18 if the department determines that there is a significant public interest in holding
19 such a hearing. Hearings held under this section are not contested cases under s.
20 227.01 (3).

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

23 **SECTION 54.** 30.208 (2) of the statutes is renumbered 30.208 (2) (a) and
24 amended to read:

INS X



1 30.208 (2) (a) Review; no additional information required. In issuing
2 individual permits or entering contracts under this subchapter, the department shall
3 ~~initially determine whether a complete application for the permit or contract has~~
4 ~~been submitted and, no later than review an application, and within~~ 30 days after
5 the application is submitted, the department shall determine that either the
6 application is complete or that additional information is needed. If the department
7 determines that the application is complete, the department shall notify the
8 applicant in writing about ~~the initial determination of completeness of that fact~~
9 within the 30-day period, and the date on which the notice under this paragraph is
10 sent shall be considered the date of closure for purposes of sub. (3) (a).

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

23 (c) Specificity of notice; limits on information. Any notice stating that an
24 application has been determined to be incomplete or any other request for
25 information that is sent under par. (b) shall state the reason for the determination

1 ~~or request and the specific items of information necessary to make the application~~
2 ~~complete. An applicant may supplement and resubmit an application that the~~
3 ~~department has determined to be incomplete. There is no limit on the number of~~
4 ~~times that an applicant may resubmit an application that the department has~~
5 ~~determined to be incomplete under this section. The department may not demand~~
6 ~~items of information that are not specified in the notice as a condition for determining~~
7 ~~whether the application is complete unless both the department and the applicant~~
8 ~~agree or unless the applicant makes material additions or alterations to the activity~~
9 ~~or project for which the application has been submitted. The rules promulgated~~
10 ~~under s. 299.05 apply only to applications for individual permits or contracts under~~
11 ~~this subchapter that the department has determined to be complete that are still~~
12 ~~needed.~~

13 **SECTION 55.** 30.208 (2) (d) of the statutes is created to read:

14 30.208 (2) (d) *Failure to meet time limits.* If the department fails to meet the
15 30-day time limit under par. (a) or 10-day time limit under par. (b), the application
16 shall be considered to have a date of closure that is the last day of that 30-day or
17 10-day time period for purposes of sub. (3) (a).

18 **SECTION 56.** 30.208 (3) (a) of the statutes is amended to read:

19 30.208 (3) (a) ~~Upon determination by the department under sub. (2), that an~~
20 ~~application submitted under sub. (1) is complete~~ Within 15 days after the date of
21 closure, as determined under sub. (2) (a) or (b), the department shall provide notice
22 of complete pending application to interested and potentially interested members of
23 the public, as determined by the department. The department shall provide the
24 notice within 15 days after the determination that the application is complete. If the

1 applicant has requested a public hearing as part of the submitted application, a
2 notice of public hearing shall be part of the notice of ~~complete~~ pending application.

3 **SECTION 57.** 30.208 (3) (b) of the statutes is amended to read:

4 30.208 (3) (b) If the notice of ~~complete~~ pending application does not contain a
5 notice of public hearing, any person may request a public hearing in writing or the
6 department may decide to hold a public hearing with or without a request being
7 submitted if the department determines that there is a significant public interest in
8 holding a hearing.

9 **SECTION 58.** 30.208 (3) (c) of the statutes is amended to read:

10 30.208 (3) (c) A request for a public hearing under par. (b) must be submitted
11 to the department or the department's decision to hold a public hearing must occur
12 within ~~30~~ 20 days after the department ~~completes~~ providing provides the notice of
13 ~~complete~~ pending application. The department shall provide notice of public hearing
14 within 15 days after the request for public hearing is submitted or the department
15 makes its ~~determination~~ decision to hold a public hearing.

16 **SECTION 59.** 30.208 (3) (e) of the statutes is amended to read:

17 30.208 (3) (e) Within ~~30~~ 20 days after the ~~public hearing is held~~ period for public
18 comment under sub. (4) (b) has ended or if no public hearing is held, within 30 days
19 of the 30-day comment period under sub. (4) (a), the department shall render a
20 decision, issuing, denying, or modifying the permit or approving or disapproving the
21 contract that is the subject of the application submitted under sub. (1).

22 **SECTION 60.** 30.208 (3) (f) of the statutes is created to read:

23 30.208 (3) (f) If the department fails to comply with the time periods under par.
24 (e), a decision issuing the permit, modifying the permit, or approving the contract
25 shall be considered to be rendered. The permit that is issued or is modified, or the

1 contract that is approved, shall authorize the activity as proposed by the applicant,
2 but the department may impose terms and conditions on the permit or contract that
3 are consistent with the applicant's basic proposal.

4 **SECTION 61.** 30.208 (4) (a) of the statutes is amended to read:

5 30.208 (4) (a) The department shall provide a period for public comment after
6 the department has provided a notice of ~~complete~~ pending application under sub. (3)
7 (a), during which time any person may submit written comments with respect to the
8 application for the permit or contract. The department shall retain all of the written
9 comments submitted during this period and shall consider all of the comments in the
10 formulation of the final decision on the application. The period for public comment
11 shall end on the 30th day following the date on which the department completes
12 providing the notice of ~~complete~~ pending application, except as provided in par. (b).

13 **SECTION 62.** 30.208 (4m) of the statutes is created to read:

14 30.208 (4m) DENIALS. If a decision is issued by the department under this
15 section that denies a permit or a modification of a permit or disapproves a contract,
16 the notice of denial or disapproval shall set forth the specific reasons as to how the
17 applicable provisions of this subchapter were not met. The notice of denial or
18 disapproval may not be based on a determination that the application for the permit
19 or contract was incomplete.

20 **SECTION 63.** 30.208 (5) (a) (intro.) of the statutes is amended to read:

21 30.208 (5) (a) (intro.) The department shall, by rule, establish procedures for
22 providing notices of ~~complete~~ pending applications and notices of public hearings to
23 be provided under sub. (3), and notices of administrative hearings to be provided
24 under s. 30.209 (1m). The procedures shall require all of the following:

25 **SECTION 64.** 30.208 (5) (a) 1. of the statutes is amended to read:

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

3 **SECTION 65.** 30.208 (5) (b) (intro.) of the statutes is amended to read:

4 30.208 (5) (b) (intro.) The department shall, by rule, prescribe the form and
5 content of notices of ~~complete~~ pending applications and notices of public hearings to
6 be provided under sub. (3), and notices of administrative hearings to be provided
7 under s. 30.209 (1m). Each notice shall include all of the following information:

8 **SECTION 66.** 30.208 (5) (b) 4. of the statutes is amended to read:

9 30.208 (5) (b) 4. For a notice of ~~complete~~ pending application and a notice of
10 public hearing under sub. (3), a statement of the tentative determination to issue,
11 modify, or deny a permit for the activity or project described in the application.

12 **SECTION 67.** 30.208 (5) (b) 5. of the statutes is amended to read:

13 30.208 (5) (b) 5. For a notice of ~~complete~~ pending application and a notice of
14 public hearing under sub. (3), a brief description of the procedures for the
15 formulation of final determinations, including a description of the comment period
16 required under sub. (4).

17 **SECTION 68.** 30.209 (2) (a) of the statutes is amended to read:

18 30.209 (2) (a) An administrative hearing under this ~~subsection~~ section shall be
19 treated as a contested case under ch. 227.

20 **SECTION 69.** 30.209 (2) (b) of the statutes is amended to read:

21 30.209 (2) (b) If a stay under sub. (1m) (c) is in effect, the hearing examiner
22 shall, within 30 days after receipt of the referral under sub. (1m) (g), determine
23 whether continuation of the stay is necessary to prevent significant adverse impacts
24 or irreversible harm to the environment pending completion of the administrative
25 hearing. The hearing examiner shall make the determination based on the request

as a notice on the department's Internet Website

1 under sub. (1m) (c), any response from the applicant under sub. (1m) (e), and any
2 testimony at a public hearing or any public comments. The determination shall be
3 made without a hearing.

4 **SECTION 70.** 30.209 (2) (c) of the statutes is amended to read:

5 30.209 (2) (c) ~~A~~ An administrative hearing under this section shall be
6 completed within 90 days after receipt of the referral of the petition under sub. (1m)
7 (g), unless all parties agree to an extension of that period. In addition, a hearing
8 examiner may grant a one-time extension for the completion of the hearing of up to
9 60 days on the motion of any party and a showing of good cause demonstrating
10 extraordinary circumstances justifying an extension.

11 **SECTION 71.** 30.209 (2) (d) (intro.) of the statutes is amended to read:

12 30.209 (2) (d) (intro.) Notwithstanding s. 227.44 (1), the department shall
13 provide a notice of the administrative hearing at least 30 days before the date of the
14 hearing to all of the following:

15 **SECTION 72.** 30.209 (2) (e) of the statutes is created to read:

16 30.209 (2) (e) In an administrative hearing under this section, the petitioner
17 shall proceed first with the presentation of evidence and shall have the burden of
18 proof.

19 **SECTION 73.** 30.2095 (1) (b) of the statutes is amended to read:

20 30.2095 (1) (b) The department may specify a time limit of less than 3 years
21 for ~~a~~ an individual permit or contract issued under ss. 30.01 to 30.29. ~~For good cause,~~
22 ~~the~~ The department may shall extend the time limit for ~~a~~ an individual permit or
23 contract issued under ss. 30.01 to 30.29 for no longer than ~~2~~ an additional 5 years if
24 the grantee requests an extension prior to expiration of the initial time limit.

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

1 **SECTION 74.** 31.12 (5) of the statutes is created to read:

2 31.12 (5) The department shall establish an expedited procedure for approval
3 of plans for low hazard dams, as defined in s. 31.19 (1g) (b), under this section. The
4 expedited procedure shall apply, in lieu of the procedure under this section, if all of
5 the following are satisfied:

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

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

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

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

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

16 **SECTION 75.** 84.01 (23) of the statutes is amended to read:

17 84.01 (23) BRIDGE STANDARDS. The department shall adopt standards and
18 specifications for the design and construction of county, town, village, and city
19 bridges, arches or culverts. The standards and specifications shall be developed after
20 consultation with the department of natural resources, and shall be directed at
21 preventing undue impairment of public rights in navigable waters. All highway
22 bridges, arches, and culverts constructed or reconstructed by a county, town, village,
23 or city shall be done in accordance with these standards and specifications.

1 **SECTION 76.** 227.01 (13) (rt) of the statutes is amended to read:

2 227.01 (13) (rt) Is a general permit issued under s. 30.206 or 30.2065.

3 **SECTION 77.** 281.344 (9) (b) 1. a. of the statutes is amended to read:

4 281.344 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
5 or as a notice on its Internet Web site.

6 **SECTION 78.** 281.346 (9) (b) 1. a. of the statutes is amended to read:

7 281.346 (9) (b) 1. a. Publication of the notice as a class 1 notice under ch. 985
8 or as a notice on its Internet Web site.

9 **SECTION 79.** 281.41 (5) of the statutes is created to read:

10 281.41 (5) The department shall establish an expedited procedure for approval
11 of plans under this section. The expedited procedure shall apply, in lieu of the
12 procedure under sub. (1) (b) if all of the following are satisfied:

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

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

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

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

20 **SECTION 80.** 283.39 (1) (a) of the statutes is amended to read:

21 283.39 (1) (a) Publication of the notice as a class 1 notice under ch. 985 or as
22 a notice on its Internet Web site;

23 **SECTION 81.** 283.53 (1) of the statutes is amended to read:

24 283.53 (1) No permit issued by the department under s. 283.31 or 283.33 shall
25 have a an initial term for more than 5 years. Upon the request of a permit holder,

1 the department may renew the permit. There is a no limit on the number of times
2 that a permit may be renewed.

3 **SECTION 82.** 285.61 (5) (c) of the statutes is amended to read:

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

8 **SECTION 83.** 285.62 (3) (c) of the statutes is amended to read:

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

13 **SECTION 84.** 285.63 (11) of the statutes is created to read:

14 285.63 (11) MODELING. The department is not required to use air dispersion
15 modeling as a basis for making its findings under subs. (1) to (3).

16 **SECTION 85.** 285.76 (2) (a) of the statutes is amended to read:

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

25 **SECTION 86.** 289.25 (3) of the statutes is amended to read:

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

16 **SECTION 87.** 289.31 (4) (a) of the statutes is amended to read:

17 289.31 (4) (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
18 to give notice in the area where the facility is located or publishing a notice on its
19 Internet Web site.

20 **SECTION 88.** 289.41 (1m) (g) 1. of the statutes is amended to read:

21 289.41 (1m) (g) 1. The owner of an approved mining facility may apply, at any
22 time at least 40 years after the closing of the facility, to the department for
23 termination of the owner's obligation to maintain proof of financial responsibility for
24 long-term care of the facility. Upon receipt of an application under this subdivision,
25 the department shall publish a class 1 notice under ch. 985 in the official newspaper

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

20 **SECTION 89.** 291.87 (3) of the statutes is amended to read:

21 291.87 (3) If the licensee requests a hearing within 45 days after receiving the
22 notice under sub. (2), the department shall schedule a hearing and give notice of the
23 hearing by publishing a class 1 notice, under ch. 985, or by publishing a notice on its
24 Internet Web site, at least 45 days prior to the date scheduled for the hearing. If the
25 licensee requests a contested case hearing and if the conditions specified under s.

1 227.42 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a
2 contested case; otherwise, the department shall conduct the hearing as an
3 informational hearing. There is no statutory right to any hearing concerning the
4 denial, suspension or revocation of a license for the reasons stated under sub. (1m)
5 (b) to (f) except as provided under this subsection.

6 **SECTION 90.** 291.87 (6) (a) of the statutes is amended to read:

7 291.87 (6) (a) Publishing a class 1 notice, under ch. 985, in a newspaper likely
8 to give notice in the area where the facility is located or publishing a notice on its
9 Internet Web site.

10 **SECTION 91.** 292.31 (3) (f) of the statutes is amended to read:

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

24 **SECTION 92.** 299.05 of the statutes is repealed and recreated to read:

1 **299.05 Deadlines for action on certain applications.** (1) DEFINITION. In
2 this section, "approval" means a license, registration, or certification specified in sub.
3 (2).

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

7 1. A well driller or pump installer registration under s. 280.15.

8 2. A water system or septage servicing vehicle operator certification under s.
9 281.17 (3).

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

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

12 5. A laboratory certification or registration under s. 299.11.

13 (b) The department shall approve or disapprove an application for any of the
14 following within 30 days from the date on which the department receives the
15 application:

16 1. A solid waste disposal facility operator certification under s. 289.42 (1).

17 2. A hazardous waste transportation license under s. 291.23.

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

19 (c) The department shall approve or disapprove an application for an oil or gas
20 exploration license under s. 295.33 (1) within 60 days from the date on which the
21 department receives the application.

22 (2m) FAILURE TO MEET DEADLINE. (a) Subject to sub. (4), the department shall
23 refund fees paid by the applicant for an approval if the department fails to provide
24 the applicant with written notice that the department has approved or disapproved
25 the application for the approval, including the specific facts upon which any

1 disapproval is based, before the expiration of the period established under sub. (2)
2 for the approval.

3 (b) Subject to sub. (4), if the department fails to provide the applicant for an
4 approval with written notice that the department has approved or disapproved the
5 application before the expiration of the period established under sub. (2) for the
6 approval, the applicant may choose to proceed under ch. 227 as though the
7 department had disapproved the application by providing the department with
8 written notice of that choice no later than 45 days after the expiration of the period
9 established under sub. (2).

10 (c) The department may not disapprove an application for an approval solely
11 because the department is unable to complete its review of the application within the
12 period established under sub. (2).

13 **(3) NOTICE OF DEADLINE.** Upon receiving an application for an approval, the
14 department shall inform the applicant of the period established under sub. (2) for the
15 license or other approval.

16 **(4) PERMITTED EXTENSION OF DEADLINE.** The department may extend the period
17 established under sub. (2) because an application is incomplete if all of the following
18 apply:

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

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

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

4 (d) The extension is not longer than the period equal to the number of days from
5 the day on which the department provides the notice under par. (a) to the day on
6 which the department receives the information.

7 **SECTION 93.** 299.06 of the statutes is created to read:

8 **299.06 Automatic approval of certain applications. (1) DEFINITION.** In
9 this section, "approval" means a permit, license, or approval specified in sub. (1m).

10 **(1m) DEADLINES.** The department, by rule, shall establish periods within which
11 the department intends to approve or disapprove an application for any of the
12 following:

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

14 (b) A prospecting permit under s. 293.45.

15 (c) An oil or gas production license under s. 295.33 (2).

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

1 the expiration of the period established under sub. (1m) for the approval, the
2 department shall provide the applicant with a statement showing that the approval
3 is approved and specifying any terms and conditions that apply to that approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **SECTION 94.** 299.17 of the statutes is created to read:

22 **299.17 Web site information.** To the greatest extent possible, the
23 department shall publish on the department's Internet Web site the current status
24 of any application filed with the department for a permit, license, or other approval

1 under chs. 281 to 285 or 289 to 299. The information shall include notice of any
2 hearing scheduled by the department with regard to the application.

3 **SECTION 95. Initial applicability.**

4 (1) The treatment of section 30.18 (4) (a), 30.208 (3) (a), (b), (c), (e), and (f), (4)
5 (a), (4m), and (5) (a) (intro.) and (b) (intro.), 4., and 5. of the statutes, the renumbering
6 and amendment of section 30.208 (2) of the statutes, and the creation of section
7 30.208 (2) (d) of the statutes first apply to applications for individual permits or
8 contracts that are submitted on the effective date of this subsection.

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

11 **SECTION 96. Effective date.**

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

14

(END)

J-note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/lins.RK
RNK:.....

INSERT 7-3

✓

1 **SECTION 1.** 30.025 (2) of the statutes is amended to read:

2 30.025 (2) HEARING. Once the applicant meets the requirements of sub. (1s) (a),
3 the department may schedule the matter for a public hearing. Notice of the hearing
4 shall be given to the applicant and shall be published as a class 1 notice under ch.
5 985 or as a notice on the department's Internet ^Wwebsite. The department may give
6 such further notice as it deems proper, and shall give notice to persons requesting
7 same. One copy of the application shall be available for public inspection at the office
8 of the department, at least one copy in the regional office of the department, and at
9 least one copy at the main public library, of the area affected. Notwithstanding s.
10 227.42, the hearing shall be an informational hearing and may not be treated as a
11 contested case hearing nor converted to a contested case hearing.

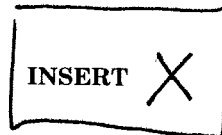
History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379.

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/linsRK2
RNK:.....

INSERT ANALYSIS

1 *wt* Current law does not require a riparian owner to obtain an approval from DNR
2 to deposit material or place a structure on the bed of a navigable water if the deposit
3 or placement is made within a bulkhead line. This bill provides that a riparian owner
4 may place additional fill or a structure on the filled portion of a bed of navigable water
5 within a bulkhead line for any purpose without obtaining an approval from DNR if
6 the filled portion was filled before the effective date of this bill. The bill also provides
7 that if the bed of a navigable water within a bulkhead line was not filled before the
8 effective date of the bill, a riparian owner may place fill or a structure on the bed of
9 the navigable water without obtaining an approval from DNR if the riparian owner
10 places the fill or structure for a public purpose.



11 **SECTION 1.** 30.2065 (3) (a) 1. of the statutes is amended to read:
12 30.2065 (3) (a) 1. Publication of the notice as a class 1 notice under ch. 985 or
13 as a notice on the department's Internet Website.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/1dn
RNK&MGG:/...

gjs

— date —

I added "reconstruct" to s. 30.123 (7) (d), but did not amend the other language regarding general permits. Please look at s. 30.123 (7) (a) 1., 2., and 3. under current law and let me know if you want any changes to those provisions.

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

This draft amends s. 30.025 (2) to allow notice of public hearings with regard to permits for utility facilities to be given by notice on DNR's Internet Website in lieu of a Class 1 notice under current law. In accordance with the original instructions for this proposal, this draft only allows Internet publication to be made in lieu of a requirement that DNR publish a Class 1 notice. That is, there are certain other statutes that DNR administers in which DNR is required to provide a Class 2 notice or a Class 3 notice. This draft does not allow DNR to give notice on its Internet Website in lieu of a Class 2 notice or a Class 3 notice. Is this consistent with your intent?

Also, please note that this draft revises the treatments of ss. 30.206 (2b) (a) 1. and 30.208 (5) (a) 1. in this draft to eliminate the requirement that DNR establish an electronic notification system to provide public notice under those provisions and to require, instead, publication of notice on DNR's Internet Website. I made those changes so that all the Class 1 notices that DNR is required to provide may be provided on DNR's Internet Website. Let me know if these changes are not consistent with your intent.

(not) It also amends s. 30.206(3)(a)1. to allow for Internet publication of DNR's notice of its intention to issue a general permit for certain wetland restoration activities.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/1dn
RNK&MGG:cjs:ph

October 10, 2011

I added "reconstruct" to s. 30.123 (7) (d), but did not amend the other language regarding general permits. Please look at s. 30.123 (7) (a) 1., 2., and 3. under current law and let me know if you want any changes to those provisions.

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

This draft amends s. 30.025 (2) to allow notice of public hearings with regard to permits for utility facilities to be given by notice on DNR's Internet Web site in lieu of a Class 1 notice under current law. It also amends s. 30.2065 (3) (a) 1. to allow for Internet publication of DNR's notice of its intention to issue a general permit for certain wetland restoration activities. In accordance with the original instructions for this proposal, this draft only allows Internet publication to be made in lieu of a requirement that DNR publish a Class 1 notice. That is, there are certain other statutes that DNR administers in which DNR is required to provide a Class 2 notice or a Class 3 notice. This draft does not allow DNR to give notice on its Internet Web site in lieu of a Class 2 notice or a Class 3 notice. Is this consistent with your intent?

Also, please note that this draft revises the treatments of ss. 30.206 (2b) (a) 1. and 30.208 (5) (a) 1. in this draft to eliminate the requirement that DNR establish an electronic notification system to provide public notice under those provisions and to require, instead, publication of notice on DNR's Internet Web site. I made those changes so that all the Class 1 notices that DNR is required to provide may be provided on DNR's Internet Web site. Let me know if these changes are not consistent with your intent.

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

Barman, Mike

From: Johnson, Dan
Sent: Monday, October 10, 2011 2:37 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1446/1 Topic: Navigable waters and environment permit changes

Please Jacket LRB 11-1446/1 for the SENATE.

relating to: the issuance of, and exemptions from, certain individual permits, contracts, and general permits for structures, deposits, and other activities in or near navigable waters; areas of significant scientific value that are areas of special natural resource interest; repair and maintenance of boathouses and fixed houseboats; information required to be published on the Department of Natural Resources Internet Web site; expedited procedures for certain plan approvals; deadlines for action on certain approval applications, and granting rule-making authority.

Introduced by Senator

(PRINCIPAL AUTHOR)

Cosponsored by Representative

(BY REQUEST OF)

(CONTINUE HERE FOR ADDITIONAL SENATORS)

(CONTINUE HERE FOR ADDITIONAL REPRESENTATIVES)

Jacket
&
Returned
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10-11-2011



State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

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

has been copied/added to the drafting file for

2011 LRB-3169 (For: Sen. Fitzgerald)

&

2011 LRB-3170 (For: Rep. Fitzgerald)

(please refer to the drafting file for LRB-3169)

Are These "Companion Bills" ?? ... Yes



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

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