

2015 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB459)

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Pre Topic:

No specific pre topic given

Topic:

The regulation of navigable waters, artificial water bodies, wetlands, and nonpoint source pollution

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0277/1
EHS&ZDW:all

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Companion R. Men

**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 600**

1h 1/29
Due now

January 29, 2016 – Offered by Representative JARCHOW.

AUTHORS SUBJECT TO CHANGE

NO CHANGES

1 **AN ACT to repeal** 30.01 (1am) (c) and 30.12 (3) (a) 6. a., b. and c.; **to renumber**
2 281.16 (2) (am) 1. a.; **to renumber and amend** 30.12 (3) (a) 6. (intro.), 30.121
3 (3c), 30.121 (3w) (c) and 281.36 (3n) (a); **to amend** 30.01 (1d), 30.025 (5), 30.12
4 (1k) (f), 30.12 (3) (a) 3c., 30.12 (3) (a) 3g., 30.12 (3) (a) 3r., 30.12 (3) (a) 13., 30.12
5 (3) (c), 30.121 (1), 30.121 (3), 30.133 (1), 30.19 (1b) (a), 30.19 (1g) (a), 30.19 (1g)
6 (am), 30.206 (1) (a), 30.29 (3) (d), 31.02 (1), 31.185 (5), 281.36 (3m) (b) and 281.36
7 (4) (d); and **to create** 23.24 (4) (b) 4., 30.01 (1am) (d), (e), (f), (g) and (h), 30.01
8 (3c), 30.01 (5p), 30.01 (5r), 30.01 (6b), 30.053, 30.106, 30.115, 30.12 (1g) (am),
9 30.12 (3) (a) 12., 30.12 (3m) (cr), 30.121 (3b), 30.121 (3c) (c), 30.121 (3w) (c) 3.,
10 30.125, 30.19 (1m) (dm), 30.19 (4) (d), 30.20 (1g) (b) 3., 30.20 (1t) (b), 30.20 (1t)
11 (c), 30.20 (2) (cn), 31.345, 33.22 (6), 281.16 (1) (bg), 281.16 (2) (c), 281.36 (1) (am),

1 281.36 (1) (ct), 281.36 (3n) (a) 2. and 3., 281.36 (3n) (am) and 281.36 (4) (f) of the
2 statutes; **relating to:** the regulation of navigable waters and wetlands.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This substitute amendment makes various changes to the regulation of navigable waters, artificial water bodies, wetlands, and nonpoint source pollution.

NAVIGABLE WATERS

Title to the bed of certain filled navigable waters

Under current statutory and common law, this state holds title to navigable waters in trust for public purposes. This body of law, commonly referred to as the public trust doctrine, is encompassed in article IX, section 1, of the Wisconsin Constitution. Under the public trust doctrine, the state has traditionally been the owner of lake beds up to the ordinary high-water mark (OHWM).

This substitute amendment provides that any area of a navigable water that was filled before January 1, 1975, and that has remained continuously filled since January 1, 1975, is owned by the riparian owner in whose riparian zone the filled area is located. The substitute amendment defines the riparian zone as the area that extends from the riparian land waterward to the line of navigation, which is three feet or the depth that is generally needed to moore a boat or use a boat hoist or boat lift on the water, as determined by a method that establishes riparian zone lines between adjacent riparian owners in a manner that equitably apportions access to the line of navigation. The substitute amendment establishes that if by January 1, 2016, there has been public use of the filled area that is visible, open, and notorious and of which a reasonable riparian owner would be aware, then the riparian owner's ownership of the filled area is subject to a public easement for that public use. The substitute amendment prohibits the Department of Natural Resources from requiring the riparian owner of the filled area to remove the fill and requires DNR to furnish a quitclaim deed to the riparian owner of the filled area upon request.

Applicability of navigable water law to artificial water bodies

Under this substitute amendment, unless specifically provided otherwise, the statutes that regulate navigable waters and harbors do not apply to an artificial water body that is not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm events. An artificial water body is a body of water that does not have a history of being a lake or stream or of being part of a lake or stream.

The level and flow of water

Under the substitute amendment, DNR may regulate and control the level and flow of water in all navigable waters in the interest of public rights in navigable waters; to promote safety; and to protect life, health, property, property values, and economic values.

Under the substitute amendment, a public inland lake protection and rehabilitation district may petition DNR to set the water level of a lake within the district's jurisdiction at a level the district determines to be necessary to protect property, property values, and economic values within the district's jurisdiction. The substitute amendment establishes a process under which DNR, after receiving such a petition, must make a preliminary water level determination for the lake, post notice of this determination, and solicit public comments. Under this process, the secretary of natural resources must make a final water level determination, considering the district's petition, the department's preliminary determination, and all public comments received, giving substantial weight to any findings by the district relating to the water level the district has determined to be necessary to protect property, property values, and economic values within the district's jurisdiction.

Navigable water permits

Under current law, a person must obtain one or more permits from DNR in order to conduct certain activities in or near navigable waterways, including placing structures or deposits in navigable waters; constructing or maintaining bridges and culverts; enlarging or connecting waterways; altering the courses of streams and rivers; removing material from the bed of a navigable waterway; and constructing, dredging, or enlarging an artificial water body that connects with a navigable waterway or that is located within 500 feet of the OHWM of an existing navigable waterway. The bed of a navigable water includes the area between the water's edge and the OHWM (shoreline area).

Under current law, some activities are exempt from these permitting requirements, some activities require that the person be issued an individual permit for the activity, and some activities are authorized under statewide general permits. If a general permit covers an activity, the person proposing to conduct the activity must notify DNR that the person wishes to proceed with the activity. If DNR does not request additional information or notify the person that an individual permit will be required within 30 days after receipt of the notification, the person may proceed with the activity.

This substitute amendment does the following with respect to general permits and individual permits to conduct activities in navigable waters:

1. Requires DNR to issue a general permit that authorizes a riparian owner to remove up to 30 cubic yards of material from the bed of an inland lake in the riparian owner's riparian zone and up to 100 cubic yards of material from the bed of outlying waters in the riparian owner's riparian zone, subject to certain conditions.

2. Prohibits DNR from requiring a person to collect a sediment sample as part of an application for an individual permit or prior to proceeding under a general permit unless DNR has specific information that indicates the potential that contaminants may be present in the material proposed to be dredged.

3. Exempts from the permit requirements certain shoreline maintenance activities that are conducted in certain shoreline areas.

4. Exempts from the permit requirements the dredging of an artificial water body that does not connect with a navigable waterway.

5. Establishes that a permit is required to construct or enlarge an artificial water body that is within 500 feet of the OHWM of an existing navigable waterway but that does not or will not connect with the existing navigable waterway.

6. Limits the types of areas that DNR may identify as areas of special natural resource interest (ASNRI) and requires the Joint Committee for Review of Administrative Rules to approve any new area identified by DNR as containing a public rights feature or sensitive area. Under current law, a riparian owner is exempt from the permit requirement for depositing material or placing a structure on the bed of certain navigable waters if the structure or material is located in an area other than an ASNRI, does not interfere with riparian rights of other riparian owners, and is a certain type of structure or material.

7. Provides that, in issuing general permits for the replacement or repair of existing riprap or the replacement of seawalls, DNR may not impose conditions that prohibit the replacement or repair of riprap or the replacement of seawalls located in areas designated as ASNRI.

Structures in navigable waters

Piers

Under this substitute amendment, a DNR decision that a riparian owner does not fall under an exemption to the prohibition against placing a pier or wharf on the bed of a navigable water may only be challenged through a declaratory judgment proceeding in the circuit court for the county in which the riparian property is located and is not subject to a contested case hearing or judicial review under the statutory administrative review procedures. Under current law, a DNR decision against the riparian owner is subject to a new trial.

Under this substitute amendment, an owner of riparian land abutting a navigable water who owns a boat docking facility that is lawfully placed in that water is not prohibited from entering into an agreement with another owner of riparian land abutting the same navigable water to use a shared boat docking facility provided that the agreement does not result in more slips than are authorized.

Boathouses

This substitute amendment changes the definition of a boathouse to specify that a boathouse is a structure used for one or more years for the storage of watercraft and associated materials regardless of its current use. The substitute amendment also makes various changes to the regulation of boathouses, including:

1. Allows a boathouse located beyond the OHWM of a navigable waterway to be expanded, and provides that the expansion does not require a permit, if the boathouse is listed in the national register of historic places in Wisconsin or the state register of historic places, the boathouse is not expanded beyond its listed historical boundaries, and the expansion does not involve the placement of any new structure on the bed of a navigable water.

2. Adds as a condition to the repair and maintenance of a boathouse or fixed houseboat extending beyond the OHWM that is allowed if within certain cost limits under current law that the repair or maintenance may not involve the placement of a floor over a wet bay.

3. Adds foundations to the list of structural elements of a boathouse or fixed houseboat that may be replaced within the current cost limit on repairing and maintaining a boathouse or fixed houseboat.

4. Allows the repair or maintenance of a boathouse in existence on December 16, 1979, to affect the configuration of the boathouse and still fall under the exception to the cost limit on repairing and maintaining such a boathouse, but adds a condition that the repair or maintenance may not involve the placement of a floor over a wet bay in the boathouse.

Boat shelters

Under current law, a boat shelter is a structure used for the storage of watercraft and associated materials that has no walls or sides. This substitute amendment eliminates the conditions that DNR may place on a general permit authorizing a riparian owner to place a boat shelter relating to the location of the shelter and other existing structures. Under the substitute amendment, DNR may impose conditions on the general permit governing the architectural features of boat shelters and the number of boat shelters that may be placed adjacent to a parcel of land, but those conditions may not govern the distance that a boat shelter will extend from the shore, except to prohibit the boat shelter from extending beyond the line of navigation and may not be based on the degree to which adjacent land is developed. Also under the substitute amendment, in determining whether to issue an individual permit to the owner of a proposed permanent boat shelter, DNR may not deny the permit on the basis of the distance at which a boat shelter will extend from the shore or the degree to which adjacent land is developed, except that DNR may deny the permit on the basis that the boat shelter will extend beyond the line of navigation.

Seawalls

This substitute amendment requires DNR, in the general permit authorizing a riparian owner to replace an existing seawall for which DNR has issued a permit, to authorize a seawall for which DNR granted an exemption from a permit requirement or for which no permit was required when the seawall was built.

Riprap

This substitute amendment requires DNR, in the general permit authorizing a riparian owner to place riprap on the bed or bank of a navigable water adjacent to the owner's property in certain amounts, to authorize the riprap to extend to the top of the bank of the navigable water or four feet above the OHWM, whichever is lower.

Operation of a vehicle in navigable water

This substitute amendment exempts from the general prohibition on operating a utility terrain vehicle or all-terrain vehicle on any navigable water or the exposed bed of a navigable water a person engaged in activities landward of a lawfully established bulkhead line for which no general or individual permit and no contract is required under navigable water law.

WETLANDS

Wetland permits

Current law requires DNR to issue certain wetland general permits for discharges to wetlands that are necessary for the treatment or disposal of hazardous

waste or toxic pollutants if not more than two acres of wetlands are affected, and discharges for commercial, residential, or agricultural purposes if not more than 10,000 square feet of wetland are affected. Current law allows DNR to establish different requirements, conditions, and exceptions in general permits to ensure that the discharges will cause only minimal adverse environmental effects. Current law establishes a procedure for obtaining authorization to proceed under a wetland general permit that is similar to the procedure for obtaining authorization under general permits that authorize structures and other activities in or near navigable waters. Current law also authorizes DNR to require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

This substitute amendment exempts from the permitting requirement any discharge that is the result of maintaining a sedimentation or stormwater detention basin and associated conveyance features. Current law exempts from the permitting requirement any discharge that is the result of maintaining a drainage ditch, and this substitute amendment adds to this exemption a discharge that is the result of a roadside ditch. However, the substitute amendment removes from these exemptions any drainage or roadside ditch that serves as fish spawning habitat or a passage to fish spawning habitat.

Practicable alternatives review

Under current law, DNR reviews the practicable alternatives presented in an application for a individual permit, and must find that the project complies with wetland quality standards if it determines that the proposed project represents the least environmentally damaging practicable alternative, all practicable measures to minimize the adverse impact to wetland functional values will be taken, and the discharge will not result in significant adverse impacts to wetland functional values or to water quality or result in any other significant adverse environmental consequences. Upon making such a finding, DNR is authorized, but is not required, to issue a wetland individual permit.

Current law requires DNR to limit its review of practicable alternatives to those that are located at the site of the discharge or adjacent to that site if the applicant has demonstrated that the proposed project causing the discharge will result in a demonstrable economic public benefit, that the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, or that the proposed project will occur in an industrial park that is in existence at the time the application is submitted. This substitute amendment instead requires DNR to limit its review of practicable alternatives to those that are located at the site of the discharge or adjacent to that site if only one of those conditions is met.

This substitute amendment also requires DNR to limit its review of practicable alternatives to those located on the property owned by the applicant for projects involving fewer than two acres of wetland if the project is limited to either the construction or expansion of a single-family home and attendant features, the

construction or expansion of a barn or farm buildings, or the expansion of a small business project. However, the substitute amendment provides that a project that is part of a common plan of development initiated after July 1, 2012, is not eligible for this limited review unless wetland boundaries on the project site as shown in an onsite delineation have changed since commencement of the development project.

The substitute amendment requires DNR to limit its review of practicable alternatives to those that are consistent with the overall purpose and scope of the project. The substitute amendment also requires DNR to impose a level of scrutiny and to require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by DNR.

UTILITY PERMIT PROCEDURE

Under current law, with certain exceptions, a public utility may not begin construction on a utility project; and no person, including a public utility, may construct a large electric generating facility or a high-voltage transmission line, unless the Public Service Commission (PSC) has issued a certificate for the project. A public utility is a company or municipality that produces or delivers heat, light, water, or power to or for the public.

Generally, under current law, a person must submit an application to DNR for each required permit, including an individual permit to conduct an activity in a navigable water or a discharge in a wetland. If the applicant is a utility that is required to obtain a certificate from the PSC, however, the utility must submit a single application to DNR requesting all of the DNR permits that the utility is required to obtain for a given project affecting navigable waters and wetlands and must follow a different procedure for obtaining these DNR permits (utility application procedure).

This substitute amendment removes the exemption in current law that provides that the permit application procedures that would normally apply to an application for an individual permit do not apply to an application for an individual permit submitted under the utility application procedure. This substitute amendment also removes the exemption in current law that provides that the procedures that would normally apply to administrative and judicial review of a DNR decision on an individual permit do not apply to decisions on an individual permit submitted under the utility application procedure. Instead, the substitute amendment specifies that the utility permit procedures are exclusive and apply in lieu of any other procedures that would otherwise apply to permits applied for under the utility permit procedure.

Also under this substitute amendment, there is no opportunity to object to, and request a stay of, a DNR decision related to a wetland individual permit applied for under the utility application procedure.

NONPOINT WATER POLLUTION

This substitute amendment provides that, if a covered municipality has obtained all permits required for the construction of a stormwater management pond in an artificial water body, whether navigable or nonnavigable, DNR may not prohibit the construction of the stormwater management pond as a method by which

the covered municipality may achieve compliance with DNR's prescribed performance standards for sources of nonpoint water pollution, which is water pollution from diffuse sources, or with an approved total maximum daily load (TMDL) requirement. A covered municipality is a municipality that has been issued an individual municipal separate storm sewer permit or that is covered by a general municipal separate storm sewer permit. A TMDL is the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.

DNR's current rules provide that, for the purpose of determining compliance with performance standards, DNR may give credit for the use of practices, measures, or techniques (best management practices) that minimize pollutants carried in runoff. The rules prohibit DNR from giving credit for a best management practice that is located in a navigable water. The substitute amendment provides that DNR must give credit for any pollutant reduction achieved by a pond constructed by a covered municipality in determining compliance with performance standards specified in a stormwater discharge permit or with an approved TMDL requirement.

The substitute amendment also provides that, if a covered municipality applies for an individual permit for the construction of a stormwater management pond in an artificial water body, whether navigable or nonnavigable, for the purpose of achieving compliance with performance standards specified in a stormwater discharge permit or with an approved TMDL requirement, in making its determination DNR is required to take into consideration the sediment control in and water quality improvements to the watershed as a whole that result from the stormwater management pond.

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

1 **SECTION 1.** 23.24 (4) (b) 4. of the statutes is created to read:

2 23.24 (4) (b) 4. A person who engages in an activity listed under sub. (3) (a) in
3 the course of performing shoreline maintenance as authorized under s. 30.125.

4 **SECTION 2.** 30.01 (1am) (c) of the statutes is repealed.

5 **SECTION 3.** 30.01 (1am) (d), (e), (f), (g) and (h) of the statutes are created to read:

6 30.01 (**1am**) (d) A body of water designated as a wild rice water under a written
7 agreement between the department and the Great Lakes Indian Fish and Wildlife
8 Commission.

9 (e) A body of water in a wetland along Lake Michigan or Lake Superior that the
10 department has identified as an ecologically significant coastal wetland.

1 (f) A river that is included in the national wild and scenic rivers system or
2 designated as a wild river under s. 30.26.

3 (g) Subject to s. 30.106, the portion of a body of water that contains a public
4 rights feature or a sensitive area.

5 (h) A unique and significant wetland specified by the department in a special
6 wetland inventory study or a special area management plan.

7 **SECTION 4.** 30.01 (1d) of the statutes is amended to read:

8 30.01 (1d) “Boathouse” means a structure with one or more walls or sides that
9 has been used for one or more years for the storage of watercraft and associated
10 materials ~~which has one or more walls or sides, regardless of the current use of the~~
11 structure.

12 **SECTION 5.** 30.01 (3c) of the statutes is created to read:

13 30.01 (3c) “Line of navigation” means the depth of a navigable water that is
14 the greater of the following:

15 (a) Three feet, as measured at summer low levels.

16 (b) The depth required to operate a boat on the navigable water.

17 **SECTION 6.** 30.01 (5p) of the statutes is created to read:

18 30.01 (5p) “Public rights feature” means a location in a body of water identified
19 by the department as in need of special protection under ss. 30.12 (1p) (a) 3. and (2m),
20 30.123 (6m) and (6s), 30.20 (1k) (a) 2. and (1m), 30.206 (1) (ag), (3) and (3r) to assure
21 that the public’s rights and interests under the public trust doctrine are protected.

22 **SECTION 7.** 30.01 (5r) of the statutes is created to read:

23 30.01 (5r) “Riparian zone” means the area that extends from riparian land
24 waterward to the line of navigation as determined by a method that establishes

1 riparian zone lines between adjacent riparian owners in a manner that equitably
2 apportions access to the line of navigation.

3 **SECTION 8.** 30.01 (6b) of the statutes is created to read:

4 30.01 (6b) “Sensitive area” means an area of aquatic vegetation identified by
5 the department as offering critical or unique fish and wildlife habitat, including
6 seasonal or lifestage requirements, or offering water quality or erosion control
7 benefits to the body of water.

8 **SECTION 9.** 30.025 (5) of the statutes is amended to read:

9 30.025 (5) ~~EXEMPTION FROM CERTAIN EXCLUSIVE PROCEDURES. Sections 30.208~~
10 ~~and 30.209 do not apply to an application for any permit~~ The procedures provided
11 under this section are exclusive and apply in lieu of any other procedures that would
12 otherwise apply to permits applied for under this section.

13 **SECTION 10.** 30.053 of the statutes is created to read:

14 **30.053 Applicability of chapter to artificial water bodies.** Except in
15 subch. V of this chapter and except as specifically provided otherwise in this chapter,
16 nothing in this chapter applies to an artificial water body, as defined in s. 30.19 (1b)
17 (a), that is not hydrologically connected to a natural navigable waterway and that
18 does not discharge into a natural navigable waterway except as a result of storm
19 events.

20 **SECTION 11.** 30.106 of the statutes is created to read:

21 **30.106 Approval of certain areas of special natural resource interest.**

22 Beginning on the effective date of this section ... [LRB inserts date], the department
23 may not identify an area described under s. 30.01 (1am) (g) as an area of special
24 natural resource interest unless it first notifies the joint committee for review of

1 administrative rules in writing of the proposal and obtains the approval of the
2 committee.

3 **SECTION 12.** 30.115 of the statutes is created to read:

4 **30.115 Ownership of certain filled navigable waters.** (1) Subject to any
5 public easement under sub. (2), if a person placed fill on the bed of a navigable water
6 before January 1, 1975, the filled area above the ordinary high–water mark is owned
7 by the riparian owner in whose riparian zone the fill is located on the effective date
8 of this subsection [LRB inserts date], if the filled area has continuously remained
9 above the ordinary high–water mark since January 1, 1975.

10 (2) If by January 1, 2016, there has been public use of the filled area described
11 under sub. (1) that is visible, open, and notorious and of which a reasonable riparian
12 owner would be aware, then the riparian owner’s ownership of the filled area under
13 sub. (1) is subject to a public easement for that public use.

14 (3) The department may not require the riparian owner of a filled area
15 described under sub. (1) to remove the fill, whether above or below the ordinary
16 high–water mark, from that area.

17 (4) Upon request, the department shall furnish a quitclaim deed to the riparian
18 owner described under sub. (1).

19 (5) This section does not apply to a lake bed area conveyed by the legislature
20 as provided under s. 13.097.

21 **SECTION 13.** 30.12 (1g) (am) of the statutes is created to read:

22 30.12 (1g) (am) A deposit of sand, gravel, or stone that is necessary to perform
23 an activity authorized under s. 30.125 (2) (a).

24 **SECTION 14.** 30.12 (1k) (f) of the statutes is amended to read:

1 30.12 (1k) (f) ~~A decision of~~ If the department against determines that the
2 owner of a structure ~~for which is not entitled to~~ an exemption is claimed under this
3 ~~subsection is subject to a trial de novo, the owner may bring an action for declaratory~~
4 judgment under s. 806.04 in the circuit court for the county in which the riparian
5 property is located. The owner is not entitled to a contested case hearing or judicial
6 review under ch. 227.

7 **SECTION 15.** 30.12 (3) (a) 3c. of the statutes is amended to read:

8 30.12 (3) (a) 3c. Place riprap in order to replace or repair existing riprap, other
9 than riprap that is exempt under sub. (1g) (i) or (j). Under the permit, the
10 department shall allow riprap to extend to the top of the bank of the navigable water
11 or 4 feet above the ordinary high-water mark, whichever is lower. In issuing the
12 permit, the department may not impose conditions that prohibit the replacement or
13 repair of riprap located in an area of special natural resource interest.

14 **SECTION 16.** 30.12 (3) (a) 3g. of the statutes is amended to read:

15 30.12 (3) (a) 3g. Place riprap on the bed or bank of a navigable water adjacent
16 to an owner's property in an amount up to and including 100 continuous feet in an
17 inland lake of 300 acres or more. Under the permit the department shall allow riprap
18 to extend to the top of the bank of the navigable water or 4 feet above the ordinary
19 high-water mark, whichever is lower.

20 **SECTION 17.** 30.12 (3) (a) 3r. of the statutes is amended to read:

21 30.12 (3) (a) 3r. Place riprap on the bed or bank of a navigable water adjacent
22 to an owner's property in an amount up to and including 300 continuous feet in a
23 Great Lakes water body. Under the permit the department shall allow riprap to
24 extend to the top of the bank of the navigable water or 4 feet above the ordinary
25 high-water mark, whichever is lower.

1 **SECTION 18.** 30.12 (3) (a) 6. (intro.) of the statutes is renumbered 30.12 (3) (a)
2 6. and amended to read:

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

7 **SECTION 19.** 30.12 (3) (a) 6. a., b. and c. of the statutes are repealed.

8 **SECTION 20.** 30.12 (3) (a) 12. of the statutes is created to read:

9 30.12 (3) (a) 12. Place fill, sand, or other material on the bed of a lake or stream
10 if all of the following apply:

11 a. The material is placed for the purpose of restoring a navigable water that was
12 dredged on or after January 1, 2006.

13 am. The material is placed by a riparian owner whose riparian zone is affected
14 by the dredging under subd. 12. a.

15 b. The material is placed in a manner that restores the navigable water, as
16 closely as possible, to the condition of that navigable water immediately before the
17 dredging was commenced.

18 c. The department has determined that the dredging under subd. 12. a. was
19 conducted without a permit in violation of sub. (1) and was not exempt from the
20 requirement to obtain a permit under sub. (1) and the department has issued a
21 citation for the violation.

22 **SECTION 21.** 30.12 (3) (a) 13. of the statutes is amended to read:

23 30.12 (3) (a) 13. Place a seawall to replace an existing seawall for which a
24 permit has been issued or an exemption granted under this chapter, or for which no
25 permit was required at the time the seawall was built. The replacement may not

1 exceed 100 continuous feet in an inland lake of 300 or more acres and may not exceed
2 300 continuous feet in a Great Lakes water body. In issuing the permit, the
3 department may not impose conditions that prohibit the replacement of a seawall
4 located in an area of special natural resource interest.

5 **SECTION 22.** 30.12 (3) (c) of the statutes is amended to read:

6 30.12 (3) (c) The department may impose conditions on general permits issued
7 under par. (a) 6. to govern the architectural features of boat shelters and the number
8 of boat shelters that may be constructed adjacent to a parcel of land. The conditions
9 may not govern the aesthetic features or color of boat shelters or the distance at
10 which a boat shelter may extend from the shore, except to prohibit a boat shelter from
11 extending beyond the line of navigation and may not be based on the degree to which
12 adjacent land is developed. The conditions shall be designed to ensure the structural
13 soundness and durability of boat shelters. A municipality may enact ordinances that
14 are consistent with this paragraph and with any conditions imposed on general
15 permits issued to regulate the architectural features of boat shelters that are under
16 the jurisdiction of the municipality.

17 **SECTION 23.** 30.12 (3m) (cr) of the statutes is created to read:

18 30.12 (3m) (cr) In determining whether to issue an individual permit to the
19 owner of a proposed permanent boat shelter, the department may not deny the
20 permit on the basis of any of the following:

21 1. The distance at which the shelter will extend from the shore, except that the
22 department may deny the permit on the basis that the boat shelter will extend
23 beyond the line of navigation.

24 2. The degree to which adjacent land is developed.

25 **SECTION 24.** 30.121 (1) of the statutes is amended 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, and foundations.

4 **SECTION 25.** 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 or maintain the boathouse or fixed houseboat if the cost to
8 repair or maintain the boathouse or fixed houseboat does not exceed 50% of the
9 equalized assessed value of the boathouse or fixed houseboat and the repair or
10 maintenance does not involve the placement of a floor over a wet bay on or after the
11 effective date of this subsection ... [LRB inserts date]. If the boathouse or fixed
12 houseboat is not subject to assessment, the owner may repair or maintain the
13 boathouse or the fixed houseboat if the cost of the repair or maintenance does not
14 exceed 50% of the current fair market value of the boathouse or fixed houseboat and
15 the repair or maintenance does not involve the placement of a floor over a wet bay
16 on or after the effective date of this subsection ... [LRB inserts date].

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

18 30.121 (3b) EXPANSION OF HISTORIC BOATHOUSES. The riparian owner of any
19 boathouse or fixed houseboat extending beyond the ordinary high-water mark of any
20 navigable waterway may expand the boathouse without a permit under s. 30.12 if
21 the boathouse is listed in the national register of historic places in Wisconsin or the
22 state register of historic places, the boathouse is not expanded beyond its listed
23 historical boundaries, and the expansion does not involve the placement of any new
24 structure on the bed of a navigable water.

1 **SECTION 27.** 30.121 (3c) of the statutes is renumbered 30.121 (3c) (intro.) and
2 amended to read:

3 30.121 **(3c)** EXCEPTION; CERTAIN BOATHOUSES. (intro.) Subsection (3) does not
4 apply to repairing or maintaining a boathouse if the boathouse was in existence on
5 December 16, 1979, and if all of the following apply to the repairing or maintaining
6 repair or maintenance:

7 (a) It does not affect the size, or location, or configuration of the boathouse and,

8 (b) It does not result in the boathouse being converted into living quarters.

9 **SECTION 28.** 30.121 (3c) (c) of the statutes is created to read:

10 30.121 **(3c)** (c) It does not involve the placement of a floor over a wet bay in the
11 boathouse on or after the effective date of this paragraph [LRB inserts date].

12 **SECTION 29.** 30.121 (3w) (c) of the statutes is renumbered 30.121 (3w) (c) (intro.)
13 and amended to read:

14 30.121 **(3w)** (c) (intro.) The boathouse is ~~located within~~ in any of the following
15 locations:

16 1. Within a harbor that is being operated as a commercial enterprise ~~or is~~
17 ~~located on.~~

18 2. On a river that is a tributary of Lake Michigan or Lake Superior.

19 **SECTION 30.** 30.121 (3w) (c) 3. of the statutes is created to read:

20 30.121 **(3w)** (c) 3. On an outlying water and the work is limited to the
21 expansion, repair, or maintenance of an existing boathouse.

22 **SECTION 31.** 30.125 of the statutes is created to read:

23 **30.125 Shoreline maintenance in outlying waters.** (1) In this section:

24 (a) “Outlying waters” has the meaning given in s. 29.001 (63).

1 (b) “Shoreline area” means the area that is located between the ordinary
2 high–water mark and water’s edge.

3 (2) If the conditions under sub. (3) are met, the permitting requirements under
4 ss. 23.24 (3) and 30.12 and the contract and permitting requirements under s. 30.20
5 do not apply to any of the following maintenance activities conducted in a shoreline
6 area of an outlying water:

7 (a) The leveling of sand or the grooming of soil if the leveling or grooming will
8 occur in an area of unconsolidated material predominately composed of sand, rock,
9 and pebble that is authorized by the owner of the riparian land that abuts the
10 shoreline area.

11 (b) The removal of debris or the mowing of vegetation that is authorized by the
12 owner of the riparian land that abuts the shoreline area.

13 (3) All of the following conditions apply to the activities described under sub.
14 (2):

15 (a) No material may be brought in from offsite sources to conduct the activity.

16 (b) No removal of material may be conducted in an area known to contain any
17 species listed as endangered or threatened under s. 29.604 (3) or any floating bogs
18 or wild rice.

19 (c) The removal of material may not interfere with the rights of other riparian
20 owners.

21 (d) The removal of invasive species shall be conducted in a manner that
22 prevents the spread of invasive species into the waters of this state and onto adjacent
23 land.

24 (e) The activity may not involve the filling of a coastal wetland or the alteration
25 of a coastal dune.

1 **SECTION 32.** 30.133 (1) of the statutes is amended to read:

2 30.133 (1) Beginning on April 9, 1994, and except as provided in s. 30.1335, no
3 owner of riparian land that abuts a navigable water may grant by an easement or
4 by a similar conveyance any riparian right in the land to another person, except for
5 the right to cross the land in order to have access to the navigable water. This right
6 to cross the land may not include the right to place any structure or material,
7 including a boat docking facility, as defined in s. 30.1335 (1) (a), in the navigable
8 water. This subsection does not prohibit an owner of riparian land that abuts a
9 navigable water who owns a boat docking facility that is lawfully placed on that
10 water from entering into an agreement with another owner of riparian land that
11 abuts the same navigable water to use a shared boat docking facility in lieu of
12 separate piers, provided that the agreement does not result in more boat slips than
13 are authorized under s. 30.12.

14 **SECTION 33.** 30.19 (1b) (a) of the statutes is amended to read:

15 30.19 (1b) (a) “Artificial water body” means a ~~proposed or existing~~ body of
16 water that does not have a history of being a lake or stream or of being part of a lake
17 or stream.

18 **SECTION 34.** 30.19 (1g) (a) of the statutes is amended to read:

19 30.19 (1g) (a) Construct, dredge, or enlarge any artificial water body that
20 connects with ~~a~~ an existing navigable waterway.

21 **SECTION 35.** 30.19 (1g) (am) of the statutes is amended to read:

22 30.19 (1g) (am) Construct, ~~dredge,~~ or enlarge any part of an artificial water
23 body that is or will be located within 500 feet of the ordinary high-water mark of, but
24 that does not or will not connect with, an existing navigable waterway, ~~including.~~
25 An artificial water body that meets the requirements of this paragraph includes a

1 stormwater management pond that does not discharge into a navigable waterway
2 except as a result of storm events.

3 **SECTION 36.** 30.19 (1m) (dm) of the statutes is created to read:

4 30.19 (1m) (dm) The dredging of any part of an artificial water that does not
5 connect with a navigable waterway. An artificial water body that meets the
6 requirements of this paragraph includes a stormwater management pond that does
7 not discharge into a navigable waterway except as a result of storm events.

8 **SECTION 37.** 30.19 (4) (d) of the statutes is created to read:

9 30.19 (4) (d) 1. In this paragraph, “covered municipality” has the meaning
10 given in s. 281.16 (1) (br).

11 2. If the applicant is a covered municipality seeking an individual permit for
12 the construction of a stormwater management pond in an artificial water body,
13 whether navigable or nonnavigable, for the purpose of achieving compliance with
14 performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr)
15 or with an approved total maximum daily load under 33 USC 1313 (d) (1) (C), the
16 department shall, in making its determinations under par. (c), take into
17 consideration the sediment control in and water quality improvements to the
18 watershed as a whole that result from the stormwater management pond.

19 **SECTION 38.** 30.20 (1g) (b) 3. of the statutes is created to read:

20 30.20 (1g) (b) 3. The removal is necessary to perform an activity authorized
21 under s. 30.125 (2).

22 **SECTION 39.** 30.20 (1t) (b) of the statutes is created to read:

23 30.20 (1t) (b) 1. In this paragraph:

24 a. “Inland lake” means an inland water that is a lake.

25 b. “Inland water” has the meaning given in s. 29.001 (45).

1 2. The department shall issue a statewide general permit under s. 30.206 that
2 authorizes any riparian owner to remove material in the following amounts from a
3 lake bed in the riparian owner's riparian zone:

4 a. From an inland lake, up to 30 cubic yards.

5 b. From an outlying water, up to 100 cubic yards.

6 2m. The department may impose any of the following conditions on the permit:

7 a. That the removal may not occur in a navigable water that is identified as an
8 outstanding or exceptional resource water under s. 281.15.

9 b. That the material may be removed only to the line of navigation.

10 c. That the riparian owner shall use best management practices, established
11 by the department and published on its Internet site, for the removal and disposal
12 of the material.

13 d. That the removal may not result in a water depth of more than the depth at
14 the line of navigation or a depth extending to the bottom of a layer of primarily
15 organic sediment, whichever is greater.

16 e. That the removal may not interfere with the rights of neighboring riparian
17 owners.

18 3. The department may not limit to non-mechanized equipment the types of
19 equipment that may be used to conduct the activity under the general permit under
20 this paragraph.

21 **SECTION 40.** 30.20 (1t) (c) of the statutes is created to read:

22 30.20 (1t) (c) The department may not require a person to collect a sediment
23 sample prior to proceeding under a general permit issued under par. (a) unless the
24 department has specific information that indicates the potential that contaminants
25 may be present in the material proposed to be dredged.

1 **SECTION 41.** 30.20 (2) (cn) of the statutes is created to read:

2 30.20 (2) (cn) The department may not require an applicant for a permit under
3 par. (bn) to collect a sediment sample unless the department has specific information
4 that indicates the potential that contaminants may be present in the material
5 proposed to be dredged.

6 **SECTION 42.** 30.206 (1) (a) of the statutes is amended to read:

7 30.206 (1) (a) The department shall issue the statewide general permits
8 required under ss. 30.12 (3) (a) and (b), 30.123 (7), 30.19 (3r), and 30.20 (1t) (a) and
9 (b).

10 **SECTION 43.** 30.29 (3) (d) of the statutes is amended to read:

11 30.29 (3) (d) ~~Activities for which a permit is issued~~ Authorized activities. A
12 person or agent of a person who is engaged in activities as authorized under a general
13 or individual permit issued under this subchapter or as authorized under a contract
14 entered into under this subchapter or who is engaged in activities landward of a
15 lawfully established bulkhead line for which no permit or contract is required under
16 this subchapter.

17 **SECTION 44.** 31.02 (1) of the statutes is amended to read:

18 31.02 (1) The department, in the interest of public rights in navigable waters
19 ~~or, to promote safety, and to protect life, health and, property, property values, and~~
20 economic values may regulate and control the level and flow of water in all navigable
21 waters and may erect, or may order and require bench marks to be erected, upon
22 which shall be designated the maximum level of water that may be impounded and
23 the lowest level of water that may be maintained by any dam heretofore or hereafter
24 constructed and maintained and which will affect the level and flow of navigable
25 waters; and may by order fix a level for any body of navigable water below which the

1 same shall not be lowered except as provided in this chapter; and shall establish and
2 maintain gauging stations upon the various navigable waters of the state and shall
3 take other steps necessary to determine and record the characteristics of such
4 waters.

5 **SECTION 45.** 31.185 (5) of the statutes is amended to read:

6 31.185 (5) As a prerequisite to the granting of a permit under this section, the
7 department may require the applicant to comply with such conditions as it deems
8 reasonably necessary in the particular case to preserve public rights in navigable
9 waters, to promote safety, and to protect life, health and, property, property values,
10 and economic values.

11 **SECTION 46.** 31.345 of the statutes is created to read:

12 **31.345 Petition for water level determination.** (1) Within 30 days after
13 the department receives a petition by a public inland lake protection and
14 rehabilitation district to set the water level of a lake under s. 33.22 (6), the
15 department shall make a preliminary water level determination for the lake. In
16 making this determination, the department shall give substantial weight to any
17 findings by the district relating to the water level the district has determined to be
18 necessary to protect property, property values, and economic values within the
19 district's jurisdiction.

20 (2) Within 15 days after the preliminary determination is made under sub. (1),
21 the department shall post on the department's Internet site notice of its preliminary
22 determination, all documents related to the determination, and a request for public
23 comments on the determination. The department shall accept public comments for
24 30 days after posting the request for public comments.

1 **(3)** Within 30 days after the public comment period under sub. (2) is closed, the
2 secretary shall make a final water level determination for the lake. In making the
3 final determination, the secretary of natural resources shall consider the district’s
4 petition, the department’s preliminary determination under sub. (1), and all public
5 comments received and shall give substantial weight to any findings by the district
6 relating to the water level the district has determined to be necessary to protect
7 property, property values, and economic values within the district’s jurisdiction.

8 **SECTION 47.** 33.22 (6) of the statutes is created to read:

9 **33.22 (6)** A district may petition the department to set, under ss. 31.02 (1) and
10 31.345, the water level of a lake within the district’s jurisdiction at a level the district
11 determines to be necessary to protect property, property values, and economic values
12 within the district’s jurisdiction.

13 **SECTION 48.** 281.16 (1) (bg) of the statutes is created to read:

14 **281.16 (1) (bg)** “Artificial water body” has the meaning given in s. 30.19 (1b)
15 (a).

16 **SECTION 49.** 281.16 (2) (am) 1. a. of the statutes is renumbered 281.16 (1) (br).

17 **SECTION 50.** 281.16 (2) (c) of the statutes is created to read:

18 **281.16 (2) (c)** If a covered municipality has obtained all permits required for
19 the construction of a storm water management pond in an artificial water body,
20 whether navigable or nonnavigable, the department may not prohibit the
21 construction of the storm water management pond as a method by which the covered
22 municipality may achieve compliance with performance standards under par. (a) or
23 with an approved total maximum daily load under 33 USC 1313 (d) (1) (C). The
24 department shall give credit to the covered municipality for any pollutant reduction
25 achieved by the storm water management pond in determining compliance with

1 performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr)
2 or an approved total maximum daily load under 33 USC 1313 (d).

3 **SECTION 51.** 281.36 (1) (am) of the statutes is created to read:

4 281.36 (1) (am) “Demonstrable economic public benefit” means an economic
5 benefit to the community or region that is measurable, such as increased access to
6 natural resources, local spending by the proposed project, employment, or
7 community investment.

8 **SECTION 52.** 281.36 (1) (ct) of the statutes is created to read:

9 281.36 (1) (ct) “Small business” has the meaning given in s. 227.114 (1).

10 **SECTION 53.** 281.36 (3m) (b) of the statutes is amended to read:

11 281.36 (3m) (b) *Analysis of practicable alternatives.* An applicant shall include
12 in an application submitted under par. (a) an analysis of the practicable alternatives
13 that will avoid and minimize the adverse impacts of the discharge on wetland
14 functional values and that will not result in any other significant adverse
15 environmental consequences, subject to the limitations in sub. (3n) (a).

16 **SECTION 54.** 281.36 (3n) (a) of the statutes is renumbered 281.36 (3n) (a) (intro.)
17 and amended to read:

18 281.36 (3n) (a) *Review limits.* (intro.) For the purpose of issuing a wetland
19 individual permit, during the period between the date on which the application
20 under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m)
21 (i) is rendered, the department shall conduct its review under this subsection. The
22 department shall review the analysis of practicable alternatives presented in the
23 application under sub. (3m) (b). The department shall limit its review of practicable
24 alternatives as follows:

1 1. The department shall limit its review to those practicable alternatives that
2 are located at the site of the discharge and that are located adjacent to that site if the
3 applicant has demonstrated ~~that~~ any of the following:

4 a. That the proposed project causing the discharge will result in a demonstrable
5 economic public benefit, ~~that~~.

6 b. That the proposed project is necessary for the expansion of an existing
7 industrial, commercial, or agricultural facility that is in existence at the time the
8 application is submitted, ~~or that~~.

9 c. That the proposed project will occur in an industrial park that is in existence
10 at the time the application is submitted.

11 **SECTION 55.** 281.36 (3n) (a) 2. and 3. of the statutes are created to read:

12 281.36 **(3n)** (a) 2. Except as provided in par. (am), the department shall limit
13 its review to those practicable alternatives that are located on the property owned
14 by the applicant for a project involving fewer than 2 acres of wetland if the project
15 is limited to one of the following:

16 a. The construction or expansion of a single-family home and attendant
17 features.

18 b. The construction or expansion of a barn or farm buildings.

19 c. The expansion of a small business project.

20 3. The department shall limit its review to those practicable alternatives that
21 are consistent with the overall purpose and scope of the project. The department
22 shall impose a level of scrutiny and require an applicant to provide an amount of
23 information that is commensurate with the severity of the environmental impact of
24 the project, as determined by the department.

25 **SECTION 56.** 281.36 (3n) (am) of the statutes is created to read:

