

**2019 DRAFTING REQUEST****Bill**

For: **Jim Steineke (608) 266-2418** Drafter: **eshea**  
 By: **Rusty** Secondary Drafters:  
 Date: **2/1/2019** May Contact:  
 Same as LRB: **-4892**

Submit via email: **YES**  
 Requester's email: **Rep.Steineke@legis.wisconsin.gov**  
 Carbon copy (CC) to: **elisabeth.shea@legis.wisconsin.gov**  
**zachary.wyatt@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

General permit for voluntary wetland restoration projects

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	eshea 2/15/2019	csicilia 2/19/2019			
/P1	zwyatt 4/4/2019	csicilia 4/8/2019	mbarman 2/19/2019		
/P2	eshea 7/24/2019	csicilia 7/25/2019	mbarman 4/8/2019		
/P3	eshea 9/9/2019	csicilia 9/11/2019	lparisi 7/25/2019		
/P4	eshea	csicilia	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P5	eshea 11/6/2019	csicilia 11/6/2019	dwalker 10/14/2019		
/P6	eshea 11/26/2019	csicilia 11/26/2019	dwalker 11/6/2019		
/1			mbarman 11/26/2019	lparisi 12/2/2019	

FE Sent For:

*2  
not  
needed*


<END>

## Shea, Elisabeth

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**From:** Schultz, Rusty  
**Sent:** Friday, February 01, 2019 11:53 AM  
**To:** Shea, Elisabeth  
**Subject:** wetlands  
**Attachments:** Wetlands Grant Program.pdf; Wetlands permitting changes.pdf

The wetlands grant program attachment is what I would like to see drafted first. For now, let's assumed the \$150k will come from GPR.

 The second attachment is an overview of the second bill we'd like to see drafted. This is draft is a lesser priority at the moment, but why don't we plan to touch base after you've had time to review.

Thanks for the help,

**Rusty Schultz** Chief of Staff | Office of the Assembly Majority Leader  
Rep. Jim Steineke | (608) 266-2401 | [www.RepSteineke.com](http://www.RepSteineke.com)

**Streamline regulatory approvals for wetland restoration and enhancement and other aquatic habitat improvements.**

*Problem statement:*

Restoring wetlands to reduce flooding, improve water quality, and enhance fish and wildlife habitat often requires work in or near sensitive areas protected under other statutes. Examples include restoring wetlands adjacent to trout streams, reconnecting rivers to floodplains, restoration work in ditches with stream history, and restoration of drained lands where some wetland remains.

Ironically, these beneficial restoration projects often trigger regulations designed to protect state waters from *harm*. The time and expense required to demonstrate project benefits and secure permits delays projects, increases costs, and discourages meaningful restoration work.

Current law provides a streamlined process for federally funded wetland restoration projects, but many of the most urgently needed and potentially beneficial restoration practices are not eligible for coverage.

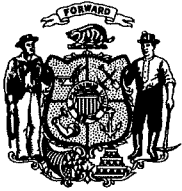
*Policy recommendation:*

Modify Chapter 30.2065 to require WDNR to establish a general permit and streamlined approval process for voluntary wetland restoration projects where the activity will result in a net increase in aquatic resource functions and services (i.e., reduce flooding or improve water quality, fish and wildlife habitat, or watershed health).

*Note:* A working draft produced in consultation with the state and federal agencies and non-profit wetland and waterfowl conservation organizations is available upon request.

**Brian Vigue**  
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Wisconsin Wetlands Association  
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State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1752/CP1  
EHS:...

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gjs

In 2/15

Due 2/19

D-NOTE

Gen Cont

X-1-18

1 AN ACT ...; relating to: a general permit for wetland restoration projects.

*that authorizes*  
**Analysis by the Legislative Reference Bureau**

This bill requires the Department of Natural Resources to issue a general permit to a person wishing to proceed with a wetland restoration activity that will result in a net increase in aquatic resource functions and services. Under current law, DNR may issue a general permit to a person wishing to proceed with a wetland restoration activity sponsored by a federal agency. *activities*

Like the existing general permit for wetland restoration activity, a general permit issued under the bill is valid for a period of ~~5~~ *five* years, except that an activity that DNR determines is authorized by a general permit remains authorized under the permit until the activity is completed. Also, like the existing general permit for wetland restoration activity, a general permit issued under the bill is in lieu of any permit or approval that would otherwise be required for that activity under state navigable water law, water quality law, or wetland law. *and apply*

The bill also allows DNR to impose the same conditions to the new general permit as it may apply to the current law wetland restoration general permit: 1) construction and design requirements that are consistent with the purpose of the activity authorized under the permit; 2) location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners; and 3) restrictions to protect areas of special natural resource interest. *S*

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

1 SECTION 1. 30.2065 (1) of the statutes is repealed.

2 SECTION 2. 30.2065 (2) of the statutes is renumbered 30.2065 and 30.2065 (1)  
3 and (2), as renumbered, are amended to read:

4 <sup>no (3)</sup> **30.2065 Issuance; validity.** (1) The department may issue a general permit  
5 to a person wishing to proceed with ~~an~~ a wetland restoration activity sponsored by  
6 a federal agency.

7 (1r) A permit issued under ~~this subsection sub. (1) or (1g)~~ is in lieu of any permit  
8 or approval that would otherwise be required for that activity under this chapter or  
9 s. 31.02, 31.12, 31.33, 281.15, or 281.36.

10 (2) A general permit issued under ~~this subsection sub. (1) or (1g)~~ is valid for a  
11 period of 5 years except that an activity that the department determines is  
12 authorized by a general permit remains authorized under the permit until the  
13 activity is completed.

History: 2009 a. 391; 2011 a. 167.

14 SECTION 3. 30.2065 (1g) of the statutes is created to read:

15 30.2065 (1g) The department shall issue a general permit to a person wishing  
16 to proceed with a wetland restoration activity <sup>that authorizes e. activities</sup> that will result in a net increase in  
17 aquatic resource functions and services. A general permit under this subsection does  
18 not apply to wetland mitigation conducted as required under s. 281.36 (3n) (d).

19 (END)

\*\*\* NOTE: I assumed because you said that the general permit should cover "voluntary" projects that you meant it should not apply to mitigation conducted as required under a wetland individual permit. Is that accurate?

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0  
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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1752/P1dn

EHS:...

*ej*

*date*

Rusty,

I took a crack at this one based on the information you gave me. Let me know if you have questions or if this does not quite get at your intent.

Elisabeth Shea  
Senior Legislative Attorney  
(608) 504-5885  
elisabeth.shea@legis.wisconsin.gov

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

LRB-1752/P1dn  
EHS:cjs

February 19, 2019

Rusty,

I took a crack at this one based on the information you gave me. Let me know if you have questions or if this does not quite get at your intent.

Elisabeth Shea  
Senior Legislative Attorney  
(608) 504-5885  
elisabeth.shea@legis.wisconsin.gov



## Wyatt, Zachary

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**From:** Schultz, Rusty  
**Sent:** Monday, April 01, 2019 3:55 PM  
**To:** Wyatt, Zachary  
**Subject:** changes to Ch. 30  
**Attachments:** 2019 restoration permit proposal.docx

Hi Zack,

Thanks again for coming over to sit down to discuss wetlands last week. As a follow-up to our conversation on the permitting of restorative projects, the WWA put together some clarifying thoughts on the changes to chapter 30.

Hopefully this is helpful. Enjoy your spring break!

**Rusty Schultz** Chief of Staff | Office of the Assembly Majority Leader  
Rep. Jim Steineke | (608) 266-2401 | [www.RepSteineke.com](http://www.RepSteineke.com)

**Amend Chapter 30.2065 to apply to certain federally sponsored wetland restoration projects.**

**Create a new section to apply to certain voluntary stream and wetland restoration projects.**

**(1) Issuance; validity.**

- ✓(a) The department shall issue a statewide general permit covering voluntary restoration and management activities in or near waters of the state that will result in net improvements in hydrologic connections, conditions, functions. A permit issued under this subsection is available to a person wishing to proceed with an activity and is in lieu of any permit or approval that would otherwise be required for that activity under this chapter or s. 31.02, 31.12, 31.33, 281.15, or 281.36. *[Note to drafter: We would like to include some sideboards about the types of activities that should be allowed but there are cons of including a prescriptive list so are wondering whether somehow defining/describing "net improvements in hydrologic connections, conditions, and functions" would achieve this goal?]*
- ✓(b) A general permit issued under this subsection is valid for a period of 5 years except that an activity that the department determines is authorized by a general permit remains authorized under the permit until the activity is completed.
- ✓(c) A general permit issued under this subsection is not valid for compensatory mitigation activities.
  - ✓(d) To ensure that the activities authorized by a general permit result in net improvements in hydrologic connections, conditions, and functions, and will not injure public rights or interests or result in material injury to the rights of any riparian owner, the department may impose conditions on the permit that are not inconsistent with the general conditions attached to the Nationwide Permits issued under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that were in effect on January 1, 2019. *[Note to drafter: This is a clumsy attempt to incorporate existing federal policy by reference while recognizing that the policy could change (thus tying to the general conditions that were in effect as of a certain date). There are many so it would be too lengthy to include directly. Please advise.]*

The permit conditions shall further clarify that:

- ✓1. Activities that re-establish or replicate historic hydrologic conditions in order to improve water management, increase infiltration, reduce downstream flood risks and damages, improve water quality, and improve or increase fish and wildlife habitat are presumed to be in the public's interests and shall not be considered to materially interfere with navigation.
 

*Note to drafter: The concept here is to make sure activities aren't deemed automatically ineligible just b/c a waterway or water feature has some navigability history or meets some navigability definition, but the intent is not to allow activities that would prevent navigation on traditional navigable water.*
- ✓2. Activities that alter the flow of water in, to, or from areas of special natural resource interest shall be authorized for projects that restore or repair historic surface and/or subsurface connections within the ASNRI and between the ASNRI and other waters of the state.
- ✓3. Use of simple water control and supply structures may be necessary to replicate natural hydrologic conditions or improve hydrologic function in highly altered landscapes.
- ✓4. Changes in wetland plant communities that occur when wetland hydrology is altered to restore or replicate historic conditions are likely to result in a net increase in hydrologic functions.
- ✓5. Activities that convert a stream or wetland to another aquatic habitat type (i.e., wetland to stream or vice versa) are not authorized, except when the change is needed to restore or replicate historic site hydrology.
- ✓6. Monitoring shall only be required when the data is needed to ensure that an innovative restoration practice results in a net improvement in hydrologic connections, conditions, and functions.

(e) To further streamline the review and approval of voluntary stream and wetland restoration activities, the department shall:

- ✓ 1. Limit the review of alternatives to changes in site design that would improve hydrologic connections, conditions, or functions or ensure compliance with floodplain management laws.
- ✓ 2. Waive fees, and establish a reporting-only notification process for activities funded by a state or federal agency.
- ✓ 3. Waive the wetland delineation requirement and only require wetland determinations when the information is needed to assess whether the project will result in a net increase in hydrologic conditions, connections, and functions.
- ✓ 4. Evaluate how the information needs for voluntary stream and wetland restoration projects are different than projects with the potential to cause adverse environmental impacts, and adjust submission requirements accordingly.
- ✓ 5. Waive wetland mitigation requirements for impacts incidental to more fully restoring wetland hydrology.

(f) Individual permit in lieu of general permit:

- 1. The department may decide to require a person who has applied under sub. (xx) for authorization to proceed under a general permit to apply for and be issued an individual permit if either of the following applies:
  - ✓ a. The department determines that the proposed activity will not result in net improvements to hydrologic connections, condition, and functions..
  - ✓ b. The department has conducted an investigation and visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, or material injury to the riparian rights of any riparian owner.
  - ✓ c. The review and approval cannot be completed under statutorily prescribed timeframes due to the complexity of the project or the need for consultation on compliance with floodplain management laws. In these cases, the department shall facilitate an expedited review that still conforms with the conditions under 2(d) and 2(e) of this section.
- ✓ 2. A decision by the department to require an individual permit under this subsection shall be in writing.

(g) Council. The department shall appoint a Hydrologic Restoration Practitioner’s Council under s. 15.04 (1) (c) to advise the department on the administration of this section. Invited members shall have at least 7 years of relevant experience and must include at least :

- ✓ 1. One representative from the U.S. Fish & Wildlife Service’s Partners for Wildlife program
- ✓ 2. One representative from the Natural Resources Conservation Service
- ✓ 3. At least three representatives from statewide organizations focused on wetlands, waterfowl, and trout conservation.
- ✓ 4. At least two private sector consultants with experience designing projects to implement watershed scale restoration projects.

The council shall also include at least one expert in Wisconsin Water Law.

The charge of the Council shall include but not be limited to:

- ✓ 1. Providing input on the terms and conditions of the general permit.
- ✓ 2. Making recommendations on and helping implement a dispute resolution process that solicits Council review and comment on complex restoration plans.
- ✓ 3. Assisting with the planning and implementation of hydrologic restoration trainings for department regulatory and resource management staff.

- 4. Advising on other opportunities to streamline review and approval of beneficial stream, wetland, and habitat restoration projects.

CONFIDENTIAL



INSERT

add

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

GA  
1/1/19

Gen Cat

1 AN ACT *to repeal* 30.2065 (1); *to renumber and amend* 30.2065 (2); and *to*  
2 *create* 30.2065 (1g) of the statutes; **relating to:** a general permit for wetland  
3 restoration projects.

**Analysis by the Legislative Reference Bureau**

INS A-1

This bill requires the Department of Natural Resources to issue a general permit that authorizes wetland restoration activities that will result in a net increase in aquatic resource functions and services. Under current law, DNR may issue a general permit to a person wishing to proceed with a wetland restoration activity sponsored by a federal agency.

Like the existing general permit for wetland restoration activity, a general permit issued under the bill is valid for a period of five years, except that an activity that DNR determines is authorized by a general permit remains authorized under the permit until the activity is completed. Also, like the existing general permit for wetland restoration activity, a general permit issued under the bill is in lieu of any permit or approval that would otherwise be required for that activity under state navigable water law, water quality law, or wetland law.

The bill also allows DNR to apply the same conditions to the new general permit as it may apply to the current law wetland restoration general permit: 1) construction and design requirements that are consistent with the purpose of the activity authorized under the permit; 2) location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on

the riparian property rights of adjacent riparian owners; and 3) restrictions to protect areas of special natural resource interest.

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

**SECTION 1.** 30.2065 (1) of the statutes is repealed.

**SECTION 2.** 30.2065 (1g) of the statutes is created to read:

**30.2065 (1g)** The department shall issue a general permit that authorizes wetland restoration activities that will result in a net increase in aquatic resource functions and services. A general permit under this subsection does not apply to wetland mitigation conducted as required under s. 281.36 (3n) (d).

\*\*\*\*NOTE: I assumed because you said that the general permit should cover "voluntary" projects that you meant it should not apply to mitigation conducted as required under a wetland individual permit. Is that accurate?

**SECTION 3.** 30.2065 (2) of the statutes is renumbered 30.2065, and 30.2065 (1) and (2) <sup>and (3) (intro.)</sup> as renumbered, are amended to read:

**30.2065 (1)** The department may issue a general permit to a person wishing to proceed with an a wetland restoration activity sponsored by a federal agency.

**(1r)** A permit issued under ~~this subsection~~ sub. (1) or (1g) is in lieu of any permit or approval that would otherwise be required for that activity under this chapter or s. 31.02, 31.12, 31.33, 281.15, or 281.36.

**(2)** A general permit issued under ~~this subsection~~ sub. (1) or (1g) is valid for a period of 5 years except that an activity that the department determines is authorized by a general permit remains authorized under the permit until the activity is completed.

(END)

RP; 30.2065 (2) (+title)

### INS A-1

This bill requires the Department of Natural Resources to issue a general permit that authorizes wetland restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. Under current law, DNR may issue a general permit to a person wishing to proceed with a wetland restoration activity sponsored by a federal agency.

The bill authorizes DNR to apply conditions to the new general permit that are consistent with conditions applied to federal permits that authorize dredging or filling navigable waters. The bill requires DNR to apply several conditions to the new general permit relating to improvement of hydrologic conditions. The bill authorizes DNR to require an individual seeking approval to conduct activities under the general permit to apply for an individual permit under certain circumstances.

### INS A-2

The bill creates at DNR a hydrologic restoration practitioner's council to provide input, make recommendations, and generally assist DNR with the implementation of the general permit and associated restoration projects.

### INS 2-1

*new*  
**SECTION 1.** 15.347 (23) of the statutes is created to read:

**15.347 (23) HYDROLOGIC RESTORATION PRACTITIONER'S COUNCIL.**

(a) There is created in the department of natural resources a hydrologic restoration practitioner's council consisting of the following members:

1. One member from the federal fish and wildlife service Partners for Wildlife program.

2. One member from the *federal* natural resources conservation service.

3. At least 3 members representing statewide organizations focused on wetlands, waterfowl, or trout conservation.

4. At least 2 members with private sector experience designing projects to implement watershed scale restoration projects.

5. At least one member with expertise in the water laws of the state.

(b) Members of the hydrologic restoration practitioner's council appointed under par. (a) shall have at least 7 years of experience relevant to the requirements of the council under par. (c). *each*

*duties*

(c) The hydrologic restoration practitioner's council shall do all of the following:

1. Provide input on the terms and conditions of the general permit issued under s. 30.2065 (1g).

2. Make recommendations to the department of natural resources regarding implementation of a dispute resolution process that solicits review and comment by the hydrologic restoration practitioner's council on complex restoration plans.

3. Assist the department of natural resources with the planning and implementation of hydrologic restoration trainings for regulatory and resource management staff of the department of natural resources.

4. Advise the department of natural resources on *other* opportunities to streamline review and approval of beneficial stream, wetland, and habitat restoration projects.

**INS 2-3**

30.2065 (1g) (a) The department shall issue a general permit that authorizes wetland restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. To ensure that the activities authorized by the general permit result in net improvements in hydrologic connections, conditions, and functions and will not injure public rights or interests or result in material injury to the rights of any riparian owner, the department may include conditions under the general permit that are consistent with the conditions of *2 Federal* nationwide permits issued under 33 USC 403 or 33 USC 1344 and shall include conditions under the general permit that do all of the following:



\*\*\*\*NOTE: Regarding your desire to limit the types of activities authorized by this permit, would it be feasible to capture those concepts broadly and include them as conditions? This draft already requires a number of conditions under the permit, so it would be a logical place for any further limitations.

1. Authorize activities to re<sup>e</sup>establish or replicate historic hydrologic conditions to improve water management, increase infiltration, reduce downstream flood risks and damages, improve water quality, and improve or increase fish and wildlife habitat if the activities do not materially interfere with navigation.

2. Authorize activities that alter the flow of water in, to, or from an area of special natural resource interest if the activities restore or repair historic surface or subsurface connections within the area of special natural resource interest or between the area of special natural resource interest and other waters of the state.

3. Authorize the use of simple water control and supply structures to replicate natural hydrologic conditions or improve hydrologic function in highly altered landscapes.

4. Authorize alterations to wetland hydrology that alter wetland plant communities if the alterations to wetland hydrology restore or replicate historic conditions and are likely to result in a net increase in hydrologic functions.

5. Prohibit activities that convert an aquatic habitat to a different type of aquatic habitat unless the conversion is necessary to restore or replicate historic hydrologic conditions.

6. Establish monitoring requirements to the extent necessary to ensure that activities result in a net improvement in hydrologic connections, conditions, and functions.

(b) In reviewing activities <sup>proposed to be</sup> conducted under a general permit issued under this subsection, the department shall:



1. Limit the department's review of alternatives to changes in site design that would improve hydrologic connections, conditions, or functions or ensure compliance with floodplain management requirements.

2. Waive any fees and establish a reporting-only notification process for activities funded by a state or federal agency.

3. Waive any requirement related to wetland delineation unless a delineation is necessary to assess whether activities result in a net increase in hydrologic conditions, connections, and functions.

4. Evaluate how the information needs for voluntary restoration projects differ from information needs for projects with potential adverse environmental impacts and adjust submission requirements accordingly.

5. Waive any requirement related to wetland mitigation for impacts incidental to more fully restoring wetland hydrology.

ISSUED  
under this  
subsection

(c) The department may notify, in writing, a person who has applied under s. 30.206 (3) for authorization to proceed under a general permit that the person is required to apply for an individual permit if any of the following apply:

1. The department determines that the proposed activity will not result in net improvements to hydrologic connections, condition, and functions.

2. The department conducts an investigation, including visiting the site of the proposed activities, and determines that conditions specific to the site require restrictions on the activities to prevent significant adverse impacts to the public rights and interest or material injury to the riparian rights of any riparian owner.

3. The department review and approval cannot be completed in the required timeframe due to the complexity of the project or the need for consultation on compliance with floodplain management requirements. If the department makes a

determination under this subdivision, the department shall conduct an expedited review, subject to pars. (a) and (b).

**INS 2-13**

except that a general permit issued under sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36 (3n) (d)

**INS 2-17**

(3) (intro.) To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit issued under sub. (1) is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may impose any of the following conditions on the permit:

XXXX It is unclear what this provision requires. If DMR determines it cannot meet the timeframe, how will it then expedite a review?

## Shea, Elisabeth

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**From:** Schultz, Rusty  
**Sent:** Tuesday, July 16, 2019 1:10 PM  
**To:** Shea, Elisabeth  
**Subject:** LRB 1752/2 - wetlands  
**Attachments:** LRB 1752\_P2 comments.docx

Hi Lis,

Hope you're doing well. Attached please find some feedback provided by the Wetlands Associated on the latest version of the wetlands permitting bill.

I think they are hoping to have a group meeting to discuss an amended draft in the not-so-distant future. Not sure if it is most helpful for you to meet prior to amending or after – maybe it will depend on how helpful this document is.

Either way, let me know. Thanks!

**Rusty Schultz** Chief of Staff | Office of the Assembly Majority Leader  
Rep. Jim Steineke | (608) 266-2401 | [www.RepSteineke.com](http://www.RepSteineke.com)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT to repeal 30.2065 (1) and 30.2065 (2) (title); to renumber and amend 30.2065 (2); and to create 15.347 (23) and 30.2065 (1g) of the statutes; relating to: a general permit for ~~wetland~~hydrologic restoration projects.

Analysis by the Legislative Reference Bureau

**Note to drafters: In case it's helpful we noted some areas we made some editing suggestions to the legislative analysis that would reflect some of the major suggested revisions for P3.**

This bill requires the Department of Natural Resources to issue a general permit that authorizes wetland, stream, and floodplain-restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions.

Under current law, DNR may issue a general permit to a person wishing to proceed with a wetland restoration activity sponsored by a federal agency.

~~The bill authorizes DNR to apply conditions to the new general permit that are consistent with conditions applied to federal permits that authorize dredging or filling navigable waters.~~ The bill requires DNR to apply several conditions to the new general permit relating to improvement of hydrologic conditions. The bill authorizes DNR to require an individual seeking approval to conduct activities under the general permit to apply for an individual permit under certain circumstances.

Like the existing general permit for wetland restoration activity, a general permit issued under the bill is valid for a period of five years, except that an activity that DNR determines is authorized by a general permit remains authorized under the permit until the activity is completed. Also, like the existing general permit for wetland restoration activity, a general permit issued under the bill is in lieu of any permit or approval that would otherwise be required for that activity under state

navigable water law, water quality law, or wetland law.

2019 - 2020 Legislature - 2 - LRB-1752/P2

The bill creates at DNR a hydrologic restoration practitioner's council to provide input, make recommendations, and generally assist DNR with the implementation of the new general permit and associated restoration projects. The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.347 (23) of the statutes is created to read:

15.347 (23) HYDROLOGIC RESTORATION PRACTITIONER'S COUNCIL.

(a) There is created in the department of natural resources a hydrologic restoration and management practitioner's council consisting of at least the following members:

1. One member from the federal fish and wildlife service's Partners for Wildlife program.
2. One member from the federal natural resources conservation service.
3. At least 3 members representing statewide organizations focused on wetlands, waterfowl, or trout conservation.
4. At least 2 members with private sector experience designing projects to implement watershed scale restoration projects.
5. At least one member with expertise in the water laws of the state.
6. One member from a Wisconsin tribal natural resources department
7. One representative of the WI County Code Administrators
8. One hydrologic engineer who is also a nationally certified Floodplain Manager

(b) Members of the hydrologic restoration practitioner's council appointed under par. (a)(1,2,4 & 8)-shall each have at least 7 years of experience relevant to the duties of the council under par. (c). Members appointed under para. (a) (5,8) shall be external (i.e., not WDNR employees).

(c) The hydrologic restoration practitioner's council shall do all of the following:

1. Provide input on the terms and conditions of the general permit issued under s. 30.2065 (1g)

2019 - 2020 Legislature - 3 - LRB-1752/P2 SECTION 1

2. ~~Help~~ ~~Make recommendations to the department of natural resources~~ establish and implement ~~regarding implementation of a dispute resolution process that solicits review and comment by the hydrologic restoration practitioner's council on complex restoration plans.~~

3. Assist the department of natural resources with the identification and examination of programmatic restoration permitting concerns and with the planning and implementation of trainings on hydrologic restoration and relevant policiestrainings for regulatory and resource management staff of the department of natural resources, local governments, and restoration partners.

4. Advise the department of natural resources on other opportunities to streamline the review and approval of beneficial stream, wetland, and habitat restoration projects.

5. Collaborate with federal agencies and local governments to clarify floodplain restoration policies and to identify and implement ways to streamline the design and approval of floodplain restoration projects.

SECTION 2. 30.2065 (1) of the statutes is repealed.

SECTION 3. 30.2065 (1g) of the statutes is created to read:

30.2065 (1g) (a) The department shall issue a general permit that authorizes ~~wetland~~ restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. These projects shall be designed to the extent possible to reestablish or emulate pre-settlement wetland, stream, and floodplain hydrology in order to: slow the flow of runoff, reduce flood peaks, restore surface and groundwater interactions, improve water quality, and increase soil retention, groundwater infiltration, base flow, upper watershed storage and flood resilience.

To ensure that the activities authorized by the general permit result in net improvements in hydrologic connections, conditions, and functions ~~and will not injure public rights or~~

interests or result in material injury to the rights of any riparian owner, the department may include conditions under the general permit that are consistent with the conditions of federal permits issued under 33 USC 403 or 33 USC 1344 and shall include conditions under the general permit that do all of the following:

*\*\*\*DRAFTER NOTE: Regarding your desire to limit the types of activities authorized by this permit, would it be feasible to capture those concepts broadly and include them as conditions? **RESPONSE:** Yes, see suggestions above and below.*

1. ~~Authorize activities to reestablish or replicate historic hydrologic conditions to improve water management, increase infiltration, reduce downstream flood risks and damages, improve water quality, and improve or increase fish and wildlife habitat if the activities do not materially interfere with navigation.~~

Authorize work in and adjacent to current and historic wetlands, streams, floodplains, and drainageways for the purpose(s) of reconnecting streams and floodplains, reestablishing healthy channel form and condition, removing or reducing wetland drainage, restoring or improving natural flow and movement of water and/or sediment, and reestablishing vegetation to support site stability and help manage flow and infiltration.

2019 - 2020 Legislature - 4 - LRB-1752/P2

ZDW&EHS:cjs SECTION 3

2. Authorize activities that alter the flow of water in, to, or from an area of special natural resource interest if the activities restore or repair historic surface or subsurface connections within the area of special natural resource interest or between the area of special natural resource interest and other waters of the state.

3. Authorize the use of simple water control and supply structures when needed to replicate natural hydrologic conditions or improve hydrologic function in highly altered landscapes.

4. Authorize alterations to wetland hydrology that alter wetland plant communities if the alterations to wetland hydrology restore or replicate historic conditions and are likely to result in a net increase in hydrologic functions.



5. Prohibit activities that convert an aquatic habitat to a different type of aquatic habitat unless the conversion is necessary to restore or replicate historic hydrologic conditions.

~~6. Establish monitoring requirements to the extent necessary to ensure that activities result in a net improvement in hydrologic connections, conditions, and functions.~~

6. Authorize the relocation of wetlands and streams on the project site provided there are net increases in hydrologic resource functions and services.

7. Authorize fish and wildlife habitat enhancement actions as secondary benefits to designs that achieve outcomes consistent with those described in 30.2065 (1g) (a)(1)

8. Clarify that the following practices are not eligible for coverage under this permit:

- construction of artificial wetlands

- construction of stormwater retention or detention ponds

- practices to straighten, berm, dredge, and/or armor stream channels except when proposed as a necessary element of a larger hydrologic restoration plan.

(b) The department may include other conditions only to the extent needed to ensure the activities will not injure public rights or interests or result in material injury to the rights of any riparian owner.

(c) In reviewing activities proposed to be conducted under a general permit issued under this subsection, the department shall:

~~1. Limit the department's review of alternatives to changes in site design that would improve hydrologic connections, conditions, or functions or ensure compliance with floodplain management requirements.~~

2-1. Waive any fees and establish a reporting-only notification process for activities funded in whole or in part by a state or federal agency.

~~32. Waive any requirement related to wetland delineation concurrence of wetland boundaries.~~

*that DNR confirms*

*as delineated  
by a 3rd  
person*

~~34. Evaluate-Identify~~ how the information needs for voluntary wetland and waterway restoration projects differ from information needs for projects with potential adverse environmental impacts and adjust submission requirements accordingly.

~~54. Waive any requirement related to wetland mitigation for impacts incidental to more fully restoring wetland hydrology.~~

~~(de) The department may notify, in writing, a person who has applied under s. 30.206 (3) for authorization to proceed under a general permit issued under this subsection that the person is required to apply for an individual permit if any of the following apply:~~

~~1. The department determines that the applicant did not adequately demonstrate that the proposed activity will result in net improvements to hydrologic connections, condition, and functions. The notice must document the findings of fact to support this determination.~~

~~2. The department conducts an investigation, including visiting the site of the proposed activities, and determines that conditions specific to the site require restrictions on the activities to prevent significant adverse impacts to the public rights and interest or material injury to the riparian rights of any riparian owner.~~

~~3. The department review and approval cannot be completed in the required timeframe due to the complexity of the project or the need for consultation on compliance with floodplain management requirements. If the department makes a determination under this subdivision, the department shall conduct an expedited review, subject to pars. (a) and (b).~~

\*\*\*\*NOTE: It is unclear what this provision requires. If DNR determines it cannot meet the timeframe, how will it then expedite a review? RESPONSE: Rendered moot through deletion.

SECTION 4. 30.2065 (2) (title) of the statutes is repealed.

SECTION 5. 30.2065 (2) of the statutes is renumbered 30.2065, and 30.2065 (1), (2) and (3) (intro.), as renumbered, are amended to read:

30.2065 (1) The department may issue a general permit to a person wishing to proceed with ~~an~~a wetland restoration activity sponsored by a federal agency.

(1r) A permit issued under this subsection sub. (1) or (1g) is in lieu of any permit or approval that would otherwise be required for that activity under this chapter or s. 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36 (3n) (d).

(2) A general permit issued under this subsection sub. (1) or (1g) is valid for a period of 5 years except that an activity that the department determines is authorized by a general permit remains authorized under the permit until the activity is completed.

(3) (intro.) To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit issued under sub. (1) is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may impose any of the following conditions on the permit:

(END)

**OTHER NOTES:**

- The conditions recommended for this new hydrologic restoration GP (subsection 1g) may be redundant to and in part at odds with those that follow SECTION 5. 30.2065 (3) of current statute as referenced immediately above. If possible we'd like to reconcile so that the conditions proposed for the restoration GP control for projects eligible for

coverage; however, we do not wish to change applicability of current statutory conditions for activities eligible for coverage under other GPs.

- We would like to add a provision somewhere saying that for projects covered by the hydrologic restoration GP, the applicant has the option to request a pre-application meeting with the state and local zoning department and that those agencies must comply within 15 days.
- You will see some inconsistency in terminology in these comments where sometimes we reference “hydrologic” restoration, others “wetland, stream and floodplain” restoration, and still elsewhere “wetland and waterway” restoration. This was intentional as different terminology was appropriate in different contexts, but please let us know if it causes problems.
- The comments and recommendations embedded in this document focus on the substantive goals of the proposed policy. We did not run a thorough check to make sure all the statutory citations remain accurate (assumed drafters would do that review).



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1752/P2  
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stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

In 7/24  
Due 7/26

D-NOTE

or cat

stat comp

- 1 **AN ACT to repeal** 30.2065 (1) and 30.2065 (2) (title); **to renumber and amend**
- 2 30.2065 (2); and **to create** 15.347 (23) and 30.2065 (1g) of the statutes; **relating**
- 3 **to:** a general permit for wetland restoration projects,

hydrologic restoration and management practitioners council

**Analysis by the Legislative Reference Bureau**

This bill requires the Department of Natural Resources to issue a general permit that authorizes wetland restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. Under current law, DNR may issue a general permit to a person wishing to proceed with a wetland restoration activity sponsored by a federal agency.

The bill authorizes DNR to apply conditions to the new general permit that are consistent with conditions applied to federal permits that authorize dredging or filling navigable waters. The bill requires DNR to apply several conditions to the new general permit relating to improvement of hydrologic conditions. The bill authorizes DNR to require an individual seeking approval to conduct activities under the general permit to apply for an individual permit under certain circumstances.

Like the existing general permit for wetland restoration activity, a general permit issued under the bill is valid for a period of five years, except that an activity that DNR determines is authorized by a general permit remains authorized under the permit until the activity is completed. Also, like the existing general permit for wetland restoration activity, a general permit issued under the bill is in lieu of any permit or approval that would otherwise be required for that activity under state navigable water law, water quality law, or wetland law.

*and management*

The bill creates at DNR a hydrologic restoration practitioner's council to provide input, make recommendations, and generally assist DNR with the implementation of the new general permit and associated restoration projects.

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

1 SECTION 1. 15.347 (23) of the statutes is created to read:

2 15.347 (23) HYDROLOGIC RESTORATION <sup>AND MANAGEMENT</sup> PRACTITIONER'S COUNCIL.

3 (a) There is created in the department of natural resources a hydrologic  
4 restoration <sup>and management</sup> practitioner's council consisting of <sup>no fewer than</sup> the following members:

5 1. One member from the federal fish and wildlife service Partners for Wildlife  
6 program.

7 2. One member from the federal natural resources conservation service.

8 3. At least 3 members representing statewide organizations focused on  
9 wetlands, waterfowl, or trout conservation.

10 4. At least 2 members with private sector experience designing projects to  
11 implement watershed scale restoration projects.

12 5. At least one member with expertise in the water laws of the state.

13 (b) Members of the hydrologic restoration <sup>and management</sup> practitioner's council appointed  
14 under par. (a) <sup>1, 2, 4, and 8.</sup> shall each have at least 7 years of experience relevant to the duties of  
15 the council under par. (c). <sup>INS 2-15.</sup>

16 (c) The hydrologic restoration <sup>and management</sup> practitioner's council shall do all of the following:

17 1. Provide input on the terms and conditions of the general permit issued under  
18 s. 30.2065 (1g).

INS 2-5

INS 2-13

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- ① *establishing and* 2. *Assist* Make recommendations to the department of natural resources regarding *in*
- ② *ing* implementation of a dispute resolution process that solicits review and comment by
- ③ the hydrologic restoration practitioner's council on complex restoration plans.
- 4 3. Assist the department of natural resources with the planning and
- ⑤ implementation of *trainings on* hydrologic restoration (trainings) *and relevant policies* for regulatory and resource
- ⑥ management staff of the department of natural resources. *local governments, and restoration partners*
- ⑦ 4. Advise the department of natural resources on *other* opportunities to streamline
- 8 *the* review and approval of beneficial stream, wetland, and habitat restoration projects.

INS. 3-9

SECTION 2. 30.2065 (1) of the statutes is repealed.

SECTION 3. 30.2065 (1g) of the statutes is created to read:

30.2065 (1g) (a) The department shall issue a general permit that authorizes

⑫ *stream and floodplain* wetland restoration and management activities that will result in a net

13 improvement in hydrologic connections, conditions, and functions. *INS. 3-13* To ensure that

14 the activities authorized by the general permit result in net improvements in

15 hydrologic connections, conditions, and functions and will not injure public rights or

16 interests or result in material injury to the rights of any riparian owner, the

17 department may include conditions under the general permit that are consistent

18 with the conditions of federal permits issued under 33 USC 403 or 33 USC 1344 and

19 shall include conditions under the general permit that do all of the following:

\*\*\*NOTE: Regarding your desire to limit the types of activities authorized by this permit, would it be feasible to capture those concepts broadly and include them as conditions? This draft already requires a number of conditions under the permit, so it would be a logical place for any further limitations.

INS. 3-20

20 1. Authorize activities to reestablish or replicate historic hydrologic conditions

21 to improve water management, increase infiltration, reduce downstream flood risks

22 and damages, improve water quality, and improve or increase fish and wildlife

23 habitat if the activities do not materially interfere with navigation.

SECTION 3

1 2. Authorize activities that alter the flow of water in, to, or from an area of  
2 special natural resource interest if the activities restore or repair historic surface or  
3 subsurface connections within the area of special natural resource interest or  
4 between the area of special natural resource interest and other waters of the state.

5 3. Authorize the use of simple water control and supply structures <sup>when needed</sup> to replicate  
6 natural hydrologic conditions or improve hydrologic function in highly altered  
7 landscapes.

8 4. Authorize alterations to wetland hydrology that alter wetland plant  
9 communities if the alterations to wetland hydrology restore or replicate historic  
10 conditions and are likely to result in a net increase in hydrologic functions.

11 5. Prohibit activities that convert an aquatic habitat to a different type of  
12 aquatic habitat unless the conversion is necessary to restore or replicate historic  
13 hydrologic conditions.

14 6. Establish monitoring requirements to the extent necessary to ensure that  
15 activities result in a net improvement in hydrologic connections, conditions, and  
16 functions.

17 (b) In reviewing activities proposed to be conducted under a general permit  
18 issued under this subsection, the department shall:

19 1. Limit the department's review of alternatives to changes in site design that  
20 would improve hydrologic connections, conditions, or functions or ensure compliance  
21 with floodplain management requirements.

22 2. Waive any fees and establish a reporting-only notification process for  
23 activities funded <sup>in whole or in part</sup> by a state or federal agency.

INS  
4-17



**SECTION 3**

*the department concurring with boundaries delineated by a 3rd person*

INS 5-4  
2  
3  
4

1 2. ~~3.~~ Waive any requirement related to wetland/delineation unless a delineation is necessary to assess whether activities result in a net increase in hydrologic conditions, connections, and functions.

3 4. Evaluate <sup>Identify</sup> how the information needs for voluntary restoration projects differ from information needs for projects with potential adverse environmental impacts and adjust submission requirements accordingly.

4 5. Waive any requirement related to wetland mitigation for impacts incidental to more fully restoring wetland hydrology.

(c) The department may notify, in writing, a person who has applied under s. 30.206 (3) for authorization to proceed under a general permit issued under this subsection that the person is required to apply for an individual permit if any of the following apply: *NOPI*

1. The department determines that the proposed activity will not result in net improvements to hydrologic connections, condition, and functions.

2. The department conducts an investigation, including visiting the site of the proposed activities, and determines that conditions specific to the site require restrictions on the activities to prevent significant adverse impacts to the public rights and interest or material injury to the riparian rights of any riparian owner.

3. The department review and approval cannot be completed in the required timeframe due to the complexity of the project or the need for consultation on compliance with floodplain management requirements. If the department makes a determination under this subdivision, the department shall conduct an expedited review, subject to pars. (a) and (b).

INS 5-23

\*\*\*\*NOTE: It is unclear what this provision requires. If DNR determines it cannot meet the timeframe, how will it then expedite a review?



2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

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INSERT 2-5

ase

\*\*\*NOTE: I am assuming that in your request when you added "at least the following members," you intended to allow for members who not listed below. Is that correct? If so, do you want to set a maximum number of members? Do you want to specify that the nonlisted members must have expertise related to the duties of the council?

1           **INSERT 2-13**

X 2           6. One member from a tribal natural resources department in this state. ✓

X 3           7. One representative of the Wisconsin County Code Administrators. ✓

X 4           8. One hydrologic engineer who is also a nationally certified floodplain  
5 manager. ✓

6           **INSERT 2-15**

7           Members of the hydrologic restoration and management practitioner's council  
8 appointed under par. (a) 5. and 8. may not be department of natural resources  
9 employees ○ ✓

10          **INSERT 3-9**

X 11          5. Collaborate with federal agencies and local governments to clarify floodplain  
12 restoration policies and to identify and implement ways to streamline the design and  
13 approval of floodplain restoration projects.

14          **INSERT 3-13**

15          These activities shall be designed to the extend possible to reestablish or  
16 emulate pre<sup>fe</sup>settlement wetland, stream, and floodplain hydrology in order to slow  
17 the flow of runoff, reduce flood peak<sup>fe</sup>s, restore surface and groundwater interactions,  
18 improve water quality, and increase soil retention, groundwater infiltration, base  
19 flow, upper watershed storage, and flood resilience.

20          **INSERT 3-20**

\*\*\*NOTE: In the comments on s. 30.2065 (1g) (a), in the first sentence the word "wetland" was removed but not replaced with any term, leaving "a general permit that authorizes restoration and management activities..." However, in the comments on the

analysis describing the general permit, instead of removing “wetland” the comments changed it to “wetland, stream, and floodplain.” I chose to err on the side of being more specific about what type of restoration and management activities the general permit authorizes, so I included “wetland, stream, and floodplain.”

1           1. Authorize activities in and adjacent to current and historic wetlands,  
2 streams, floodplains, and drainageways for the purposes of reconnecting streams  
3 and floodplains, reestablishing healthy channel form and condition, removing or  
4 reducing wetland drainage, restoring or improving natural flow and movement of  
5 water or sediment, and reestablishing vegetation to support site stability and help  
6 manage flow and infiltration.

7           **INSERT 4-17**

8           6. Authorize the relocation of wetlands and streams on the project site provided  
9 there are net increases in hydrologic resource functions and services.

10          7. Authorize activities that enhance fish and wildlife habitat as a secondary  
11 benefit of designs that achieve outcomes consistent with those under subd. 1.

12          8. Specify that the general permit does not authorize any of the following  
13 activities:

14           a. Construction of artificial wetlands.

15           b. Construction of stormwater retention or detention ponds.

16           c. Activities that straighten, berm, dredge, or armor stream channels, except  
17 when proposed as a necessary element of a larger hydrologic restoration plan.

18          9. Other conditions only to the extent needed to ensure the activities will not  
19 injure public rights or interests or result in material injury to the rights of any  
20 riparian owner.

21           **INSERT 5-4**

\*\*\*\*NOTE: Is this what you meant by “concurrence of wetland boundaries”? I tried to make it a bit more specific, in reference to the wetland identification process under s. 23.321 (2). Is the intent to allow wetland consultants who are not on the list of DNR

assured wetland delineators to delineate wetlands involved in a project under this general permit?

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**INSERT 5-23**

(d) A person wishing to proceed with an activity that may be authorized by a general permit under this subsection may request a pre-application meeting with the department and the local zoning authority prior to submitting an application under s. 30.206 (3) (a). No later than 15 days after receiving a pre-application meeting request, the department or the local zoning authority shall meet with the person.

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

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— date —

— 1752/P3dn

The note on page 7 of the comments refers to the conditions under the new hydrologic restoration GP and the existing GP for wetland restoration under current law, and whether they might be redundant or at odds. I am not sure I understand the request that the hydrologic restoration GP “control for projects eligible for coverage.” Could you clarify this?

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

LRB-1752/P3dn  
EHS:cjs

July 25, 2019

The note on page 7 of the comments refers to the conditions under the new hydrologic restoration GP and the existing GP for wetland restoration under current law, and whether they might be redundant or at odds. I am not sure I understand the request that the hydrologic restoration GP “control for projects eligible for coverage.” Could you clarify this?

## Shea, Elisabeth

---

**From:** Schultz, Rusty  
**Sent:** Thursday, August 29, 2019 4:16 PM  
**To:** Shea, Elisabeth  
**Subject:** LRB-1752/3  
**Attachments:** WWA comments on P3.docx

Hi Lis,

Received some feedback per a few of the questions you outlined in the /P3.

**Rusty Schultz** Chief of Staff | Office of the Assembly Majority Leader  
Rep. Jim Steineke | (608) 266-2401 | [www.RepSteineke.com](http://www.RepSteineke.com)



LRB-1752/P3

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2019 - 2020 LEGISLATURE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

AN ACT to repeal 30.2065 (1) and 30.2065 (2) (title); to renumber and amend 30.2065 (2); and to create 15.347 (23) and 30.2065 (1g) of the statutes; relating to: a general permit for hydrologic restoration projects and creating a hydrologic restoration and management practitioner's council.

Analysis by the Legislative Reference Bureau

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This bill requires the Department of Natural Resources to issue a general permit that authorizes wetland, stream, and floodplain restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. Under current law, DNR may issue a general permit to a person wishing to proceed with a wetland restoration activity sponsored by a federal agency.

The bill requires DNR to apply several conditions to the new general permit relating to improvement of hydrologic conditions. The bill authorizes DNR to require an individual seeking approval to conduct activities under the general permit to apply for an individual permit under certain circumstances.

Like the existing general permit for wetland restoration activity, a general permit issued under the bill is valid for a period of five years, except that an activity that DNR determines is authorized by a general permit remains authorized under the permit until the activity is completed. Also, like the existing general permit for wetland restoration activity, a general permit issued under the bill is in lieu of any permit or approval that would otherwise be required for that activity under state navigable water law, water quality law, or wetland law.

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The bill creates at DNR a hydrologic restoration and management practitioner's council to provide input, make recommendations, and generally assist DNR with the implementation of the new general permit and associated restoration projects.

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

SECTION 1. 15.347 (23) of the statutes is created to read:

15.347 (23) HYDROLOGIC RESTORATION AND MANAGEMENT PRACTITIONER'S COUNCIL.

(a) There is created in the department of natural resources a hydrologic restoration and management practitioner's council consisting of no fewer than the following members:

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\*\*\*\*NOTE: I am assuming that in your request when you added "at least the following members," you intended to allow for members who are not listed below. Is that correct? Yes. If so, do you want to set a maximum number of members? We recommend authorizing up to two additional members identified and approved by the appointed council members/ Do you want to specify that the nonlisted members must have expertise related to the duties of the council? Yes.

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added new (b) ✓

1. One member from the federal fish and wildlife service Partners for Wildlife program.
2. One member from the federal natural resources conservation service.
3. At least 3 members representing statewide organizations focused on wetlands, waterfowl, or trout conservation.
4. At least 2 members with private sector experience designing projects to implement watershed scale restoration projects.
5. At least one member with expertise in the water laws of the state.
6. One member from a tribal natural resources department in this state.
7. One representative of the Wisconsin County Code Administrators.
8. One representative of the Wisconsin Association for Floodplain, Stormwater, and Coastal Management who is a hydrologic engineer who is also a and a nationally certified floodplain manager. ✓

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SECTION 1

(b) Members of the hydrologic restoration and management practitioner's council appointed under par. (a) 1., 2., 4., and 8. shall each have at least 7 years of experience relevant to the duties of the council under par. (c). Members of the hydrologic restoration and management practitioner's council appointed under par.

(a) ~~5- and 8.~~ may not be department of natural resources employees. Consultation question for WDNR is whether they need a formal seat or to be directed to staff the council?

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(c) The hydrologic restoration and management practitioner's council shall do all of the following:

1. Provide input on the terms and conditions of the general permit issued under s. 30.2065 (1g).
2. Assist the department of natural resources in establishing and implementing a dispute resolution process that solicits review and comment by the council on complex restoration plans.
3. Assist the department of natural resources with the planning and implementation of trainings on hydrologic restoration and relevant policies for regulatory and resource management staff of the department of natural resources, local governments, and restoration partners.
4. Advise the department of natural resources on other opportunities to streamline the review and approval of beneficial stream, wetland, and habitat

restoration projects.

5. Collaborate with federal agencies and local governments to clarify floodplain restoration policies and to identify and implement ways to streamline the design and approval of floodplain restoration projects.

SECTION 2. 30.2065 (1) of the statutes is repealed.

SECTION 3. 30.2065 (1g) of the statutes is created to read:

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SECTION 3

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30.2065 (1g) (a) The department shall issue a general permit that authorizes wetland, stream, and floodplain restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. These activities shall be designed to the extent possible to reestablish or emulate presettlement wetland, stream, and floodplain hydrology in order to slow the flow of runoff, reduce flood peaks, restore surface and groundwater interactions, improve water quality, and increase soil retention, groundwater infiltration, base flow, upper watershed storage, and flood resilience. To ensure that the activities authorized by the general permit result in net improvements in hydrologic connections, conditions, and functions, the department shall include conditions under the general permit that do all of the following:

\*\*\*NOTE: In the comments on s. 30.2065 (1g) (a), in the first sentence the word "wetland" was removed but not replaced with any term, leaving "a general permit that authorizes restoration and management activities...." However, in the comments on the analysis describing the general permit, instead of removing "wetland" the comments changed it to "wetland, stream, and floodplain." I chose to err on the side of being more specific about what type of restoration and management activities the general permit authorizes, so I included "wetland, stream, and floodplain." This makes good sense.

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1. Authorize activities in and adjacent to current and historic wetlands, streams, floodplains, and drainageways for the purposes of reconnecting streams and floodplains, reestablishing healthy channel form and condition, removing or reducing wetland drainage, restoring or improving natural flow and movement of water or sediment, and reestablishing vegetation to support site stability and help manage flow and infiltration.
2. Authorize activities that alter the flow of water in, to, or from an area of special natural resource interest if the activities restore or repair historic surface or subsurface connections within the area of special natural resource interest or between the area of special natural resource interest and other waters of the state.

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SECTION 3

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3. Authorize the use of simple water control and supply structures when needed to replicate natural hydrologic conditions or improve hydrologic function in highly altered landscapes.

4. Authorize alterations to wetland hydrology that alter wetland plant communities if the alterations to wetland hydrology restore or replicate historic conditions and are likely to result in a net increase in hydrologic functions.
5. Prohibit activities that convert an aquatic habitat to a different type of aquatic habitat unless the conversion is necessary to restore or replicate historic hydrologic conditions.
6. Authorize the relocation of wetlands and streams on the project site provided there are net increases in hydrologic resource functions and services.
7. Authorize activities that enhance fish and wildlife habitat as a secondary benefit of designs that achieve outcomes consistent with those under subd. 1.
8. Specify that the general permit does not authorize any of the following activities:
  - a. Construction of artificial wetlands.
  - b. Construction of stormwater retention or detention ponds.
  - c. Activities that straighten, berm, dredge, or armor stream channels, except when proposed as a necessary element of a larger hydrologic restoration plan.
9. Other conditions only to the extent needed to ensure the activities will not injure public rights or interests or result in material injury to the rights of any riparian owner. To be consistent with items 1-8 you'd need to start this item with a verb (i.e., "Impose other conditions" except that with this item our recommendation is that the dept "may" impose conditions for this reason rather than shall. ✓ new (am)
- (b) In reviewing activities proposed to be conducted under a general permit issued under this subsection, the department shall:

2019 - 2020 Legislature - 6 - LRB-1752/P3

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SECTION 3

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1. Waive any fees and establish a reporting-only notification process for activities funded in whole or in part by a state or federal agency.
2. Waive any requirement related to the department concurring with wetland boundaries delineated by a 3rd person.

\*\*\*\*NOTE: Is this what you meant by "concurrence of wetland boundaries"? -I tried to make it a bit more specific, in reference to the wetland identification process under s.

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23.321 (2). Is the intent to allow wetland consultants who are not on the list of DNR assured wetland delineators to delineate wetlands involved in a project under this general permit? No. The intent is to clarify that delineation of wetland boundaries isn't necessary for restoration projects. The reason for this is that precise boundary determinations are needed when calculating mitigation ratios for projects that impact wetlands, but the activities under this permit will not require mitigation. The applicant will still need to document the type, estimated amount, and condition of wetlands in the project area to ensure eligibility. I recommend consulting with WDNR for input on how to waive delineation requirements while still ensuring they have what they need from applicants. ✓

3. Identify how the information needs for voluntary restoration projects (suggest making this specific to *this GP*) differ from information needs for projects with potential adverse environmental impacts and adjust submission requirements accordingly.
4. Waive any requirement related to wetland mitigation for impacts incidental

to more fully restoring wetland hydrology.

(c) The department may notify, in writing, a person who has applied under s. 30.206 (3) for authorization to proceed under a general permit issued under this subsection that the person is required to apply for an individual permit if the department determines that the proposed activity will not result in net improvements to hydrologic connections, condition, and functions. (Question for drafter: we had recommended that the dept be required to document their reasons in this written notification. Is that implied?)

(d) A person wishing to proceed with an activity that may be authorized by a general permit under this subsection may request a preapplication meeting with the department and the local zoning authority prior to submitting an application under s. 30.206 (3) (a). No later than 15 days after receiving a preapplication meeting request, the department or the local zoning authority shall meet with the person.

SECTION 4. 30.2065 (2) (title) of the statutes is repealed.

SECTION 5. 30.2065 (2) of the statutes is renumbered 30.2065, and 30.2065 (1), (2) and (3) (intro.), as renumbered, are amended to read:

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SECTION 5

30.2065 (1) The department may issue a general permit to a person wishing to proceed with an a wetland restoration activity sponsored by a federal agency.

(1r) A permit issued under this subsection sub. (1) or (1g) is in lieu of any permit or approval that would otherwise be required for that activity under this chapter or s. 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36 (3n) (d).

(2) A general permit issued under this subsection sub. (1) or (1g) is valid for a period of 5 years except that an activity that the department determines is authorized by a general permit remains authorized under the permit until the activity is completed.

(3) (intro.) To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit issued under sub. (1) is insignificant and that the issuance of the general permit will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner, the department may impose any of the following conditions on the permit: Question for drafter...want to make sure this para only applies to (1) and not to (1g).

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(END)

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Response to LRB-1752/P3dn

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Both 30.206(1)(ag) and 30.206(5)(2)(c) of current statute contain language that says to “ensure the cumulative adverse impact of the activities authorized by a GP is insignificant...the Department “may” attach conditions to GPs for 3 (the same 3) reasons:

1. impose construction/design conditions consistent with the purpose of the authorized activity
2. impose location requirements to prevent interference with navigation/or impacts to riparian property owners
3. protects ASNRIs.

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In our drafting suggestions, we intended for the conditions and paraphrased language above to continue to apply for activities they apply to now, but to *not* apply to the new hydrologic restoration permit.

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Instead, for the hydrologic restoration permit we recommended an alternative set of conditions that the department “shall” follow in their review of these projects. Therein, we recommended narrowing the circumstances under which the Department could impose additional conditions (e.g., *only to the extent needed to prevent interference with navigation or impacts to riparian property owner*).

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In our comments on P2 we were trying to make sure this distinction was clear and that the language was crafted in a way that would be upheld and not ambiguous (i.e., left to the department to interpret whether the more or less restrictive conditions applied).

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What we’re trying to get at in the code for the new hydrologic restoration GPs is a presumption that the projects improve hydrologic condition and function and thus are not subject to the same type of review/conditions to avoid and minimize adverse impacts. If those types of conditions were needed, the proposed project should be deemed ineligible for the GP.

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