

*lpl*  
*Stays*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*In 9/9*

*Due 9/11*

*stat comp #*  
*SA #*

*Gen. Ct.*

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 hydrologic restoration projects and creating a  
4 hydrologic restoration and management practitioner’s council.

***Analysis by the Legislative Reference Bureau***

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.

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:***

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

2           **15.347 (23) HYDROLOGIC RESTORATION AND MANAGEMENT PRACTITIONER'S COUNCIL.**

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

\*\*\*\*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? 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?

- 6           1. One member from the federal fish and wildlife service Partners for Wildlife  
7 program.
- 8           2. One member from the federal natural resources conservation service.
- 9           3. At least 3 members representing statewide organizations focused on  
10 wetlands, waterfowl, or trout conservation.
- 11           4. At least 2 members with private sector experience designing projects to  
12 implement watershed scale restoration projects.
- 13           5. At least one member with expertise in the water laws of the state.
- 14           6. One member from a tribal natural resources department in this state.
- 15           7. One representative of the Wisconsin County Code Administrators.
- 16           8. One hydrologic engineer <sup>and</sup> who is also a nationally certified floodplain  
17 manager.

INS. 2-16

INS. 2-17

1 (b) Members of the hydrologic restoration and management practitioner's  
2 council appointed under par. (a) 1., 2., 4., and 8. <sup>and par (b)</sup> shall each have at least 7 years of  
3 experience relevant to the duties of the council under par. (c). Members of the  
4 hydrologic restoration and management practitioner's council appointed under par.  
5 (a) 5. and 8. may not be department of natural resources employees.

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

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

10 2. Assist the department of natural resources in establishing and  
11 implementing a dispute resolution process that solicits review and comment by the  
12 council on complex restoration plans.

13 3. Assist the department of natural resources with the planning and  
14 implementation of trainings on hydrologic restoration and relevant policies for  
15 regulatory and resource management staff of the department of natural resources,  
16 local governments, and restoration partners.

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

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

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

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

1           30.2065 (1g) (a) The department shall issue a general permit that authorizes  
2 wetland, stream, and floodplain restoration and management activities that will  
3 result in a net improvement in hydrologic connections, conditions, and functions.  
4 These activities shall be designed to the extent possible to reestablish or emulate  
5 presettlement wetland, stream, and floodplain hydrology in order to slow the flow of  
6 runoff, reduce flood peaks, restore surface and groundwater interactions, improve  
7 water quality, and increase soil retention, groundwater infiltration, base flow, upper  
8 watershed storage, and flood resilience. To ensure that the activities authorized by  
9 the general permit result in net improvements in hydrologic connections, conditions,  
10 and functions, the department shall include conditions under the general permit  
11 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."

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

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

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

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

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

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

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

14          8. Specify that the general permit does not authorize any of the following  
15 activities:

16           a. Construction of artificial wetlands.

17           b. Construction of stormwater retention or detention ponds.

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

20           9. <sup>e. I.N.S. 5-20</sup> Other conditions only to the extent needed to ensure the activities will not  
21 injure public rights or interests or result in material injury to the rights of any  
22 riparian owner.

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

*that the department identify, or confirm the identification of, a wetland*

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

3 2. Waive any requirement related to the department concurring with wetland  
4 boundaries delineated by a 3rd person.

*a wetland identification or confirmation by*

\*\*\*\*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?

5 3. Identify how the information needs for voluntary restoration projects differ  
6 from information needs for projects with potential adverse environmental impacts  
7 and adjust submission requirements accordingly.

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

10 (c) The department <sup>shall</sup> ~~may~~ notify, in writing, a person who has applied under s.  
11 30.206 (3) for authorization to proceed under a general permit issued under this  
12 subsection that the person is required to apply for an individual permit if the  
13 department determines that the proposed activity will not result in net  
14 improvements to hydrologic connections, condition, and functions. *INS 6-14*

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

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

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

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

3           (1r) A permit issued under ~~this subsection sub. (1) or (1g)~~ is in lieu of any permit  
4 or approval that would otherwise be required for that activity under this chapter or  
5 s. 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under  
6 sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36  
7 (3n) (d).

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

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

(END)

17  
18

1           **INSERT 2-16**

2           representative of the Wisconsin Association for Floodplain, Stormwater, and  
3 Coastal Management who is a

4           **INSERT 2-17**

5           (b) The members of the council listed <sup>appointed</sup> under par. (a) may, by majority vote,  
6 appoint the addition of no more than 2 additional members of the council.

7           **INSERT 5-20** <sup>2 up to</sup>

8           (am) In addition to the conditions under par. (a), the department may impose <sup>rel to</sup>  
9 other conditions, but only to the extent needed to ensure the activities will not injure  
10 public rights or interests or result in material injury to the rights of any riparian  
11 owner. <sup>include</sup>

12           **INSERT 6-14**

13           The department shall document in this notification its reasons for making this  
14 determination. <sup>that</sup>

authorized by  
the general  
permit



**Shea, Elisabeth**

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**From:** Clark, Tyler  
**Sent:** Friday, October 11, 2019 12:55 PM  
**To:** Shea, Elisabeth  
**Subject:** FW: wetland permit bill revisions (LRB-1752/P3)  
**Attachments:** LRB 1752 Language with Legislative Feedback 10-11-2019.docx

Good afternoon,

Attached are some of the proposed changes I referenced on LRB 1752/P3. Please let me know if you have any questions/concerns with this language.

Have a nice weekend,

Tyler

Tyler Clark  
Office of State Representative Jim Steineke  
Majority Leader – Wisconsin State Assembly  
(608) 266-2401

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 ADVISORY COUNCIL.

(a) There is created in the department of natural resources a hydrologic restoration and management advisory council consisting of no fewer than 7 and no more than 15 members.

The advisory council will be staffed by the department.

Advisory council members will be selected by the WDNR Secretary to include local, tribal, academic, non-governmental, and private sector partners with diverse expertise in relevant policies and practices such as: wetland, stream, and watershed restoration; floodplain management, hydrology; fluvial geomorphology; and hydrogeology. Participation by federal and state agencies and local governments with shared regulatory jurisdiction or programmatic priorities should also be invited and encouraged.

*i.e. "appointed?"*

(b) The hydrologic restoration and management advisory council shall do all of the following:

1. Provide input on the terms, conditions, and implementation of policies related to the review of hydrologic restoration and management projects, including the general permit for hydrologic restoration and management authorized under 30.2065(1g)(a).
2. Create a forum to help increase and improve interagency coordination on the review of proposals to reconnect streams and floodplains.
3. Consider and recommend opportunities to help local governments plan, review, and implement hydrologic and floodplain restoration projects.
4. Consider and recommend policy and program changes needed to increase integration of hydrologic restoration and management strategies in state-sponsored programs related to flood hazard mitigation, water quality improvement, and fishery and wildlife management.
5. Assist the department of natural resources with the planning and implementation of trainings on hydrologic restoration and management for state regulatory and resource management staff, local governments, restoration practitioners, and other relevant audiences.
6. Address other related issues identified by the council and provide recommendations on these issues.

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

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

SECTION 3

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 return wetland, stream, and floodplain hydrology to a natural and self regulating condition 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 be eligible for coverage, applicants must demonstrate that the project will result in net improvements in hydrologic connections, conditions, and functions, and will not adversely affect the rights or interests of adjacent or downstream property owners.

In issuing the permit, the department shall include conditions under the general permit that do all of the following:

1. Authorize hydrologic restoration activities in and adjacent to current and restorable wetlands, streams, floodplains, and existing 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 hydrologic restoration activities that alter the flow of water in, to, or from an area of special natural resource interest if the activities restore or repair 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. 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.
- d. Fish and wildlife habitat enhancement activities that are not associated with a larger hydrologic restoration plan.
- e. Activities prohibited by the Federal Emergency Management Agency.

4. Impose other conditions necessary to ensure the activities will not injure public rights or interests or result in material injury to the rights of any riparian owner.

*(b) Factors used in review* - The department shall consider the following additional factors when it assesses whether the project achieves a net improvement in hydrologic connections, conditions, and functions:

1. Minimal temporary adverse impacts under Wis. Stats. Ch. 29(?), 30, 31, and 281 may be allowed if adverse impacts are not anticipated long-term.
2. Restoring natural and self regulating hydrology may result in permanent but net positive changes to biotic communities and abiotic conditions.

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

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

3. Waive requirements for wetland delineations and functional assessments.
4. Adjust and simplify the application and information needs to reflect how voluntary hydrologic restoration projects differ from projects with potential adverse environmental impacts.
5. Waive any requirement related to wetland mitigation for impacts incidental to more fully restoring wetland hydrology.

(d) 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.

(e) A person wishing to proceed with an activity that may be authorized by a general permit under this subsection may request and shall be granted a preapplication meeting with the department prior to submitting an application under s. 30.206 (3) (a). This meeting should be coordinated with local zoning offices in cases where local regulations apply.

*30.206 (4) removed by 1/1/17*

(f) The department shall grant or deny an application for a general permit under this subchapter within 90 days. If the department requests additional information, then the deadline for the department to grant or deny an application for a general permit under this subchapter may be extended by 30 days.

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 a wetland restoration activity sponsored by a federal agency.

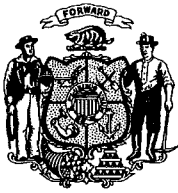
(1r) A permit issued under sub. (1) or (1g) is in lieu of any permit or approval that would otherwise be required for that activity under this chapter or s. 29.885(?), 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36 (3n) (d).

(2) A general permit issued under 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:

Effective Date: DNR Input?

(END)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

In 10/11

Due 10/15

ST  
SCV

*3*

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 hydrologic restoration projects and creating a  
 4 hydrologic restoration and management practitioner's <sup>e-advisory</sup> council.

***Analysis by the Legislative Reference Bureau***

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.

The bill <sup>advisory</sup> 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.

*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 AND MANAGEMENT PRACTITIONER'S COUNCIL. <sup>ADVISORY</sup>

3 (a) There is created in the department of natural resources a hydrologic  
4 restoration and management practitioner's council consisting of no fewer than the  
5 following members: <sup>INS. 2-5</sup> <sup>ADVISORY</sup>

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

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

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

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

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

14 6. One member from a tribal natural resources department in this state.

15 7. One representative of the Wisconsin County Code Administrators.

16 8. One representative of the Wisconsin Association for Floodplain, Stormwater,  
17 and Coastal Management who is a hydrologic engineer and who is also a nationally  
18 certified floodplain manager.

19 (b) The members of the council appointed under par. (a) may, by majority vote,  
20 appoint up to 2 additional members to the council.

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

(b) (d) 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:

INS  
3-8

advisory

(a) Department of natural resources regulatory and resource management staff  
S.C.

1           30.2065 (1g) (a) The department shall issue a general permit that authorizes  
2 wetland, stream, and floodplain restoration and management activities that will  
3 result in a net improvement in hydrologic connections, conditions, and functions.

4           These activities shall be designed to the extent possible to reestablish or emulate  
5 presettlement <sup>return</sup> wetland, stream, and floodplain hydrology <sup>to a natural and self-regulating condition</sup> in order to slow the flow of  
6 runoff, reduce flood peaks, restore surface and groundwater interactions, improve  
7 water quality, and increase soil retention, groundwater infiltration, base flow, upper  
8 watershed storage, and flood resilience. <sup>be authorized by the department</sup> To ensure that the activities authorized by

9 the general permit <sup>INS. 4-9</sup> result in net improvements in hydrologic connections, conditions,  
10 and functions. <sup>of</sup> the department shall include conditions under the general permit  
11 that do all of the following:

12           1. Authorize <sup>hydrologic restoration</sup> activities in and adjacent to current and historic wetlands,  
13 streams, floodplains, and drainageways for the purposes of reconnecting streams  
14 and floodplains, reestablishing healthy channel form and condition, removing or  
15 reducing wetland drainage, restoring or improving natural flow and movement of  
16 water or sediment, and reestablishing vegetation to support site stability and help  
17 manage flow and infiltration.

18           2. Authorize <sup>hydrologic restoration</sup> activities that alter the flow of water in, to, or from an area of  
19 special natural resource interest if the activities restore or repair historic surface or  
20 subsurface connections within the area of special natural resource interest or  
21 between the area of special natural resource interest and other waters of the state.

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



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

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

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

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

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

13 a. Construction of artificial wetlands.

14 b. Construction of stormwater retention or detention ponds.

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

17 f. (am) In addition to the conditions under par. (a), the department may include  
18 other conditions, but only to the extent needed to ensure that activities authorized  
19 by the general permit will not injure public rights or interests or result in material  
20 injury to the rights of any riparian owner.

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

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

3

INS. 5-19

INS. 5-21

necessary

may do any of the following

eg. 2.

*requirements for wetland delineations and functional assessments*

1 ~~3~~ 2. Waive any requirement that the department identify, or confirm the  
2 identification of, a wetland.

*INS 6-3*

3 3. Identify how the information needs for voluntary restoration projects under  
4 the general permit differ from information needs for projects with potential adverse  
5 environmental impacts and adjust submission requirements accordingly.

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

8 (d) (c) The department shall notify, in writing, a person who has applied under  
9 30.206 (3) for authorization to proceed under a general permit issued under this  
10 subsection that the person is required to apply for an individual permit if the  
11 department determines that the proposed activity will not result in net  
12 improvements to hydrologic connections, condition, and functions. The department  
13 shall document in this notification its reasons for making this determination.

*INS 6-14*

14 (e) (d) A person wishing to proceed with an activity that may be authorized by a  
15 general permit under this subsection may request a preapplication meeting with the  
16 department and the local zoning authority prior to submitting an application under

*INS 6-19*

17 s. 30.206 (3) (a). No later than 15 days after receiving a preapplication meeting  
18 request, the department or the local zoning authority shall meet with the person.

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

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

22 30.2065 (1) The department may issue a general permit to a person wishing  
23 to proceed with an a wetland restoration activity sponsored by a federal agency.

24 (1r) A permit issued under this subsection sub. (1) or (1g) is in lieu of any permit  
25 or approval that would otherwise be required for that activity under this chapter or

*The department shall attempt to coordinate this meeting with in case where local zoning regulations apply*

1 s. 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under  
2 sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36  
3 (3n) (d).

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

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

14 (END)

1           **INSERT 2-5**

2           7 and no more than 15 members appointed by the secretary of natural  
3 resources. The secretary shall appoint members who represent entities such as local  
4 governments and state and federal agencies with shared regulatory jurisdiction or  
5 programmatic priorities; tribal communities; and academic, non<sup>e</sup>governmental, and  
6 private sector partners. The secretary shall appoint members with diverse expertise  
7 in policies and practices relevant to the functions of the council, such as wetland,  
8 stream, and watershed restoration; floodplain management and hydrology; fluvial  
9 geomorphology; and hydrogeology.

10           **INSERT 3-8**

11           1. Provide input on the terms, conditions, and implementation of policies  
12 related to the review of hydrologic restoration and management projects, including  
13 the general permit for hydrologic restoration and management issued under s.  
14 30.2065 (1g).

15           2. Create a forum to help increase and improve interagency coordination on the  
16 review of proposals to reconnect streams and floodplains.

17           3. Consider and recommend opportunities to help local governments plan,  
18 review, and implement hydrologic and floodplain restoration projects.

19           4. Consider and recommend policy and program changes needed to increase  
20 integration of hydrologic restoration and management strategies in state-sponsored  
21 programs related to flood hazard mitigation, water quality improvement, and fishery  
22 and wildlife management.

1 5. Assist the department of natural resources with the planning and  
2 implementation of trainings on hydrologic restoration and management for state  
3 regulatory and resource management staff, local governments, restoration  
4 practitioners, and other relevant audiences.

5 6. Identify and address other issues related to subds. 1. to 5. and provide  
6 recommendations on those issues.

7 (c) The department of natural resources shall provide <sup>no other than</sup> ~~adequate~~ <sup>under</sup> staff to conduct  
8 the functions of the council.

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

10 30.206 (3) (a) ~~(A) Except as provided in s. 30.2065 (1g) (f), (g), and (h),~~ a person  
11 wishing to proceed with an activity that may be authorized by a general permit under  
12 this section or s. 30.2065 shall apply to the department, with written notification of  
13 the person's wish to proceed, not less than 30 days before commencing the activity  
14 authorized by a general permit. The notification shall provide information  
15 describing the activity in order to allow the department to determine whether the  
16 activity is authorized by the general permit and shall give the department consent  
17 to enter and inspect the site, subject to s. 30.291. The department may make a  
18 request for additional information one time during the 30-day period. If the  
19 department makes a request for additional information, the 30-day period is tolled  
20 from the date the person applying for authorization to proceed receives the request  
21 until the date on which the department receives the information.

PLAIN

History: 1987 a. 374; 1995 a. 227; 1997 a. 174; 2003 a. 89, 118, 326; 2007 a. 96, 204; 2011 a. 167; 2013 a. 75; 2015 a. 299; 2017 a. 214; 2017 a. 365 s. 112.

Cross-reference: See also ss. NR 320.06, 323.04, 328.05, 328.35, 341.08 and ch. NR 310, Wis. adm. code.

22 **INSERT 4-9**

23 Activities are authorized by <sup>e</sup> a general permit only if the department determines  
24 that they will

1           **INSERT 5-17**

2           d. Fish and wildlife habitat enhancement activities that are not associated with  
3 a larger hydrologic restoration plan.

4           e. Activities prohibited by the federal emergency management agency.

5           **INSERT 5-21**

6           The department shall consider all of the following factors when it assesses  
7 whether a proposed activity will result in net improvements in hydrologic  
8 connections, conditions, and functions:

*this chapter and  
e chs.*

9           1. Minimal adverse impacts regulated under s. 30, 31, and 281 may be allowed  
10 if those impacts are anticipated to be temporary.

11           2. Restoring natural and self-regulating hydrology may result in permanent  
12 but net-positive changes to biotic communities and abiotic conditions.

13           (c)

14           **INSERT 6-3**

*e the fact that*

15           Adjust and simplify the application and information requirements to reflect  
16 how voluntary hydrologic restoration projects differ from projects with potential  
17 adverse environmental impacts.

18           **INSERT 6-14**

\*\*\*\*NOTE: The request would change the language in par. (d) from "shall" to "may."  
However, if DNR does not notify an applicant that they need an individual permit, the  
person would be able to proceed under the general permit. Therefore, I left this as "shall."

19           **INSERT 6-19**

20           (f) A person wishing to proceed with an activity that may be authorized by a  
21 general permit under this subsection shall apply to the department, with written  
22 notification of the person's wish to proceed, not less than 90 days before commencing  
23 the activity authorized by a general permit. The notification shall provide

1 information describing the activity in order to allow the department to determine  
2 whether the activity is authorized by the general permit and shall give the  
3 department consent to enter and inspect the site, subject to s. 30.291. The  
4 department may make a request for additional information one time during the  
5 90-day period. If the department makes a request for additional information, the  
6 90-day period is tolled from the date the person applying for authorization to proceed  
7 receives the request until the date on which the department receives the  
8 information.

\*\*\*\*NOTE: Normally s. 30.206 (3) would control the time limits for an application  
to proceed under a general permit. Because the draft is changing these time limits, I  
exempted this general permit from these procedures, and made this provision mirror the  
existing language in s. 30.206 (3) but with a 90-day limit instead of a 30-day limit.

Part of the request was that, if DNR requests additional information, the 90-day  
limit may be extended by 30 days, whereas s. 30.206 (3) simply tolls the time limit until  
DNR receives the information. I just wanted to double-check that you intended to alter  
how this is normally done for these general permits. In this draft I left it as it appears  
under s. 30.206 (3).

9 (g) If within 90 days after a notification under par. (f) is submitted to the  
10 department the department does not require any additional information about the  
11 activity that is subject to the notification and does not inform the applicant that an  
12 individual permit will be required, the activity will be considered to be authorized  
13 by the general permit and the applicant may proceed without further notice, hearing,  
14 permit or approval if the activity is carried out in compliance with all of the  
15 conditions of the general permit.

16 (h) Upon completion of an activity that the department has authorized under  
17 a general permit, the applicant for the general permit shall provide to the  
18 department a statement certifying that the activity is in compliance with all of the  
19 conditions of the general permit and a photograph of the activity.

## Shea, Elisabeth

---

**From:** Herkert, Toni  
**Sent:** Monday, November 04, 2019 5:48 PM  
**To:** Shea, Elisabeth  
**Cc:** Miller, Evan  
**Subject:** RE: LRB 1752 P6  
**Attachments:** Additional P6 Drafting Instructions LRB1752.docx

Lis,

Pursuant to our phone conversation today, attached is a list of the existing requests from October 28<sup>th</sup> (that are outlined in the previous email below) and some modifications and additions based on feedback from the Department of Natural Resources. Feel free to contact me with any questions you may have.

Thanks for all your work on so many of our proposals, your help is always greatly appreciated.

Toni  
**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



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**From:** Shea, Elisabeth <Elisabeth.Shea@legis.wisconsin.gov>  
**Sent:** Thursday, October 31, 2019 3:28 PM  
**To:** Schultz, Rusty <Rusty.Schultz@legis.wisconsin.gov>; Wyatt, Zachary <Zachary.Wyatt@legis.wisconsin.gov>  
**Cc:** Herkert, Toni <Toni.Herkert@legis.wisconsin.gov>; Miller, Evan <Evan.Miller@legis.wisconsin.gov>  
**Subject:** RE: LRB 1752

Hi all,

Regarding the comments on the presumptive issuance of the general permit (Page 7, Lines 7 to 13), I have questions, because what you are describing sounds more like an individual permit than a general permit.

As you know, a general permit is issued to cover anyone, statewide, who wishes to proceed with a particular activity, adhering to certain conditions. Instead of applying for a permit, the person must give notice to DNR that they wish to proceed under the general permit, at which point DNR may (within 30 days, typically) require the person to instead apply for an individual permit if the activity is not covered by the general permit or if the conditions specific to the site require additional restrictions on the activity. If DNR does not notify the person of a need for an individual permit by the deadline, the person may proceed under the general permit. Therefore, a person is not "issued" a general permit. Rather, the person is authorized to proceed under a general permit that has already been issued statewide.

Therefore, I am not sure I understand the concerns regarding the applicant, a contractor, or local or federal approvals needing the "certainty" of a written approval. The certainty, as with other GPs, comes from following the statutory process and reaching the deadline by which DNR must notify the applicant they need an IP instead. At that point the applicant may legally proceed under the GP.



If instead you would like DNR to issue a written permit, perhaps this should instead be structured as a special kind of IP. An IP scheme may fit this type of permit scenario better in any case if DNR's determination is likely to take a significant amount of time and be highly focused on conditions specific to the site. Let me know if you have questions about how this might work.

If not structured as an IP, then it is not clear to me what the purpose of the 90-day deadline is. Normally it is the time within which DNR must tell the applicant if they need an IP. If DNR is not required to take this action by that time, or if there is no consequence if DNR does not take action by that time, what is the purpose of the 90-day deadline?

Lis

**Elisabeth H. Shea**

Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 504-5885  
[elisabeth.shea@legis.wisconsin.gov](mailto:elisabeth.shea@legis.wisconsin.gov)

*The information contained in this communication may be confidential and protected by the attorney-client privilege.*

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**From:** Schultz, Rusty <[Rusty.Schultz@legis.wisconsin.gov](mailto:Rusty.Schultz@legis.wisconsin.gov)>

**Sent:** Monday, October 28, 2019 12:46 PM

**To:** Shea, Elisabeth <[Elisabeth.Shea@legis.wisconsin.gov](mailto:Elisabeth.Shea@legis.wisconsin.gov)>; Wyatt, Zachary <[Zachary.Wyatt@legis.wisconsin.gov](mailto:Zachary.Wyatt@legis.wisconsin.gov)>

**Cc:** Herkert, Toni <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>; Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>

**Subject:** LRB 1752

Hi guys,

Hoping to incorporate some changes based on conversations had with Sen. Cowles office as well as some of the advocates.

It's a bit of a hodgepodge, but below lists out the changes we'd like to see incorporated into a /P6. Finally, if it already hasn't been granted, please allow access to the drafting files for the Cowles office.

Please feel free to reach out to myself, Toni or Evan with any questions you might have in working on this new draft.

Thanks,

RS

- Page 2, Line 8: Add "as feasible" to the end of the clause on appointing local, state, and federal officials to account for any potential that local or federal actors may not want to

participate to read "...programmatic priorities, as feasible; ..." Add tribal partners to the list of "as feasible" entities since they also have sovereign authority. We recommend tribal "partners" rather than tribal "communities."

- The drafting instructions state that "Participation by federal and state agencies and local governments with shared regulatory jurisdiction or programmatic priorities should also be invited and encouraged", but the P5 states that the Secretary "shall appoint members who represent entities such a local governments and state and federal agencies..."

- Page 3, Lines 11 to 12: We're a little uncomfortable with the language currently used for staffing the advisory council. Can we change (c) to simply read: "The advisory council shall be staffed by the department of natural resources."?
  - The way we read the language in the current draft, it seemed more burdensome on the department than the new language above which we now read as the DNR assisting, but not doing all of the work of the council members.
- Page 4, Line 9 the instructions had a colon after "in order to:" The change is ok as long as it doesn't create an expectation that all projects must deliver all of the listed benefits to be eligible.
- Page 4, Line 12-14 says "Activities are authorized by the general permit only if the department determines that they will result in net improvements in hydrologic connections, conditions, and functions." The drafting instructions said " To be eligible for coverage, applicants must demonstrate that the project will result in net improvements in hydrologic connections, conditions, and functions, and will not adversely affect the rights or interests of adjacent or downstream property owners." Question for drafters...was there a reason that we can't put more of the burden up front on the applicant to demonstrate eligibility?
- Page 4, line 17 we had recommended replacing the word "historic" with "restorable" to address Toni's point about what point in history we expected project sponsors to restore to.
- Page 5, line 9. WDNR suggested this might need a tweak b/c FEMA doesn't "prohibit" activities. Something like "Activities that do not meet FEMA standards" might be closer to what's needed but I think we need WDNR's input on which standards should be referenced.
- Page 5, Line 17: We had included in the drafting instructions possibly adding a reference to Wis. Stats. Ch. 29 here before 31 and 281 for, more specifically, s. 29.885. We're not positive we need to have this reference incorporated, but want to check. Drafters, do you think we need to include this, and if you're not sure, can we incorporate it into a draft to run by the DNR?
- Page 6, Note 1: We agree with that use of a 'shall' over a 'may'. Great call, drafters!
- Page 7, Note 1 (both paragraphs): We appreciate the effort to mimic the language instead of cross-reference to make it clear that it's 90 days, and we like the pause in the timeline during a request for more information instead of the 30 day extension we had in the drafting instructions. This seems like a good solution but will definitely need further input from WDNR. In earlier discussions they indicated that much on their end depends on when they have a complete application so they are likely to suggest starting the review countdown from that point.
- Page 7, Lines 7 to 13: Remove (g) with the presumptive issuance of permits. We 100% agree with this recommendation. Here are several reasons why we don't believe a presumptive approval is the right approach for this GP:

- The cost of these projects is going to be more substantial than many other GPs, so having a written approval would provide more certainty to the permittee before expending these funds.
  - The irreversibility of these projects is greater than many other GPs, and while you can remove a dock or revegetate a shoreline with some ease, returning a channel of navigation would be harder, and waiting for a written approval could prevent these circumstances.
  - If the permittee is working with contractors on the project, the contractors are likely going to want a permit before proceeding on the project.
  - Additionally, local or federal approvals may be contingent upon, or at least influenced by the issuance of a written permit from the DNR versus trusting the word of an applicant that they received a presumptive approval.
  - In a limited number of cases, it may be in the best interest of both the public trust and the permit applicant to provide the DNR with slightly more time than 90 days to ensure the issuance of a GP while still allowing the DNR to check all of their boxes, especially since these projects are wide-reaching and we do not provide additional staff to review applications.
- Page 7, Lines 14 to 17: We don't recall having discussed (h) in the past, but believe it's a great addition to the process and want to keep (h) despite removing (g). We believe it brings some closure to the hydrologic restoration projects.

**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 P6 Drafting Instructions continued** – This list includes those originally sent on 10/28/19 along with revisions and additions to those drafting instructions after DNR input and phone conversation 11/4/19.

- ✓ • **10/28/19** - Page 2, Line <sup>6</sup>8: Add “as feasible” to the end of the clause on appointing local, state, and federal officials to account for any potential that local of federal actors may not want to participate to read “...programmatic priorities, as feasible; ...” Also add tribal partners to the list of “as feasible” entities since they also have sovereign authority. We recommend tribal “partners” rather than tribal “communities.”
  - The drafting instructions state that “Participation by federal and state agencies and local governments with shared regulatory jurisdiction or programmatic priorities should also be invited and encouraged”, but the P5 states that the Secretary “shall appoint members who represent entities such a local governments and state and federal agencies...”
  
- ✓ • **10/28/19** - Page 3, Lines <sup>13-14</sup>11 to 12: We’re a little uncomfortable with the language currently used for staffing the advisory council. Can we change (c) to simply read: “The advisory council shall be staffed by the department of natural resources.”?
  - The way we read the language in the current draft, it seemed more burdensome on the department than the new language above which we now read as the DNR assisting, but not doing all of the work of the council members.
  
- ✓ • **10/28/19** - Page 4, Line 9 the instructions had a colon after “in order to:” The change is ok as long as it doesn’t create an expectation that all projects must deliver all of the listed benefits to be eligible.
- ✓ • **10/28/19** Page 4, Line 12-14 says “Activities are authorized by the general permit only if the department determines that they will result in net improvements in hydrologic connections, conditions, and functions.” The drafting instructions said “To be eligible for coverage, applicants must demonstrate that the project will result in net improvements in hydrologic connections, conditions, and functions, and will not adversely affect the rights or interests of adjacent or downstream property owners.” Question for drafters...was there a reason that we can't put more of the burden up front on the applicant to demonstrate eligibility?
- ✓ • **10/28/19** Page 4, line 17 we had recommended replacing the word “historic” with “restorable” to address Toni's point about what point in history we expected project sponsors to restore to.
- ✓ • **10/28/19 modified 11/4/19 - Remove per DNR’s Recommendation** - Page 5, line 9. ~~WDNR suggested this might need a tweak b/c FEMA doesn't "prohibit" activities. Something like "Activities that do not meet FEMA standards" might be closer to what's needed but I think we need WDNR's input on which standards should be referenced.~~

- ✓ • **10/28/19 Modified 11/4/19 After discussions with Wetlands Association and DNR we have decided that this reference is not necessary.** Page 5, Line 17: We had included in the drafting instructions possibly adding a reference to Wis. Stats. Ch. 29 here before 31 and 281 for, more specifically, s. 29.885. We're not positive we need to have this reference incorporated, but want to check. Drafters, do you think we need to include this, and if you're not sure, can we incorporate it into a draft to run by the DNR?
- ✓ • **10/28/19 Page 6, Note 1: We agree with that use of a 'shall' over a 'may'. Great call, drafters!**
  - ✓ • **10/28/19 Modified 11/4/19 Go back to the normal GP permitting process timelines and approval per DNR's Request - Page 7, Note 1 (both paragraphs):** We appreciate the effort to mimic the language instead of cross-reference to make it clear that it's 90 days, and we like the pause in the timeline during a request for more information instead of the 30 day extension we had in the drafting instructions.
  - ✓ • **10/28/19 Modified 11/4/19 Go back to the normal GP permitting process timelines and approval per DNR's Request - Page 7, Lines 7 to 13:** Remove (g) with the presumptive issuance of permits. We 100% agree with this recommendation. Here are several reasons why we don't believe a presumptive approval is the right approach for this GP:
  - ✓ • **10/28/19 Modified 11/4/19 Go back to the normal GP permitting process timelines and approval per DNR's Request - Page 7, Lines 14 to 17:** We don't recall having discussed (h) in the past, but believe it's a great addition to the process and want to keep (h) despite removing (g). We believe it brings some closure to the hydrologic restoration projects.

#### **New Provisions based on DNR Feedback 11/4/19**

- ✓ • Page 4, line 14: After functions. Add "The department may develop a quantification tool to determine if a project will have a net improvement in hydrologic connections, conditions, and functions." Then continue with "The department shall include..."
- ✓ • Page 5, line 5 add a new c. "Construction of dams that pose a risk to life, health, and property." And renumber current c. and d. to d. and e.
- Please set the effective date for the day after publication.

Automatic



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

In 11/6

Due today

ST ✓  
SC ✓

1 **AN ACT to repeal** ~~30.2065~~ (1) and 30.2065 (2) (title); **to renumber and amend**  
 2 30.2065 (2); **to amend** 30.206 (3) (a); and **to create** 15.347 (23) and 30.2065 (1g)  
 3 of the statutes; **relating to:** a general permit for hydrologic restoration projects  
 4 and creating a hydrologic restoration and management advisory council.

***Analysis by the Legislative Reference Bureau***

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.

The bill creates at DNR a hydrologic restoration and management advisory 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 AND MANAGEMENT ADVISORY COUNCIL.

3           (a) There is created in the department of natural resources a hydrologic  
4 restoration and management advisory council consisting of no fewer than 7 and no  
5 more than 15 members appointed by the secretary of natural resources. The  
6 secretary shall <sup>as feasible,</sup> appoint members who represent entities such as local governments  
7 and state and federal agencies with shared regulatory jurisdiction or programmatic  
8 priorities; tribal <sup>e-partners</sup> communities; and academic, nongovernmental, and private sector  
9 partners. The secretary shall appoint members with diverse expertise in policies and  
10 practices relevant to the functions of the council, such as wetland, stream, and  
11 watershed restoration; floodplain management and hydrology; fluvial  
12 geomorphology; and hydrogeology.

13           (b) The hydrologic restoration and management advisory council shall do all  
14 of the following:

15           1. Provide input on the terms, conditions, and implementation of policies  
16 related to the review of hydrologic restoration and management projects, including  
17 the general permit for hydrologic restoration and management issued under s.  
18 30.2065 (1g).

19           2. Create a forum to help increase and improve interagency coordination on the  
20 review of proposals to reconnect streams and floodplains.

1           3. Consider and recommend opportunities to help local governments plan,  
2 review, and implement hydrologic and floodplain restoration projects.

3           4. Consider and recommend policy and program changes needed to increase  
4 integration of hydrologic restoration and management strategies in state-sponsored  
5 programs related to flood hazard mitigation, water quality improvement, and fishery  
6 and wildlife management.

7           5. Assist the department of natural resources with the planning and  
8 implementation of trainings on hydrologic restoration and management for state  
9 regulatory and resource management staff, local governments, restoration  
10 practitioners, and other relevant audiences.

11           6. Identify and address other issues related to subs. 1. to 5. and provide  
12 recommendations on those issues.

13           (c) The department of natural resources shall provide adequate staff to conduct  
14 the functions of the council.

15           **SECTION 2.** 30.206 (3) (a) of the statutes is amended to read:

16           30.206 (3) (a) A person wishing to proceed with an activity that may be  
17 authorized by a general permit under this section or s. 30.2065, other than under s.  
18 30.2065 (1g), shall apply to the department, with written notification of the person's  
19 wish to proceed, not less than 30 days before commencing the activity authorized by  
20 a general permit. The notification shall provide information describing the activity  
21 in order to allow the department to determine whether the activity is authorized by  
22 the general permit and shall give the department consent to enter and inspect the  
23 site, subject to s. 30.291. The department may make a request for additional  
24 information one time during the 30-day period. If the department makes a request  
25 for additional information, the 30-day period is tolled from the date the person



1 applying for authorization to proceed receives the request until the date on which the  
2 department receives the information.

3 SECTION 3. 30.2065 (1) of the statutes is repealed.

4 SECTION 4. 30.2065 (1g) of the statutes is created to read:

5 30.2065 (1g) (a) The department shall issue a general permit that authorizes  
6 wetland, stream, and floodplain restoration and management activities that will  
7 result in a net improvement in hydrologic connections, conditions, and functions.

8 These activities shall be designed to the extent possible to return wetland, stream,  
9 and floodplain hydrology to a natural and self-regulating condition in order to <sup>achieve such goals as to</sup> slow  
10 the flow of runoff, reduce flood peaks, restore surface and groundwater interactions,  
11 improve water quality, <sup>e or</sup> and increase soil retention, groundwater infiltration, base  
12 flow, upper watershed storage, and flood resilience. <sup>An activity is</sup> Activities are authorized by the  
13 general permit only if the <sup>applicant demonstrates to the satisfaction of the</sup> department determines that they will result in net  
14 improvements in hydrologic connections, conditions, and functions. <sup>e the activity</sup> The department  
15 shall include conditions under the general permit that do all of the following: <sup>(INS 4-14)</sup>

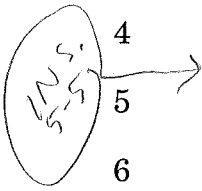
16 1. Authorize hydrologic restoration activities in and adjacent to <sup>e</sup> current and  
17 historic wetlands, streams, floodplains, and drainageways <sup>(INS. 4-13)</sup> for the purposes of  
18 reconnecting streams and floodplains, reestablishing healthy channel form and  
19 condition, removing or reducing wetland drainage, restoring or improving natural  
20 flow and movement of water or sediment, and reestablishing vegetation to support  
21 site stability and help manage flow and infiltration.

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

1           3. Specify that the general permit does not authorize any of the following  
2 activities:

3           a. Construction of artificial wetlands.

4           b. Construction of stormwater retention or detention ponds.



5           *d* c. Activities that straighten, berm, dredge, or armor stream channels, except  
6 when proposed as a necessary element of a larger hydrologic restoration plan. X

7           *e* d. Fish and wildlife habitat enhancement activities that are not associated with  
8 a larger hydrologic restoration plan. X

9           *f* e. Activities prohibited by the federal emergency management agency. X

10           (am) In addition to the conditions under par. (a), the department may include  
11 other conditions necessary to ensure that activities authorized by the general permit  
12 will not injure public rights or interests or result in material injury to the rights of  
13 any riparian owner.

14           (b) The department shall consider all of the following factors when it assesses  
15 whether a proposed activity will result in net improvements in hydrologic  
16 connections, conditions, and functions:

17           1. Minimal adverse impacts regulated under this chapter and chs. 31 and 281  
18 may be allowed if those impacts are anticipated to be temporary.

19           2. Restoring natural and self-regulating hydrology may result in permanent  
20 but net-positive changes to biotic communities and abiotic conditions.

21           (c) In reviewing activities proposed to be conducted under a general permit  
22 issued under this subsection, the department may do any of the following:

23           1. Waive fees.

24           2. Establish a reporting-only notification process for activities funded in whole  
25 or in part by a state or federal agency.

1 3. Waive requirements for wetland delineations and functional assessments.

2 4. Adjust and simplify the application and information requirements to reflect  
3 the fact that voluntary hydrologic restoration projects differ from projects with  
4 potential adverse environmental impacts.

5 5. Waive requirements related to wetland mitigation for impacts incidental to  
6 more fully restoring wetland hydrology.

*S. 30.206(3)(a)*

7 (d) The department shall notify, in writing, a person who has applied under par.

8 (f) for authorization to proceed under a general permit issued under this subsection  
9 that the person is required to apply for an individual permit if the department  
10 determines that the proposed activity will not result in net improvements to  
11 hydrologic connections, condition, and functions. The department shall document  
12 in this notification its reasons for making this determination.

\*\*\*\*NOTE: The request would change the language in par. (d) from "shall" to "may." However, if DNR does not notify an applicant that they need an individual permit, the person would be able to proceed under the general permit. Therefore, I left this as "shall."

13 (e) A person wishing to proceed with an activity that may be authorized by a  
14 general permit under this subsection may request and shall be granted a  
15 preapplication meeting with the department prior to submitting an application  
16 under par. (f). *S. 30.206(3)(a)* The department shall attempt to coordinate this meeting with the  
17 local zoning authority in cases where local zoning regulations apply.

X

18 (f) A person wishing to proceed with an activity that may be authorized by a  
19 general permit under this subsection shall apply to the department, with written  
20 notification of the person's wish to proceed, not less than 90 days before commencing  
21 the activity authorized by a general permit. The notification shall provide  
22 information describing the activity in order to allow the department to determine  
23 whether the activity is authorized by the general permit and shall give the

1 department consent to enter and inspect the site, subject to s. 30.291. The  
2 department may make a request for additional information one time during the  
3 90-day period. If the department makes a request for additional information, the  
4 90-day period is tolled from the date the person applying for authorization to proceed  
5 receives the request until the date on which the department receives the  
6 information.

\*\*\*\*NOTE: Normally s. 30.206 (3) would control the time limits for an application to proceed under a general permit. Because the draft is changing these time limits, I exempted this general permit from these procedures, and made par. (f), above, mirror the existing language in s. 30.206 (3) but with a 90-day limit instead of a 30-day limit.

Part of the request was that, if DNR requests additional information, the 90-day limit may be extended by 30 days, whereas s. 30.206 (3) simply tolls the time limit until DNR receives the information. I just wanted to double-check that you intended to alter how this is normally done for these general permits. In this draft I left it as it appears under s. 30.206 (3).

X 7 (g) If within 90 days after a notification under par. (f) is submitted to the  
8 department the department does not require any additional information about the  
9 activity that is subject to the notification and does not inform the applicant that an  
10 individual permit will be required, the activity will be considered to be authorized  
11 by the general permit and the applicant may proceed without further notice, hearing,  
12 permit or approval if the activity is carried out in compliance with all of the  
13 conditions of the general permit.

X 14 (h) Upon completion of an activity that the department has authorized under  
15 a general permit, the applicant for the general permit shall provide to the  
16 department a statement certifying that the activity is in compliance with all of the  
17 conditions of the general permit and a photograph of the activity.

18 **SECTION 5.** 30.2065 (2) (title) of the statutes is repealed.

19 **SECTION 6.** 30.2065 (2) of the statutes is renumbered 30.2065, and 30.2065 (1),  
20 (2) and (3) (intro.), as renumbered, are amended to read:

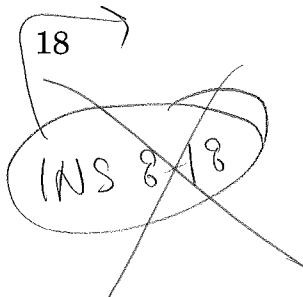
1            30.2065 (1) The department may issue a general permit to a person wishing  
2 to proceed with an a wetland restoration activity sponsored by a federal agency.

3            **(1r)** A permit issued under this subsection sub. (1) or (1g) is in lieu of any permit  
4 or approval that would otherwise be required for that activity under this chapter or  
5 s. 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under  
6 sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36  
7 (3n) (d).

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

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

(END)

18 

**INSERT 4-14**

and will not injure public rights or interests or result in material injury to the rights of any riparian owner. The department may develop a quantification tool to determine if an activity will meet those standards.

**INSERT 4-17**

, including those that are no longer present but are restorable, ✓

**INSERT 5-5**

c. Construction of dams that pose a risk to life, health, and property. ✓

**INSERT 8-18**

**SECTION 1.** 30.291 (1) of the statutes is amended to read:

30.291 (1) For purposes of determining whether an exemption is appropriate under s. 30.12 (1k), (2m) or (2r), 30.123 (6m) or (6r), or 30.20 (1m) or (1r), whether a general permit is appropriate under s. 30.206 (3), or whether authorization to proceed under a general permit is appropriate under s. 30.206 (3r) or 30.2065 (1g) (f), any employee or other representative of the department, upon presenting his or her credentials, may enter the site and inspect any property on the site.

History: 2003 a. 118; 2007 a. 204.



11/26/19 Rusty - Rep. Steincke

companion to 4892



stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

In 11/24

Due today

SA  
SC

Go Cat

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 hydrologic restoration projects and creating a  
 4 hydrologic restoration and management advisory council.

***Analysis by the Legislative Reference Bureau***

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.



The bill creates at DNR a hydrologic restoration and management advisory 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 AND MANAGEMENT ADVISORY COUNCIL.**

3           (a) There is created in the department of natural resources a hydrologic  
4 restoration and management advisory council consisting of no fewer than 7 and no  
5 more than 15 members appointed by the secretary of natural resources. The  
6 secretary shall, as feasible, appoint members who represent entities such as local  
7 governments and state and federal agencies with shared regulatory jurisdiction or  
8 programmatic priorities; tribal partners; and academic, nongovernmental, and  
9 private sector partners. The secretary shall appoint members with diverse expertise  
10 in policies and practices relevant to the functions of the council, such as wetland,  
11 stream, and watershed restoration; floodplain management and hydrology; fluvial  
12 geomorphology; and hydrogeology.

13           (b) The hydrologic restoration and management advisory council shall do all  
14 of the following:

15           1. Provide input on the terms, conditions, and implementation of policies  
16 related to the review of hydrologic restoration and management projects, including  
17 the general permit for hydrologic restoration and management issued under s.  
18 30.2065 (1g).

19           2. Create a forum to help increase and improve interagency coordination on the  
20 review of proposals to reconnect streams and floodplains.

1           3. Consider and recommend opportunities to help local governments plan,  
2 review, and implement hydrologic and floodplain restoration projects.

3           4. Consider and recommend policy and program changes needed to increase  
4 integration of hydrologic restoration and management strategies in state-sponsored  
5 programs related to flood hazard mitigation, water quality improvement, and fishery  
6 and wildlife management.

7           5. Assist the department of natural resources with the planning and  
8 implementation of trainings on hydrologic restoration and management for state  
9 regulatory and resource management staff, local governments, restoration  
10 practitioners, and other relevant audiences.

11           6. Identify and address other issues related to subds. 1. to 5. and provide  
12 recommendations on those issues.

13           (c) The department of natural resources shall staff the council.

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

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

16           30.2065 (1g) (a) The department shall issue a general permit that authorizes  
17 wetland, stream, and floodplain restoration and management activities that will  
18 result in a net improvement in hydrologic connections, conditions, and functions.  
19 These activities shall be designed to the extent possible to return wetland, stream,  
20 and floodplain hydrology to a natural and self-regulating condition in order to  
21 achieve such goals as to slow the flow of runoff, reduce flood peaks, restore surface  
22 and groundwater interactions, improve water quality, or increase soil retention,  
23 groundwater infiltration, base flow, upper watershed storage, and flood resilience.  
24 An activity is authorized by the general permit only if the applicant demonstrates  
25 to the satisfaction of the department that the activity will result in net improvements

1 in hydrologic connections, conditions, and functions and will not injure public rights  
2 or interests or result in material injury to the rights of any riparian owner. The  
3 department may develop a quantification tool to determine if an activity will meet  
4 those standards. The department shall include conditions under the general permit  
5 that do all of the following:

6 1. Authorize hydrologic restoration activities in and adjacent to wetlands,  
7 streams, floodplains, and drainageways, including those that are no longer present  
8 but are restorable, for the purposes of reconnecting streams and floodplains,  
9 reestablishing healthy channel form and condition, removing or reducing wetland  
10 drainage, restoring or improving natural flow and movement of water or sediment,  
11 and reestablishing vegetation to support site stability and help manage flow and  
12 infiltration.

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

INS  
4-17

17 4.3. Specify that the general permit does not authorize any of the following  
18 activities:

19 a. Construction of artificial wetlands.

20 b. Construction of stormwater retention or detention ponds.

21 c. Construction of <sup>large</sup> dams <sup>as defined under s. 31.19(1m), or dams</sup> that pose a risk to life, health, or property.

22 d. Activities that straighten, berm, dredge, or armor stream channels, except  
23 when proposed as a necessary element of a larger hydrologic restoration plan.

24 e. Fish and wildlife habitat enhancement activities that are not associated with  
25 a larger hydrologic restoration plan.

1 f. Activities prohibited by the federal emergency management agency.

2 (am) In addition to the conditions under par. (a), the department may include  
3 other conditions necessary to ensure that activities authorized by the general permit  
4 will not injure public rights or interests or result in material injury to the rights of  
5 any riparian owner.

6 (b) The department shall consider all of the following factors when it assesses  
7 whether a proposed activity will result in net improvements in hydrologic  
8 connections, conditions, and functions:

9 1. Minimal adverse impacts regulated under this chapter and chs. 31 and 281  
10 may be allowed if those impacts are anticipated to be temporary.

11 2. Restoring natural and self-regulating hydrology may result in permanent  
12 but net-positive changes to biotic communities and abiotic conditions.

13 (c) In reviewing activities proposed to be conducted under a general permit  
14 issued under this subsection, the department may do any of the following:

15 1. Waive fees.

16 2. Establish a reporting-only notification process for activities funded in whole  
17 or in part by a state or federal agency.

18 3. Waive requirements for wetland delineations and functional assessments.

19 4. Adjust and simplify the application and information requirements to reflect  
20 the fact that voluntary hydrologic restoration projects differ from projects with  
21 potential adverse environmental impacts.

22 5. Waive requirements related to wetland mitigation for impacts incidental to  
23 more fully restoring wetland hydrology.

24 (d) The department shall notify, in writing, a person who has applied under s.  
25 30.206 (3) (a) for authorization to proceed under a general permit issued under this

1 subsection that the person is required to apply for an individual permit if the  
2 department determines that the proposed activity will not result in net  
3 improvements to hydrologic connections, condition, and functions. The department  
4 shall document in this notification its reasons for making this determination.

5 (e) A person wishing to proceed with an activity that may be authorized by a  
6 general permit under this subsection may request and shall be granted a  
7 preapplication meeting with the department prior to submitting an application  
8 under s. 30.206 (3) (a). The department shall attempt to coordinate this meeting with  
9 the local zoning authority in cases where local zoning regulations apply.

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

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

13 30.2065 (1) The department may issue a general permit to a person wishing  
14 to proceed with an a wetland restoration activity sponsored by a federal agency.

15 **(1r)** A permit issued under ~~this subsection~~ sub. (1) or (1g) is in lieu of any permit  
16 or approval that would otherwise be required for that activity under this chapter or  
17 s. 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under  
18 sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36  
19 (3n) (d).

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

24 **(3)** (intro.) To ensure that the cumulative adverse environmental impact of the  
25 activities authorized by a general permit issued under sub. (1) is insignificant and

1 that the issuance of the general permit will not injure public rights or interests, cause  
2 environmental pollution, as defined in s. 299.01 (4), or result in material injury to the  
3 rights of any riparian owner, the department may impose any of the following  
4 conditions on the a general permit issued under sub. (1):

5

(END)

**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1752/lins  
ZDW&EHS:cjs

1           **INSERT 4-17**

2           3. Authorize approval for certain low-risk dams, as determined by the  
3 department, that do not meet the definition of a large dam under s. 31.19 (1m). The  
4 department shall establish reasonable conditions in the permit to ensure that life,  
5 health, property, and property values are protected.

**Parisi, Lori**

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**From:** Schultz, Rusty  
**Sent:** Monday, December 02, 2019 4:14 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1752/1

Please Jacket LRB -1752/1 for the ASSEMBLY.