



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0175/1
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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 177**

September 13, 2011 – Offered by Representative STEINEKE.

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

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

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

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

12 **SECTION 2.** 30.12 (3) (br) of the statutes is repealed.

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

14 **SECTION 4.** 30.123 (7) (b) of the statutes is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **SECTION 38. Initial applicability.**

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

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

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

5 **SECTION 39. Effective date.**

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

8 (END)