



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0915/P2
ZDW:skw

DOA:.....Potts, BB0305 - Hydrologic Restoration

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

NATURAL RESOURCES

NAVIGABLE WATERS AND WETLANDS

Hydrologic restoration

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. This bill requires DNR 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.

The 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. The general permit issued under the bill for an activity 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 requires DNR to apply several conditions to the new general permit and authorizes DNR to require an individual seeking approval to conduct activities under the general permit to apply for an individual permit under certain circumstances.

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:

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 appointed by the secretary of natural resources. The secretary shall, as feasible, appoint members who represent entities such as local governments and state and federal agencies with shared regulatory jurisdiction or programmatic priorities; tribal partners; and academic, nongovernmental, and private sector partners. The secretary shall appoint members with diverse expertise in policies and practices relevant to the functions of the council, such as wetland, stream, and watershed restoration; floodplain management and hydrology; fluvial geomorphology; and hydrogeology.

(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 issued under s. 30.2065 (1g).

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

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

SECTION 2. 30.2065 (1) of the statutes is repealed.

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

30.2065 (**1g**) (a) The department shall issue a general permit that authorizes wetland, 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 achieve such goals as to slow the flow of runoff, reduce flood peaks, restore surface and groundwater interactions, improve water quality, or increase soil retention, groundwater infiltration, base flow, upper watershed storage, and flood resilience. An activity is authorized by the general permit only if the applicant demonstrates to the satisfaction of the department that the activity will result in net improvements

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

1. Authorize hydrologic restoration activities in and adjacent to wetlands, streams, floodplains, and drainageways, including those that are no longer present but are restorable, 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. Construction of large dams, as defined under s. 31.19 (1m), or dams that pose a risk to life, health, or property.
- d. Activities that straighten, berm, dredge, or armor stream channels, except when proposed as a necessary element of a larger hydrologic restoration plan.

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

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

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

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

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

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

1. Waive fees.

2. Establish a reporting-only notification process for 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 requirements to reflect the fact that voluntary hydrologic restoration projects differ from projects with potential adverse environmental impacts.

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

(e) The department shall notify, in writing, a person who has applied under s. 30.206 (3) (a) 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. The department shall document in this notification its reasons for making this determination.

(f) 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). The department shall attempt to coordinate this meeting with the local zoning authority in cases where local zoning regulations apply.

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

SECTION 5. 30.2065 (2) (a) of the statutes is renumbered 30.2065 (1e) and amended to read:

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

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

SECTION 6. 30.2065 (2) (b) of the statutes is renumbered 30.2065 (2m) and amended to read:

30.2065 **(2m)** A general permit issued under ~~this subsection sub. (1e) 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.

SECTION 7. 30.2065 (2) (c) of the statutes is renumbered 30.2065 (3m) (intro.), and 30.2065 (3m) (intro.), as renumbered, is amended to read:

30.2065 **(3m)** (intro.) To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit issued under sub. (1e) 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 a general permit issued under sub. (1e):

(END)