



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Senate Bill 326

Senate Substitute Amendment 1

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General Permits for Activities Affecting Navigable Waters

Senate Substitute Amendment 1 establishes new procedures for the Department of Natural Resources (DNR) to issue a general permit for activities that affect navigable waters. The substitute amendment repeals the requirement that the DNR issue general permits through the administrative rule-making process.

Under the substitute amendment, the DNR must provide notice of its intent to issue a general permit in the following four ways: (1) publication of a Class 1 notice; (2) providing a copy of the notice to any person or group upon request of the person or group; (3) publication of the notice through an electronic notification system; and (4) publication of the notice on the DNR's Internet website. The notice must include a description of the activities to be authorized under the general permit.

The DNR must provide a comment period of at least 30 days. In addition, any person may request a hearing on the proposed general permit and, if it finds that there is significant public interest, the DNR must hold a public hearing.

The substitute amendment specifies that general permits are valid for five years and may be renewed, modified, or revoked. It also specifies that projects authorized under a general permit remain authorized for five years from the date the DNR determines the project may proceed under the general permit, even if the underlying general permit expires during this time period.

Individual Permits for Activities Affecting Navigable Waters

Senate Substitute Amendment 1 makes several changes regarding the approval of applications for individual permits for activities that affect navigable waters and deadlines for DNR action.

The substitute amendment specifies that if the DNR determines that an application is not complete, it may make one request for additional information to complete the application. When DNR receives the additional information, it has 10 days to determine if the application is complete. DNR may make additional requests for supplemental information but may not request information outside the scope of the original request.

The substitute amendment provides that a person may request a hearing on an individual permit application within 20 days of the DNR's notice of a pending application. The DNR is required to hold a public hearing upon request if it determines that there is significant public interest in the hearing.

The substitute amendment provides that the DNR must make a final decision on an application within 30 days of holding a hearing or, if it does not hold a hearing, within 30 days of the close of the public comment period. If the DNR fails to meet the deadline for taking final action, the application is considered to be approved. The resulting permit must authorize the activity as proposed by the applicant, except that the DNR may impose terms and conditions that are consistent with the applicant's basic proposal.

Piers

Senate Substitute Amendment 1 modifies the two current law exemptions from the requirement that a person obtain a permit to place a pier.

The first exemption is based on the design and location of the pier. The substitute amendment requires that the three-foot depth calculation in this exemption be "measured at summer low levels." The substitute amendment also replaces the requirement that a loading platform be no more than eight feet wide and meet the other listed conditions with a provision limiting the loading platform surface area to 200 square feet. The substitute amendment also specifies that a riparian owner may secure, to a pier, up to two personal watercraft for the first 50 feet of the riparian owner's shoreline footage and one additional personal watercraft for each additional 50 feet of shoreline footage without affecting the riparian owner's eligibility for this exemption.

The second exemption in current law is known as the grandfather exemption, which, as affected by 2011 Wisconsin Act 25, specifies that a riparian owner of a pier that was placed on the bed of a navigable water on or before February 6, 2004, is exempt from the permit requirements under s. 30.12, Stats., if: the pier is not more than eight feet wide; the pier does not interfere with the riparian rights of other riparian owners; and the riparian owner registers the pier with the DNR no later than April 1, 2012. The substitute amendment modifies this exemption so that it applies to any pier placed before the substitute amendment goes into effect if the pier does not interfere with the riparian rights of other riparian owners. The other conditions of the exemption that apply under current law would not apply under the substitute amendment. The substitute amendment also applies this pier exemption to piers for which the DNR initiated enforcement action before February 6, 2004, which enforcement action remained pending on April 16, 2008, and makes other changes to the enforcement limitations for this exemption.

The substitute amendment also requires DNR to issue a general permit that authorizes a riparian owner to place a pier in, or that would directly affect, an area of special natural resource interest (ASNRI) and that is adjacent to the owner's property, if the pier does not interfere with the riparian

rights of other riparian owners. The substitute amendment specifies that the general permit must apply to any pier that meets all of the other eligibility criteria for the first exemption above.

Boathouses

The substitute amendment allows repair and maintenance of a boathouse if the boathouse existed on December 16, 1979, and the repair or maintenance does not affect the size, location, or configuration of the boathouse and does not result in the boathouse being converted into living quarters.

Bridges and Culverts

The substitute amendment repeals the exemption under ch. 30, Stats., for municipalities to obtain permits to construct or reconstruct highway bridges and requires the DNR to issue a statewide general permit that authorizes a person to construct, reconstruct, and maintain bridges and culverts that are part of a transportation project that is carried out under the direction and supervision of a municipality.

Grading on the Banks of a Navigable Waterway

The substitute amendment exempts land grading activity authorized under a stormwater discharge permit and land grading activity authorized by a shoreland zoning permit issued by a county from the requirement to have a permit to grade or remove topsoil from the bank of any navigable waterway if the area exposed is more than 10,000 square feet.

Dams

The substitute amendment requires the DNR to establish an expedited procedure for approval of plans for “low hazard dams” if certain specified criteria are satisfied.

ASNRI

Under current law, for purposes of ch. 30, Stats., an ASNRI includes “An area that possesses significant scientific value, as identified by the department.” The DNR has promulgated rules that include a list of “areas that possess significant scientific value.” The substitute amendment directs the DNR, in its identification of “areas of significant scientific value,” to include a list that closely matches the current list under the DNR rule, with the exception of areas identified in a special wetland inventory study and areas identified by the U.S. Army Corp of Engineers in a special area management plan.

Permits for Activities That Are Not Related to Navigable Waters

Under current law, the DNR is required to promulgate rules under which it refunds fees paid by an applicant for a license or approval if the DNR fails to make a determination on the application within the time limit specified in the rule for that type of license or approval.

The substitute amendment repeals this requirement and replaces it with more specific requirements. The substitute amendment establishes, in statute, deadlines for the DNR to take final action on certain permit applications and directs the DNR to set other deadlines. The substitute amendment prohibits the DNR from disapproving an application for an approval solely because it is

unable to complete its review of the application before a deadline. If it fails to approve or disapprove an application before a deadline, the DNR must refund fees paid by the applicant for the approval and the applicant may bring an appeal as though the DNR had disapproved the application.

Air Pollution Control Permits

The substitute amendment specifies that the DNR is not required to use air dispersion modeling as a basis for making its findings on permit approval for certain air pollution control permits, unless required to do so under the Federal Clean Air Act.

Wisconsin Pollution Discharge Elimination System (WPDES) Permits and Stormwater Management Permits

The substitute amendment gives the DNR explicit authority to renew WPDES permits and stormwater management permits, upon the request of the permit holder, for not more than five years.

Forms of Certain DNR Notices

The substitute amendment requires the DNR to give notice on its Internet website, in addition to the publishing of a Class 1 notice under ch. 985, Stats., for certain types of notices.

Legislative History

Senate Bill 326 and Senate Substitute Amendment 1 to the bill were introduced on December 8, 2011. On December 14, 2011, the Senate Committee on Natural Resources and Environment recommended adoption of the substitute amendment by a vote of Ayes, 6; Noes, 1, and recommended passage as amended by a vote of Ayes, 4; Noes, 3.

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