

1 **AN ACT** *to create* 30.10 (5), 30.10 (6), 30.10 (7), 59.23 (2) (u) and 59.43 (1) (w) of
 2 the statutes; **relating to:** appeals from the determination that a stream is navigable
 3 and the mapping of navigable streams.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council’s Special Committee on Navigability and Drainage Ditches at the direction of Senator Alan Lasee, chair of the special committee.

The draft creates a mechanism for review of determinations of navigability of streams by the department of natural resources (DNR). It also directs the DNR to prepare maps that show the navigable portions of streams and to make the map information available to the public. The draft contains a number of provisions, which operate independently.

COMMENT: The special committee may recommend legislation consisting of all or any combination of the provisions of this draft.

4 **SECTION 1.** 30.10 (5) of the statutes is created to read:

5 30.10 (5) REVIEW OF DETERMINATIONS. (a) In this subsection, “committee” means the
 6 navigability review committee appointed under par. (b)

7 (b) The secretary shall appoint a navigability review committee consisting of 5
 8 members, including one person representing each of the following:

- 9 1. The department.
- 10 2. Agricultural interests.
- 11 3. Real estate and land development interests.
- 12 4. Environmental interests.
- 13 5. Local governments.

1 (c) A person may not serve on the committee until that person's appointment has been
2 ratified by a unanimous vote of all members of the natural resources board.

3 (d) A person who has an interest in land that is traversed or bordered by a waterway that
4 the department has determined is a navigable stream may at any time appeal that determination
5 to the committee. The appellant shall provide such information in support of the appeal as the
6 committee requires.

7 (e) Upon receipt of an appeal under par. (d), the committee shall meet to review the
8 appeal. The committee shall allow the appellant to appear before it and may hold a public
9 hearing. Notwithstanding s. 227.42, the hearing shall be an informational hearing and shall
10 not be treated as a contested case hearing or converted to a contested case hearing. The
11 committee shall render a decision to uphold or overturn the determination of navigability no
12 later than [30] [60] [other] days after the appeal is filed.

13 (f) A determination under par. (e) is an administrative decision reviewable under s.
14 227.52. Notwithstanding s. 227.59, the review of a determination under par. (e) shall be
15 instituted or taken in the circuit court for the county in which the waterway is located.

NOTE: SECTION 1 creates a process for the review of DNR determinations of the navigability of streams. It directs the secretary of natural resources to appoint a review committee for this purpose and specifies general procedures for the committee's review of DNR determinations. This SECTION also provides that an affected person may appeal a decision of the committee directly to the circuit court of the county in which the stream is located.

COMMENT: The review process established by SECTION 1 is quite different from the usual process for review of administrative decisions, which requires appeal within the administrative agency, followed by a quasi-judicial review by an administrative law judge (ALJ) before appeal to circuit court. This last appeal is generally required to take place in the circuit court of Dane county. Also, there generally are time limits for commencing an appeal; for example, 30 days from service of a decision by an ALJ.

In contrast, this draft creates a process that

-- Allows a person to challenge a determination that a stream is navigable at any time; that is, the draft imposes no time limit on the commencement of the review.

-- Bypasses appeals both within the DNR and before an ALJ, allowing direct appeal to circuit court.

-- Specifies that the appeal shall be made in the circuit court for the county in which the land is located.

1 **SECTION 2.** 30.10 (6) of the statutes is created to read:

2 30.10 (6) MAPS AND DATA. (a) The department shall develop, and make publicly
3 available, maps and data that show the results of determinations of navigability that are made
4 by the department. At a minimum, the maps and data shall include navigability determinations
5 made after the effective date of this subsection [revisor inserts date]. To the extent
6 practicable, within the constraints of available staff and funds, the department shall
7 incorporate past determinations of navigability into the maps and data.

8 (b) The department shall promulgate rules specifying procedures and standards it will
9 follow for the determination of the navigability of a waterway, including the kinds of scientific
10 evidence that it may use to show that a drainage ditch was a navigable stream before ditching.

NOTE: SECTION 2 requires the DNR to prepare maps of navigable streams. It requires the DNR to add streams to a mapping database as it makes navigability determinations, and to incorporate information from earlier determinations of navigability as resources allow. It also requires the DNR to promulgate rules to specify procedures and standards for determinations of navigability.

COMMENT: This provision is based in part on 2005 Assembly Bill 500 (AB 500), which was developed by the Joint Legislative Council's Special Committee on Navigable Waters Recodification.

11 **SECTION 3.** 30.10 (7) of the statutes is created to read:

12 30.10 (7) DISTRIBUTION OF MAPS. (a) The department shall prepare and periodically
13 update a digital navigable streams database and make the database available to the general

1 public via the Internet. The DNR shall prepare a fact sheet for distribution under s. 59.43.
2 The fact sheet shall describe the general nature of regulations applicable to navigable streams
3 and the existence of the navigable streams database and advise land owners to consult the
4 database prior to engaging in any activity that may be subject to the described regulations.

5 (b) Each time that the department adds information regarding a determination of
6 navigability to the database under par. (a), it shall provide that information to the register of
7 deeds of the county in which the stream is located regarding the parcels of land that are
8 traversed or bordered by the stream, for recording under s. 59.43 (1) (w).

NOTE: SECTION 3 relates to the dissemination of information contained in navigable streams maps. It requires that the DNR do all of the following:

-- Create, periodically update, and make available via the Internet a digital navigable streams database.

-- Prepare a fact sheet regarding the regulation of navigable streams and the availability of the database.

-- Submit information regarding parcels of land traversed or bordered by navigable streams included in its maps to registers of deeds.

9 **SECTION 4.** 59.23 (2) (u) of the statutes is created to read:

10 59.23 (2) (u) Ensure that the appropriate county or municipal official provides a copy
11 of the fact sheet under s. 30.10 (7) to every applicant for a building permit or zoning variance.

NOTE: SECTION 4 directs county clerks to ensure that the DNR fact sheet on regulation of activities affecting navigable streams is distributed to applicants for building permits and zoning variances.

COMMENT: This provision is intentionally imprecise regarding who actually must distribute the fact sheet because the organization of building inspection and zoning functions varies across the state.

12 **SECTION 5.** 59.43 (1) (w) of the statutes is created to read:

1 59.43 (1) (w) Record and index writings that are submitted according to s. 30.10 (7) (b)
2 evidencing that a navigable stream traverses or borders the particular parcel described in the
3 writings.

NOTE: SECTION 5 directs registers of deeds to record in the county land records information provided by the DNR regarding parcels traversed or bordered by streams in the DNR’s navigable streams maps.

4 (END)