

**1981 Assembly Bill 776**

**Date published: April 26, 1982**

**CHAPTER 226 , Laws of 1981**

**AN ACT** to repeal 27.115, 29.137 (6), 30.12 (2) (b) to (d) and 30.205; to renumber 30.12 (3); to renumber and amend 30.12 (2) (a); to amend 29.09 (11) and 30.28 (1); and to create 30.12 (3) of the statutes, relating to the exchange of submerged lands by cities and counties, bonds required for county clerks, bait dealer reports, permits for structures and deposits in navigable waters, zoning for lake bed removals and fees for placing riprap in navigable waters (suggested as remedial legislation by the department of natural resources).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of natural resources, and introduced by the law revision committee under s. 13.83 (1) (c) 4 of the statutes. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 27.115 of the statutes is repealed.

NOTE: As originally adopted in 1919, section 27.115 of the statutes authorized any city which previously acquired, or may in the future acquire, title to submerged land constituting the bed of a lake for public park and boulevard purposes, to convey that land to an incorporated yacht club for boating purposes. In 1945, the legislature considered 1945 Senate Bill 133, which extended this authority to counties.

The attorney general was asked to provide an opinion as to the constitutionality of section 27.115 of the 1943 statutes, and the constitutionality of 1945 Senate Bill 133.

In 34 OAG 124 (1945), the attorney general illustrated by a quote the Wisconsin supreme court's consistent position that title to the beds of navigable lakes in Wisconsin is vested in the state "in trust to preserve to the people of the state forever the common rights of fishing and navigation and other such rights as are incident to public waters at common law, which trusteeship is inviolable, the state being powerless to change the situation by in any way abdicating its trust." [*Village of Pewaukee v. Savoy*, 103 Wis. 271, 274 (1899).]

The attorney general noted that in a few exceptions to this rule, the supreme court has approved conveyance of the state's title to a portion of the bed of a navigable lake. However, these exceptions have pertained only to Lake Michigan, and the supreme court in these cases held that the state may not convey the bed of any lake for purely private purposes.

Therefore, the attorney general concluded that the state is powerless to permit a city or a county to convey the bed of a lake to a yacht club since the beds of navigable lakes belong to the people of the state. Notwithstanding this opinion, the legislature adopted 1945 Senate Bill 133.

Although the attorney general's opinion on the unconstitutionality of section 27.115 of the statutes has not been confirmed by the Wisconsin supreme court, the opinion is based on clear precedents. There is little doubt that this opinion is correct. Therefore, this bill repeals section 27.115 of the statutes.

SECTION 2. 29.09 (11) of the statutes is amended to read:

29.09 (11) BOND REQUIRED. The department shall provide and pay the cost of a blanket surety bond covering ~~the several~~ county clerks performing duties under this chapter. The bond shall be conditioned, among other things, upon the faithful performance of ~~such~~ the clerk's duties according to law and shall provide for the payment to the parties entitled to ~~the same, such~~ payment, damages, not exceeding the amount provided in the bond, as may be suffered by them in consequence of a failure on the part of any ~~such~~ clerk ~~so~~ to discharge ~~such~~ his or her duties. The amount of the bond shall be determined by the department, ~~but shall not exceed \$100,000 for each county clerk covered.~~

NOTE: Section 29.09 (11) of the statutes currently requires the department of natural resources to provide and pay the cost of a blanket surety bond covering county clerks who issue licenses under chapter 29 of the statutes. The current statute allows the department to determine the amount of the surety bond, with a maximum of \$100,000 for each county clerk covered. This bill permits the department of natural resources to set the maximum amount of the security bond to reflect the increased value of licenses distributed to county clerks.

SECTION 3. 29.137 (6) of the statutes is repealed.

NOTE: This bill repeals the requirement that licensed bait dealers file reports with the department of natural resources. The reports are not used, so the statutory requirement is unnecessary.

SECTION 5. 30.12 (2) (a) of the statutes is renumbered 30.12 (2) and amended to read:

30.12 (2) (title) PERMITS TO PLACE STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS; GENERALLY. The department ~~may~~, upon application and after notice as provided under s. 31.06 and hearing, may grant to any riparian owner a permit to build or maintain for ~~his own~~ the owner's use a structure otherwise prohibited by statute, ~~provided such if the structure does not materially obstruct navigation or reduce the effective flood flow capacity of a stream and is not detrimental to the public interest.~~ The procedures in this subsection do not apply to permits issued under sub. (3).

SECTION 6. 30.12 (2) (b) to (d) of the statutes are repealed.

SECTION 7. 30.12 (3) of the statutes is renumbered 30.12 (5).

SECTION 8. 30.12 (3) of the statutes is created to read:

30.12 (3) PERMITS TO PLACE CERTAIN STRUCTURES OR DEPOSITS IN NAVIGABLE WATERS. (a) The department, upon application and investigation, may grant to a riparian owner a permit to:

1. Place a layer of sand or similar material on the bed of a lake adjacent to the owner's property for the purpose of improving recreational use.
2. Place a fish crib or similar device on the bed of a lake for the purpose of improving fish habitat.
3. Place riprap or similar material on the bed and bank of navigable waters adjacent to an owner's property for the purpose of protecting the bank and adjacent land from erosion.
4. Place crushed rock or gravel, reinforced concrete planks, adequately secured treated timbers, cast in place concrete or similar material on the bed of a navigable stream for the purpose of developing a ford if an equal amount of material is removed from the stream bed.

(b) A person who seeks to place structures or deposits under par. (a) shall apply to the department for a permit. The department shall review the application and inspect the location involved. The department may disapprove the application if it finds the proposed structure or deposit will materially impair navigation or be detrimental to the public interest. The department shall issue the permit or notify the applicant in writing of the disposition of the application.

NOTE: Section 30.12 of the statutes requires permits from the department of natural resources for deposits in navigable waters. A 30-day notice is required before these permits can be issued. In the case of stream crossings, sand blankets, fish cribs and riprap, the environmental impacts are generally negligible. Therefore, the 30-day notice requirement is unnecessary to protect public rights and the rights of neighboring landowners and causes a delay in the process.

This bill reduces delays in obtaining a permit in the cases described above, without reducing the opportunity for objections to be raised. Objections can be raised under section 227.064 of the statutes. Elimination of the notice requirement will also reduce the costs of postage and printing and will eliminated non-productive staff work.

SECTION 9. 30.205 of the statutes is repealed.

NOTE: Under s. 30.205 of the statutes, riparian owners on outlying waters may apply to the department of natural resources for the establishment of zones on lake beds. Within these zones, riparian owners may remove material from the lake bed to restore recreational uses, without obtaining a contract for the removal of material from a lake bed under s. 30.20 (1) of the statutes.

This bill repeals s. 30.205 of the statutes. This provision has never been used, and the removal of material from the bed of outlying waters is adequately covered by other provisions of chapter 30 of the statutes.

SECTION 10. 30.28 (1) of the statutes is amended to read:

30.28 (1) The department shall charge a permit or approval fee for carrying out its duties and responsibilities under ss. 30.10 to 30.27 except that the department may not charge a fee for an approval granted under s. 30.12 (3) (a) 3. The permit or approval fee shall accompany the permit application or request for approval and shall be refunded if the permit or approval is not granted.

NOTE: Section 30.12 (2) (d), 1979 stats., allows a riparian landowner to place riprap or similar material on the bed and bank of navigable waters adjacent to the owner's property for the purpose of protecting the stream bank or lake shore from erosion. Section 30.28 of the statutes currently requires fees for permits to conduct such activity.

This bill exempts permits for riprap from the permit fee because shore protection is a benefit to the lake and stream resources if placed in accordance with permit requirements of the department of natural resources. Riprap stops erosion and sedimentation, provides fisheries habitat and protects property. Elimination of fees will help encourage people to undertake more shore protection activities, which will benefit the resources of the state as well as private property. The offsetting long-term benefit to the public should far exceed the revenue loss to the state.

SECTION 13. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
29.29 (3)(b)	30.12 (2)(b)	30.12 (3)(a)1

---