



1995 ASSEMBLY BILL 590

October 2, 1995 - Introduced by Representatives BRANDEMUEHL and JOHNSRUD, cosponsored by Senator RUDE. Referred to Committee on Natural Resources.

1 **AN ACT to repeal** 30.43 (2), 30.437, 30.44 (1) (c) 5., 30.44 (8) (am), 30.44 (9) and
2 30.44 (11); **to renumber and amend** 30.42 (1) (d); **to amend** 30.435 (1), 30.44
3 (title), 30.44 (1) (c) 1. and 3., 30.44 (1) (f), 30.44 (7), 30.44 (8) (a), 30.44 (8) (b) and
4 (c) (intro.), 30.44 (10) (a), 30.45 (2) and 30.45 (5); **to repeal and recreate** 30.44
5 (1) (c) 4.; and **to create** 30.40 (1r), 30.40 (12m), 30.40 (14m), 30.42 (1) (d) 2.,
6 30.43 (4), 30.44 (3) (c) 2n., 30.44 (3e), 30.45 (3) (dg) and 30.45 (6m) of the
7 statutes; **relating to:** the lower Wisconsin state riverway concerning
8 performance standards for structures and mobile homes, cutting and
9 harvesting of timber, permit procedures of the counties in the riverway and of
10 the lower Wisconsin state riverway board, reports by the department of natural
11 resources, recreational trails and mining and quarrying activities; providing an
12 exemption from emergency rule procedures; and granting rule-making
13 authority.

Analysis by the Legislative Reference Bureau

Under current law, in order to engage in certain activities in the lower Wisconsin state riverway (riverway) a person must have a permit. Under current law, for certain activities that are to be conducted on land in the riverway that is zoned as shorelands under a county zoning ordinance, the county issues the permits. The activities for which a county issues permits consist of construction, modification

or certain repairs of structures, mobile homes, walkways, stairways and bridges. For these activities that are to be conducted on land in the riverway that is not county-zoned shorelands and for all other activities that require permits, the lower Wisconsin state riverway board (board) issues the permits. This bill eliminates the authority of counties to issue these types of permits for activities in the riverway. Under the bill, the board issues all of these types of permits.

Under current law, these permits may not be issued unless certain performance standards are met. This bill changes some of the performance standards that relate to how conspicuous a structure or mobile home may be from the river. The bill also deletes the performance standard requiring that the natural slope of the land on which a structure or mobile home is located be 12% or less and the standard requiring that a structure or mobile home be at least 100 feet below or behind the top of a bluff. Instead, the bill substitutes a performance standard that requires that sufficient measures to prevent erosion be used during and after construction or placement of the structure or mobile home. The bill requires that the board promulgate rules establishing the measures that will be sufficient to meet this performance standard.

Under current law, the department of natural resources (DNR) promulgates rules for the cutting of marketable timber in the riverway. The current rules establish 3 zones in which this timber cutting is restricted. In the river edge zone, which is land that begins with tree growth at the river's edge and extends 75 feet landward, no cutting of marketable timber is permitted. In the bluff zone, which consists of the area 200 feet in width from 100 feet behind a bluff line to 100 feet below the bluff line, selection timber cutting is allowed but a minimum of 75 square feet basal area per acre must be maintained for the stand of timber after cutting. The rules define "basal area" to be the cumulative cross-sectional area of trees that have a diameter of at least 5 inches when measured 4.5 feet above the ground. The basal area is expressed in square feet per acre. The rules define "selection cutting" to be cutting that leaves a uniformly distributed standing of desirable trees in desirable sizes. In the river view zone, which is the area in the riverway which is visible from the river during the time when the leaves are on the deciduous trees, the rule establishes the minimum basal area at 60 square feet per acre and allows some clear cutting of areas that do not exceed 6 acres in size.

This bill requires DNR to promulgate rules that establish the minimum basal area per acre for the land in the riverway that is in the river edge zone and the bluff zone to be 60 square feet per acre and that allow only selection cutting in these zones.

Under current law, new mining and quarrying activities, and the expansion of existing ones, are prohibited in the riverway. The bill limits this prohibition to land that can be seen from the river when the leaves are on the deciduous trees. For the beginning or expanding of mining or quarrying activities that occur on land that cannot be seen from the river when the leaves are on the deciduous trees, the person engaged in the activity must receive a permit for the activity from the board.

The bill also provides that the construction or alteration of a recreational trail may occur only if the embankments, grading and associated structures are visually inconspicuous and are constructed with sufficient safeguards to prevent erosion. No permit is required for the construction or alteration of such trails. The bill defines

a “recreational trail” to be different from a “walkway”, which is a defined term under current law and for which a permit is required. The main difference between a “walkway” and a “recreational trail” is that the former is necessary for access to the river while the latter is not necessary for such access and is used for recreational purposes.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 30.40 (1r) of the statutes is created to read:

2 30.40 (1r) “Bluff zone” means land in the riverway in the areas that are 200
3 feet in width from behind the bluff line to 100 feet below the bluff line.

4 **SECTION 2.** 30.40 (12m) of the statutes is created to read:

5 30.40 (12m) “Recreational trail” means an unpaved trail or pathway that is
6 used for recreational purposes and is not necessary for access to the river due to the
7 difficulty of the terrain.

8 **SECTION 3.** 30.40 (14m) of the statutes is created to read:

9 30.40 (14m) “River edge zone” means land in the riverway in the areas that
10 begin from the point at which tree growth begins at the edge of the river and that
11 extend 75 feet landward from that point.

12 **SECTION 4.** 30.42 (1) (d) of the statutes is renumbered 30.42 (1) (d) 1. and
13 amended to read:

14 30.42 (1) (d) 1. Promulgate rules that are applicable only to land in the riverway
15 to regulate the cutting and harvesting of timber so that the effect of cutting or
16 harvesting of timber on the scenic beauty and the natural value of the riverway is
17 minimized. For land that is in the river edge zone or the bluff zone, the rules
18 promulgated under this paragraph shall require that the cutting and harvesting of

1 timber be solely by selection cutting and that the minimum basal area for the
2 residual stand of timber be 60 square feet per acre. The rules promulgated under this
3 paragraph do not apply to any cutting or harvesting of timber subject to regulation
4 under s. 30.43 (3).

5 **SECTION 5.** 30.42 (1) (d) 2. of the statutes is created to read:

6 30.42 (1) (d) 2. For purposes of subd. 1, the department shall, by rule, define
7 “basal area” and “selection cutting”.

8 **SECTION 6.** 30.43 (2) of the statutes is repealed.

9 **SECTION 7.** 30.43 (4) of the statutes is created to read:

10 30.43 (4) Promulgate rules establishing the measures that will be sufficient to
11 prevent erosion for purposes of s. 30.44 (1) (c) 4.

12 **SECTION 8.** 30.435 (1) of the statutes is amended to read:

13 30.435 (1) Grant waivers under s. 30.44 (8) (c) and (f) and impose conditions
14 under s. 30.44 (7) ~~and (11) (d)~~.

15 **SECTION 9.** 30.437 of the statutes is repealed.

16 **SECTION 10.** 30.44 (title) of the statutes is amended to read:

17 **30.44 (title) Permits; and waivers; board ~~and county~~ procedures.**

18 **SECTION 11.** 30.44 (1) (c) 1. and 3. of the statutes are amended to read:

19 30.44 (1) (c) 1. Sufficient vegetation exists on the land to allow the structure
20 or mobile home to be visually inconspicuous or the board imposes a permit condition
21 that requires the person to establish sufficient vegetation within a specified period
22 of time to make the structure or mobile home visually inconspicuous.

23 3. Visual impact shall be minimized by the use of exterior colors that harmonize
24 with the natural surroundings during the time when the leaves are on the deciduous
25 trees and by the limited use of glass or other reflective materials, except that a

1 structure that is for agricultural use may be painted in a traditional manner in red
2 or white.

3 **SECTION 12.** 30.44 (1) (c) 4. of the statutes is repealed and recreated to read:

4 30.44 (1) (c) 4. Sufficient measures to prevent erosion, as established by rules
5 promulgated under s. 30.43 (4), will be used during and after the construction,
6 reconstruction, modification, repair, placement or replacement of the structure or
7 mobile home.

8 **SECTION 13.** 30.44 (1) (c) 5. of the statutes is repealed.

9 **SECTION 14.** 30.44 (1) (f) of the statutes is amended to read:

10 30.44 (1) (f) For land in the riverway that is not visible from the river ~~and that~~
11 ~~is not zoned shorelands~~, the board may issue a general permit for an activity in par.
12 (b) that is applicable to a designated area of the riverway instead of requiring
13 applications for individual permits for the activity under par. (b). A person engaging
14 in an activity in par. (b) in an area for which a general permit has been issued for the
15 activity shall comply with the performance standard in par. (e).

16 **SECTION 15.** 30.44 (3) (c) 2n. of the statutes is created to read:

17 30.44 (3) (c) 2n. The cutting of timber that is necessary for the construction,
18 reconstruction, modification, repair or maintenance of a recreational trail.

19 **SECTION 16.** 30.44 (3e) of the statutes is created to read:

20 30.44 (3e) MINING; QUARRYING. (a) A person shall apply for and receive a permit
21 before doing any of the following on land in the riverway that is not visible from the
22 river when the leaves are on the deciduous trees:

- 23 1. Beginning a mining or quarrying activity.
- 24 2. Expanding a mining or quarrying activity.

1 (b) A person may not be issued a permit for an activity in par. (a) unless the
2 following performance standards are met:

3 1. Any structure and any stockpiled minerals or soil associated with the mining
4 or quarrying activity may not be visible from the river when the leaves are on the
5 deciduous trees.

6 2. The excavation for the mining or quarrying activity may not be visible from
7 the river when the leaves are on the deciduous trees.

8 **SECTION 17.** 30.44 (7) of the statutes is amended to read:

9 30.44 (7) CONDITIONS ON PERMITS. The board ~~or county~~ may impose on a permit
10 a condition that is necessary to assure compliance with the performance standards
11 in subs. (1) to (5) or to assure that the activity is completed within a reasonable time,
12 except that only the board may impose such a condition on a permit issued under sub.
13 ~~(3), (3m) or (4).~~

14 **SECTION 18.** 30.44 (8) (a) of the statutes is amended to read:

15 30.44 (8) (a) Except as provided under sub. (1) (f), a person shall apply for and
16 be issued by the board a permit for an activity in subs. (1), ~~(2)~~ and to (5) for land in
17 the riverway ~~that is not zoned shorelands under s. 59.971.~~

18 **SECTION 19.** 30.44 (8) (am) of the statutes is repealed.

19 **SECTION 20.** 30.44 (8) (b) and (c) (intro.) of the statutes are amended to read:

20 30.44 (8) (b) The board may not issue a permit under par. (a) ~~or (am)~~ if the
21 performance standards for the activity are not met.

22 (c) (intro.) The board may grant a waiver of a performance standard for an
23 activity in sub. (1) (b) and issue a permit under par. (a) or may grant a waiver
24 authorizing an activity prohibited under s. 30.45 (3) or (3m) for land in the riverway
25 ~~that is not zoned shorelands under s. 59.971~~ if one of the following applies:

1 **SECTION 21.** 30.44 (9) of the statutes is repealed.

2 **SECTION 22.** 30.44 (10) (a) of the statutes is amended to read:

3 30.44 **(10)** (a) The board ~~or a county~~ shall revoke a permit ~~it~~ issued under sub.
4 (8) or s. 30.44 (9), 1993 stats., if a person fails to comply with the performance
5 standards for the permit that are not waived under sub. (8) (c) or s. 30.44 (9) (c), 1993
6 stats.

7 **SECTION 23.** 30.44 (11) of the statutes is repealed.

8 **SECTION 24.** 30.45 (2) of the statutes is amended to read:

9 30.45 **(2)** No person may violate a condition imposed under s. 30.44 (7) or under
10 s. 30.44 (11) (d), 1993 stats.

11 **SECTION 25.** 30.45 (3) (dg) of the statutes is created to read:

12 30.45 **(3)** (dg) Construction, reconstruction, modification, repair or
13 maintenance of a recreational trail.

14 **SECTION 26.** 30.45 (5) of the statutes is amended to read:

15 30.45 **(5)** No person may begin a mining or quarrying activity or expand a
16 mining or quarrying activity on land that is visible from the river when the leaves
17 are on the deciduous trees.

18 **SECTION 27.** 30.45 (6m) of the statutes is created to read:

19 30.45 **(6m)** No person may construct, reconstruct or alter a recreational trail
20 unless the recreational trail and any embankments, grading and associated
21 structures are visually inconspicuous and are constructed with sufficient safeguards
22 to prevent erosion.

23 **SECTION 28. Nonstatutory provisions; transfers of county actions.**

24 (1) Applications submitted to a county for permits under section 30.44 (9), 1993
25 stats., that are pending in a county on the effective date of this subsection shall be

1 transferred to the lower Wisconsin state riverway board for determinations of
2 whether to issue the permits under section 30.44 (8) of the statutes, as affected by
3 this act.

4 (2) Requests for waivers submitted to a county under section 30.44 (9) (c), 1993
5 stats., that are pending in a county on the effective date of this subsection shall be
6 transferred to the lower Wisconsin state riverway board for determinations of
7 whether to grant the waivers under section 30.44 (8) of the statutes, as affected by
8 this act.

9 (3) Appeals of denials of permits under section 30.44 (9) (f), 1993 stats., that
10 are pending in a county on the effective date of this subsection shall be transferred
11 to the lower Wisconsin state riverway board for determinations of whether to issue
12 the permits under section 30.44 (8) of the statutes, as affected by this act.

13 (4) The procedures under section 30.44 (11), 1993 stats., shall apply to reviews
14 of waivers granted under section 30.44 (9) (c), 1993 stats., that are pending before
15 the lower Wisconsin state riverway board on the effective date of this subsection.

16 **SECTION 29. Nonstatutory provisions; rules for erosion prevention.**

17 (1) The lower Wisconsin state riverway board shall submit proposed rules
18 required under section 30.43 (4) of the statutes, as created by this act, to the
19 legislative council staff for review under section 227.15 (1) of the statutes no later
20 than the first day of the 13th month beginning after the effective date of this
21 subsection.

22 (2) Using the procedure under section 227.24 of the statutes, the lower
23 Wisconsin state riverway board shall promulgate rules required under section 30.43
24 (4) of the statutes, as created by this act. The rules shall be in effect until the effective
25 date of the rules submitted under subsection (1), regardless of whether the period of

1 time during which they are in effect exceeds the period authorized under section
2 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2)
3 (b) of the statutes, the board need not provide evidence of the necessity of
4 preservation of the public peace, health, safety or welfare in promulgating the rules
5 under this subsection.

6

(END)