



## 1997 ASSEMBLY BILL 664

December 18, 1997 - Introduced by Representatives OTTE, LADWIG, GRONEMUS, ZUKOWSKI, BRANDEMUEHL, PLALE, HASENOHRL, HOVEN, F. LASEE, OLSEN, ALBERS, OWENS, GROTHMAN, AINSWORTH, GOETSCH, DUFF, WALKER, MUSSER and RYBA, cosponsored by Senators HUELSMAN, GEORGE, A. LASEE and WELCH. Referred to Committee on Natural Resources.

1     **AN ACT** *to renumber and amend* 30.10 (2); *to amend* 30.01 (4m) and 30.10 (4)  
2           (c); and *to create* 30.10 (2) (a), 30.10 (2) (b), 30.10 (2) (c) and 30.10 (2m) of the  
3           statutes; **relating to:** navigability of certain bodies of water.

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### *Analysis by the Legislative Reference Bureau*

Under the state constitution, bodies of water in the state that are navigable in fact are held in trust by the state for the benefit of the public, and no person may infringe on the public's right to use any navigable water without the permission of the state. Under current statutory law, the department of natural resources (DNR) has the duty to safeguard this public right, and the placement of any type of structure or obstruction in a body of water that can in fact be navigated is subject to regulation by DNR.

#### ***Streams, sloughs, bayous and marsh outlets***

In determining whether a stream is navigable in fact, courts have held that it is navigable if it is possible to float a small craft, such as a canoe, on the stream at some time during the year for recreational purposes. Current statutes do not specify this test or another test to be used in determining whether a stream is navigable in fact.

For streams, sloughs, bayous and marsh outlets, this bill establishes a test that must be met for the body of water to be declared by DNR to be navigable in fact. The requirements under the test include that the body of water be able to float a 16-foot canoe with a 6-inch draft carrying a person who weighs not less than 120 pounds or that the body of water be determined to be navigable by statistically calculating its

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annual recurring water flow based on a 4-hour to 6-hour storm with a recurrence interval of at least 2 years. The test also requires that the stream, slough, bayou or outlet has an identifiable stream history and naturally occurring bed and bank and that the stream, slough, bayou or outlet provides quality recreation for a period of at least 24 consecutive hours at least once a year.

The bill also requires that if a stream, slough, bayou or marsh outlet is divided by a structure that is used for pedestrian or vehicular traffic, each portion of the divided body of water must meet this navigability test.

***Farm drainage ditches***

Under current law, a farm drainage ditch is not considered navigable unless it is shown that it was a navigable stream before ditching. This bill requires that this showing of navigability be documented on maps, in land surveys or by other documentation.

Current law defines a "farm drainage ditch" to be an artificial channel that drains waters from agricultural lands. This bill changes the definition so that the channel need drain from agricultural lands only at the time it was created. Therefore, a farm drainage ditch that is subsequently changed to another purpose is still considered not navigable.

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

1           **SECTION 1.** 30.01 (4m) of the statutes is amended to read:

2           30.01 (**4m**) "Navigable waters" or "navigable waterway" means any body of  
3 water which is navigable under ~~the laws of this state s. 30.10.~~

4           **SECTION 2.** 30.10 (2) of the statutes is renumbered 30.10 (2) (intro.) and  
5 amended to read:

6           30.10 (**2**) STREAMS. (intro.) Except as provided under sub. (4) (c), ~~all streams,~~  
7 ~~sloughs, bayous and marsh outlets, which are navigable in fact for any purpose~~  
8 ~~whatsoever, are~~ any body of water that is a stream, slough, bayou or marsh outlet is  
9 declared navigable to the extent that no dam, bridge or other obstruction shall be  
10 made in or over the same body of water without the permission of the state. only if  
11 all of the following apply to the body of water:

12           **SECTION 3.** 30.10 (2) (a) of the statutes is created to read:

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1           30.10 (2) (a) The body of water is determined to be navigable by either floating  
2           in the body of water a 16-foot canoe with a 6-inch draft that is carrying a person who  
3           weighs not less than 120 pounds or by statistically calculating its annual recurring  
4           water flow based on the water that would be produced by a 4-hour to 6-hour storm  
5           with a recurrence interval of at least 2 years.

6           **SECTION 4.** 30.10 (2) (b) of the statutes is created to read:

7           30.10 (2) (b) The body of water has identifiable stream history and a naturally  
8           occurring bed and bank.

9           **SECTION 5.** 30.10 (2) (c) of the statutes is created to read:

10          30.10 (2) (c) The water depth in the body of water provides quality recreation  
11          of the type that requires the body of water to be navigable for a period of at least 24  
12          consecutive hours at least once a year.

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

14          30.10 (2m) ENCLOSED STREAMS. Except as provided in sub. (4) (c), any body of  
15          water that is a stream, slough, bayou or marsh outlet and that is contained and  
16          divided into 2 or more portions is declared navigable to the extent that no dam, bridge  
17          or other obstruction shall be made in or over any portion of the body of water without  
18          the permission of the state only if all of the following apply:

19               (a) The division of the body of water is a bridge, dam or other structure that is  
20               used by vehicular or pedestrian traffic to cross the body of water.

21               (b) Each portion meets the requirements under sub. (2) (a) to (c).

22          **SECTION 7.** 30.10 (4) (c) of the statutes is amended to read:

23          30.10 (4) (c) Notwithstanding any other provision of law, farm drainage ditches  
24          are not navigable within the meaning of this section unless it is shown on maps, in  
25          land surveys or by other documentation that the ditches were navigable streams

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**SECTION 7**

1 before ditching. For purposes of this paragraph, "farm drainage ditch" means any  
2 artificial channel which drains water from lands which ~~are~~ were used for  
3 agricultural purposes at the time the channel was created.

4 (END)