



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4634/1
EHS&ZDW:klm

2017 ASSEMBLY BILL 599

October 27, 2017 - Introduced by Representatives QUINN, BERNIER, E. BROOKS, FELZKOWSKI, KLEEFISCH, KULP, PETRYK, RIPP, SUMMERFIELD and TAUCHEN, cosponsored by Senators MOULTON, HARSDORF, MARKLEIN, STROEBEL and TIFFANY. Referred to Committee on Environment and Forestry.

1 **AN ACT** *to renumber* 30.053; *to renumber and amend* 30.10 (2); *to amend*
2 30.053 (title); and *to create* 30.053 (2), 30.10 (2) (b) and 281.31 (2m) (c) of the
3 statutes; **relating to:** determinations of navigability of a stream.

Analysis by the Legislative Reference Bureau

This bill establishes conditions under which, if the Department of Natural Resources has determined that a stream is not navigable, DNR's ability to change that determination is restricted. The bill also exempts certain impoundments from regulations relating to navigable waters.

Current law regulates a number of actions taken in or near navigable waters that may impact the water level, flow, and quality of navigable water bodies, such as the placement of structures on, the deposit of materials on, or the removal of material from the beds of navigable waters and the zoning of shorelands, wetlands, and construction sites. Under current law, all streams that are navigable in fact for any purpose are declared navigable to the extent that no dam, bridge, or other obstruction may be made in or over the stream without the permission of this state.

Under this bill, if DNR makes a determination that a stream or portion of a stream is not navigable and a dam is constructed on the stream that modifies the flow of the stream or portion of the stream as compared to the natural flow of the stream or portion of the stream prior to its construction, and if an artificial impoundment created by the dam is or has been subject to a federal Fish and Wildlife Service Partners for Fish and Wildlife Habitat Development Agreement or similar environmental restoration project, then DNR's ability to change that determination

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is restricted. Specifically, the bill prohibits DNR from changing its determination of non-navigability with respect to the stream or portion of the stream unless all structures that affect the flow of the stream or portion of the stream are removed, all changes to the stream or land adjacent to the stream that could affect the flow of the stream or portion of the stream are substantially returned to their natural state, and a DNR evaluation of the navigability of the stream or portion of the stream conducted after the first two conditions are met indicates that DNR's determination of navigability should be changed.

The bill also exempts this type of impoundment from laws that regulate the placement of structures on, the deposit of materials on, or the removal of material from the beds of navigable waters and from regulation under shoreland zoning ordinances, wetland zoning ordinances, and construction site erosion control and storm water management zoning ordinances.

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

1 **SECTION 1.** 30.053 (title) of the statutes is amended to read:

2 **30.053** (title) **Applicability of chapter to artificial water bodies and**
3 **certain impoundments.**

4 **SECTION 2.** 30.053 of the statutes is renumbered 30.053 (1).

5 **SECTION 3.** 30.053 (2) of the statutes is created to read:

6 **30.053 (2)** Except in subch. V and s. 30.10 (2) (b), nothing in this chapter applies
7 to an impoundment described under s. 30.10 (2) (b) that does not discharge directly
8 into a natural navigable waterway.

9 **SECTION 4.** 30.10 (2) of the statutes is renumbered 30.10 (2) (a) and amended
10 to read:

11 **30.10 (2) (a)** ~~Except~~ Subject to par. (b) and except as provided under sub. (4) (c)
12 and (d), all streams, sloughs, bayous, and marsh outlets, which are navigable in fact
13 for any purpose whatsoever, are declared navigable to the extent that no dam, bridge,
14 or other obstruction shall be made in or over the same without the permission of the
15 state.

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SECTION 5. 30.10 (2) (b) of the statutes is created to read:

30.10 (2) (b) If the department makes a determination that a stream or portion of a stream is not navigable and a dam is constructed on the stream that modifies the flow of the stream or portion of the stream as compared to the natural flow of the stream or portion of the stream prior to its construction, and if an artificial impoundment created by the dam is or has been subject to a federal fish and wildlife service Partners for Fish and Wildlife Habitat Development Agreement or similar environmental restoration project, then the department may not change its determination of non-navigability with respect to the stream or portion of the stream unless all of the following conditions are met:

1. All structures that affect the flow of the stream or portion of the stream are removed.

2. All changes to the stream or land adjacent to the stream that could affect the flow of the stream or portion of the stream are substantially returned to their natural state.

3. A department evaluation of the navigability of the stream or portion of the stream conducted after the conditions in subds. 1. and 2. are met indicates that the department’s determination of non-navigability should be changed.

SECTION 6. 281.31 (2m) (c) of the statutes is created to read:

281.31 (2m) (c) Lands adjacent to an impoundment described under s. 30.10 (2) (b) that does not discharge directly into a natural navigable waterway.

(END)