



2021 ASSEMBLY BILL 85

February 18, 2021 - Introduced by Representatives OLDENBURG, STEINEKE, BILLINGS, CABRERA, DOYLE, EDMING, KITCHENS, KRUG, LOUDENBECK, B. MEYERS, MILROY, MOSES, MURSAU, NOVAK, ROZAR, SKOWRONSKI, SUBECK, TAUCHEN, THIESFELDT, TUSLER and SPREITZER, cosponsored by Senators COWLES, BEWLEY, FEYEN, PETROWSKI, RINGHAND, TESTIN and WIRCH. Referred to Committee on Environment.

1 **AN ACT to repeal** 30.2065 (1) and 30.2065 (2) (title); **to renumber and amend**
2 30.2065 (2); and **to create** 15.347 (23) and 30.2065 (1g) of the statutes; **relating**
3 **to:** a general permit for hydrologic restoration projects and creating a
4 hydrologic restoration and management advisory council.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources to issue a general permit that authorizes wetland, stream, and floodplain restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. Under current law, DNR may issue a general permit to a person wishing to proceed with a wetland restoration activity sponsored by a federal agency.

The bill requires DNR to apply several conditions to the new general permit relating to improvement of hydrologic conditions. The bill authorizes DNR to require an individual seeking approval to conduct activities under the general permit to apply for an individual permit under certain circumstances.

Like the existing general permit for wetland restoration activity, a general permit issued under the bill is valid for a period of five years, except that an activity that DNR determines is authorized by a general permit remains authorized under the permit until the activity is completed. Also, like the existing general permit for wetland restoration activity, a general permit issued under the bill is in lieu of any permit or approval that would otherwise be required for that activity under state navigable water law, water quality law, or wetland law.

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The bill creates at DNR a hydrologic restoration and management advisory council to provide input, make recommendations, and generally assist DNR with the implementation of the new general permit and associated restoration projects.

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

1 **SECTION 1.** 15.347 (23) of the statutes is created to read:

2 15.347 (23) HYDROLOGIC RESTORATION AND MANAGEMENT ADVISORY COUNCIL.

3 (a) There is created in the department of natural resources a hydrologic
4 restoration and management advisory council consisting of no fewer than 7 and no
5 more than 15 members appointed by the secretary of natural resources. The
6 secretary shall, as feasible, appoint members who represent entities such as local
7 governments and state and federal agencies with shared regulatory jurisdiction or
8 programmatic priorities; tribal partners; and academic, nongovernmental, and
9 private sector partners. The secretary shall appoint members with diverse expertise
10 in policies and practices relevant to the functions of the council, such as wetland,
11 stream, and watershed restoration; floodplain management and hydrology; fluvial
12 geomorphology; and hydrogeology.

13 (b) The hydrologic restoration and management advisory council shall do all
14 of the following:

15 1. Provide input on the terms, conditions, and implementation of policies
16 related to the review of hydrologic restoration and management projects, including
17 the general permit for hydrologic restoration and management issued under s.
18 30.2065 (1g).

19 2. Create a forum to help increase and improve interagency coordination on the
20 review of proposals to reconnect streams and floodplains.

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1 3. Consider and recommend opportunities to help local governments plan,
2 review, and implement hydrologic and floodplain restoration projects.

3 4. Consider and recommend policy and program changes needed to increase
4 integration of hydrologic restoration and management strategies in state-sponsored
5 programs related to flood hazard mitigation, water quality improvement, and fishery
6 and wildlife management.

7 5. Assist the department of natural resources with the planning and
8 implementation of trainings on hydrologic restoration and management for state
9 regulatory and resource management staff, local governments, restoration
10 practitioners, and other relevant audiences.

11 6. Identify and address other issues related to subs. 1. to 5. and provide
12 recommendations on those issues.

13 (c) The department of natural resources shall staff the council.

14 **SECTION 2.** 30.2065 (1) of the statutes is repealed.

15 **SECTION 3.** 30.2065 (1g) of the statutes is created to read:

16 30.2065 (**1g**) (a) The department shall issue a general permit that authorizes
17 wetland, stream, and floodplain restoration and management activities that will
18 result in a net improvement in hydrologic connections, conditions, and functions.
19 These activities shall be designed to the extent possible to return wetland, stream,
20 and floodplain hydrology to a natural and self-regulating condition in order to
21 achieve such goals as to slow the flow of runoff, reduce flood peaks, restore surface
22 and groundwater interactions, improve water quality, or increase soil retention,
23 groundwater infiltration, base flow, upper watershed storage, and flood resilience.
24 An activity is authorized by the general permit only if the applicant demonstrates
25 to the satisfaction of the department that the activity will result in net improvements

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1 in hydrologic connections, conditions, and functions and will not injure public rights
2 or interests or result in material injury to the rights of any riparian owner. The
3 department may develop a quantification tool to determine if an activity will meet
4 those standards. The department shall include conditions under the general permit
5 that do all of the following:

6 1. Authorize hydrologic restoration activities in and adjacent to wetlands,
7 streams, floodplains, and drainageways, including those that are no longer present
8 but are restorable, for the purposes of reconnecting streams and floodplains,
9 reestablishing healthy channel form and condition, removing or reducing wetland
10 drainage, restoring or improving natural flow and movement of water or sediment,
11 and reestablishing vegetation to support site stability and help manage flow and
12 infiltration.

13 2. Authorize hydrologic restoration activities that alter the flow of water in, to,
14 or from an area of special natural resource interest if the activities restore or repair
15 surface or subsurface connections within the area of special natural resource interest
16 or between the area of special natural resource interest and other waters of the state.

17 3. Specify that the general permit does not authorize any of the following
18 activities:

19 a. Construction of artificial wetlands.

20 b. Construction of stormwater retention or detention ponds.

21 c. Construction of large dams, as defined under s. 31.19 (1m), or dams that pose
22 a risk to life, health, or property.

23 d. Activities that straighten, berm, dredge, or armor stream channels, except
24 when proposed as a necessary element of a larger hydrologic restoration plan.

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1 e. Fish and wildlife habitat enhancement activities that are not associated with
2 a larger hydrologic restoration plan.

3 (b) In addition to the conditions under par. (a), the department may include
4 other conditions necessary to ensure that activities authorized by the general permit
5 will not injure public rights or interests or result in material injury to the rights of
6 any riparian owner.

7 (c) The department shall consider all of the following factors when it assesses
8 whether a proposed activity will result in net improvements in hydrologic
9 connections, conditions, and functions:

10 1. Minimal adverse impacts regulated under this chapter and ch. 281 may be
11 allowed if those impacts are anticipated to be temporary.

12 2. Restoring natural and self-regulating hydrology may result in permanent
13 but net-positive changes to biotic communities and abiotic conditions.

14 (d) In reviewing activities proposed to be conducted under a general permit
15 issued under this subsection, the department may do any of the following:

16 1. Waive fees.

17 2. Establish a reporting-only notification process for activities funded in whole
18 or in part by a state or federal agency.

19 3. Waive requirements for wetland delineations and functional assessments.

20 4. Adjust and simplify the application and information requirements to reflect
21 the fact that voluntary hydrologic restoration projects differ from projects with
22 potential adverse environmental impacts.

23 5. Waive requirements related to wetland mitigation for impacts incidental to
24 more fully restoring wetland hydrology.

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1 (e) The department shall notify, in writing, a person who has applied under s.
2 30.206 (3) (a) for authorization to proceed under a general permit issued under this
3 subsection that the person is required to apply for an individual permit if the
4 department determines that the proposed activity will not result in net
5 improvements to hydrologic connections, condition, and functions. The department
6 shall document in this notification its reasons for making this determination.

7 (f) A person wishing to proceed with an activity that may be authorized by a
8 general permit under this subsection may request and shall be granted a
9 preapplication meeting with the department prior to submitting an application
10 under s. 30.206 (3) (a). The department shall attempt to coordinate this meeting with
11 the local zoning authority in cases where local zoning regulations apply.

12 **SECTION 4.** 30.2065 (2) (title) of the statutes is repealed.

13 **SECTION 5.** 30.2065 (2) of the statutes is renumbered 30.2065, and 30.2065 (1),
14 (2) and (3) (intro.), as renumbered, are amended to read:

15 30.2065 (1) The department may issue a general permit to a person wishing
16 to proceed with ~~an~~ a wetland restoration activity sponsored by a federal agency.

17 **(1r)** A permit issued under ~~this subsection sub. (1) or (1g)~~ is in lieu of any permit
18 or approval that would otherwise be required for that activity under this chapter or
19 s. 31.02, 31.12, 31.33, 281.15, or 281.36, except that a general permit issued under
20 sub. (1g) does not apply to wetland mitigation conducted as required under s. 281.36
21 (3n) (d).

22 **(2)** A general permit issued under ~~this subsection sub. (1) or (1g)~~ is valid for a
23 period of 5 years except that an activity that the department determines is
24 authorized by a general permit remains authorized under the permit until the
25 activity is completed.

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1 **(3)** (intro.) To ensure that the cumulative adverse environmental impact of the
2 activities authorized by a general permit issued under sub. (1) is insignificant and
3 that the issuance of the general permit will not injure public rights or interests, cause
4 environmental pollution, as defined in s. 299.01 (4), or result in material injury to the
5 rights of any riparian owner, the department may impose any of the following
6 conditions on ~~the~~ a general permit issued under sub. (1):

7

(END)