

State of Wisconsin



2015 Senate Bill 459

Date of enactment: April 26, 2016
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2015 WISCONSIN ACT 387

AN ACT *to repeal* 30.01 (1am) (c) and 30.12 (3) (a) 6. a., b. and c.; *to renumber* 281.16 (2) (am) 1. a.; *to renumber and amend* 30.12 (3) (a) 6. (intro.), 30.121 (3c), 30.121 (3w) (c) and 281.36 (3n) (a); *to amend* 30.01 (1am) (a), (b) and (bm), 30.01 (1d), 30.025 (5), 30.12 (1k) (f), 30.12 (3) (a) 13., 30.12 (3) (c), 30.121 (1), 30.121 (3), 30.19 (1b) (a), 30.19 (1g) (a), 30.19 (1g) (am), 31.02 (1), 31.185 (5) and 281.36 (3m) (b); and *to create* 30.01 (1am) (d), (e), (f), (g) and (h), 30.01 (3c), 30.01 (6b), 30.053, 30.12 (3m) (cr), 30.121 (3c) (c), 30.121 (3w) (c) 3., 30.19 (1m) (dm), 30.19 (4) (d), 281.16 (1) (bg), 281.16 (2) (c), 281.36 (1) (am), 281.36 (1) (ct), 281.36 (3n) (a) 2. and 3., 281.36 (3n) (am) and 281.36 (4) (f) of the statutes; **relating to:** the regulation of navigable waters and wetlands.

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

SECTION 1. 30.01 (1am) (a), (b) and (bm) of the statutes are amended to read:

30.01 (**1am**) (a) A state natural area designated or dedicated under ss. 23.27 to 23.29 and shown on a map published on the department's Internet site.

(b) A surface water identified as a trout stream by the department and shown on a map published on the department's Internet site.

(bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15 and shown on a map published on the department's Internet site.

SECTION 2. 30.01 (1am) (c) of the statutes is repealed.

SECTION 3. 30.01 (1am) (d), (e), (f), (g) and (h) of the statutes are created to read:

30.01 (**1am**) (d) A body of water designated as a wild rice water under a written agreement between the department and the Great Lakes Indian Fish and Wildlife Commission and shown on a map published on the department's Internet site.

(e) A body of water in a wetland along Lake Michigan or Lake Superior that the department has identified as an ecologically significant coastal wetland and shown on a map published on the department's Internet site.

(f) A river that is included in the national wild and scenic rivers system or designated as a wild river under s. 30.26 and shown on a map published on the department's Internet site.

(g) The portion of a body of water that contains a sensitive area and shown on a map published on the department's Internet site.

(h) A unique and significant wetland specified by the department in a special wetland inventory study or a special area management plan and shown on a map published on the department's Internet site.

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

30.01 (**1d**) "Boathouse" means a structure with one or more walls or sides that has been used for one or more years for the storage of watercraft and associated materials which has one or more walls or sides, regardless of the current use of the structure.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

SECTION 5. 30.01 (3c) of the statutes is created to read:

30.01 (3c) “Line of navigation” means the depth of a navigable water that is the greater of the following:

- (a) Three feet, as measured at summer low levels.
- (b) The depth required to operate a boat on the navigable water.

SECTION 6. 30.01 (6b) of the statutes is created to read:

30.01 (6b) “Sensitive area” means an area of aquatic vegetation identified by the department as offering critical or unique fish and wildlife habitat, including seasonal or lifestage requirements, or offering water quality or erosion control benefits to the body of water.

SECTION 7. 30.025 (5) of the statutes is amended to read:

30.025 (5) ~~EXEMPTION FROM CERTAIN EXCLUSIVE PROCEDURES. Sections 30.208 and 30.209 do not apply to an application for any permit. The procedures provided under this section are exclusive and apply in lieu of any other procedures that would otherwise apply to permits applied for under this section.~~

SECTION 8. 30.053 of the statutes is created to read:

30.053 Applicability of chapter to artificial water bodies. Except in subch. V of this chapter and except as specifically provided otherwise in this chapter, nothing in this chapter applies to an artificial water body, as defined in s. 30.19 (1b) (a), that is not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm events.

SECTION 9. 30.12 (1k) (f) of the statutes is amended to read:

30.12 (1k) (f) ~~A decision of If the department against determines that the owner of a structure for which is not entitled to an exemption is claimed under this subsection is subject to a trial de novo, the owner may bring an action for declaratory judgment under s. 806.04 in the circuit court for the county in which the riparian property is located. The owner is not entitled to a contested case hearing or judicial review under ch. 227.~~

SECTION 10. 30.12 (3) (a) 6. (intro.) of the statutes is renumbered 30.12 (3) (a) 6. and amended to read:

30.12 (3) (a) 6. Place a permanent boat shelter adjacent to the owner’s property for the purpose of storing or protecting watercraft and associated materials, ~~except that no general or individual permit may be issued for a permanent boat shelter that is constructed after May 3, 1988, if any of the following apply:~~

SECTION 11. 30.12 (3) (a) 6. a., b. and c. of the statutes are repealed.

SECTION 12. 30.12 (3) (a) 13. of the statutes is amended to read:

30.12 (3) (a) 13. Place a seawall to replace an existing seawall for which a permit has been issued or an exemption granted under this chapter, or for which no permit

was required at the time the seawall was built. The replacement may not exceed 100 continuous feet in an inland lake of 300 or more acres and may not exceed 300 continuous feet in a Great Lakes water body. In issuing the permit, the department may impose conditions on the replacement of a seawall located in an area of special natural resource interest only if those conditions do not prohibit the replacement of a seawall located in an area of special natural resource interest.

SECTION 13. 30.12 (3) (c) of the statutes is amended to read:

30.12 (3) (c) The department may impose conditions on general permits issued under par. (a) 6. to govern the architectural features of boat shelters and the number of boat shelters that may be constructed adjacent to a parcel of land. The conditions may not govern the aesthetic features or color of boat shelters or the distance at which a boat shelter may extend from the shore, except to prohibit a boat shelter from extending beyond the line of navigation, and may not be based on the degree to which adjacent land is developed. The conditions shall be designed to ensure the structural soundness and durability of boat shelters. A municipality may enact ordinances that are consistent with this paragraph and with any conditions imposed on general permits issued to regulate the architectural features of boat shelters that are under the jurisdiction of the municipality.

SECTION 14. 30.12 (3m) (cr) of the statutes is created to read:

30.12 (3m) (cr) In determining whether to issue an individual permit to the owner of a proposed permanent boat shelter, the department may not deny the permit on the basis of any of the following:

1. The distance at which the shelter will extend from the shore, except that the department may deny the permit on the basis that the boat shelter will extend beyond the line of navigation.
2. The degree to which adjacent land is developed.

SECTION 15. 30.121 (1) of the statutes is amended to read:

30.121 (1) DEFINITION. In this section, the terms “maintain” and “repair” include replacing structural elements, including roofs, doors, walls, windows, beams, porches, ~~and~~ and floors, and foundations.

SECTION 16. 30.121 (3) of the statutes is amended to read:

30.121 (3) MAINTENANCE AND REPAIR. The riparian owner of any boathouse or fixed houseboat extending beyond the ordinary high-water mark of any navigable waterway may repair or maintain the boathouse or fixed houseboat if the cost to repair or maintain the boathouse or fixed houseboat does not exceed 50% of the equalized assessed value of the boathouse or fixed houseboat and the repair or maintenance does not involve the placement of a floor over a wet bay on or after the effective date of this subsection [LRB inserts date]. If the boathouse or

fixed houseboat is not subject to assessment, the owner may repair or maintain the boathouse or the fixed houseboat if the cost of the repair or maintenance does not exceed 50% of the current fair market value of the boat-house or fixed houseboat and the repair or maintenance does not involve the placement of a floor over a wet bay on or after the effective date of this subsection [LRB inserts date].

SECTION 17. 30.121 (3c) of the statutes is renumbered 30.121 (3c) (intro.) and amended to read:

30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES. (intro.) Subsection (3) does not apply to repairing or maintaining a boathouse if the boathouse was in existence on December 16, 1979, and if all of the following apply to the repairing or maintaining repair or maintenance:

(a) It does not affect the size, or location, or configuration of the boathouse and,

(b) It does not result in the boathouse being converted into living quarters.

SECTION 18. 30.121 (3c) (c) of the statutes is created to read:

30.121 (3c) (c) It does not involve the placement of a floor over a wet bay in the boathouse on or after the effective date of this paragraph [LRB inserts date].

SECTION 19. 30.121 (3w) (c) of the statutes is renumbered 30.121 (3w) (c) (intro.) and amended to read:

30.121 (3w) (c) (intro.) The boathouse is ~~located within~~ in any of the following locations:

1. Within a harbor that is being operated as a commercial enterprise ~~or is located on,~~

2. On a river that is a tributary of Lake Michigan or Lake Superior.

SECTION 20. 30.121 (3w) (c) 3. of the statutes is created to read:

30.121 (3w) (c) 3. On an outlying water and the work is limited to the expansion, repair, or maintenance of an existing boathouse.

SECTION 21. 30.19 (1b) (a) of the statutes is amended to read:

30.19 (1b) (a) “Artificial water body” means a ~~proposed or existing~~ body of water that does not have a history of being a lake or stream or of being part of a lake or stream.

SECTION 22. 30.19 (1g) (a) of the statutes is amended to read:

30.19 (1g) (a) Construct, dredge, or enlarge any artificial water body that connects with ~~a~~ an existing navigable waterway.

SECTION 23. 30.19 (1g) (am) of the statutes is amended to read:

30.19 (1g) (am) Construct, ~~dredge,~~ or enlarge any part of an artificial water body that is or will be located within 500 feet of the ordinary high-water mark of, but that does not or will not connect with, an existing navigable waterway, including. An artificial water body that

meets the requirements of this paragraph includes a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events.

SECTION 24. 30.19 (1m) (dm) of the statutes is created to read:

30.19 (1m) (dm) The dredging of any part of an artificial water that does not connect with a navigable waterway. An artificial water body that meets the requirements of this paragraph includes a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events.

SECTION 25. 30.19 (4) (d) of the statutes is created to read:

30.19 (4) (d) 1. In this paragraph, “covered municipality” has the meaning given in s. 281.16 (1) (br).

2. If the applicant is a covered municipality seeking an individual permit for the construction of a stormwater management pond in an artificial water body, whether navigable or nonnavigable, for the purpose of achieving compliance with performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr) or with an approved total maximum daily load under 33 USC 1313 (d) (1) (C), the department shall, in making its determinations under par. (c), take into consideration the sediment control in and water quality improvements to the watershed as a whole that result from the stormwater management pond.

SECTION 26. 31.02 (1) of the statutes is amended to read:

31.02 (1) The department, in the interest of public rights in navigable waters ~~or,~~ to promote safety, and to protect life, health and, property, property values, and economic values may regulate and control the level and flow of water in all navigable waters and may erect, or may order and require bench marks to be erected, upon which shall be designated the maximum level of water that may be impounded and the lowest level of water that may be maintained by any dam heretofore or hereafter constructed and maintained and which will affect the level and flow of navigable waters; and may by order fix a level for any body of navigable water below which the same shall not be lowered except as provided in this chapter; and shall establish and maintain gauging stations upon the various navigable waters of the state and shall take other steps necessary to determine and record the characteristics of such waters.

SECTION 27. 31.185 (5) of the statutes is amended to read:

31.185 (5) As a prerequisite to the granting of a permit under this section, the department may require the applicant to comply with such conditions as it deems reasonably necessary in the particular case to preserve public rights in navigable waters, to promote safety, and to protect life, health ~~and,~~ property, property values, and economic values.

SECTION 28. 281.16 (1) (bg) of the statutes is created to read:

281.16 (1) (bg) “Artificial water body” has the meaning given in s. 30.19 (1b) (a).

SECTION 29. 281.16 (2) (am) 1. a. of the statutes is renumbered 281.16 (1) (br).

SECTION 30. 281.16 (2) (c) of the statutes is created to read:

281.16 (2) (c) If a covered municipality has obtained all permits required for the construction of a storm water management pond in an artificial water body, whether navigable or nonnavigable, the department may not prohibit the construction of the storm water management pond as a method by which the covered municipality may achieve compliance with performance standards under par. (a) or with an approved total maximum daily load under [33 USC 1313](#) (d) (1) (C). The department shall give credit to the covered municipality for any pollutant reduction achieved by the storm water management pond in determining compliance with performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr) or an approved total maximum daily load under [33 USC 1313](#) (d).

SECTION 31. 281.36 (1) (am) of the statutes is created to read:

281.36 (1) (am) “Demonstrable economic public benefit” means an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment.

SECTION 32. 281.36 (1) (ct) of the statutes is created to read:

281.36 (1) (ct) “Small business” has the meaning given in s. 227.114 (1).

SECTION 33. 281.36 (3m) (b) of the statutes is amended to read:

281.36 (3m) (b) *Analysis of practicable alternatives.* An applicant shall include in an application submitted under par. (a) an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences, subject to the limitations in sub. (3n) (a).

SECTION 34. 281.36 (3n) (a) of the statutes is renumbered 281.36 (3n) (a) (intro.) and amended to read:

281.36 (3n) (a) *Review limits.* (intro.) For the purpose of issuing a wetland individual permit, during the period between the date on which the application under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the department shall conduct its review under this subsection. The department shall review the analysis of practicable alternatives pre-

sented in the application under sub. (3m) (b). The department shall limit its review of practicable alternatives as follows:

1. The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated that any of the following:

a. That the proposed project causing the discharge will result in a demonstrable economic public benefit, ~~that.~~

b. That the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, ~~or that.~~

c. That the proposed project will occur in an industrial park that is in existence at the time the application is submitted.

SECTION 35. 281.36 (3n) (a) 2. and 3. of the statutes are created to read:

281.36 (3n) (a) 2. Except as provided in par. (am), the department shall limit its review to those practicable alternatives that are located on the property owned by the applicant for a project involving fewer than 2 acres of wetland if the project is limited to one of the following:

a. The construction or expansion of a single-family home and attendant features.

b. The construction or expansion of a barn or farm buildings.

c. The expansion of a small business project.

3. The department shall limit its review to those practicable alternatives that are consistent with the overall purpose and scope of the project. The department shall impose a level of scrutiny and require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by the department.

SECTION 36. 281.36 (3n) (am) of the statutes is created to read:

281.36 (3n) (am) *Exception to review limit.* A lot created as part of a subdivision, land division, or other development that is initiated after July 1, 2012, is not eligible for the limited review under par. (a) 2.

SECTION 37. 281.36 (4) (f) of the statutes is created to read:

281.36 (4) (f) Maintenance, operation, or abandonment of a sedimentation or stormwater detention basin and associated conveyance features that were not originally constructed in a wetland.

SECTION 38. Effective date.

(1) This act takes effect on first day of the 5th month beginning after publication.