



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0226/1  
RNK:kjf:jf

DOA:.....Stinebrink, BB0098 – Commercial construction site erosion control  
**FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION**

**AN ACT** ...; **relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

**WATER QUALITY**

Under current law both DSPS and DNR administer laws with regard to erosion control at building sites. DSPS is required to establish standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment (commercial buildings) as well as for the construction of one-family and two-family dwellings. DNR is required to establish standards for erosion control at sites where the construction activities do not include the construction of a building, such as sites involving street or bridge construction.

This bill transfers from DSPS to DNR the authority to administer erosion control laws for construction sites with a land disturbance area of one or more, regardless of whether the construction activity includes the construction of a building. Under the bill, DSPS retains authority to administer erosion control laws for construction sites with a land disturbance area of less than one acre and that involve the construction of a commercial building or a one-family or two-family dwelling.

Current law requires certain persons who discharge storm water from a discernible, confined, and discrete conveyance to obtain a storm water discharge permit. This bill specifies that this permit requirement applies to conveyances of storm water associated with a construction site, including a construction site for a building.

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

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

**SECTION 1.** 30.025 (1b) (b) of the statutes is amended to read:

30.025 (1b) (b) “Permit” means an individual permit, a general permit, an approval, or a contract required under this subchapter or subch. II, a permit or an approval required under ch. 31, a storm water discharge permit required under s. 283.33 (1) (a) or (am), or a wetland general permit or wetland individual permit required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement [33 USC 1341](#) (a).

**SECTION 2.** 30.025 (1e) (b) of the statutes is amended to read:

30.025 (1e) (b) This section does not apply to a proposal to construct a utility facility if the only permit that the utility facility is required to obtain from the department is a storm water discharge permit under s. 283.33 (1) (a) or (am).

**SECTION 3.** 59.69 (4c) of the statutes is amended to read:

59.69 (4c) CONSTRUCTION SITE ORDINANCE LIMITS. Except as provided in s. 101.1206 (5m), an ordinance that is enacted under sub. (4) may only include provisions that are related to construction site erosion control if those provisions are limited to sites ~~where the construction activities do not include the construction of a building described in s. 281.33 (3) (a) 1. a. and b.~~

**SECTION 4.** 59.693 (2) of the statutes is amended to read:

59.693 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a county may enact a zoning ordinance, that is applicable to all of its unincorporated area, except as

provided in s. 60.627 (2) (b), for construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 59.69.

**SECTION 5.** 59.693 (7) of the statutes is amended to read:

59.693 (7) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a county under s. 236.45 may be exercised by the county with respect to construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to storm water management regulation, if the county has or provides a county planning agency as defined in s. 236.02 (1) (3).

**SECTION 6.** 60.627 (2) (a) of the statutes is amended to read:

60.627 (2) (a) To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, if a town board may enact zoning ordinances under s. 60.62, the town board may enact a zoning ordinance, that is applicable to all of its area, for construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 60.62.

**SECTION 7.** 60.627 (4) (c) of the statutes is amended to read:

60.627 (4) (c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 60.62 that relate to construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

**SECTION 8.** 60.627 (6) of the statutes is amended to read:

60.627 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a town under s. 236.45 may be exercised by it with respect to construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to storm water management regulation, if the town has or provides a planning commission or agency.

**SECTION 9.** 61.354 (2) of the statutes is amended to read:

61.354 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a village may enact a zoning ordinance, that is applicable to all of its incorporated area, for construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 61.35.

**SECTION 10.** 61.354 (4) (c) of the statutes is amended to read:

61.354 (4) (c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 61.35 that relate to construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

**SECTION 11.** 61.354 (6) of the statutes is amended to read:

61.354 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a village under s. 236.45 may be exercised by it with respect to construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to

storm water management regulation, if the village has or provides a planning commission or agency.

**SECTION 12.** 62.234 (2) of the statutes is amended to read:

62.234 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a city may enact a zoning ordinance, that is applicable to all of its incorporated area, for construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 62.23.

**SECTION 13.** 62.234 (4) (c) of the statutes is amended to read:

62.234 (4) (c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 62.23 that relate to construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

**SECTION 14.** 62.234 (6) of the statutes is amended to read:

62.234 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a city under s. 236.45 may be exercised by it with respect to construction site erosion control at sites ~~where the construction activities do not include the construction of a building~~ described in s. 281.33 (3) (a) 1. a. and b. or with respect to storm water management regulation, if the city has or provides a planning commission or agency.

**SECTION 15.** 101.1206 (1) of the statutes is amended to read:

101.1206 (1) The department shall establish statewide standards for erosion control at building sites that have a land disturbance that is less than one acre in area

and that are for the construction of public buildings, as defined in s. 101.01 (12), and buildings that are places of employment, as defined in s. 101.01 (11).

**SECTION 16.** 101.653 (2m) of the statutes is amended to read:

101.653 **(2m)** RULES FOR ADMINISTRATION. The department shall promulgate rules for the administration of construction site erosion control under this subchapter by counties, cities, villages and towns, including provisions regarding the issuance of building permits and the collection and distribution of fees.

**SECTION 17.** 101.653 (8) of the statutes is created to read:

101.653 **(8)** INAPPLICABILITY. This section does not apply to a construction site that has a land disturbance area that is one acre or more in area.

**SECTION 18.** 281.33 (3) (a) 1. of the statutes is renumbered 281.33 (3) (a) 1. (intro.) and amended to read:

281.33 **(3)** (a) 1. (intro.) Except as restricted under subd. 2., the department shall establish by rule minimum standards for activities all of the following:

a. Activities related to construction site erosion control at sites ~~where the construction activities do not include the construction of a building and to storm water management~~ that have a land disturbance that is one acre or more in area.

**SECTION 19.** 281.33 (3) (a) 1. b. of the statutes is created to read:

281.33 **(3)** (a) 1. b. Activities related to construction site erosion control at sites that have a land disturbance that is less than one acre and to which ss. 101.1206 and 101.653 do not apply.

**SECTION 20.** 281.33 (3) (a) 1. c. of the statutes is created to read:

281.33 **(3)** (a) 1. c. Storm water management.

**SECTION 21.** 281.33 (3) (b) (intro.) of the statutes is amended to read:

281.33 (3) (b) (intro.) The minimum standards for construction site erosion control at sites where the construction activities do not include the construction of a building described in par. (a) 1. a. and b. shall provide for the regulation of any construction activity, at such a site, that:

**SECTION 22.** 281.33 (4) of the statutes is amended to read:

281.33 (4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall prepare a model zoning ordinance for construction site erosion control at sites where the construction activities do not include the construction of a building described in sub. (3) (a) 1. a. and b. and for storm water management in the form of an administrative rule. The model ordinance is subject to s. 227.19 and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any city, village, town or county that submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.

**SECTION 23.** 283.33 (1) (a) of the statutes is amended to read:

283.33 (1) (a) A discharge from a discernible, confined, and discrete conveyance of storm water associated with an industrial activity, ~~including construction,~~ that meets criteria in rules promulgated by the department.

**SECTION 24.** 283.33 (1) (am) of the statutes is created to read:

283.33 (1) (am) A discharge from a discernible, confined, and discrete conveyance of storm water associated with a construction site, including a construction site for a building, that meets criteria in rules promulgated by the department.

**SECTION 25.** 283.33 (3) (d) of the statutes is created to read:

283.33 (3) (d) If the department determines that rules promulgated under s. 281.16 (2) prescribe performance standards that meet the requirements for establishing minimum standards under this subsection, the department's rules under s. 281.16 (2) satisfy the rule-making requirements under this subsection and shall apply as if they were promulgated under this subsection.

**SECTION 26.** 283.33 (4) (a) (intro.) of the statutes is amended to read:

283.33 (4) (a) (intro.) In addition to obtaining a permit under this section, the owner or operator of an industrial activity described in sub. (1) (a) or (am) that discharges storm water through a municipal separate storm sewer system described in sub. (1) (b) to (cr) shall submit the following information to the owner or operator of the municipal separate storm sewer system:

**SECTION 27.** 283.33 (5) of the statutes is amended to read:

283.33 (5) OTHER DISCHARGERS. A person who is required to obtain a permit under sub. (1) (a), (am), or (d) may apply for an individual permit or request coverage under a general permit issued by the department under s. 283.35.

**SECTION 28.** 283.33 (7) of the statutes is amended to read:

283.33 (7) PETITIONS. The owner or operator of a municipal separate storm sewer system may petition the department to require a permit under this section for any discharge through the municipal separate storm sewer system. The department may approve the petition only if a permit for the discharge is required under sub. (1) (a), (am), or (d).

**SECTION 9138. Nonstatutory provisions; Safety and Professional Services.**

(1) CONSTRUCTION SITE EROSION CONTROL. Any matter pending with the department of safety and professional services on the effective date of this subsection



that primarily relates to its erosion control responsibilities under section 101.1206, 2011 stats., or section 101.653, 2011 stats., as determined by the secretary of administration, remains the responsibility of the department of safety and professional services.

(END)