



2005 SENATE BILL 14

January 18, 2005 - Introduced by JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES, by request of 2003-2004 Rule Objection. Referred to Committee on Natural Resources and Transportation.

1 **AN ACT to create** 30.12 (1p) (c), 30.12 (3) (dm), 30.12 (3m) (d), 30.12 (4b) and
2 30.208 (6) of the statutes; **relating to:** the placement of riprap, biological shore
3 erosion control structures, seawalls, piers, wharves, boat shelters, boat hoists,
4 boat lifts, and swim rafts in navigable waters and the effective date for the
5 issuance of individual permits for activities in navigable waters.

Analysis by the Legislative Reference Bureau

Under current law, the repair or replacement of existing riprap in inland lakes or in the Great Lakes that does not exceed a certain amount is exempt from the permit requirements for projects or activities that occur in navigable waters. The placement of new riprap or riprap that does not enjoy this exemption is subject to a statewide general permit promulgated by the Department of Natural Resources (DNR).

For the exemption for repair or replacement of existing riprap, this bill prohibits DNR from promulgating certain rules that limit this exemption. This prohibition includes rules that limit the amount of vegetation that may be removed as a result of the replacement or repair or that limits the replacement or repair to riprap that had been authorized under an earlier DNR permit.

For the general permit covering the placement of new riprap or nonexempt riprap, the bill prohibits DNR from promulgating certain rules that limit the location where the riprap may be placed and the types and placement of riprap that is used in conjunction with the replacement of existing seawalls.

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Under current law, the placement of a biological shore erosion control structure is also exempt from the permit requirements. Under the bill, DNR may not promulgate a rule that limits the amount of vegetation that may be removed as a result of placing one of these structures or that prohibits the use of a limited amount of sand, gravel, or stone in the placement of the structure.

As to the placement of seawalls, the bill prohibits DNR from promulgating a rule in issuing individual permits for seawalls that limits the moderate energy sites where seawalls may be located. DNR calculates shore erosion by storm waves or other causes at a given site and then classifies the site as a high energy, moderate energy, or low energy site.

The bill contains a prohibition that bans DNR from promulgating any rule that prohibits the placement of riprap at low energy sites or any rule that establishes a waiting period that is applicable to individual permits.

Finally, the bill invalidates emergency rules promulgated by DNR relating to the placement of piers, wharves, boat shelters, boat hoists, boat lifts, and swim rafts so that the permanent rules concerning these structures that were in effect before the emergency rules remain in place, to the extent that they do not conflict with current statutory law.

This bill is introduced in support of the action of the Joint Committee for Review of Administrative Rules in suspending, on June 24, 2004, the following provisions of the Wisconsin Administrative Code, all of which are emergency rules promulgated by DNR:

1. Section NR 328.04 (3) (c), (4) (e), (5) (c), and (6) (b), which deals with permitting exemptions for biological shore erosion control structures and the repair and replacement of riprap.

2. Section NR 328.05 (4) (f) and (j) and (5) (f), which deals with general permits for placement of riprap and replacement of seawalls.

3. Section NR 328.06 (4) (intro.), which deals with individual permits for the placement of seawalls.

4. Section NR 328.07 (3), which deals with the placement of new riprap at certain locations.

5. Section NR 310.17 (4) (a), which deals with waiting periods for individual permits.

6. The treatment of ch. NR 326 by emergency rules that took effect on April 19, 2004, which relate to placement of piers, wharves, boat shelters, boat hoists, boat lifts, and swim rafts.

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

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

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1 30.12 **(1p)** (c) Notwithstanding par. (a), the department may not promulgate
2 any rule that does any of the following:

3 1. Limits the amount of vegetation that may be removed as a result of the repair
4 or replacement of riprap under sub. (1g) (j) or as a result of the placement of a
5 biological shore erosion control structure under sub. (1g) (k).

6 2. Limits the exemption for the repair or replacement of riprap under sub. (1g)
7 (j) or (k) to replacing or repairing riprap that was placed pursuant to a permit issued
8 under this chapter.

9 3. Prohibits a deposit of sand, gravel, or stone that is exempt under sub. (1g)
10 (a) from being associated with the placement of a biological shore erosion control
11 structure under sub. (1g) (k).

12 **SECTION 2.** 30.12 (3) (dm) of the statutes is created to read:

13 30.12 **(3)** (dm) For the issuance of general permits under this subsection, the
14 department may not promulgate any rule that does any of the following:

15 1. Limits the elevation for the placement of riprap to only elevations that are
16 below that ordinary high-water mark or that are below the storm-wave height, as
17 calculated under rules promulgated by the department.

18 2. Requires that riprap along moderate energy sites, as defined by rule by the
19 department, be planted above the ordinary high-water mark with native vegetation.

20 3. Requires that rock riprap be used in conjunction with the replacement of
21 existing seawalls under a general permit issued under par. (a) 13.

22 4. Establishes limitations on the placement or extension of riprap that is used
23 in conjunction with the replacement of existing seawalls.

24 **SECTION 3.** 30.12 (3m) (d) of the statutes is created to read:

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1 30.12 **(3m)** (d) For the issuance of individual permits for seawalls under this
2 subsection, the department may not promulgate a rule to limit the moderate energy
3 sites, as defined by rule by the department, where seawalls may be located.

4 **SECTION 4.** 30.12 (4b) of the statutes is created to read:

5 30.12 **(4b)** PLACEMENT OF RIPRAP; LOCATION. For purposes of this section, the
6 department may not promulgate any rule that prohibits the placement of riprap at
7 low energy sites, as defined by rule by the department.

8 **SECTION 5.** 30.208 (6) of the statutes is created to read:

9 30.208 **(6)** WAITING PERIOD PROHIBITED. The department may not promulgate
10 any rule that establishes a waiting period that is applicable to individual permits
11 issued under this subchapter.

12 **SECTION 6. Nonstatutory provisions.**

13 (1) The emergency rules promulgated by the department of natural resources
14 that took effect on April 19, 2004, that affect chapter NR 326 of the Wisconsin
15 Administrative Code relating to piers, wharves, boat shelters, boat hoists, boat lifts,
16 and swim rafts in navigable waterways are void.

17 **(END)**