CHAPTER 30

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SUBCHAPTER I

GENERAL PROVISIONS

30.01 Definitions. In this chapter:

(1am) "Area of special natural resource interest" means any of the following:

(a) A state natural area designated or dedicated under ss. 23.27 to 23.29.

(b) A surface water identified as a trout stream by the department.

(bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15.

(c) An area that possesses significant scientific value, as identified by the department.

(1b) "Authorized base level of water loss" has the meaning given under s. 281.35 (1) (b).

(1c) "Boat shelter" means a structure in navigable waters designed and constructed for the purpose of providing cover for a berth place for watercraft, which has a roof but does not have walls or sides. Such a structure may include a device for lifting a boat.

(1d) "Boathouse" means a structure used for the storage of watercraft and associated materials which has one or more walls or sides.

(1g) "Bridge" means a structure used to convey people, animals and vehicles over navigable waters and includes pipe arches and culverts.

(1j) "Department" means the department of natural resources.

(1m) "Designated mooring area" means a mooring area designated by a municipality under s. 30.773 (2) and (3), approved by the department and marked as a mooring area.

(1n) "Drain" has the meaning given in s. 88.01 (8).

(1nm) "Duck Creek Drainage District" means Outagamie Drainage District No. 6 that is also known as the Duck Creek Drainage District and is located in Outagamie County.

(1p) "Fishing raft" means any raft, float or structure, including a raft or float with a superstructure and including a structure located or extending below or beyond the ordinary high−water mark of a water, which is designed to be used or is normally used for fishing, which is not normally used as a means of transportation on water and which is normally retained in place by means of a permanent or semipermanent attachment to the shore or to the bed of the waterway. "Fishing raft" does not include a boathouse or fixed houseboat regulated under s. 30.121 nor a wharf or pier regulated under ss. 30.12 and 30.13.

(1r) "Fixed houseboat" means a structure not actually used for navigation which extends beyond the ordinary high−water mark of a navigable waterway and is retained in place either by cables to the shoreline or by anchors or spudpoles attached to the bed of the waterway.

(1t) "Flotation device" means any device used to provide flotation for a fishing raft, including each individual barrel or styrofoam coffin.

(2) "Governing body" means a town board, a village board of trustees, a city council or a county board.

(2m) "Great Lakes water body" means Lake Superior or Lake Michigan and includes any bay or harbor that is part of Lake Superior or Lake Michigan.

(3) "Harbor facility" means every facility useful in the maintenance or operation of a harbor, including transportation facilities of all types, terminal and storage facilities of all types, wharves, piers, slips, basins, ferries, docks, bulkheads and dock walls, and floating and handling equipment, power stations, transmission lines and other facilities necessary for the maintenance and operation of such harbor facilities.

(3e) "Mooring" when used as a noun means a mooring anchor and mooring buoy together with attached chains, cables, ropes and pennants and related equipment, unless the term is qualified or restricted.

(3m) "Mooring anchor" means any anchor or weight which is designed to rest on the bed or to be buried in the bed of a navigable water, which is designed to be attached by a chain, cable, rope or other mechanism to a mooring buoy and which is designed to be left in position permanently or on a seasonal basis.

(3s) "Mooring buoy" means any float or marker which is attached to a mooring anchor and either is suitable for attachment to a boat through the use of a pennant or other device or facilitates the attachment of the boat to the mooring anchor.

(3w) "Motor vehicle" has the meaning designated under s. 340.01 (35) except that this term does not include snowmobiles.

(4) "Municipality" means any town, village, city or county in this state.

(4m) "Navigable waters" or "navigable waterway" means any body of water which is navigable under the laws of this state.

(4o) "Net pen" means an enclosure placed in a body of water and used to hold or rear fish.

(4r) "Outlying waters" has the meaning given in s. 29.001 (63).

(5) "Pier" means any structure extending into navigable waters from the shore with water on both sides, built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally. Such a structure may include a boat hoist or boat lift, and the hoist or lift may be permanent or may be removed seasonally.

(5m) "Piling" means a group of piles.

(6) "Secretary" means the secretary of natural resources.

(6d) "Surplus water" means any water of a stream that is not being beneficially used, as determined by the department.

(6e) "Swimming raft" means a floating platform without railings, roof or walls that is adequately anchored to the bed of navigable waters and is designed for swimming, diving and related activities.

(7) "Watercraft" means any device used and designed for navigation on water.

(7m) "Water loss" has the meaning given under s. 281.35 (1) (L).

(8) "Wharf" means any structure in navigable waters extending along the shore and generally connected with the uplands throughout its length, built or maintained for the purpose of providing a berth for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat hoist or boat lift, and the hoist or lift may be permanent or may be removed seasonally.

(9) "Withdrawal" has the meaning given under s. 281.35 (1) (m).

(10) "Wolf River municipality" means any city, village or town which adjoins or includes any part of the Wolf River or its stream tributaries from the Shawano dam downstream to Lake Poygan.

History: 1983 a. 189; 1985 a. 243, 332; 1987 a. 374 ss. 1 to 9, 25, 34, 35, 46 to 49, 70, 76; 1987 a. 403; 1989 a. 56; 1993 a. 236; 1995 a. 227; 1997 a. 27, 248; 1999 a. 9; 2003 a. 118; 2013 a. 75.

No threshold showing that a waterway is actually navigated for commercial or recreational purposes is necessary in order to prove that the waterway is navigable. City of Oak Creek v. Department of Natural Resources, 185 Wis. 2d 424, 518 N.W.2d 276 (Ct. App. 1994).

30.025 Permit procedure for utility facilities. (1b) DEFINITIONS. In this section:

(a) "Commission" means the public service commission.

(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).

(c) "Utility facility" means a project, as defined in s. 196.49 (3) (a), or a facility, as defined in s. 196.491 (1) (e).

(1e) APPLICABILITY. (a) Except as provided in pars. (b) and (c), this section applies to a proposal to construct a utility facility if the utility facility is required to obtain, or give notification of the wish to proceed under, one or more permits.

(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).

(c) This section does not apply to a proposal to construct a utility facility for ferrous mineral mining and processing activities governed by subch. III of ch. 295, unless the person proposing to construct the utility facility elects to proceed in the manner provided under this section.

(1m) PREAPPLICATION PROCESS. Before filing an application under this section, a person proposing to construct a utility facility shall notify the department of the intention to file an application. After receiving such notice, the department shall confer with the person, in cooperation with the commission, to make a preliminary assessment of the project's scope, to make an analysis of alternatives, to identify potential interested persons, and to ensure that the person making the proposal is aware of all of the following:

(a) The permits that the person may be required to obtain and the permits under which the person must give notification of the wish to proceed.

(b) The information that the person will be required to provide.

(c) The timing of information submissions that the person will be required to provide in order to enable the department to participate in commission review procedures and to process the application in a timely manner.

(1s) APPLICATION FOR PERMITS. (a) Any person proposing to construct a utility facility to which this section applies shall, in lieu of separate application for permits, submit one application for permits together with any additional information required by the department. The application shall be filed with the department at the same time that an application for a certificate is filed with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall include the detailed information that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The department may require supplemental information to be furnished thereafter.

(b) A person who applies to the commission for a certificate under s. 196.49 or 196.491 (3) is eligible to apply under par. (a) for any permit that the utility facility may require and to receive such permit.

(2) HEARING. Once the applicant meets the requirements of sub. (1s) (a), the department may schedule the matter for a public hearing. Notice of the hearing shall be given to the applicant and shall be published as a class 1 notice under ch. 985 and as a notice on the department's Internet Web site. The department may give such further notice as it deems proper, and shall give notice to interested persons requesting same. The department's notice to interested persons may be given through an electronic notification system established by the department. Notice of a hearing under this subsection published as a class 1 notice, as a notice on the department's Internet Web site, and through the electronic notification system established by the department shall include the time, date, and location of the hearing, the name and address of the applicant, a summary of the subject matter of the application, and information indicating where a copy of the application may be viewed on the department's Internet Web site. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the application. One copy of the application shall be available for public inspection at the office of the department, at least one copy in the regional office of the department, and at least one copy at the main public library, of the area affected. Notwithstanding s. 227.42, the hearing shall be an informational hearing and may not be treated as a contested case hearing nor converted to a contested case hearing.

(2g) PARTICIPATION IN COMMISSION PROCEEDINGS. (a) The department shall review every proposed utility facility subject to this section, including each location, site, or route proposed for the utility facility, to assess whether each proposed location, site, or route can meet the criteria for proceeding under the authority of or obtaining the required permits, and shall provide that information to the commission.

(b) The department shall participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with regard to any proposed utility facility that is subject to this section. In order to ensure that the commission's decision is consistent with the department's responsibilities, the department shall provide the commission with information that is relevant to only the following:

1. Environmental issues that concern the proposed utility facility.

2. Public rights in navigable waters that may be affected by the proposed utility facility.

3. Location, site, or route issues concerning the proposed utility facility, including alternative locations, sites, or routes.

(2s) CONSIDERATION OF ALTERNATIVES. (a) The department shall treat the commission's decision under s. 196.49 or 196.491 (3) as concluding that there is no practicable alternative for the utility facility if all of the following apply:

1. The department has participated in the commission's investigations or proceedings under sub. (2g).

2. The commission's decision under s. 196.49 or 196.491 (3) is consistent with the department's assessment and information under sub. (2g) considering those factors required to be considered by the commission under s. 196.49 or 196.491 (3).

(b) If par. (a) applies, the department may not require the applicant for the proposed utility facility to undertake further analysis of any utility facility alternatives, including an analysis of alternative methods of meeting the need for the project or alternative locations, sites, or routes in order to satisfy the criteria under sub. (3). The department may identify adjustments that may be

required to address permitting issues within the location, site, or route approved by the commission under s. 196.49 or 196.491 (3).

(3) PERMIT ISSUANCE. The department shall issue, or authorize proceeding under, the necessary permits if it finds that the applicant has shown that the proposal:

(a) Complies with environmental statutes administered by the department and rules promulgated thereunder, and federal environmental standards which the department has authority to enforce.

(b) Does not unduly affect:

1. Public rights and interests in navigable waterways;
2. The effective flood flow capacity of a stream;
3. The rights of other riparian owners; or
4. Water quality.

(3m) ENVIRONMENTAL ASSESSMENTS FOR CERTAIN PROJECTS. The department is not required to prepare an environmental impact statement under s. 1.11 (2) (c) for the construction of a project that is specified in s. 196.491 (4) (c) 1m. or 1s. and for which one or more permits are required, but shall prepare an environmental assessment regarding the construction if the department's rules require an environmental assessment.

(4) PERMIT CONDITIONS. The permit may be issued, or the authority to proceed under a permit may be granted, upon stated conditions deemed necessary to assure compliance with the criteria designated under sub. (3). The department shall grant or deny the application for a permit for the utility facility within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3).

(5) EXEMPTION FROM CERTAIN PROCEDURES. Sections 30.208 and 30.209 do not apply to an application for any permit under this section.

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167; 2013 a. 1, 20.

30.027 Lower Wisconsin State Riverway. For activities in the Lower Wisconsin State Riverway, as defined in s. 30.40 (15), no person obtaining a permit under subchs. I, II or V may start or engage in the activity for which the permit was issued unless the person obtains any permit that is required for the activity under s. 30.44 or 30.445.

History: 1989 a. 31.

30.03 Enforcement of forfeitures; abatement of nuisances; infringement of public rights. (2) The district attorney of the appropriate county or, at the request of the department, the attorney general shall institute proceedings to recover any forfeiture imposed or to abate any nuisance committed under this chapter or ch. 31.

(3) All forfeitures shall be recovered by civil action as provided in ch. 778 and when collected shall be paid directly into the state treasury.

(4) (a) If the department learns of a possible violation of s. 281.36 or of the statutes relating to navigable waters or a possible infringement of the public rights relating to navigable waters, and the department determines that the public interest may not be adequately served by imposition of a penalty or forfeiture, the department may proceed as provided in this paragraph, either in lieu of or in addition to any other relief provided by law. The department may order a hearing under ch. 227 concerning the possible violation or infringement, and may request the hearing examiner to issue an order directing the responsible parties to perform or refrain from performing acts in order to comply with s. 281.36 or to fully protect the interests of the public in the navigable waters. If any person fails or neglects to obey an order, the department may request the attorney general to institute proceedings for the enforcement of the department's order in the name of the state. The proceedings shall be brought in the manner and with the effect of proceedings under s. 111.07 (7).

(am) In determining an appropriate remedy for a violation under this chapter relating to a pier or wharf, the department may not order the removal of a pier or wharf unless the department considers all reasonable alternatives offered by the department and the owner of the pier or wharf relating to the location, design, construction, and installation of the pier or wharf.

(b) No penalty may be imposed for violation of a hearing examiner's order under this subsection, but violation of a judgment enforcing the order may be punished in civil contempt proceedings.

History: 1979 c. 32 s. 92 (8); 1979 c. 257; 1981 c. 390; 1983 a. 524; 1987 a. 374; 2007 a. 204; 2011 a. 118.

Under sub. (4), the department of natural resources has jurisdiction to pursue any "possible violation" of the public trust doctrine as embodied in ch. 30. ABKA Limited Partnership v. Department of Natural Resources, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854, 99−2306.

The department of natural resources has a statutory duty under sub. (4) (a) to proceed against piers it believes to be in violation of ch. 30 or contrary to the public's rights in the waters of the state. No administrative rule limits the department's statutory enforcement authority, nor could it do so. Baer v. Department of Natural Resources, 2006 WI App 225, 297 Wis. 2d 232, 724 N.W.2d 638, 05−0668.

Summary judgment is not permitted in forfeiture actions for violations of ch. 30. The relevant procedural statutes cannot be reconciled with the summary judgment procedure. Although the parties agreed to the filing of a written answer in lieu of an appearance, such an agreement cannot provide the basis to impose upon the statutory scheme a summary judgment procedure that does not otherwise exist. State v. Ryan, 2012 WI 16, 338 Wis. 2d 695, 809 N.W.2d 37, 09−3075.

The department of natural resources may enforce the terms of lakebed grants under sub. (4) (a) as long as the enforcement does not conflict with s. 30.05. 78 Atty. Gen. 107.

30.05 Applicability of chapter to municipally−owned submerged shorelands. Nothing in this chapter relative to the establishment of bulkhead or pierhead lines or the placing of structures or deposits in navigable waters or the removal of materials from the beds of navigable waters is applicable to submerged shorelands in Lake Michigan, the title to which has been granted by the state to a municipality.

30.056 Exemption from certain permit requirements. Notwithstanding ss. 30.12, 30.19, 30.195 and 30.294, the city of Oak Creek may not be required to remove any structure or concrete or other deposit that was placed in Crayfish Creek in the city of Oak Creek before June 1, 1991, and may continue to maintain the structure, concrete or deposit without having a permit or other approval from the department.

History: 1995 a. 455.

30.06 Waiver of certain provisions of this chapter. The department, by rule, may waive the applicability to specified navigable waters of the United States of all or part of those provisions of this chapter which relate to the establishment of bulkhead or pierhead lines or the placing of structures or deposits in navigable waters or the removal of materials from the beds of navigable waters. The department may promulgate such rule only after it has entered into an agreement with the appropriate federal agency wherein it is agreed that the comparable federal law will be enforced on the waters in question in lieu of the state law which is being waived. The objective of such agreement shall be to avoid duplication of administration with respect to navigable waters over which this state and the U.S. government have concurrent jurisdiction, in those situations wherein administration by a single governmental agency will tend to avoid confusion and the necessity of obtaining permits from both the state and federal governments by those who are subject to the law and at the same time will adequately protect the public interest. The agreement may contain such further provisions as are designed to achieve this objective.

History: 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1).

30.07 Transportation of aquatic plants and animals; placement of objects in navigable waters. (1) In this section:

(a) "Aquatic animal" means any animal that lives or grows only in water during any life state and includes that animal's eggs, larvae, or young.

(b) "Aquatic plant" means a submergent, emergent, floating−leaf, or free−floating plant or any part thereof. "Aquatic plant" does not mean wild rice.

(c) "Highway" has the meaning given in s. 340.01 (22), except that it does not include public boat access sites or parking areas for public boat access sites.

(d) "Law enforcement officer" has the meaning given in s. 30.50 (4s).

(e) "Local governmental unit" means a city, village, town, or county; a special purpose district in this state; an agency or corporation of a city, village, town, county, or special purpose district; or a combination or subunit of any of the foregoing.

(f) "Public boat access site" means a site that provides access to a navigable water for boats and that is open to the general public for free or for a charge or that is open only to certain groups of persons for a charge.

(g) "Vehicle" has the meaning given in s. 340.01 (74), but includes an all−terrain vehicle, as defined in s. 340.01 (2g).

(2) (a) No person may place or operate a vehicle, seaplane, watercraft, or other object of any kind in a navigable water if it has any aquatic plants or aquatic animals attached to the exterior of the vehicle, seaplane, watercraft, or other object. This paragraph does not require a person to remove aquatic plants or aquatic animals from a vehicle, seaplane, watercraft, or other object during the period of time when the vehicle, seaplane, watercraft, or other object is being operated in the same navigable body of water in which the aquatic plants or aquatic animals became attached.

(b) No person may take off with a seaplane, or transport or operate a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached to the exterior of the seaplane, vehicle, watercraft, or other object.

(3) A law enforcement officer who has reason to believe that a person is in violation of sub. (2) may order the person to do any of the following:

(a) Remove aquatic plants or aquatic animals from a vehicle, seaplane, watercraft, or other object of any kind before placing it in a navigable water.

(b) Remove aquatic plants or aquatic animals from a seaplane before taking off with the seaplane.

(c) Remove from, or not place in, a navigable water, a vehicle, seaplane, watercraft, or other object of any kind.

(d) Not take off with a seaplane, or transport or operate a vehicle, watercraft, or other object of any kind on a highway.

(4) Subsection (2) does not prohibit a person from doing any of the following:

(am) Transporting or operating commercial aquatic plant harvesting equipment that has aquatic plants or animals attached to the exterior of the equipment if the equipment is owned or operated by a local governmental unit, if the equipment is being transported or operated for the purpose of cleaning the equipment to remove aquatic plants or animals, and if the person transports the equipment to, or operates the equipment at, a suitable location away from any body of water.

(b) Transporting or operating a vehicle, seaplane, watercraft, or other object of any kind with duckweed that is incidentally attached to the exterior of the vehicle, seaplane, watercraft, or other object.

(5) (a) The department shall prepare a notice that contains a summary of the provisions under this section and shall make copies of the notice available to owners required to post the notice under par. (b).

(b) Each owner of a public boat access site shall post and maintain the notice described in par. (a).

(6) No person may refuse to obey the order of a law enforcement officer who is acting under sub. (3).

History: 2009 a. 55 ss. 9, 13, 14; 2011 a. 265.

30.10 Declarations of navigability. (1) LAKES. All lakes wholly or partly within this state which are navigable in fact are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters.

(2) STREAMS. Except as provided under sub. (4) (c) and (d), all streams, sloughs, bayous and marsh outlets, which are navigable in fact for any purpose whatsoever, are declared navigable to the extent that no dam, bridge or other obstruction shall be made in or over the same without the permission of the state.

(3) ENLARGEMENTS OR IMPROVEMENTS IN NAVIGABLE WATERS. All inner harbors, turning basins, waterways, slips and canals created by any municipality to be used by the public for purposes of navigation, and all outer harbors connecting interior navigation with lake navigation, are declared navigable waters and are subject to the same control and regulation that navigable streams are subjected to as regards improvement, use and bridging.

(4) INTERPRETATION. (a) This section does not impair the powers granted by law to municipalities to construct highway bridges, arches, or culverts over streams.

(b) The boundaries of lands adjoining waters and the rights of the state and of individuals with respect to all such lands and waters shall be determined in conformity to the common law so far as applicable, but in the case of a lake or stream erroneously meandered in the original U.S. government survey, the owner of title to lands adjoining the meandered lake or stream, as shown on such original survey, is conclusively presumed to own to the actual shorelines unless it is first established in a suit in equity, brought by the U.S. government for that purpose, that the government was in fact defrauded by such survey. If the proper claims of adjacent owners of riparian lots of lands between meander and actual shorelines conflict, each shall have his or her proportion of such shorelands.

(c) Notwithstanding any other provision of law, farm drainage ditches are not navigable within the meaning of this section unless it is shown that the ditches were navigable streams before ditching. For purposes of this paragraph, "farm drainage ditch" means any artificial channel which drains water from lands which are used for agricultural purposes.

(d) A drainage district drain located in the Duck Creek Drainage District and operated by the board for that district is not navigable unless it is shown, by means of a U.S. geological survey map or other similarly reliable scientific evidence, that the drain was a navigable stream before it became a drainage district drain.

History: 1977 c. 190, 272, 418; 1981 c. 339; 1991 a. 316; 1999 a. 9; 2003 a. 118; 2011 a. 167.

Cross−reference: See also chs. NR 305 and 320, Wis. adm. code.

When there are 2 owners of land adjacent to a disputed parcel erroneously meandered under sub. (4), the judge is to divide the parcel proportionately on an equitable, but not necessarily equal, basis. Kind v. Vilas County, 56 Wis. 2d 269, 201 N.W.2d 881 (1972).

The department of natural resources properly considered the existence of beaver dams and ponds and the periods of high water caused by spring runoffs in determining the navigability of a creek. The dams and ponds were normal and natural to the stream, and the periods of high water were of a regularly recurring, annual nature. DeGayner & Co. v. Department of Natural Resources, 70 Wis. 2d 936, 236 N.W.2d 217 (1975).

An owner of land on a meandered lake takes only to the actual shoreline. An owner does not have a "proper claim" to an isolated parcel separated from the remainder of the lot by the lake, making sub. (4) (b) inapplicable as parcels separated by a lake are not "adjacent." State Commissioners of Board of Public Lands v. Thiel, 82 Wis. 2d 276, 262 N.W.2d 522 (1978).

A department of natural resources declaration of navigability subjecting private property to sub. (1) was a taking. Zinn v. State, 112 Wis. 2d 417, 334 N.W.2d 67 (1983).

The department of natural resources has the authority, as well as the obligation, to determine whether the waters of the state are navigable in fact and subject to regulation under ch. 30, another agency's prior ancillary finding to the contrary notwithstanding. Turkow v. Department of Natural Resources, 216 Wis. 2d 273, 576 N.W.2d 288 (Ct. App. 1998), 97−1149.

This chapter applies to navigable ditches that were originally navigable streams. If a navigable ditch was originally nonnavigable or had no previous stream history, the department of natural resources' jurisdiction depends upon the facts of the situation. 63 Atty. Gen. 493.

Erroneously meandered lakeshore — the status of the law as it affects title and distribution. 61 MLR 515.

The Muench case: A better test of navigability. Edwards, 1957 WLR 486.

Riparian Landowners Versus the Public: The Importance of Roads and Highways for Public Access to Wisconsin's Navigable Waters. Williams. 2010 WLR 186.

30.102 Web site information. (1) NAVIGABILITY DETERMINATION AND ORDINARY HIGH−WATER MARK IDENTIFICATION. If the department makes a determination that a waterway is navigable or is not navigable or identifies the ordinary high−water mark of a navigable waterway, the department shall publish that information on the department's Internet Web site. Any person may rely on the information posted under this section as being accurate. This section does not restrict the ability of a person to challenge the accuracy of the information posted under this section.

(2) APPLICATION STATUS. To the greatest extent possible, the department shall publish on the department's Internet Web site the current status of any application filed with the department for a permit, license, or other approval under this chapter. The information shall include notice of any hearing scheduled by the department with regard to the application.

History: 2011 a. 167.

30.103 Identification of ordinary high−water mark by town sanitary district. A town sanitary district may identify the ordinary high−water mark of a lake that lies wholly within unincorporated territory and wholly within the town sanitary district. The department may not identify an ordinary high−water mark of a lake that is different than the ordinary high−water mark identified by a town sanitary district under this section.

History: 1997 a. 237.

30.105 Determining footage of shoreline. In determining footage of shoreline for purposes of s. 30.50 (4q), 30.77 (3) (ac), (ae) and (am) and 60.782 (2), towns, villages, cities, public inland lake protection and rehabilitation districts and town sanitary districts shall measure by use of a map wheel on the U.S. geological survey 7 1/2 minute series map.

History: 1995 a. 152 s. 9; 1995 a. 349 s. 11.

SUBCHAPTER II

NAVIGABLE WATERS AND NAVIGATION IN GENERAL

30.11 Establishment of bulkhead lines. (1) WHO MAY ESTABLISH. Any municipality may, subject to the approval of the department, by ordinance establish a bulkhead line and from time to time reestablish the same along any section of the shore of any navigable waters within its boundaries.

(2) STANDARDS FOR ESTABLISHING. Bulkhead lines shall be established in the public interest and shall conform as nearly as practicable to the existing shores, except that in the case of leases under sub. (5) and s. 24.39 (4) bulkhead lines may be approved farther from the existing shoreline if they are consistent with and a part of any lease executed by the board of commissioners of public lands.

(3) HOW ESTABLISHED. Whenever any municipality proposes to establish a bulkhead line or to reestablish an existing bulkhead line, the municipality shall indicate both the existing shore and the proposed bulkhead line upon a map and shall file with the department for its approval 6 copies of the map and 6 copies of the ordinance establishing the bulkhead line. The map shall use a scale of not less than 100 feet to an inch or any other scale required by the department. The map and a metes and bounds description of the bulkhead line shall be prepared by a professional land surveyor licensed under ch. 443. The department may require the installation of permanent reference markers to the bulkhead line. Upon approval by the department, the municipality shall deliver the map, description, and ordinance to the office of the register of deeds of the county in which the bulkhead line lies, to be recorded by the register of deeds.

NOTE: Sub. (3) is shown as amended eff. 8−1−14 by 2013 Wis. Act 358. Prior to 8−1−14 it reads:

(3) HOW ESTABLISHED. Whenever any municipality proposes to establish a bulkhead line or to reestablish an existing bulkhead line, the municipality shall indicate both the existing shore and the proposed bulkhead line upon a map and shall file with the department for its approval 6 copies of the map and 6 copies of the ordinance establishing the bulkhead line. The map shall use a scale of not less than 100 feet to an inch or any other scale required by the department. The map and a metes and bounds description of the bulkhead line shall be prepared by a land surveyor registered in this state. The department may require the installation of permanent reference markers to the bulkhead line. Upon approval by the department, the municipality shall deliver the map, description and ordinance to the office of the register of deeds of the county in which the bulkhead line lies, to be recorded by the register of deeds.

(4) RIPARIAN RIGHTS PRESERVED. Establishment of a bulkhead line shall not abridge the riparian rights of riparian owners. Riparian owners may place solid structures or fill up to such line.

(5) FINDING OF PUBLIC INTEREST. (a) Prior to the execution of any lease by the board of commissioners of public lands concerning rights to submerged lands or rights to fill in submerged lands held in trust for the public under s. 24.39, the department shall determine whether the proposed physical changes in the area as a result of the execution of the lease are consistent with the public interest. Thirty days before making its determination, the department shall notify, in writing, the clerk of the county and clerk of the city, village or town in which the changes are proposed and the U.S. Army Corps of Engineers of the application for the lease. In making its finding the department shall give consideration to all reports submitted to it. The department shall not approve a lease applied for under s. 24.39 (4) (a) 2. if the department determines that the lease may threaten excessive destruction of wildlife habitat.

(b) When considering leases to allow certain initial improvements such as, but not restricted to, filling on submerged lands to create sites for further facilities, the department may determine whether such initial improvements are consistent with the public interest in the navigable waters involved even though the exact final use to which these improvements will be put is not known. The department, at the time it finds that a proposed lease would be consistent with the public interest in the navigable waters involved, may include in its findings such limitations upon the use of improvements as it considers necessary to confine their use to functions primarily related to water transportation or otherwise of public benefit. The board of commissioners of public lands shall include in the lease such limitations on final use as is determined by the department.

(c) Upon the complaint of any person to the department that current use made of rights leased under s. 24.39 (4) is inconsistent with both its original findings and the public interest, the department shall hold a public hearing thereon after the publication of a class 2 notice, under ch. 985. If the department finds that the present use conforms neither to its original finding nor to the present public interest, it shall submit its findings to the governor. The governor may cause the attorney general or the district attorney of the proper county to bring action in the name of the state in a court of competent jurisdiction to declare the lease terminated and to institute appropriate action for removal of structures or cessation of practices in violation of such lease.

(6) SHORELINE NOT INVALIDATED. A shoreline lawfully established before January 1, 1960, is a lawfully established bulkhead line.

History: 1987 a. 374; 1991 a. 32; 2003 a. 118; 2013 a. 358.

A bulkhead line is not merely the natural shoreline, but one legislatively established by a municipality. It may differ from the existing shoreline and is also distinguishable from the low− and high−water marks previously judicially defined. State v. McFarren, 62 Wis. 2d 492, 215 N.W.2d 459 (1974).

The private right to fill lakebeds granted under this section does not preempt the zoning power of a county over shorelands under s. 59.971 [now 59.692]. State v. Land Concepts, Ltd. 177 Wis. 2d 24, 501 N.W.2d 817 (Ct. App. 1993).

When a bulkhead line has been established, a riparian owner must nonetheless obtain a permit or contract pursuant to s. 30.20 prior to removing material from the bed of a navigable water landward of the bulkhead line, but within the original ordinary high water mark. 63 Atty. Gen. 445.

A bulkhead line is not legally established until the filing requirements of sub. (3) are met. A bulkhead line established by a town on lands subsequently annexed to a municipality that has not established such line, remains in effect. 64 Atty. Gen. 112.

30.12 Structures and deposits in navigable waters. **(1)** PERMITS REQUIRED. Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following:

(a) Deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established.

(b) Deposit any material or place any structure upon the bed of any navigable water beyond a lawfully established bulkhead line.

(1g) EXEMPTIONS. A riparian owner is exempt from the permit requirements under this section for the placement of a structure or the deposit of material if the structure or material is located in an area other than an area of special natural resource interest, does not interfere with the riparian rights of other riparian owners, and is any of the following:

(a) A deposit of sand, gravel, or stone that totals less than 2 cubic yards and that is associated with any activity or project that is exempt from an individual permit or a general permit under this subchapter.

(b) A structure, other than a pier or a wharf, that is placed on a seasonal basis in accordance with rules promulgated by the department.

(c) A fish crib, spawning reef, wing deflector, or similar device that is placed on the bed of navigable waters for the purpose of improving fish habitat.

(d) A bird nesting platform, wood duck house, or similar structure that is placed on the bed of a navigable water for the purpose of improving wildlife habitat.

(e) A boat shelter, boat hoist, or boat lift that is placed on a seasonal basis adjacent to the riparian owner's pier or wharf or to the shoreline on the riparian owner's property, in accordance with rules promulgated by the department.

(f) 1. A pier or wharf to which all of the following apply:

a. It is no more than 6 feet wide.

b. It extends no further than to a point where the water is 3 feet at its maximum depth as measured at summer low levels, or to the point where there is adequate depth for mooring a boat or using a boat hoist or boat lift, whichever is farther from the shoreline.

c. It has no more than 2 boat slips for the first 50 feet of the riparian owner's shoreline footage and no more than one additional boat slip for each additional 50 feet of the riparian owner's shoreline footage.

2. Notwithstanding the width limitation in subd. 1., a pier may have an area as a loading platform that is more than 6 feet wide if the surface area of the platform does not exceed 200 square feet.

(g) An intake structure and pipe that is placed on the bed of a navigable water for the purpose of constructing a dry fire hydrant to supply water for fire protection.

(h) A piling that is driven into the bed of a navigable water adjacent to the owner's property for the purpose of deflecting ice, protecting an existing or proposed structure, or providing a pivot point for turning watercraft.

(i) Riprap in an amount not to exceed 100 linear feet that is placed to replace existing riprap located in an inland lake or Great Lakes water body and that includes the replacement of filter fabric or base substrate.

(j) Riprap in an amount not to exceed 300 linear feet that is placed to repair existing riprap located in an inland lake or Great Lakes water body, and that consists only of the placement of additional rock or the redistribution of existing rock within the footprint of the existing riprap.

(k) A biological shore erosion control structure, as defined by rule by the department.

(km) An intake or outfall structure that is less than 6 feet from the water side of the ordinary high−water mark and that is less than 25 percent of the width of the channel in which it is placed.

(1h) PERSONAL WATERCRAFT SECURED TO PIERS ALLOWED. A riparian owner may secure to a pier or wharf up to 2 personal watercraft for the first 50 feet of the riparian owner's shoreline footage and one additional personal watercraft for each additional 50 feet of the riparian owner's shoreline footage without affecting the riparian owner's eligibility for an exemption under sub. (1g) (f). For the purpose of this subsection, "personal watercraft" has the meaning given in s. 30.50 (9d).

(1j) BOAT SLIPS FOR CERTAIN PIERS AND WHARVES. (a) Subject to pars. (b) and (c), the riparian owner or owners of a property that is adjacent to a lake of 50 acres or more and on which there are 3 or more dwelling units or on which there are commercial structures may, in lieu of placing a pier or wharf described under sub. (1g) (f), place a pier or wharf that has either of the following number of boat slips, whichever is smaller:

1. Four boat slips for the first 50 feet of the property's shoreline footage and no more than 2 boat slips for each additional 50 feet of the property's shoreline footage.

2. One boat slip for each dwelling unit, plus an additional number of boat slips if the additional slips are open to the public and the use of the additional slips is limited to the transient docking of boats for less than 24 hours.

(b) If the riparian owner or owners of a property described in par. (a) are eligible to place a pier or wharf with the number of boat slips specified in par. (a), the pier or wharf must be located in an area other than an area of special natural resource interest, may not interfere with the riparian rights of other riparian owners, and must meet all of the requirements for the placement of the pier or wharf specified under sub. (1g) (f) except for the limitation on the number of boat slips allowed under sub. (1g) (f).

(c) If the riparian owner or owners of a property described in par. (a) are eligible and propose to place a pier or wharf with the number of boat slips specified in par. (a), the riparian owner or owners shall apply to the department for an individual permit under s. 30.208 authorizing the configuration of the pier or wharf unless the configuration is authorized by the department under a general permit under s. 30.206. The department may not deny the permit on the basis of the number of slips proposed by the riparian owner or owners if the number of slips proposed does not exceed the number allowed under par. (a). A riparian owner or owners who apply for a permit under this paragraph shall be presumed to be entitled to the number of slips allowed under par. (a).

(1k) EXEMPTION FOR CERTAIN STRUCTURES. (a) In this subsection, "structure" means a pier, wharf, boat shelter, boat hoist, or boat lift.

(b) In addition to the exemptions under sub. (1g), a riparian owner of a pier or wharf that was placed on the bed of a navigable water before April 17, 2012, is exempt from the permit requirements under this section unless any of the following applies:

1m. The department notified the riparian owner before August 1, 2012, that the pier or wharf is detrimental to the public interest.

2. The pier or wharf interferes with the riparian rights of other riparian owners.

(cm) The department may not take any enforcement action under this chapter against a riparian owner for the placement of any of the following:

1. A structure for which the department has issued a permit under this section, if the structure is in compliance with that permit.

2. A structure for which the department has issued a written authorization, if the structure is in compliance with that written authorization.

3. A structure that is exempt under par. (b).

(e) A riparian owner who is exempt under par. (b) from the permit requirements under this section or who is exempt under par. (cm) from enforcement action under this chapter may do all of the following:

1. Repair and maintain the exempt structure without obtaining a permit from the department under this section unless the owner enlarges the structure.

2. If the exempt structure is a pier or wharf, relocate or reconfigure the pier or wharf if the riparian owner does not enlarge the pier or wharf.

(f) A decision of the department against the owner of a structure for which an exemption is claimed under this subsection is subject to a trial de novo.

(1m) DUCK CREEK DRAINAGE DISTRICT STRUCTURES AND DEPOSITS. A structure or deposit that the drainage board for the Duck Creek Drainage District places in a drain that the board operates in the Duck Creek Drainage District is exempt from the permit requirements under this section if either of the following applies:

(a) The department of agriculture, trade and consumer protection, after consulting with the department of natural resources, specifically approves the structure or deposit.

(b) The structure or deposit is required, under rules promulgated by the department of agriculture, trade and consumer protection, in order to conform the drain to specifications approved by the department of agriculture, trade and consumer protection after consulting with the department of natural resources.

(1n) FLOATING TOILET FACILITIES. (a) In this subsection, "national park service" means the national park service, federal department of the interior.

(b) The placement of a pier that meets all of the following requirements is exempt from the permit requirements under this section:

1. The pier contains a floating toilet facility that meets technical specifications approved by the national park service for floating toilet facilities.

2. The pier is owned and placed by the national park service along a federally owned shoreline in a federally administered area of the St. Croix National Scenic Riverway.

(1p) RULES. (a) The department may promulgate rules concerning the exempt activities under sub. (1g) and concerning piers and wharves under sub. (1j) that only do any of the following:

1. Establish reasonable installation practices for the placement of structures or the deposit of material to minimize environmental impacts.

2. Establish reasonable construction and design requirements for the placement of structures under sub. (1g) (c), (d), (f), (g), (h), and (km) that are consistent with the purpose of the activity and for piers and wharves under sub. (1j).

3. Establish reasonable limitations on the location of the placement of structures or the deposit of material at the site affected by the activity.

(b) Notwithstanding par. (a), the rules under par. (a) 1. and 2. may not establish practices or requirements that prohibit the placement of structures or the deposit of material or that render the placement of structures or the deposit of material economically cost−prohibitive.

(2m) PERMITS IN LIEU OF EXEMPTIONS. The department may decide to require that a person engaged in an activity that is exempt under sub. (1g) apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that conditions specific to the site require restrictions on the activity in order to prevent any of the following:

(a) Significant adverse impacts to the public rights and interests.

(b) Environmental pollution, as defined in s. 299.01 (4).

(c) Material injury to the riparian rights of any riparian owner.

(2r) EXEMPTION DETERMINATIONS. (a) A person may submit to the department a written statement requesting that the department determine whether a proposed activity is exempt under sub. (1g). The statement shall contain a description of the proposed activity and site and shall give the department consent to enter and inspect the site.

(b) The department shall do all of the following within 15 days after receipt of a statement under par. (a):

1. Enter and inspect the site on which the activity is located, subject to s. 30.291, if the department determines such an inspection is necessary.

2. Make a determination as to whether the activity is exempt.

3. Notify in writing the person submitting the statement which general or individual permit will be required for the activity, if the department determines that the activity is not exempt.

(c) If the department does not take action under par. (b), the department may not require at any time that the person proposing to engage in the activity apply for an individual permit or seek authorization under a general permit unless required to do so by a court or hearing examiner.

(d) If a statement under par. (a) is not given or if the statement does not give consent to inspect, the 15−day time limit under par. (b) does not apply.

(3) GENERAL PERMITS. (a) The department shall issue statewide general permits under s. 30.206 that authorize riparian owners to do all of the following:

1. Place a layer of sand or similar material on the bed of a lake adjacent to the owner's property for the purpose of improving recreational use.

3c. Place riprap in order to replace or repair existing riprap, other than riprap that is exempt under sub. (1g) (i) or (j).

3g. Place riprap on the bed or bank of a navigable water adjacent to an owner's property in an amount up to and including 100 continuous feet in an inland lake of 300 acres or more.

3r. Place riprap on the bed or bank of a navigable water adjacent to an owner's property in an amount up to and including 300 continuous feet in a Great Lakes water body.

4. Place crushed rock or gravel, reinforced concrete planks, adequately secured treated timbers, cast in place concrete or similar material on the bed of a navigable stream for the purpose of developing a ford if an equal amount of material is removed from the stream bed.

5. Place crushed rock or gravel, reinforced concrete planks, cast in place concrete or similar material on the bed of navigable waters adjacent to the owner's property for the purpose of building a boat landing.

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:

a. The property on which the permanent boat shelter is to be located also contains a boathouse within 75 feet of the ordinary high−water mark.

b. There is a boathouse over navigable waters adjacent to the owner's property.

c. The permanent boat shelter extends beyond the waterward end of the owner's pier or the waterward side of the owner's wharf.

13. Place a seawall to replace an existing seawall for which a permit has been issued under this chapter. 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.

14. Place a pier or wharf on the bed of a navigable water that is in, or that would directly affect, an area of special natural resource interest and that is adjacent to the owner's property if the

pier or wharf does not interfere with the riparian rights of other riparian owners and it meets the requirements of sub. (1g) (f).

(b) 1. The department shall issue a statewide general permit under s. 30.206 that authorizes a person to place a net pen in a Great Lakes water body or a tributary of a Great Lakes water body if all of the following apply:

a. The net pen is placed for the purpose of holding or rearing fish for noncommercial purposes.

b. The fish held or reared in the net pen are stocked by the department or by a person who is in compliance with s. 29.736.

c. The fish held or reared in the net pen are released by the department or by a person who is in compliance with s. 29.736 into the same body of water in which the net pen is placed.

2. A general permit issued for the purpose described in this section shall authorize a person to place a net pen in a Great Lakes water body or a tributary of a Great Lakes water body for a period not to exceed 8 weeks. The general permit may not limit the number of times that a person may place a net pen in a Great Lakes water body or a tributary of a Great Lakes water body under the authority of that general permit.

(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. 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.

(d) The department may impose conditions relating to the location, design, construction, and installation of a pier or wharf placed under the authority of a general permit issued under par. (a) 14., but may not prohibit a riparian owner from placing a pier or wharf that meets the requirement of the general permit.

(3m) INDIVIDUAL PERMITS. (a) For a structure or deposit that is not exempt under sub. (1g) and that is not subject to a general permit under sub. (3), and for a structure or deposit for which the department requires an individual permit under sub. (2m) or s. 30.206 (3r), a riparian owner may apply to the department for the individual permit that is required under sub. (1) in order to place the structure for the owner's use or to deposit the material.

(am) 1. Except as provided under subd. 2., the department may not refuse to allow a riparian owner to apply for an individual permit for the placement of a pier or wharf, including a solid pier, that exceeds the number of boat slips authorized under sub. (1g) (f) or (1j). The department shall evaluate permit applications under this paragraph on an individual basis and shall grant such applications if the department finds that the pier or wharf meets the requirements under par. (c) 1. to 3.

2. The department may deny an individual permit to the riparian owner or owners of a property that is adjacent to a lake of 50 acres or more and on which there are 3 or more dwelling units if the riparian owner or owners apply for an individual permit for the placement of a pier or wharf with a number of boat slips that exceeds the number of boat slips specified in sub. (1j) (a) 2.

(b) The notice and hearing provisions of s. 30.208 (3) to (5) shall apply to an application under par. (a).

(c) The department shall issue an individual permit to a riparian owner for a structure or a deposit pursuant to an application under par. (a) if the department finds that all of the following requirements are met:

1. The structure or deposit will not materially obstruct navigation.

2. The structure or deposit will not be detrimental to the public interest.

3. The structure or deposit will not materially reduce the flood flow capacity of a stream.

(cm) In determining whether to issue an individual permit to the owner of a proposed pier or wharf, the department may not deny the permit unless the department considers all reasonable alternatives offered by the department and the owner of the pier or wharf relating to the location, design, construction, and installation of the pier or wharf.

(d) 1. In this paragraph, "solid pier" means a pier that does not allow for the free flow of water beneath the pier.

2. The department may promulgate rules that limit the issuance of individual permits for solid piers to outlying waters, harbors connected to outlying waters, the Fox River from the dam at De Pere to Lake Winnebago, Lake Winnebago, and the Mississippi River. The rules may establish reasonable conditions to implement the criteria under par. (c) 1. to 3. The rules may not prohibit the issuance of individual permits for solid piers used for private or commercial purposes.

(5) PENALTY. Any person violating this section or any term or condition of a permit issued pursuant thereto shall be fined not more than $1,000 or imprisoned not more than 6 months or both.

History: 1975 c. 250, 421; 1977 c. 130, 447; 1981 c. 226, 330; 1981 c. 390 s. 252; 1987 a. 374; 1989 a. 31; 1993 a. 132, 151, 236, 491; 1995 a. 27, 201, 227; 1997 a. 35, 248; 1999 a. 9; 2001 a. 16; 2003 a. 118, 321, 326, 327; 2007 a. 204; 2011 a. 25, 153, 167; 2013 a. 1, 75.

Cross−reference: See also chs. NR 305, 320, 323, 326, 328, 329, and 353, Wis. adm. code.

In a state proceeding to enforce a department of natural resources order requiring an owner of land abutting a navigable lake to remove a quantity of fill, the burden of proof is on the state to establish the nonexistence of a bulkhead line. State v. McFarren, 62 Wis. 2d 492, 215 N.W.2d 459 (1974).

Sub. (1) (a) does not apply to conduct that only indirectly and unintentionally results in deposits on lake beds. State v. Deetz, 66 Wis. 2d 1, 224 N.W.2d 407 (1974).

When a department of natural resources decision prohibited a structure under this section and the riparian owner did not seek review under s. 227.20 [now 227.57], the trial court had no jurisdiction to hear an action by the owner seeking a declaration that the structure was a "pier" permitted under s. 30.13. Kosmatka v. Department of Natural Resources, 77 Wis. 2d 558, 253 N.W.2d 887 (1977).

"Navigable waters" under this section are waters that are navigable in fact. A ski jump was a "structure" under this section. The public trust doctrine is discussed. State v. Bleck, 114 Wis. 2d 454, 338 N.W.2d 492 (1983).

Section 66.24 (5) (c) [now 200.11 (5) (c)] does not exempt sewerage districts from the requirements of s. 30.12. Cassidy v. Department of Natural Resources, 132 Wis. 2d 153, 390 N.W.2d 81 (Ct. App. 1986).

An area need not be navigable to be a lakebed. The ordinary high water mark is determinative. State v. Trudeau, 139 Wis. 2d 91, 408 N.W.2d 337 (1987).

The holder of an easement does not qualify as a riparian owner. De Nava v. Department of Natural Resources, 140 Wis. 2d 213, 409 N.W.2d 151 (Ct. App. 1987).

In considering whether a proposed structure is detrimental to the public interest, the department of natural resources is authorized to weigh relevant policy factors including the preservation of the natural beauty of the state's waters, the public's fullest use of the waters, and the convenience of riparian owners. Sterlingworth Condominium Association v. Department of Natural Resources, 205 Wis. 2d 710, 556 N.W.2d 702 (Ct. App. 1996), 95−3526.

Review of local ordinances may be made in making a determination under sub. (2), but is not required. Issuance of a permit conditioned on compliance with a local ordinance was reasonable. Borsellino v. Department of Natural Resources, 2000 WI App 27, 232 Wis. 2d 430, 606 N.W.2d 255, 99−1220.

Although in granting pier permits under s. 30.12 the department of natural resources acts in furtherance of the public trust, a cause of action cannot be based only on a general allegation of a violation of the public trust doctrine. Borsellino v. Department of Natural Resources, 2000 WI App 27, 232 Wis. 2d 430, 606 N.W.2d 255, 99−1220.

NOTE: The above annotated materials cite to the pre− 2003 Wisconsin Act 118 version of s. 30.12.

New Law Eases Requirements: Navigable Waterway Permits. Wheeler. Wis. Law. Aug. 2012.

30.121 Regulation of boathouses and houseboats.

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

(2) PROHIBITIONS. After December 16, 1979 no boathouse or fixed houseboat may be constructed or placed beyond the ordinary high−water mark of any navigable waterway.

(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. If the boathouse or fixed houseboat is not subject to assessment, the owner may repair or maintain the boathouse or the fixed house-

boat if the cost of the repair or maintenance does not exceed 50% of the current fair market value of the boathouse or fixed houseboat.

(3c) EXCEPTION; CERTAIN BOATHOUSES. Subsection (3) does not apply to repairing or maintaining a boathouse if the boathouse was in existence on December 16, 1979, and the repairing or maintaining does not affect the size, location, or configuration of the boathouse and does not result in the boathouse being converted into living quarters.

(3g) EXCEPTION; HISTORICAL OR CULTURAL VALUE. Subsection (3) does not apply to repairing or maintaining a boathouse or a fixed houseboat if the boathouse or fixed houseboat has a historic or cultural value, as determined by the state historical society or a local or county historical society established under s. 44.03.

(3m) EXCEPTION; CERTAIN SINGLE−STORY BOATHOUSES. Notwithstanding subs. (2) and (3), a person may construct, repair or maintain a single−story boathouse over an authorized waterway enlargement if:

(a) The boathouse does not extend beyond the ordinary high−water mark as it existed prior to the creation of the enlargement;

(b) The boathouse covers the entire enlargement; and

(c) Living quarters or plumbing fixtures are not constructed in the boathouse.

(3r) EXCEPTION; DAMAGES AFTER JANUARY 1, 1984. Subsections (2) and (3) do not apply to repairing or reconstructing a damaged boathouse if the boathouse was damaged by violent wind, vandalism or fire and if the damage occurs after January 1, 1984.

(3w) EXCEPTION; COMMERCIAL BOATHOUSES. Notwithstanding subs. (2) and (3), a person may construct, repair, or maintain a boathouse if all of the following apply:

(a) The boathouse is used exclusively for commercial purposes.

(b) The boathouse is located on land zoned exclusively for commercial or industrial purposes or the boathouse is located on a brownfield, as defined in s. 238.13 (1) (a), or in a blighted area, as defined in s. 66.1331 (3) (a).

(c) The boathouse is located within a harbor that is being operated as a commercial enterprise or is located on a river that is a tributary of Lake Michigan or Lake Superior.

(d) The person has been issued any applicable individual permits under this subchapter and is in compliance with any applicable general permitting requirements under this subchapter.

(4) MAJOR REPAIR, ABANDONED STRUCTURES AND OBSTRUCTIONS TO NAVIGATION. The owner of a boathouse or a fixed houseboat which extends beyond the ordinary high−water mark of any navigable waterway and which is in a major state of disrepair or is a material obstruction to navigation may be ordered by the department to remove the structure from the waterway. The department shall follow the procedures set forth in s. 30.03 (4) (a) for ordering removal of a structure. If such a structure is abandoned and the department, after due diligence, cannot locate the owner, the department shall utilize the procedures set forth in s. 31.187 (1) for removing the abandoned structure.

(5) APPLICABILITY. Boathouses or fixed houseboats owned by the state or by local units of government shall comply with this section. This section does not apply to any structure listed on the national register of historic places in Wisconsin or the state register of historic places.

(6) RULES. The department may promulgate rules deemed necessary to carry out the purposes of this section. The rules may not govern the aesthetic features or color of boathouses.

(7) PENALTIES. Any person who constructs, owns or maintains a boathouse or fixed houseboat in violation of this section or in violation of any order issued under this section shall forfeit not less than $10 nor more than $50 for each offense. Each day a structure exists in violation of this section constitutes a separate offense.

History: 1979 c. 101; 1981 c. 117; 1983 a. 27 s. 2202 (38); 1987 a. 374, 395; 1995 a. 27; 2001 a. 16; 2003 a. 118; 2011 a. 32, 167.

Cross−reference: See also ch. NR 325, Wis. adm. code.

A boathouse on a navigable, artificially created waterway maintained over private property with waters from a natural waterway is subject to regulation. Klingeisen v. Department of Natural Resources, 163 Wis. 2d 921, 472 N.W.2d 603 (Ct. App. 1991).

An administrative rule permitting repairs not authorized by this section was invalid. Oneida County v. Converse, 180 Wis. 2d 120, 508 N.W.2d 416 (1993).

The legislation creating sub. (3r) was not an unconstitutional private bill. Sub. (3r) preempts contrary local zoning ordinances. Pace v. Oneida County, 212 Wis. 2d 448, 569 N.W.2d 311 (Ct. App. 1997), 96−3514.

30.122 Unauthorized structures. All permanent alterations, deposits or structures affecting navigable waters, other than boathouses, which were constructed before December 9, 1977 and which did not require a permit at the time of construction, shall be presumed in conformity with the law, unless a written complaint is filed within 180 days of December 9, 1977. Upon the filing of a complaint, the department shall proceed with an action to enforce the applicable statutes.

History: 1977 c. 189.

30.123 Bridges and culverts. **(2)** PERMITS REQUIRED. Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may construct or maintain a bridge or construct, place, or maintain a culvert in, on, or over navigable waters.

(5) Any person who is issued a permit under this section respecting a bridge that may be used by the public shall construct and maintain the bridge in a safe condition at all times.

(6) EXEMPTIONS. Subsection (2) does not apply to any of the following:

(b) The construction and maintenance of bridges by the department of transportation in accordance with s. 30.2022.

(d) The construction or placement and the maintenance of a culvert to replace a culvert that is authorized under a permit issued under s. 30.12 or 30.123, if the construction, placement, and maintenance will comply with the same conditions of the permit.

(e) The construction or placement and the maintenance of a culvert to replace a culvert that has an inside diameter that does not exceed 24 inches.

(6m) PERMITS IN LIEU OF EXEMPTIONS. The department may decide to require that a person engaged in an activity that is exempt under sub. (6) (d) or (e) apply for an individual permit or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that conditions specific to the site require restrictions on the activity in order to prevent any of the following:

(a) Significant adverse impacts to the public rights and interests.

(b) Environmental pollution, as defined in s. 299.01 (4).

(c) Material injury to the riparian rights of any riparian owner.

(6r) EXEMPTION DETERMINATIONS. (a) A person may submit to the department a written statement requesting that the department determine whether a proposed activity is exempt under sub. (6) (d) or (e). The statement shall contain a description of the proposed activity and site and shall give the department consent to enter and inspect the site.

(b) The department shall do all of the following within 15 days after receipt of a statement under par. (a):

1. Enter and inspect the site on which the activity is located, subject to s. 30.291, if the department determines such an inspection is necessary.

2. Make a determination as to whether the activity is exempt.

3. Notify in writing the person submitting the statement which general or individual permit will be required for the activity, if the department determines that the activity is not exempt.

(c) If the department does not take action under par. (b), the department may not require at any time that the person proposing to engage in the activity apply for an individual permit or seek authorization under a general permit unless required to do so by a court or hearing examiner.

(d) If a statement under par. (a) is not given or if the statement does not give consent to inspect, the 15−day time limit under par. (b) does not apply.

(6s) RULES. (a) The department may promulgate rules concerning the exempt activities under sub. (6) that only do any of the following:

1. Establish reasonable installation practices for culverts to minimize environmental impacts.

2. Establish reasonable construction and design requirements for culverts that are consistent with the purpose of the activity.

3. Establish reasonable limitations on the location of culverts at the site affected by the activity.

(b) Notwithstanding par. (a), the rules under par. (a) 1. and 2. may not establish practices or requirements that prohibit the construction of culverts or that render the placement of culverts economically cost−prohibitive.

(7) GENERAL PERMITS. The department shall issue statewide general permits under s. 30.206 that authorize any person to do all of the following:

(a) Construct and maintain a clear−span bridge over a navigable water that provides access to a principal structure, as defined by rule by the department.

(b) Construct and maintain a culvert that replaces a culvert that is not exempt under sub. (6) (d) or (e) and that is in a navigable water that is less than 35 feet wide.

(c) Construct and maintain a bridge that is supported only by culverts in a navigable water that is less than 35 feet wide.

(d) Construct, reconstruct, and maintain bridges and culverts that are part of a transportation project that is carried out under the direction and supervision of a municipality.

(8) INDIVIDUAL PERMITS. (a) For the construction and maintenance of a bridge or culvert that is not exempt under sub. (6) and that is not subject to a general permit under sub. (7), a person may apply to the department for the individual permit that is required under sub. (2) in order to construct or maintain a bridge or culvert.

(b) The notice and hearing provisions of s. 30.208 (3) to (5) shall apply to an application under par. (a).

(c) The department shall issue an individual permit pursuant to an application under par. (a) if the department finds that all of the following requirements are met:

1. The bridge or culvert will not materially obstruct navigation.

2. The bridge or culvert will not materially reduce the effective flood flow capacity of a stream.

3. The bridge or culvert will not be detrimental to the public interest.

History: 1977 c. 190; Stats. 1977 s. 30.122; 1977 c. 272; Stats. 1977 s. 30.123; 1987 a. 374; 2003 a. 118; 2011 a. 167; 2013 a. 1.

30.124 Waterfowl habitat management. (1) Notwithstanding ss. 30.12, 30.20, 30.44, and 30.45, and if the department finds that the activity will not adversely affect public or private rights or interests in fish and wildlife populations, navigation, or waterway flood flow capacity and will not result in environmental pollution, as defined in s. 299.01 (4), the department may do all of the following on public lands or waters:

(a) Cut aquatic plants, as defined in s. 30.07 (1) (b), without removing them from the water, for the purpose of improving waterfowl nesting, brood, and migration habitat.

(b) Develop nesting islands for the purpose of increasing waterfowl production.

(2) The department may use moneys available under s. 29.191 (1) (b) 1. to engage in the activities described under sub. (1).

History: 1987 a. 294; 1989 a. 31; 1995 a. 227; 1997 a. 248; 2001 a. 16; 2009 a. 55.

Cross−reference: See also ch. NR 353, Wis. adm. code.

30.1255 Report on control of aquatic nuisance species. (1) DEFINITION. In this section, "aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters or that threatens a commercial, agricultural, aquacultural or recreational activity dependent on infested waters.

(3) BIENNIAL REPORTS. (a) The department shall submit to the legislature biennial reports describing all of the following:

1. The current and potential economic and environmental impact of aquatic nuisance species on the waters of the state.

2. Potential strategies to control aquatic nuisance species.

3. Any geographical areas, public facilities or activities conducted in this state that need technical or financial assistance to reduce the environmental, public health or safety risk that may be caused by aquatic nuisance species.

(b) The department shall submit the report required under par. (a) before October 1 of each even−numbered year as part of the corresponding biennial report under s. 23.22 (6).

History: 1991 a. 269; 1997 a. 27; 1999 a. 9; 2001 a. 109; 2009 a. 55.

30.126 Regulation of fishing rafts. (2) PROHIBITION OF FISHING RAFTS. Except as provided under subs. (3) and (4), no person may construct or place a fishing raft on any navigable water.

(3) EXCEPTION FOR FISHING RAFTS ON THE MISSISSIPPI RIVER. A person may maintain any fishing raft located below and in close proximity to a lock or dam on the Mississippi River if the fishing raft is constructed or in place prior to December 4, 1983. A person may construct, place and maintain a fishing raft below and in proximity to a lock or dam on the Mississippi River if a permit is obtained for the fishing raft under s. 30.12.

(4) EXCEPTION FOR FISHING RAFTS ON THE WOLF RIVER. A person may construct, place and maintain a fishing raft on authorized portions of the Wolf River if the person complies with the restrictions under sub. (5). Authorized portions of the Wolf River consist of any part of the Wolf River or its stream tributaries from the Shawano dam downstream to Lake Poygan.

(5) RESTRICTIONS ON FISHING RAFTS ON THE WOLF RIVER. (a) *May not obstruct navigation or interfere with public rights.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River in a manner which materially obstructs navigation or which materially interferes with public rights in the navigable waters.

(b) *May not be located in channel.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River in the channel of the waterway.

(c) *May not block more than 25% of the waterway.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River if the raft alone or in combination with any other fishing rafts previously constructed and placed on the waterway results in the obstruction of more than 25% of the width of the waterway.

(d) *May not be located within 10 feet of another fishing raft.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River within 10 feet of any other fishing raft previously constructed and placed on the waterway.

(e) *May not affect riparian rights without permission of riparian owner.* No person who is not the riparian owner may construct, place or maintain a fishing raft which is attached or adjacent to property of a riparian owner or which otherwise affects the rights of a riparian owner unless the person receives the written permission of the riparian owner.

(f) *May not be used during certain times of the year.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River prior to March 1 of any year. Any person who constructs, places or maintains a fishing raft on authorized portions of the Wolf River shall remove or cause the removal of the fishing raft from the waterway on or before October 31 of each year.

(g) *May not have improper flotation devices.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River unless each flotation device used on the fishing raft is clean and uncontaminated, properly attached to the fishing raft and properly maintained in conformity with minimum standards established by the department by rule. The department shall establish minimum standards for the condition, attachment and maintenance of flotation devices used on fishing rafts.

(h) *May not have improper toilets.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River if the fishing raft is equipped with a toilet which permits toilet waste to be disposed of in the waterway. A toilet on a fishing raft shall comply with rules of the department of safety and professional services as if the toilet were on a boat.

(i) *May not be abandoned.* No person who constructs or places a fishing raft on authorized portions of the Wolf River may abandon the fishing raft.

(j) *May not be improperly maintained.* No person who constructs or places a fishing raft on authorized portions of the Wolf River may fail to maintain the fishing raft in conformity with minimum standards established by the department by rule. After consulting with Wolf River municipalities, the department shall establish by rule minimum standards for the maintenance of fishing rafts to ensure proper repair, to promote maintenance in an aesthetically pleasing manner and to reduce the possibility that debris or litter from the fishing raft will be deposited in the waterway.

(k) *May not be used unless registered.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River unless the fishing raft is registered under the uniform registration system and unless the registration number is displayed on the raft and on each flotation device in 3−inch block letters.

(6) REGISTRATION OF FISHING RAFTS ON THE WOLF RIVER. (a) *Department to establish a uniform registration system.* The department shall establish by rule general standards for a uniform registration system for fishing rafts, on authorized portions of the Wolf River, which includes all the following:

1. A uniform numbering system for fishing rafts and flotation devices used on fishing rafts.

2. Provisions for the annual registration of all fishing rafts.

3. Provisions for the payment of an annual registration fee of $5 for each fishing raft.

(b) *Municipal adoption, administration and enforcement of uniform registration system.* 1. A Wolf River municipality shall adopt by ordinance and administer and enforce a uniform registration system for fishing rafts consistent with the general standards established by the department.

2. A Wolf River municipality which adopts, administers and enforces a uniform registration system for fishing rafts and which adopts and enforces restrictions on fishing rafts may retain all registration fees to administer and enforce the uniform registration system and the restrictions.

3. A Wolf River municipality which adopts a uniform registration system for fishing rafts shall transmit a complete list of all registered fishing rafts and their owners to the department on or before April 1 of each year.

(c) *Failure of municipality to adopt, administer or enforce the uniform registration system.* If a Wolf River municipality fails to adopt by ordinance a uniform registration system for fishing rafts within 120 days after the effective date of rules promulgated by the department under par. (a), or fails to adequately administer or enforce the uniform registration system for fishing rafts, the department, after providing notice and conducting a hearing on the matter, may adopt or administer and enforce the uniform registration system for fishing rafts in that municipality. If the department adopts, administers or enforces the uniform registration system for fishing rafts in a Wolf River municipality, the department may retain all registration fees for fishing rafts registered in that municipality.

(d) *Conflicts.* Any conflict in jurisdiction arising from the enactment of ordinances for the registration of fishing rafts on authorized portions of the Wolf River by 2 or more Wolf River municipalities shall be resolved under s. 66.0105.

(7) MUNICIPAL REGULATION OF FISHING RAFTS ON THE WOLF RIVER. (a) *Municipal adoption and enforcement of restrictions on fishing rafts.* A Wolf River municipality shall adopt by ordinance and enforce restrictions on fishing rafts at least as restrictive as those under sub. (5).

(b) *Failure of a municipality to adopt and enforce restrictions on fishing rafts.* If a Wolf River municipality fails to adopt by ordinance restrictions on fishing rafts within 120 days after the effective date of rules promulgated by the department under subs. (5) (g) and (j) and (6) (a), or fails to adequately enforce the restrictions on fishing rafts, the department, after providing notice and conducting a hearing on the matter, may enforce restrictions on fishing rafts. If the department enforces restrictions on fishing rafts in a Wolf River municipality, the department may retain all registration fees for fishing rafts registered in that municipality.

(c) *Conflicts.* Any conflict in jurisdiction arising from the enactment of ordinances restricting fishing rafts on authorized portions of the Wolf River by 2 or more Wolf River municipalities shall be resolved under s. 66.0105.

(8) REMOVAL OF FISHING RAFTS. (a) *Municipality may order removal.* A Wolf River municipality may order a person who is violating restrictions under sub. (5) or restrictions on fishing rafts adopted by ordinance to comply with the restrictions or to remove the fishing raft from authorized portions of the Wolf River.

(b) *Municipality may cause removal.* 1. If a person fails to comply with an order issued under par. (a) or if a Wolf River municipality is unable to issue an order under par. (a) because the fishing raft is not registered and the municipality cannot determine who constructed, placed or maintained the fishing raft on authorized portions of the Wolf River, the municipality may remove the fishing raft and dispose of it.

2. The owner or person responsible for the fishing raft shall reimburse a Wolf River municipality for all costs associated with the removal and disposal of the fishing raft under this paragraph.

(c) *Department authority to order removal.* 1. The department may order a person who is violating sub. (2) to remove the fishing raft from the navigable waters.

2. The department shall report any violation of sub. (5) to the Wolf River municipality where the violation occurred.

3. If the Wolf River municipality does not act under par. (b) 1. within 90 days after the department reports the violation, the department may order the person who is violating restrictions under sub. (5) to comply with the restrictions or to remove the fishing raft from authorized portions of the Wolf River.

(d) *Department authority to cause removal.* 1. If a person does not comply with an order issued under par. (c) 1. or if the department is unable to issue an order under par. (c) 1. because the department cannot determine who constructed, placed or maintained the fishing raft on the navigable waters, the department may remove the fishing raft and dispose of it.

2. If a person does not comply with an order issued under par. (c) 3., the department may remove the fishing raft and dispose of it.

3. If the department is unable to issue an order under par. (c) 3. because the fishing raft is not registered and the department cannot determine who constructed, placed or maintained the fishing raft on authorized portions of the Wolf River and if the Wolf River municipality does not act under par. (b) 1. within 120 days after

the department reports the violation, the department may remove the fishing raft and dispose of it.

4. The owner or person responsible for the fishing raft shall reimburse the department for all costs associated with the removal and disposal of the fishing raft under this paragraph.

(9) ENFORCEMENT. (a) *Department and district attorney's authority to enforce.* The department or the district attorney for the county where the violation occurred may enforce this section, any rule promulgated under this section or any order issued by the department under this section. Before the department may enforce standards and rules promulgated under sub. (5) (j) with respect to a specific fishing raft and before the department may issue an order based on these standards or rules with respect to a specific fishing raft, the department shall notify and consult with the Wolf River municipality where the fishing raft is located.

(b) *Municipality's authority to enforce.* A Wolf River municipality may enforce any ordinance adopted or order issued by the municipality under this section.

(10) PENALTIES. (a) *Violation of statute, rule or department order.* A person who violates this section, any rule promulgated under this section or any order issued by the department under this section shall forfeit not less than $10 nor more than $250 for each offense. Each day of violation constitutes a separate offense.

(b) *Violation of municipal ordinance or order.* A person who violates any ordinance adopted or order issued by the municipality under this section is subject to the penalty established by ordinance. A Wolf River municipality may not establish this penalty at a level which is less severe than the penalty established under par. (a).

History: 1983 a. 100; 1987 a. 374; 1995 a. 27 ss. 1658, 9116 (5); 1999 a. 150 s. 672; 2011 a. 32.

Cross−reference: See also ch. NR 324, Wis. adm. code.

30.13 Regulation of wharves, piers and swimming rafts; establishment of pierhead lines. (1) CONSTRUCTION ALLOWED WITHOUT PERMIT UNDER CERTAIN CIRCUMSTANCES. A riparian proprietor may construct a wharf or pier in a navigable waterway extending beyond the ordinary high−water mark or an established bulkhead line in aid of navigation without obtaining a permit under s. 30.12 if the pier or wharf is exempt from obtaining a permit under s. 30.12 or if all of the following conditions are met:

(a) The wharf or pier does not interfere with public rights in navigable waters.

(b) The wharf or pier does not interfere with rights of other riparian proprietors.

(c) The wharf or pier does not extend beyond any pierhead line which is established under sub. (3).

(d) The wharf or pier does not violate any ordinances enacted under sub. (2).

(e) The wharf or pier is constructed to allow the free movement of water underneath and in a manner which will not cause the formation of land upon the bed of the waterway.

(1m) SWIMMING RAFTS ALLOWED WITHOUT PERMIT UNDER CERTAIN CIRCUMSTANCES. A riparian owner may place a swimming raft in a navigable waterway for swimming and diving purposes without obtaining a permit under s. 30.12 if all of the following conditions are met:

(a) The swimming raft does not interfere with public rights in navigable waters.

(b) The swimming raft does not interfere with rights of other riparian owners.

(c) The swimming raft is placed within 200 feet of shore.

(2) WHARVES, PIERS AND SWIMMING RAFTS REGULATED. A municipality may enact ordinances not inconsistent with this section regulating the construction and location of wharves, piers and swimming rafts located within or attached to land within that municipality.

(3) ESTABLISHMENT OF PIERHEAD LINES. (a) Any municipality authorized by s. 30.11 to establish a bulkhead line may also establish a pierhead line in the same manner as it is authorized to establish a bulkhead line, except that a metes and bounds legal description is not required nor is the map required to be prepared by a professional land surveyor licensed under ch. 443 and except that if the municipality has created a board of harbor commissioners the municipality must obtain the approval of the board concerning the establishment of the pierhead line in addition to obtaining the approval of the department.

NOTE: Par. (a) is shown as amended eff. 8−1−14 by 2013 Wis. Act 358. Prior to 8−1−14 it reads:

(a) Any municipality authorized by s. 30.11 to establish a bulkhead line may also establish a pierhead line in the same manner as it is authorized to establish a bulkhead line, except that a metes and bounds legal description is not required nor is the map required to be prepared by a registered land surveyor and except that if the municipality has created a board of harbor commissioners the municipality must obtain the approval of the board concerning the establishment of the pierhead line in addition to obtaining the approval of the department.

(b) Any pierhead line established by a municipality shall be established in the interest of the preservation and protection of its harbor or of public rights in navigable waters.

(4) UNLAWFUL OBSTRUCTION. (a) *Interferes with public rights.* A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit issued under s. 30.12 or unless other authorization for the wharf or pier is expressly provided.

(b) *Interferes with riparian rights.* A wharf or pier which interferes with rights of other riparian owners constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit issued under s. 30.12 or unless other authorization for the wharf or pier is expressly provided.

(c) *Extends beyond pierhead line; exception.* A wharf or pier which extends into navigable waters beyond any pierhead line established under sub. (3) constitutes an unlawful obstruction of navigable waters unless a valid permit, license or authorization for the wharf or pier is granted or unless it is a permissible preexisting wharf or pier. A wharf or pier is a permissible preexisting wharf or pier if it existed prior to the establishment of the pierhead line, if it is not extended or expanded after that date and if the ownership of the land to which it is attached did not change after that date except that a wharf or pier continues its status as a permissible preexisting wharf or pier for one year after the date the change of ownership is recorded. The seasonal removal of a wharf or pier does not affect its status as a permissible preexisting wharf or pier if it is reestablished in substantially the same form. Status as a permissible preexisting wharf or pier does not imply that authorization for the wharf or pier is provided for the purposes of par. (a) or (b). The owner of a wharf or pier may submit evidence to the municipality that it is a permissible preexisting wharf or pier at any time after the municipality establishes the pierhead line.

(d) *Violates regulations.* A wharf or pier which violates the regulations contained in sub. (2) or in any ordinance enacted under sub. (2) constitutes an unlawful obstruction of navigable waters.

(5m) REMOVAL OF WHARVES AND PIERS IN NAVIGABLE WATERS. (a) 1. The governing body of a city, village or town or a designated officer may order the owner of a wharf or pier which constitutes an unlawful obstruction of navigable waters under sub. (4) to remove that portion of the wharf or pier which constitutes an unlawful obstruction.

2. The governing body of a city, village or town or a designated officer may order the owner of a wharf or pier in navigable waters which in its judgment is so old, dilapidated or in need of repair that it is dangerous, unsafe or unfit for use to repair or remove the wharf or pier. If the governing body of a city, village or town or a designated officer determines that the cost of repair is likely to exceed 50% of the equalized assessed value of the wharf or pier or, if the wharf or pier is not subject to assessment, if the cost of repair is likely to exceed 50% of the current fair mar-

ket value, then repair is presumed unreasonable and the wharf or pier is presumed to be a public nuisance.

3. An order under this paragraph shall be served upon the owner or person responsible in the manner provided for the service of a summons in circuit court. If the owner or person responsible cannot be found, the order may be served by posting it on the wharf or pier and by publishing it as a class 3 notice under ch. 985. The order shall specify the action to be taken and the time within which it shall be complied with. At least 50 days must be allowed for compliance.

(b) 1. If the owner or person responsible fails to comply with an order issued under par. (a), the governing body of a city, village or town or a designated officer may cause the wharf or pier to be removed through any available public agency or by a contract or arrangement by a private person. The cost of the removal may be charged against the real estate on which or adjacent to which the wharf or pier is located, constitutes a lien against that real estate and may be assessed and collected as a special tax. The governing body of the city, village or town or the designated officer may sell any salvage or valuable material resulting from the removal at the highest price obtainable. The governing body of the city, village or town or the designated officer shall remit the net proceeds of any sale, after deducting the expense of the removal, to the circuit court for use of the person entitled to the proceeds subject to the order of the court. The governing body of the city, village or town or the designated officer shall submit a report on any sale to the circuit court which shall include items of expense and the amount deducted. If there are no net proceeds, the report shall state that fact.

2. If the owner or person responsible fails to comply with an order issued under par. (a), the governing body of a city, village or town or a designated officer may commence an action in circuit court for a court order requiring the person to comply with the order issued under par. (a). The court shall give the hearing on this action precedence over other matters on the court's calendar and may assess costs.

(c) A person affected by an order issued under par. (a) may apply to circuit court within 30 days after service of the order for a restraining order prohibiting the governing body of the city, village or town or the designated officer from removing the wharf or pier. The court shall conduct a hearing on the action within 20 days after application. The court shall give this hearing precedence over other matters on the court's calendar. The court shall determine whether the order issued under par. (a) is reasonable. If the court finds that the order issued under par. (a) is unreasonable, it shall issue a restraining order or modify it as the circumstances require and the governing body of the city, village or town or the designated officer may not issue another order under par. (a) with respect to the wharf or pier unless its condition is substantially changed. The court may assess costs. The remedy provided under this paragraph is exclusive and no person affected by an order issued under par. (a) may recover damages for the removal of a wharf or pier under this section.

(6) DOCK LINE NOT INVALIDATED. A dock line lawfully established before January 1, 1960, is a lawfully established pierhead line.

History: 1981 c. 252; 1987 a. 374; 1999 a. 150 ss. 3, 120, 123, 125, 127, 129, 131, 133; 2003 a. 118; 2007 a. 204; 2013 a. 358.

Cross−reference: See also ch. NR 326, Wis. adm. code.

When a department of natural resources decision prohibited a structure under s. 30.13 and the riparian owner did not seek review under s. 227.20 [now 227.57], the trial court had no jurisdiction to hear an action by the owner seeking a declaration that the structure was a "pier" permitted under s. 30.13. Kosmatka v. Department of Natural Resources, 77 Wis. 2d 558, 253 N.W.2d 887 (1977).

In considering whether a proposed structure is detrimental to the public interest, the department of natural resources is authorized to weigh relevant policy factors including the preservation of the natural beauty of the state's waters, the public's fullest use of the waters, and the convenience of riparian owners. Sterlingworth Condominium Association v. Department of Natural Resources, 205 Wis. 2d 710, 556 N.W.2d 791 (Ct. App. 1996), 95−3526.

The permitting criteria under department of natural resources rules are supplemental to the criteria under sub. (1). To escape the requirement of obtaining a permit, the requirements of both the statute and rules must be met. Sea View Estates Beach Club, Inc. v. Department of Natural Resources, 223 Wis. 2d 138, 588 N.W.2d 667 (Ct. App. 1998), 97−3418.

Riparian rights are qualified by reasonable use and are subordinate to public rights. The common law requires reasonable use by riparian owners to be determined by the extent and capacity of the lake, the uses to which it has been put, and the rights that other riparian owners on the same lake also have. The inquiry is highly fact−specific, and determinations are made on a case−by−case basis. Hilton v. Department of Natural Resources, 2006 WI 84, 293 Wis. 2d 1, 717 N.W.2d 166, 03−3353.

Historical use, however it is determined, is one of the factors that an administrative law judge may weigh in balancing the private rights and public interests at stake in riparian rights/public trust doctrine cases. The cases do not establish any set definition of historical use or any hard and fast methodology for determining it. That historic use must be based on something like passage of an ordinance or department of natural resources contact is not required by public policy considerations. An ALJ may review local ordinances in making a permit determination but is not required to do so. Hilton v. Department of Natural Resources, 2006 WI 84, 293 Wis. 2d 1, 717 N.W.2d 166, 03−3353.

30.131 Wharves and piers placed and maintained by persons other than riparian owners. (1) Notwithstanding s. 30.133, a wharf or pier of the type which does not require a permit under ss. 30.12 (1) and 30.13 that abuts riparian land and that is placed in a navigable water by a person other than the owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

(a) The owner of the riparian land or the owner's predecessor in interest entered into a written easement that was recorded before December 31, 1986, and that authorizes access to the shore to a person who is not an owner of the riparian land.

(b) The person to whom the easement was granted or that person's successor in interest is the person who places and maintains the wharf or pier.

(c) The placement and maintenance of the wharf or pier is not prohibited by and is not inconsistent with the terms of the written easement.

(d) The wharf or pier has been placed seasonally in the same location at least once every 4 years since the written easement described in par. (a) was recorded.

(e) The wharf or pier is substantially the same size and configuration as it was on April 28, 1990, or during its last placement before April 28, 1990, whichever is later.

(f) The placement of the wharf or pier complies with the provisions of this chapter, with any rules promulgated under this chapter and with any applicable municipal regulations or ordinances.

(2) Notwithstanding s. 30.133, an easement under sub. (1) may be conveyed if it is conveyed at the same time, and to the same person, that the land to which the easement is appurtenant is conveyed.

History: 1989 a. 217; 1993 a. 167.

The application of s. 30.131 is discussed. Godfrey Co. v. Lopardo, 164 Wis. 2d 352, 474 N.W.2d 786 (Ct. App. 1991).

This section does not grant rights to a nonriparian owner vis a vis a riparian owner. The statute speaks only to the lawfulness of a pier maintained under a nonriparian access easement. The terms and purpose of the easement may include the right to use and maintain the pier. Wendt v. Blazek, 2001 WI App 91, 242 Wis. 2d 722, 626 N.W.2d 78, 00−2448.

30.133 Prohibition against conveyance of riparian rights. (1) Beginning on April 9, 1994, and except as provided in s. 30.1335, no owner of riparian land that abuts a navigable water may grant by an easement or by a similar conveyance any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water. This right to cross the land may not include the right to place any structure or material, including a boat docking facility, as defined in s. 30.1335 (1) (a), in the navigable water.

(2) This section does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdic-

tion over the project. This section does not apply to riparian land that is associated with an approval required for bulk sampling or mining that is required under subch. III of ch. 295.

History: 1993 a. 167; 2007 a. 20; 2009 a. 180, 352; 2013 a. 1.

Small lock boxes were not "intended for any type of independent use" within the meaning of a condominium "unit" under s. 703.02 (15) and were not valid condominium units. Without a valid condominium unit, the transfer of riparian rights purportedly attached to the condominium lock boxes was in violation of this section. ABKA Limited Partnership v. Department of Natural Resources, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854, 99−2306.

This section prohibits the severing by easement or by a similar conveyance of riparian rights from the riparian lands to which they are attached, preventing the reservation of riparian rights apart from riparian land by an easement, as well as the granting of riparian rights to a nonriparian. Berkos v. Shipwreck Bay Condominium Association, 2008 WI App 122, 313 Wis. 2d 609, 758 N.W.2d 215, 06−2747.

NOTE: The above annotated cases cite to the pre−2007 Wisconsin Act 20 version of s. 30.133. See also s. 30.1335, created by 2007 Wisconsin Act 20.

30.1335 Marina condominiums. (1) DEFINITIONS. In this section:

(a) "Boat docking facility" means a pier, wharf, boat slip, or multi−boat−slip facility.

(b) "Common element" has the meaning given in s. 703.02 (2).

(c) "Condominium" has the meaning given in s. 703.02 (4).

(d) "Condominium unit" has the meaning given for "unit" in s. 703.02 (15).

(e) "Declarant" has the meaning given in s. 703.02 (7).

(f) "Declaration" has the meaning given in s. 703.02 (8).

(h) "Dwelling" means a structure or part of a structure that is used or intended to be used as a home or residence by one or more persons to the exclusion of all others.

(i) "Limited common element" has the meaning given in s. 703.02 (10).

(j) "Marina condominium" means a condominium in which the common elements, limited common elements, or condominium units consist of or include boat docking facilities and to which either or both of the following apply:

1. One or more of the boat docking facilities is not appurtenant to a dwelling.

2. None of the condominium units are dwellings.

(2) PROHIBITION. No owner of riparian land may create a marina condominium on the riparian land on or after June 1, 2007. Any declaration for a marina condominium that is recorded on or after June 1, 2007, is invalid and establishes ownership of the riparian land as a tenancy in common that is held by the owners of the marina condominium units.

(3) EXISTING MARINA CONDOMINIUMS. (a) Notwithstanding sub. (2), a declaration that creates or purports to create a marina condominium and that is recorded before June 1, 2007, shall be effective in creating the marina condominium regardless of subsequent activity affecting the declaration.

(b) If a marina condominium as described in par. (a) contains more than 300 boat slips, the declarant shall make at least 40 percent of the total number of boat slips in the marina condominium available for rent or for transient use by the public. When the declarant conveys title to, or another interest in, a condominium unit that is affected by this restriction on use, the declarant shall include a statement of the restriction in the instrument of conveyance.

(4) VALIDITY OF PERMITS. (a) For a marina that is converted into a marina condominium, if the owner of the marina is issued a permit or other authorization under this subchapter to place, maintain, or use a boat docking facility before the date that a declaration was recorded converting the marina into a marina condominium, the permit or authorization shall be deemed to satisfy the requirements of the other sections of this subchapter and may not be rescinded or modified by the department or a municipality or by court or administrative order if the grounds for the rescission or modification are based on the fact that the marina has been converted to a marina condominium. The permit or authorization shall remain in effect regardless of any subsequent activity affecting the declaration. This paragraph does not apply to any permit or authorization that is issued after the date that the declaration was recorded converting the marina into a marina condominium.

(b) For a marina condominium that was not previously a marina, if the owner of a marina condominium is issued a permit or other authorization under this subchapter to place, maintain, or use a boat docking facility, the permit or authorization shall be deemed to satisfy the requirements of the other sections of this subchapter and may not be rescinded or modified by the department or a municipality or by court or administrative order if the grounds for the rescission or modification are based on the fact that the boat docking facility is part of a marina condominium as opposed to a marina. The permit or authorization shall remain in effect regardless of any subsequent activity affecting the declaration.

(5) INCREASE IN SIZE OR NUMBER. An amendment or modification of a declaration as described under sub. (3) (a) may not increase the size of the boat docking facility or the size or the number of boat slips in a boat docking facility.

(6) SUBSEQUENT ACTIVITY AFFECTING A DECLARATION. For purposes of this section, subsequent activity affecting the declaration consists of any of the following:

(a) Any amendment, modification, or restatement of the declaration by court or administrative order or by consent of the owners of the condominium units as authorized under ch. 703.

(b) Any determination by court or administrative order that the declaration is void or voidable or that the condominium units in the condominium are not intended for any type of independent use.

(7) DEPARTMENT ENFORCEMENT. Notwithstanding sub. (4), the department retains the authority to enforce the terms and conditions of a permit or other authorization except to the extent that such terms and conditions relate to the form of ownership of a boat docking facility.

History: 2007 a. 20; 2009 a. 180, 352.

30.134 Use of exposed shore areas along streams. (1) DEFINITIONS. In this section:

(a) "Artificial ditch" means a ditch, channel, canal or other stream of water that has no prior history as a stream.

(b) "Exposed shore area" means the area of the bed of a navigable body of water that is between the ordinary high−water mark and the water's edge.

(c) "Highway" has the meaning given in s. 340.01 (22).

(d) "Riparian" means the owner, lessee or occupant of land that abuts a navigable body of water.

(2) AUTHORIZATION. Members of the public may use any exposed shore area of a stream without the permission of the riparian only if it is necessary to exit the body of water to bypass an obstruction.

(3) RESTRICTIONS; MEMBERS OF PUBLIC. (a) In using an exposed shore area of a stream, as authorized under sub. (2), a member of the public may not enter the exposed shore area except from the water, from a point of public access on the stream, or with the permission of the riparian.

(c) Use of an exposed shore area of a stream by members of the public does not grant an easement or other right to the exposed shore area that is greater than the right granted to the public under this section.

(4) RESTRICTIONS; RIPARIANS; OTHERS. (a) No riparian may prohibit a member of the public from using, as authorized under this section, an exposed shore area of a stream.

(b) No riparian may charge a fee for the use, as authorized under this section, of an exposed shore area of a stream.

(c) No person may obstruct a highway with the intention to impede or prohibit access by the public to an exposed shore area of a stream.

(5) EXCEPTIONS. The right granted to the public under this section to use an exposed shore area of a stream does not apply to any of the following:

(a) An exposed shore area of an impoundment on a stream.

(b) Any artificial ditch.

(c) Any location on a stream where there is no surface water flowing in the stream.

History: 1999 a. 9; 2001 a. 16.

30.135 Regulation of water ski platforms and jumps. **(1)** A riparian owner placing a water ski platform or water ski jump in a navigable waterway is exempt from the permit requirements under this chapter if all of the following requirements are met:

(a) The platform or jump does not interfere with public rights in navigable waters.

(b) The platform or jump does not interfere with rights of other riparian owners.

(c) The platform or jump is located at a site that ensures adequate water depth and clearance for safe water skiing.

(2) If the department determines that any of the requirements under sub. (1) are not met, the riparian owner shall submit an application for an individual permit to the department. The notice and hearing provisions under s. 30.208 (3) to (5) apply to the application.

History: 1997 a. 27; 2003 a. 118.

30.14 Reports of and hearings on violations. **(1)** MUNICIPALITIES TO REPORT VIOLATIONS. The governing body of each municipality shall promptly report to the department every violation of s. 30.12 or 30.13 which occurs or which it has reason to believe is likely to occur within the municipal boundaries.

(2) HEARINGS BY DEPARTMENT. Upon complaint by any person to the department that any wharf, pier or other structure exists in navigable water in violation of s. 30.12 or 30.13 or 30.207 or that any wharf, pier or other structure proposed to be built in navigable water will violate s. 30.12 or 30.13 or 30.207, the department shall investigate and may hold a hearing to determine whether the wharf, pier, or other structure is or would be in violation of those sections. If no hearing is held, the complainant shall be informed of the results of the investigation.

History: 1987 a. 374; 1997 a. 174.

30.15 Penalty for unlawful obstruction of navigable waters. **(1)** OBSTRUCTIONS PENALIZED. Any person who does any of the following shall forfeit not less than $10 nor more than $500 for each offense:

(a) Unlawfully obstructs any navigable waters and thereby impairs the free navigation thereof.

(b) Unlawfully places in navigable waters or in any tributary thereof any substance that may float into and obstruct any such waters or impede their free navigation.

(c) Constructs or maintains in navigable waters, or aids in the construction or maintenance therein, of any boom not authorized by law.

(d) Constructs or places any structure or deposits any material in navigable waters in violation of s. 30.12 or 30.13.

(3) EACH DAY A SEPARATE VIOLATION. Each day during which an obstruction, deposit or structure exists in violation of sub. (1) is a separate offense.

History: 1987 a. 374.

When a bridge obstructing navigation was necessary, reasonable, and existing before the plaintiff moved into the area, the defendant city need not abate the nuisance. Capt. Soma Boat Line v. Wisconsin Dells, 79 Wis. 2d 10, 255 N.W.2d 441 (1977).

If an unattended and anchored boat is left on navigable water for an unreasonable length of time, it constitutes a violation. 63 Atty. Gen. 601.

30.16 Removal of obstructions to navigation. **(1)** WATERCRAFT AND FLOATS. (a) *Removal.* The governing body of any municipality in this state may cause to be removed to a convenient and safe place any watercraft or float obstructing or interfering with the free navigation of any river, canal, water channel or slip within its harbor after having given reasonable notice to the master or owner or the agent of the master or owner, if known and a resident of this state, or to the person in charge thereof, to so remove such watercraft or float. The governing body of the municipality by ordinance or resolution may authorize any harbor master or other public officer over whom it has jurisdiction to remove the obstruction, and may prescribe the officer's duties with respect thereto and the mode of carrying them into effect and may prescribe penalties for violation of such ordinance or resolution.

(b) *Costs of removal.* All costs, charges and expenses of such removal are a first lien on such watercraft or float, which lien may be enforced in the manner provided by law. The owner of any such watercraft or float is also personally liable for such costs, charges and expenses, to be recovered by the municipality by a personal action.

(2) REMOVAL OF OBSTRUCTIONS TO NAVIGATION; WHARVES AND PIERS; ALTERNATIVE. As an alternative to the procedure specified under sub. (1), the governing body of a city, village or town may remove that portion of a wharf or pier which constitutes an unlawful obstruction to navigation as provided under s. 30.13 (5m).

History: 1981 c. 252; 1991 a. 316; 1993 a. 246; 1997 a. 35; 1999 a. 150 ss. 4, 672; 2001 a. 30 s. 96.

30.18 Withdrawal of water from lakes and streams. **(2)** PERMIT REQUIRED. (a) *Streams.* No person may withdraw water from a stream in this state without an individual permit under this section if the withdrawal meets either of the following conditions:

1. The withdrawal is for the purpose of maintaining or restoring the normal level of a navigable lake or the normal flow of a navigable stream, regardless of whether the navigable lake or navigable stream is located within the watershed of the stream from which the water is withdrawn.

2. The withdrawal is for the purpose of agriculture or irrigation.

(b) *Streams or lakes.* No person, except a person required to obtain an approval under s. 281.41, may withdraw water from any lake or stream in this state without an individual permit under this section if the withdrawal will result in a water loss averaging 2,000,000 gallons per day in any 30−day period above the person's authorized base level of water loss.

(3) APPLICATION FOR PERMIT. (a) *Application; streams.* 1. Except as provided in par. (b), an applicant for a permit required under sub. (2) (a) shall file the application with the department setting forth the name and post−office address of the applicant, the name of the stream from which the water will be withdrawn, the point in the stream from which it is proposed to withdraw the water, the name of the lake or stream or the location and riparian status of the land to which the water is to be transferred, the location and description of the canal, tunnel or pipes and other works through which the water is to be withdrawn and transferred, the amount of water to be withdrawn, the periods of time when it is proposed to withdraw such water, the time required for the completion of the canal and other structures necessary for the completed project and, if required by the department, 4 copies of plans showing cross sections and profiles for any canal, tunnel, pipes or other works for withdrawing and transferring the water and any dam and control works at the point of withdrawal and at the point of discharge.

2. For a withdrawal under sub. (2) (a) 1., a map or maps shall accompany the application with a scale of not less than one inch per 2,000 feet, showing the land topography and the probable course of the proposed canal and other works, and the ownership of all lands upon which will be located the canal, tunnel, pipes and all other works for the completed project.

3. For a withdrawal under sub. (2) (a) 2., the application shall include written statements of consent to the withdrawal from all

riparian owners who are making beneficial use of the water proposed to be withdrawn.

4. The department may require such additional information as may be pertinent.

(b) *Application; streams or lakes.* An application for a permit required under sub. (2) (b) shall be submitted in the form required under s. 281.35 (5) (a). If the withdrawal also meets either condition specified under sub. (2) (a), the application shall also comply with par. (a).

(4) NOTICE OF HEARING ON APPLICATION. (a) The notice and hearing provisions of s. 30.208 (3) to (5) shall apply to an application under sub. (3). In addition to providing notice as required under s. 30.208 (3) to (5), the department shall mail a copy of the notice to every person upon whose land any part of the canal or any other structure will be located, to the clerk of the next town downstream, to the clerk of any village or city in which the lake or stream is located and which is adjacent to any municipality in which the withdrawal will take place and to each person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

(b) If a hearing on the application for a permit is conducted as a part of a hearing under s. 293.43, the notice and hearing provisions in that section supersede the notice and hearing provisions of par. (a).

(5) APPROVAL OF APPLICATION. (a) *Streams.* The department shall approve an application for a permit required under sub. (2) (a) if the department determines both of the following:

1. That the proposed withdrawal will not injure any public rights in navigable waters.

2. That the water to be withdrawn is surplus water, or if it is not surplus water, that all riparians who may be adversely affected by the withdrawal have consented to the proposed withdrawal.

(b) *Streams or lakes.* The department shall approve an application for a permit required under sub. (2) (b) if the grounds for approval specified under s. 281.35 (5) (d) are met and, if the permit is also required under sub. (2) (a), if the department makes the determinations specified under par. (a).

(6) PERMITS; USE OF WATER; REPORTING; REVIEW. (a) *Contents of permit.* The department shall specify on each permit issued under this section the quantity of water that may be withdrawn and the times during which water may be withdrawn. In addition, if the permit is one which is required under sub. (2) (b), the permit shall comply with s. 281.35 (6).

(b) *Use of water.* A person issued a permit under this section for the purpose of irrigation or agriculture may use the water on any land contiguous to the permittee's riparian land, but may not withdraw more water than it did before August 1, 1957, without applying to the department for a modification of the permit.

(c) *Reporting required.* The department shall require each permittee under this section to report its volume and rate of withdrawal and its volume and rate of water loss, if any, in the form and at the times specified by the department.

(d) *Review of permits.* If the permit is one that is required under sub. (2) (a), but not under sub. (2) (b), and the permit was issued on or after August 1, 1957, the department shall review the permit at least once every 5 years. If the permit is one that is required under sub. (2) (b), the department shall review the permit as required under s. 281.35 (6) (b).

(6m) REVOCATION. (a) The department shall revoke a permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it finds any of the following:

1. That the water being withdrawn is no longer surplus water, except that the department may allow the withdrawal to continue if all riparians adversely affected by the withdrawal continue to consent to it.

2. If the withdrawal is from a stream designated by the department as a trout stream, that the revocation is desirable for conservation purposes.

(b) The department may revoke any permit issued under sub. (5) (a), which is not subject to sub. (2) (b), if it finds that the withdrawal is detrimental to the stream from which the water is withdrawn.

(c) The department may revoke a permit issued under sub. (5) (b) only as provided under s. 281.35 (6).

(7) PREREQUISITES TO PROJECT CONSTRUCTION. After an application under this section has been filed with the department, the applicant may enter any land through which it is proposed to withdraw or transfer the water for the purposes of making any surveys required for drafting the plans for the project, but no work shall be commenced on the canal, headworks or other structures necessary for the project until the plans for the same have been approved by the department. Any person having received a permit required under sub. (2) (a) may construct upon the land of another the canal and other works authorized by the permit after the damage which will be sustained by the owner or owners of such land has been satisfied, or has been determined as provided for in ch. 32, and after the final sum so determined and all costs have been paid to the persons entitled thereto or to the clerk of the circuit court on their account.

(8) DEPARTMENT MAY RAISE WATER ELEVATIONS. If after examination and investigation the department determines that it is necessary to raise water elevations in any navigable stream or lake for conservation purposes, the department may, if funds are available from any source other than license fees, determine and establish the elevations to which the water may be raised or maintained, but the water elevation may not be established below the normal elevation. If any lands are damaged by raising the water levels above normal and the department cannot acquire the right to flow the lands by agreement with the owner, the department may acquire the lands or the right to flow the lands by condemnation under ch. 32.

(9) JUDICIAL REVIEW. Any order or determination made by the department is subject to judicial review as prescribed in ch. 227.

History: 1979 c. 221; 1985 a. 60; 1987 a. 374; 1995 a. 227; 2003 a. 118; 2007 a. 227; 2011 a. 167.

Cross−reference: See also chs. NR 142 and 305, Wis. adm. code.

This section is to be strictly construed. Any diversion of water lawful at common law is permitted without a permit unless it is for irrigation, agriculture, or to maintain normal water levels. State ex rel. Chain O'Lakes Protective Association v. Moses, 53 Wis. 2d 579, 193 N.W.2d 708.

This section applies to diversions from nonnavigable, as well as from navigable, streams. Omernik v. State, 64 Wis. 2d 6, 218 N.W.2d 734 (1974).

The legislature abrogated the common law riparian right of irrigation and substituted the permit procedure under sub. (3). Omernick v. Department of Natural Resources, 71 Wis. 2d 370, 238 N.W.2d 114 (1974).

Section 94.26 exempts cranberry growers from permit requirements of this section. State v. Zawistowski, 95 Wis. 2d 250, 290 N.W.2d 303 (1980).

30.19 Enlargement and protection of waterways.

(1b) DEFINITION. In this section:

(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.

(b) "Bank" means either of the following:

1. Land area that is, in size, the greater of the following:

a. The portion of land surface that extends 75 feet landward from the ordinary high−water mark of any navigable waterway.

b. The portion of land surface extending landward from the ordinary high−water mark of any navigable waterway to the point where the slope is less than 12 percent.

2. A bank as determined by the department by rule under sub. (1d).

(c) "Priority navigable waterway" means any of the following:

1. A navigable waterway, or a portion of a navigable waterway, that is identified as an outstanding or exceptional resource water under s. 281.15.

2. A navigable waterway, or a portion of a navigable waterway, identified as a trout stream.

3. A lake that is less than 50 acres in size.

4. Any other navigable waterway, or portion of a navigable waterway, that the department has determined, by rule, contains sensitive fish and aquatic habitat and that the department has specifically identified by rule.

(1c) DEFINITION; APPLICABILITY. The definition of "bank" under sub. (1b) does not apply after the 90th day after the day the rule under sub. (1d) is submitted to legislative council staff under s. 227.15 (1) or the day that the rule promulgated under sub. (1d) goes into effect, whichever is earlier.

(1d) RULES; BANKS OF NAVIGABLE WATERWAYS. (a) The department shall promulgate a rule to determine what constitutes a bank for purposes of this section in accordance with all of the following:

1. For priority navigable waterways, the department shall promulgate a rule stating that a bank is, in size, the greater of the following:

a. The portion of land surface that extends a certain distance landward from the ordinary high−water mark of the navigable waterway, but the distance under the rule may not exceed 300 feet.

b. The portion of land surface that extends landward from the ordinary high−water mark of the navigable waterway to the point where the slope is measured to be a certain percentage, but the percentage under the rule may not be less than 10 percent.

1m. The rule promulgated under subd. 1. may apply to specific priority navigable waterways or to classes of priority navigable waterways.

2. For navigable waterways that are not priority navigable waterways, the department shall promulgate a rule stating that a bank is, in size, the greater of the following:

a. The portion of the land surface that extends a certain distance landward from the ordinary high−water mark of the navigable waterway, but the distance under the rule may not exceed 75 feet.

b. The portion of land surface that extends landward from the ordinary high−water mark of the navigable waterway to the point where the slope is measured to be a certain percentage, but the percentage under the rule may not be less than 12 percent.

2m. The rule promulgated under subd. 2. may apply to specific navigable waterways or to classes of navigable waterways.

(am) The rule under this subsection may not require or allow the department to deviate from, or create an exemption from, the requirements of the rules promulgated under this section in determining what constitutes a bank at an individual, specific site.

(b) In promulgating the rule under this subsection, the determination under this subsection of what constitutes a bank may not include any land where the slope or drainage of the land into the navigable waterway is completely interrupted.

(c) To the extent practicable, the rule under this subsection shall be consistent with rules promulgated by the department that relate to shorelands, as defined in s. 59.692 (1) (b), and floodplains, and rules promulgated under s. 281.16 (2) that relate to protective areas for wetlands and waterways.

(d) In promulgating the rule under this subsection, the department shall consider public rights and interests for the purpose of furthering the public trust in navigable waters.

(1g) PERMITS REQUIRED. Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following:

(a) Construct, dredge, or enlarge any artificial water body that connects with a navigable waterway.

(am) Construct, dredge, or enlarge any part of an artificial water body that is located within 500 feet of the ordinary high−water mark of an existing navigable waterway, including a stormwater management pond that does not discharge into a navigable waterway except as a result of storm events.

(c) Grade or remove topsoil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet.

(1m) EXEMPTIONS. A person is exempt from the permit requirements under this section for any of the following:

(a) The construction or repair of any public highway.

(b) Any agricultural use of land.

(c) An activity that affects a navigable inland lake that is located wholly or partly in any county having a population of 750,000 or more.

(cm) Any activity that affects a portion of Lake Michigan or of Lake Superior that is located within a county having a population of 750,000 or more.

(d) Any activity that affects a portion of a navigable stream that is located within a county having a population of 750,000 or more.

(e) Any work required to maintain the original dimensions of an enlargement of an artificial water body done pursuant to a permit or legislative authorization under sub. (1g) (a) or (am).

(f) Any land grading activity authorized under a stormwater discharge permit issued under s. 283.33.

(g) Any land grading activity authorized by a permit issued by a county under a shoreland zoning ordinance enacted under s. 59.692.

(3r) GENERAL PERMITS. The department shall issue statewide general permits under s. 30.206 that authorize persons to do all of the following:

(a) Engage in an activity specified in sub. (1g) (am) substantially in accordance with best management practices required for storm water discharge permits under ch. 283.

(b) Engage in an activity specified in sub. (1g) (c).

(4) INDIVIDUAL PERMITS. (a) For activities that are not exempt under sub. (1m) and that are not subject to a general permit under sub. (3r), a person may apply to the department for an individual permit in order to engage in an activity for which a permit is required under sub. (1g).

(b) The notice and hearing provisions of s. 30.208 (3) to (5) apply to an application under par. (a).

(c) The department shall issue an individual permit pursuant to an application under par. (a) if the department finds that all of the following requirements are met:

1. The activity will not be detrimental to the public interest.

2. The activity will not cause environmental pollution, as defined in s. 299.01 (4).

3. Any enlargement connected to a navigable waterway complies with all of the laws relating to platting of land and sanitation.

4. No material injury will result to the riparian rights of any riparian owners of real property that abuts any water body that is affected by the activity.

(5) REQUIREMENT FOR PUBLIC ACCESS. A permit issued under this section to construct an artificial water body and to connect it to a navigable waterway shall require that the navigable portion of the artificial water body be a public waterway if the connecting portion is navigable. The department may impose such further conditions in the permit on public access as it finds reasonably necessary to protect public health, safety, welfare, rights and interest and to protect private rights and property.

History: 1971 c. 273; 1979 c. 34 s. 2102 (39) (g); 1979 c. 221; 1983 a. 36; 1987 a. 374; 1995 a. 227; 2003 a. 118; 2011 a. 167; 2013 a. 1.

Cross−reference: See also chs. NR 305, 340, 341, 343, and 353, Wis. adm. code.

The department of natural resources has subject matter jurisdiction to issue after−the−fact permits, as well as those issued prior to the commencement of construction. Capoun Revocable Trust v. Ansari, 2000 WI App 83, 234 Wis. 2d 335, 610 N.W.2d 129, 99−1146.

The only specific exemption from the jurisdiction of the department of natural resources over navigable waters is that of s. 30.19 (1) (d) [now s. 30.19 (1m)], concerning agricultural uses of land. The department determines dam regulations for dams on drainage ditches, regardless of the purpose of the dam. 63 Atty. Gen. 355.

When a bulkhead line has been established, a riparian owner must nonetheless obtain a permit or contract pursuant to s. 30.20 prior to removing material from the bed of a navigable water landward of the bulkhead line, but within the original ordinary high water mark. 63 Atty. Gen. 445.

NOTE: The above annotated materials cite to the pre− 2003 Wisconsin Act 118 version of s. 30.19.

30.195 Changing of stream courses. (1) PERMIT REQUIRED. Unless a permit has been issued under this section or authorization has been granted by the legislature, no person may change the course of or straighten a navigable stream.

(2) INDIVIDUAL PERMITS. (a) A riparian owner shall apply to the department for an individual permit in order to engage in activities for which a permit is required under sub. (1).

(b) The notice and hearing provisions of s. 30.208 (3) to (5) apply to an application under par. (a).

(c) The department shall issue an individual permit applied for under this section to a riparian owner if the department determines that all of the following requirements are met:

1. The applicant is the owner of any land upon which the change in course or straightening of the navigable stream will occur.

2. The proposed change of course or straightening of the navigable stream will improve the economic or aesthetic value of the applicant's land.

3. The proposed change of course or straightening of the navigable stream will not adversely affect the flood flow capacity of the stream or otherwise be detrimental to the public interest.

4. The proposed change of course or straightening of the navigable stream will not be detrimental to the rights of other riparian owners located on the stream or all of these riparian owners have consented to the issuance of the permit.

(4) LIABILITY FOR NEGLIGENCE. No common law liability, and no statutory liability which may be provided elsewhere in these statutes, for damages resulting from the changing of the course of or from the straightening of a stream is in any manner affected by this section, nor does this section create any liability on the part of the state for any such damages, but a person who changes the course of a stream or straightens a stream in accordance with a permit granted pursuant to this section is presumed to have exercised due care in such changing or straightening.

(7) APPLICATION OF SECTION. This section does not apply to municipal or county−owned lands in counties having a population of 750,000 or more.

History: 1987 a. 374; 2003 a. 118; 2013 a. 1.

Cross−reference: See also chs. NR 305, 340, and 353, Wis. adm. code.

The elements of proof required for a conviction under sub. (1) are discussed. 67 Atty. Gen. 265.

30.196 Enclosure of navigable waters; issuance of permits to municipalities. A municipality may enclose navigable waters by directing, placing or restricting navigable waters into an enclosed drain, conduit, storm sewer or similar structure if the department grants the municipality an individual permit. The department may grant this permit to a municipality after following the notice and hearing requirements under s. 30.208 (3) to (5) if it finds that granting the permit:

(1) Is in the public interest;

(2) Will not violate public rights; and

(3) Will not endanger life, health or property.

History: 1981 c. 19; 1987 a. 374; 2003 a. 118.

30.20 Removal of material from beds of navigable waters. (1) PERMITS OR CONTRACTS REQUIRED. (a) Unless a contract has been entered into with the department under sub. (2) (a) or (b) or authorization has been granted by the legislature, no person may remove any material from the bed of a natural navigable lake or from the bed of any outlying waters.

(b) Unless an individual or a general permit has been issued by the department under this section or authorization has been granted by the legislature, no person may remove any material from the bed of any lake or navigable stream that is not described under par. (a).

(1g) EXEMPTIONS. (a) 1. A removal of material from the bed of a farm drainage ditch which was not a navigable stream before ditching is exempt from the individual and general permit requirements under this section unless the department finds that the proposed removal may have a long−term adverse effect on cold−water fishery resources or may destroy fish spawning beds or nursery areas.

2. A person who proposes a removal under subd. 1. which may have an effect on cold−water fishery resources or may affect fish spawning beds or nursery areas shall notify the department at least 10 days prior to the removal.

(b) A removal of material is exempt from the permit and contract requirements under this section if the material does not contain hazardous substances, the material is not being removed from an area of special natural resource interest, and if any of the following applies:

1. The removal is the amount necessary to place or maintain a structure that is exempt from any permitting requirements in this chapter.

2. The removal is by hand or by hand−held devices without the use or aid of external or auxiliary power.

(c) A removal of material by the drainage board for the Duck Creek Drainage District from a drain that the board operates in the Duck Creek Drainage District is exempt from the individual and general permit requirements under this section if the removal is required, under rules promulgated by the department of agriculture, trade and consumer protection, in order to conform the drain to specifications imposed by the department of agriculture, trade and consumer protection after consulting with the department of natural resources.

(1k) RULES. (a) The department may promulgate rules concerning the exempt activities under sub. (1g) that only do any of the following:

1. Establish reasonable procedures for undertaking the removal of material to minimize environmental impacts.

2. Establish reasonable limitations on the location of the removal of material at the site affected by the activity.

(b) Notwithstanding par. (a), the rules under par. (a) 1. may not establish procedures that prohibit undertaking the removal of material or that render the undertaking of the removal of material economically cost−prohibitive.

(1m) PERMITS OR CONTRACTS IN LIEU OF EXEMPTIONS. The department may decide to require that a person engaged in an activity that is exempt under sub. (1g) apply for an individual permit or contract, or seek authorization under a general permit if the department has conducted an investigation and visited the site of the activity and has determined that conditions specific to the site require restrictions on the activity in order to prevent any of the following:

(a) Significant adverse impacts to the public rights and interests.

(b) Environmental pollution, as defined in s. 299.01 (4).

(c) Material injury to the riparian rights of any riparian owner.

(1r) EXEMPTION DETERMINATIONS. (a) A person may submit to the department a written statement requesting that the department determine whether a proposed activity is exempt under sub. (1g). The statement shall contain a description of the proposed activity and site and shall give the department consent to enter and inspect the site.

(b) The department shall do all of the following within 15 days after receipt of a statement under par. (a):

1. Enter and inspect the site on which the activity is located, subject to s. 30.291, if the department determines such an inspection is necessary.

2. Make a determination as to whether the activity is exempt.

3. Notify in writing the person submitting the statement of which general permit or individual permit will be required, or whether a contract will be required, if the department determines that the activity is not exempt.

(c) If the department does not take action under par. (b), the department may not require at any time that the person proposing to engage in the activity apply for an individual permit, seek

authorization under a general permit, or apply to enter a contract unless required to do so by a court or hearing examiner.

(d) If a statement under par. (a) is not given or if the statement does not give consent to inspect, the 15−day time limit under par. (b) does not apply.

(1t) GENERAL PERMITS. (a) The department shall issue statewide general permits under s. 30.206 that authorize any person to remove material for maintenance purposes from an area from which material has been previously removed.

(am) No person may be authorized to proceed under a general permit issued under par. (a) unless the person has demonstrated to the department that material has been previously removed from the area for which the person has requested authorization to proceed.

(2) CONTRACTS AND INDIVIDUAL PERMITS. (a) The department may enter into a contract on behalf of the state for the removal and lease or sale of any material from the bed of any navigable lake or of any outlying waters if the contract is consistent with public rights. A person seeking to enter into such a contract shall apply to the department. Each contract entered into under this paragraph shall contain any conditions that the department determines are necessary for the protection of the public interest and the interests of the state. Each contract entered into under this paragraph shall also fix the amount of compensation to be paid to the state for the material to be removed, except that the contract may not require that any compensation be paid for material if the material will not be resold. Each contract entered into under this paragraph may not run for more than 5 years. The department may allow one extension of a contract entered into under this paragraph, upon application to the department. The extension shall be for the same period as the original contract.

(b) The department may enter into a contract on behalf of the state for the removal and lease or sale of any mineral, ore, or other material from beneath the bed of a navigable water that the state may own if the contract will be consistent with public rights and if the navigable water will not be disturbed in the removal operation. A person seeking to enter into such a contract shall apply to the department. Each contract entered into under this paragraph shall contain any conditions that the department determines are necessary for the protection of the public interest and the interest of the state. Each contract entered into under this paragraph shall also fix the compensation to be paid to the state for the mineral, ore, or other material to be removed. Each contract entered into under this paragraph may not run for more than 75 years. Should any doubt exist as to whether the state, in fact, owns such lake bed or stream bed such contract or lease shall be for such interests, if any, as the state may own. Title to the royalties to be paid when mining operations are begun shall be determined at such future time as royalties for ores so sold are paid or are due and payable.

(bn) For a removal that is not exempt under sub. (1g) and that is not subject to a general permit under sub. (1t), a person may apply to the department for an individual permit that is required under sub. (1) (b) in order to remove material from the bed of any lake or stream not described under sub. (1) (a).

(c) The department shall issue an individual permit pursuant to an application under par. (bn) if the department finds that the issuance of the permit will be consistent with the public interest in the lake or stream.

(d) If an applicant for a permit under par. (bn) submits the application at least 30 days before the proposed date of the removal, the department may issue the permit for a period of up to 10 years. The department may allow one extension of a permit issued under this paragraph, upon application to the department. The extension shall be for the same period of time as the original permit.

(e) The notice and hearing provisions of s. 30.208 (3) to (5) apply to an application for a permit or contract under this subsection.

History: 1977 c. 391; 1979 c. 34 s. 2102 (39) (g); 1981 c. 330; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1); 1987 a. 374; 1999 a. 9, 185; 2003 a. 118; 2011 a. 167.

Cross−reference: See also chs. NR 305, 320, 323, 345, 346, 347, and 353, Wis. adm. code.

Before proceeding to remove an obstruction under s. 88.90 (3), one must obtain a permit under s. 30.20. State v. Dwyer, 91 Wis. 2d 440, 283 N.W.2d 448 (Ct. App. 1979).

When a bulkhead line has been established, a riparian owner must nonetheless obtain a permit or contract pursuant to 30.20 prior to removing material from the bed of a navigable water landward of the bulkhead line, but within the original ordinary high water mark. 63 Atty. Gen. 445.

NOTE: The above annotated materials cite to the pre− 2003 Wisconsin Act 118 version of s. 30.20.

30.201 Financial assurance for nonmetallic mining. (1) If the department requires that financial assurance be provided as a condition for a permit under s. 30.19, 30.195, or 30.20 or for a contract under s. 30.20 for nonmetallic mining and reclamation, the financial assurance may be a bond or alternative financial assurance. An alternative financial assurance may include cash or any of the following:

(a) A certificate of deposit.

(b) An irrevocable letter of credit.

(c) An irrevocable trust.

(d) An escrow account.

(e) A government security.

(f) Any other demonstration of financial responsibility.

(2) Any interest earned by the financial assurance shall be paid to the person operating the nonmetallic mining or reclamation project.

History: 2003 a. 118.

30.202 Dredge disposal in and near the Mississippi, St. Croix and Black rivers by the U.S. corps of engineers. (1) MEMORANDUM OF UNDERSTANDING. The department may enter into a memorandum of understanding with the U.S. corps of engineers concerning the dredging of the Mississippi, St. Croix and Black rivers and the disposal of these dredge spoils. Any memorandum of understanding shall specify approved sites where dredge spoils may be deposited and shall specify conditions and standards which are required for use of an approved site. A memorandum of understanding may contain recommended or required dredge disposal methods, equipment and policies.

(2) AUTHORIZATION FOR DREDGING AND DREDGE SPOIL DISPOSAL. If the department enters into a memorandum of understanding with the U.S. corps of engineers under sub. (1), the U.S. corps of engineers may deposit dredge spoils from dredging the Mississippi, St. Croix and Black rivers at approved sites according to specified conditions and standards including any special conditions and standards established under sub. (4).

(3) EXEMPTION FROM STATUTES AND RULES. Dredge spoil disposal activities authorized under sub. (2) are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692 or 87.30 or chs. 281 to 285 or 289 to 299 or specified in any rule promulgated, order issued or ordinance adopted under those sections or chapters.

(4) HAZARDOUS WASTE DREDGE SPOIL DISPOSAL. In consultation with the U.S. corps of engineers, the department shall establish special conditions and standards for the disposal of dredge spoils which are hazardous waste, as defined under s. 291.01 (7). These special conditions and standards shall be established to ensure that public health and the environment are protected.

History: 1981 c. 240; 1995 a. 201, 227; 1997 a. 35, 248; 2005 a. 347.

NOTE: Chapter 240, laws of 1981, which created this section, has "legislative findings" in section 1.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

30.2022 Activities of department of transportation. **(1)** Activities affecting waters of the state, as defined in s. 281.01 (18), that are carried out under the direction and supervision of the department of transportation in connection with highway, bridge, or other transportation project design, location, construction, reconstruction, maintenance, and repair are not subject to the prohibitions or permit or approval requirements specified under s. 29.601, 30.11, 30.12, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 61.353, 62.231, 62.233, or 87.30 or chs. 281 to 285 or 289 to 299. However, at the earliest practical time prior to the commencement of these activities, the department of transportation shall notify the department of the location, nature, and extent of the proposed work that may affect the waters of the state.

(2) The exemption under sub. (1) does not apply unless the activity is accomplished in accordance with interdepartmental liaison procedures established by the department and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity. If the activity affects a wetland, as defined in s. 23.32 (1), the department of transportation shall conduct any required mitigation either by complying with the interdepartmental liaison procedures and any applicable interagency agreement on mitigation banks that is approved by the department of natural resources or by using any of the methods specified in s. 281.36 (3r) (a) 1. to 3.

(3) If the department determines that there is reasonable cause to believe that an activity being carried out under this section is not in compliance with the environmental protection requirements developed through interdepartmental liaison procedures, it shall notify the department of transportation. If the secretary and the secretary of transportation are unable to agree upon the methods or time schedules to be used to correct the alleged noncompliance, the secretary, notwithstanding the exemption provided in this section, may proceed with enforcement actions as the secretary deems appropriate.

(4) The department of transportation and the department shall exchange information and cooperate in the planning and carrying out of such activities in order to alleviate, to the extent practical under the circumstances, any potential detrimental encroachment on the waters of the state.

(5) Except as may be required otherwise under s. 1.11, no public notice or hearing is required in connection with any interdepartmental consultation and cooperation under this section.

(6) This section does not apply to activities in the Lower Wisconsin State Riverway, as defined in s. 30.40 (15).

History: 2003 a. 118 ss. 48 to 53, 129; 2005 a. 347; 2011 a. 118; 2013 a. 80.

NOTE: 2005 Wis. Act 347, which affected this section, contains extensive explanatory notes.

30.2023 Seawalls; Wolf River and Fox River basins. A riparian owner is exempt from the permit requirements under s. 30.12 for a structure that is placed on the bed of a navigable water in the Wolf River and Fox River basin area, as described in s. 30.207 (1), and that extends beyond the ordinary high−water mark, if the following conditions apply:

(1) The structure is a vertical wall designed to prevent land from eroding into a navigable water.

(2) The structure is not a replacement for an existing structure and is placed on the bed of an artificial enlargement of a navigable water, or the structure is a replacement for an existing structure placed on the bed of a navigable water, including the bed of an artificial enlargement of a navigable water.

(3) If the structure is a replacement for an existing structure placed on the bed of a navigable water, including the bed of an artificial enlargement of a navigable water, it is placed not more than 2 feet waterward of the structure that it is replacing.

(4) The structure incorporates adequate bracing and anchors to ensure structural stability.

(5) A filter fabric lining containing a layer of gravel extends from the landward side of the structure to facilitate drainage.

(6) The base of the structure extends to a sufficient depth into the bed of the navigable water to ensure the structure's stability and to prevent the structure from failing.

(7) The structure is secured into the bank of the navigable water in a manner that prevents erosion or scouring.

(8) The riparian owner places riprap at the base of the waterward side of the structure up to the waterline or, if the structure is placed in a location where watercraft are moored, the riparian owner places riprap at the base of the waterward side of the structure up to a point that allows adequate space for the mooring of watercraft.

(9) The structure is constructed of treated wood and built so that the top of the structure meets the lower of the following:

(a) The natural topography of the bank of the navigable water.

(b) A point that is 4 feet above the ordinary high−water mark of the navigable water.

(c) The minimum height required to prevent overtopping by wave action.

History: 2003 a. 118 ss. 42, 43.

30.2025 Lake Koshkonong comprehensive project. **(1)** DEFINITION. In this section, "district" means the Rock−Koshkonong public inland lake protection and rehabilitation district.

(2) AUTHORIZATION. The district may implement a project developed and approved by the U.S. army corps of engineers to place structures, or fill, or both on the bed of Lake Koshkonong for any of the following purposes:

(a) To improve navigation or to provide navigation aids.

(b) To restore or protect wetland habitat or water quality.

(c) To create, restore, or protect fish and wildlife habitat.

(d) To enhance the natural aesthetic value or improve the recreational use of the lake.

(3) LOCATION OF STRUCTURES AND FILL. Any structure or fill placed as part of the project authorized under sub. (2) shall be located in Lake Koshkonong within the area that consists of Secs. 10, 13, 18, 19, 20, 24, 33, and 35, T 5 N., R 13.

(4) PRELIMINARY REQUIREMENTS. (a) Before beginning any activity involving the placement of a structure or fill as part of the project authorized under sub. (2), the district shall submit plans and specifications for the project to the department and obtain the department's approval for the project.

(b) Before the department gives its approval for a project authorized under sub. (2), the department shall do all of the following:

1. Comply with the requirements under s. 1.11.

2. Review the plans and specifications submitted to the department under par. (a) and obtain any other information that it determines is necessary to effectively evaluate the structural and functional integrity of the structure or fill.

3. Hold a public informational meeting to discuss the plans and specifications submitted under par. (a).

4. Determine that the structure or fill is structurally and functionally sound and that the structure or fill will comply with the requirements under sub. (5).

(5) REQUIREMENTS FOR STRUCTURES AND FILL. A structure or fill placed as part of a project authorized under sub. (2) shall meet all of the following requirements:

(a) It may not materially affect the flood flow capacity of the Rock River.

(b) It may not materially obstruct navigation.

(c) It may not cause material injury to the rights of an owner of lands underlying the structure or fill or to the rights of a riparian owner who owns lands affected by the project.

(d) It may not cause environmental pollution, as defined in s. 299.01 (4).

(e) It may not be detrimental to the public interest.

(f) It must further a purpose specified in sub. (2).

(6) MAINTENANCE BY THE DISTRICT. (a) The district shall maintain the structures and the fill that are part of the project authorized under sub. (2) to ensure that the structures and fill do not impair the safety of the public.

(b) The district shall maintain the structures and the fill that are part of the project authorized under sub. (2) so that the structures and fill remain in compliance with the requirements listed under sub. (5).

(c) If the department determines that any structure or any fill that is part of the project authorized under sub. (2) does not comply with the requirements under sub. (5), the department may require the district to modify the structure or fill to bring it into compliance or to remove the structure or fill.

(7) USE OF STRUCTURES OR FILL. Any structure or fill placed as part of the project authorized under sub. (2) may be used only for any of the following:

(a) As a site for the placement of navigation aids approved by the department.

(b) Activities to protect or improve wildlife or fish habitat, including the placement of fish or wildlife habitat structures approved by the department.

(c) Open space for recreational activities.

(8) OWNERSHIP. (a) The structures or fill that are part of the project authorized under sub. (2) are owned by the district. Except as provided in par. (b), the district may not transfer ownership of any structure or any fill that is part of the project authorized under sub. (2).

(b) The district may transfer ownership of any structure or fill that is part of the project authorized under sub. (2) if all of the following apply:

1. The district transfers ownership of the structure or fill to a public entity, as defined by the department by rule.

2. Before transferring ownership of the structure or fill, the district obtains written approval of the transfer from the department.

(9) ACCESS TO PROPERTY. An employee or agent of the department shall have free access during reasonable hours to the structures or fill that are part of the project authorized under sub. (2) for the purpose of inspecting the structures or fill to ensure that the project is in compliance with the requirements of this section. If the department determines that any structure or any fill that is part of the project authorized under sub. (2) does not comply with the requirements of this section, the department may require the owner of the structure or fill to modify the structure or fill to bring it into compliance or to remove the structure or fill.

(10) EXEMPTIONS. Section 30.12 does not apply to activities that are necessary for the implementation or maintenance of the project authorized under sub. (2).

History: 2001 a. 16.

30.2026 Lake Belle View and Sugar River project. **(1)** AUTHORIZATION. (a) Subject to the restrictions under sub. (2), the village of Belleville may place fill on all or part of the portion of the bed of Lake Belle View located in Dane County for any of the following purposes:

1. Improving fish and wildlife habitat.

2. Creating and enhancing wetlands.

3. Improving the water quality of Lake Belle View and the Sugar River.

4. Enhancing the recreational use and aesthetic enjoyment of Lake Belle View and the Sugar River.

5. Separating Lake Belle View from the Sugar River by creating an artificial barrier from lake bottom sediments or by other means.

6. Creating suitable lake bottom depths or contours in Lake Belle View.

7. Promoting the growth of desirable wetland plants.

(b) Any lake bottom sediments that are unsuitable for the creation of an artificial barrier under par. (a) 5. may be placed in any agricultural field that is adjacent to Lake Belle View.

(c) If the village of Belleville creates an artificial barrier from lake bottom sediments under par. (a) 5., the village of Belleville shall also place lake bottom sediments in adjacent areas for the purpose of creating and enhancing wetlands.

(2) REQUIREMENTS. (a) The village of Belleville shall obtain approval from the department for any placement of fill material as authorized under sub. (1).

(b) The village of Belleville shall submit to the department any plans or other information that the department considers necessary for it to effectively determine whether to grant approval under par. (a).

(c) The village of Belleville shall ensure that all of the following apply to any artificial barrier created as authorized under sub. (1).

1. The barrier does not materially obstruct navigation or reduce the effective flood flow capacity of a stream.

2. The barrier is not detrimental to the public interest.

3. The barrier is owned by a public entity and the public is granted free access to the barrier.

4. Access by the public to the barrier is limited to use as open space for recreational purposes.

5. The barrier remains in as natural a condition as is practicable, as determined by the department.

6. No structure, except those necessary in order to effectuate a purpose specified in sub. (1) (a), are placed on the barrier.

(d) The village of Belleville shall create any artificial barrier under this section in compliance with all state laws that relate to navigable bodies of water, except s. 30.12.

(3) CONDITIONS. (a) The village of Belleville shall maintain any artificial barrier created as authorized under sub. (1). If a landowner of more than 500 feet of Lake Belle View shoreline, a portion of which is located within 1,000 feet of any such artificial barrier, is dissatisfied with the manner in which the village of Belleville is maintaining the barrier, the owner may maintain the barrier in lieu of the village, upon approval of the department. The village or a landowner who maintains the barrier shall comply with all state laws that relate to navigable bodies of water, except s. 30.12. The department may require the village of Belleville or the landowner to maintain the barrier in a structurally and functionally adequate condition.

(b) The village of Belleville shall ensure that any construction draw down of Lake Belle View related to the creation of any artificial barrier authorized under sub. (1) occurs only once.

(4) COSTS. Any costs incurred by the state to construct, maintain, improve, or remove any artificial barrier created as authorized under sub. (1) shall be paid by the village of Belleville or its successors or assigns.

(5) IMMUNITY. The state and its officers, employees, and agents are immune from liability for acts or omissions that cause damage or injury and that relate to the construction, maintenance, or use of any artificial barrier created as authorized under sub. (1).

History: 2001 a. 16; 2003 a. 118.

30.203 Lake Winnebago comprehensive project. **(1)** AUTHORIZATION. The department may implement a project to place structures or fill or both on the beds of lakes Winnebago, Butte des Morts, Winneconne and Poygan for any of the following purposes:

(a) To improve navigation or to provide navigation aids.

(b) To restore or protect wetland habitat or water quality.

(c) To create, restore or protect fish and wildlife habitat.

(d) To enhance the natural aesthetic value or improve the recreational use of these lakes.

(2) LOCATION OF STRUCTURES AND FILL. Any structure or fill placed as part of the project authorized under sub. (1) shall be located in Winnebago County as follows:

(a) In Lake Winnebago within the area that consists of the S−1/2 of Sec. 14, T. 17 N., R. 17 E., and the N−1/2 of Sec. 23, T. 17 N., R. 17 E.

(b) In Lake Butte des Morts within an area that consists of the N−1/2 of Secs. 1 and 2, T. 18 N., R. 15 E., the S−1/2 of Secs. 25, 26 and 27, T. 19 N., R. 15 E., the E−1/2 of Sec. 34, T. 19 N., R. 15 E., and Secs. 35 and 36, T. 19 N., R. 15 E.

(c) In Lake Winneconne and Lake Poygan within an area that consists of the W−1/2 of Secs. 6 and 7, T. 19 N., R. 15 E.; the E−1/2 of Secs. 1 and 12 and the NE−1/4 of Sec. 2, T. 19 N., R. 14 E.; and the S−1/2 of Sec. 26, the SE−1/4 of Sec. 27, and the E−1/2 of Sec. 35, T. 20 N., R. 14 E.

(d) In Lake Poygan within an area that consists of the W−1/2 of Sec. 36, T. 20 N., R. 14 E.; the NW−1/4 of Sec. 1, T. 19 N., R. 14 E.; the E−1/2 of Sec. 33, all of Sec. 34, and the W−1/2 of Sec. 35, T. 20 N., R. 14 E.; and the N−1/2 of Sec. 4, T. 19 N., R. 14 E.

(3) PRELIMINARY REQUIREMENTS. (a) Before beginning any activity involving the placement of a structure or fill as part of the project authorized under sub. (1), the department shall do all of the following:

1. Comply with the requirements under s. 1.11.

2. Prepare plans and gather any other information necessary to effectively evaluate the structural and functional integrity of the structure or fill.

3. Hold a public informational meeting to discuss the plans prepared under subd. 2.

4. Approve the project if it finds that the structure or fill is structurally and functionally sound and that the structure or fill will comply with the requirements under sub. (4).

(b) The department shall determine the manner in which and to whom notice will be given of the public informational meeting held under par. (a) 3.

(4) REQUIREMENTS FOR STRUCTURES AND FILL. A structure or fill placed as part of the project authorized under sub. (1) shall meet all of the following requirements:

(a) It may not reduce the effective flood flow capacity of the Wolf River or the Fox River above the point where the Fox River flows into Lake Butte des Morts.

(b) It may not materially obstruct navigation.

(c) It may not cause material injury to the rights of a riparian owner who owns land that abuts a navigable waterway that is affected by the project.

(d) It may not cause environmental pollution, as defined in s. 299.01 (4).

(e) It may not be detrimental to the public interest.

(f) It must further a purpose specified in sub. (1).

(5) OVERSIGHT AND MAINTENANCE BY THE DEPARTMENT. (a) The department shall monitor the project authorized under sub. (1) to assure that the project is furthering a purpose specified in sub. (1).

(b) The department shall maintain the structures and the fill that are part of the project authorized under sub. (1) to assure that the structures and fill do not impair the safety of the public.

(c) The department shall maintain the structures and the fill that are part of the project authorized under sub. (1) in a manner that does not impair the natural aesthetic value of the area, to the extent practicable.

(d) The department shall maintain the structures and the fill that are part of the project authorized under sub. (1) so that they remain in compliance with the requirements listed under sub. (4).

(e) If the department determines that any structure or any fill that is part of the project authorized under sub. (1) does not comply with the requirements under sub. (4), the department shall modify the structure or fill to bring it into compliance. If the department cannot modify the structure or fill to bring it into compliance, the department shall remove the structure or fill.

(6) USE OF STRUCTURES OR FILL. (a) Any structure or fill placed as part of the project authorized under sub. (1) may be used only for any of the following:

1. As a site for the placement of navigation aids approved by the department.

2. Activities to protect or improve wildlife or fish habitat, including the placement of fish or wildlife habitat structures approved by the department.

3. Open space for recreational activities.

(b) The department may promulgate rules to reasonably limit use by the public under par. (a) 3.

(7) OWNERSHIP; JURISDICTION. The structures or fill that are part of the project authorized under sub. (1) are owned by the state and are under the jurisdiction of the department. The state may not transfer ownership of a structure or any fill that is part of the project authorized under sub. (1).

(8) EXEMPTIONS. Section 30.12 does not apply to activities that are necessary for the implementation or maintenance of the project authorized under sub. (1).

(9) FUNDING. Funding for this project shall be paid from the appropriations under ss. 20.370 (1) (mu) and 20.866 (2) (tr) and (tu).

History: 1991 a. 39; 1995 a. 27, 227; 2005 a. 25; 2007 a. 20.

30.2035 Shoreline protection study. The department shall conduct a study on shoreline protection measures, including the use of seawalls, and on the environmental impact that these measures may have. No later than June 1, 1996, the department shall complete the study and shall distribute the results of the study, including the department's findings and recommendations, to the appropriate standing committees of the legislature in the manner provided under s. 13.172 (3). The recommendations shall include any proposed legislation or rules that are necessary to implement the recommendations. Any rules that the department proposes to implement the recommendations of the study shall be submitted for review by the legislative council staff under s. 227.15 (1) no later than 7 months after the study is completed.

History: 1993 a. 421.

30.2037 Big Silver Lake high−water mark. The ordinary high−water mark of Big Silver Lake in the town of Marion in Waushara County shall be set by the department at 867 feet above mean sea level as determined under U.S. geological survey standards.

History: 1997 a. 27.

30.2038 Milwaukee shoreline established. (1) (a) The shoreline of Lake Michigan in the city of Milwaukee is fixed and established to extend from approximately the line of East Lafayette Place extended easterly on the north to the present north harbor entrance wall of the Milwaukee River on the south as specified in an agreement between the Chicago and Northwestern Railway Company and the city of Milwaukee recorded with the office of the register of deeds of Milwaukee County on April 23, 1913, in volume 662, pages 326−330, as document number 762955.

(b) The shoreline described under par. (a) constitutes the boundary line between the lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan.

(2) Any restrictions, conditions, reverters, or limitations imposed on the use of land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of 1915, chapter 284, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929, chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985 Act 327, and any other act conveying a part of

the lake bed of Lake Michigan do not apply to land located to the west of the shoreline described under sub. (1) (a).

(3) The declarations under sub. (1) are made in lieu of, and have the same effect as, a final judgment entered by a court under ch. 841.

History: 2013 a. 20, 140.

NOTE: 2013 Wisconsin Act 140, section 2, contains legislative declarations and findings.

30.204 Lake acidification experiment. (1) AUTHORIZATION. Between May 15, 1984, and January 1, 2008, the department is authorized to conduct a lake acidification experiment on the lake specified under sub. (2).

(2) LAKE SELECTION. The department shall select Little Rock Lake in the town of Arbor Vitae, Vilas County, township 41 north, range 6 east, for the lake acidification experiment.

(3) EXPERIMENT. In conducting the lake acidification experiment, the department shall deny access to and prohibit navigation on the lake by posted notice, may place a barrier or dyke across the lake, may place chemicals or other substances in the lake and may take other actions necessary for the experiment.

(4) RESTORATION. (a) Before artificially acidifying the lake, the department shall establish an escrow account containing sufficient funds to restore the lake and its aquatic life as provided under par. (c).

(b) After the department has artificially acidified the lake, it may allow and monitor the natural restoration of the lake and its aquatic life as part of the experiment.

(c) At the conclusion of the experiment or in the event of an unanticipated occurrence that requires that the lake be restored before the conclusion of the experiment, the department shall do all of the following to the fullest extent possible given available technology:

1. Artificially restore the lake to its original acid level if the lake has not been naturally restored to the original acid level during the experiment.

2. Artificially reestablish the lake's aquatic life if the aquatic life has not been naturally reestablished during the experiment.

(5) EXEMPTION FROM CERTAIN STATUTES AND RULES. Activities of the department in conducting the lake acidification experiment are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601 (3), 30.01 to 30.03, 30.06 to 30.16, 30.18 to 30.29, 30.50 to 30.99, 59.692, 87.30, 287.81, 299.15 to 299.23, 299.91, 299.95 or 299.97 or chs. 281, 283 or 289 to 292 or specified in any rule promulgated, order issued or ordinance adopted under any of those sections or chapters.

(6) COMPLIANCE WITH ENVIRONMENTAL IMPACT STATUTE. The department shall comply with the requirements under s. 1.11 in conducting the experiment authorized by this section. The department shall initiate compliance by preparing and reviewing, under the procedures it has established under s. 1.11, an environmental assessment for this experiment.

History: 1983 a. 421; 1985 a. 135 s. 85; 1989 a. 335; 1991 a. 39; 1995 a. 201, 227, 258; 1997 a. 35, 248; 2001 a. 16.

NOTE: 1983 Wis. Act 421, which created this section, has "legislative findings" in section 1.

30.205 Water resources development projects. The department may cooperate with and enter into agreements with the appropriate federal agencies for the purpose of constructing, maintaining and operating water resources development projects. Such agreements may contain any indemnification provisions required by federal law.

History: 1987 a. 27.

30.206 General permits. (1) PROCEDURE FOR ISSUING GENERAL PERMITS. (a) The department shall issue the statewide general permits required under ss. 30.12 (3) (a) and (b), 30.123 (7), 30.19 (3r), and 30.20 (1t) (a).

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

1. Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.

2. Location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.

3. Restrictions to protect areas of special natural resource interest.

(aj) Paragraph (ag) applies only to general permits issued under par. (a).

(am) In addition to the general permits required under par. (a), the department may issue a general permit authorizing an activity for which an individual permit is issued, or a contract is entered into, under this subchapter. In issuing general permits under this paragraph, the department shall establish requirements and conditions to ensure that the activities subject to the permit will cause only minimal adverse environmental impacts, will not materially interfere with navigation, and will not have an adverse impact on the riparian property rights of adjacent riparian owners.

(ar) A permit issued under par. (a) or (am) is in lieu of any permit or contract that would otherwise be required for that activity under this subchapter.

(b) Except as provided in sub. (1r), a general permit issued under par. (a) or (am) is valid for a period of 5 years, and an activity that the department determines is authorized by a general permit remains authorized under the general permit for a period of 5 years from the date of the department's determination or until the activity is completed, whichever occurs first, regardless of whether the general permit expired before the activity is completed. The department may renew or modify, or revoke a general permit issued under par. (a) or (am) or s. 30.2065 upon compliance with the requirements under subs. (2b) and (2m).

(1r) TRANSITIONS BETWEEN PERMITS. Any general permit issued under this section that is valid on August 1, 2012, shall remain valid until the date upon which a general permit issued under sub. (1) (a) or (am) that authorizes the same activity becomes effective.

(2b) PUBLIC NOTICE. (a) The department shall provide to interested members of the public notices of its intention to issue, renew, modify, or revoke a general permit under sub. (1) (a) or (am) or s. 30.2065. Procedures for providing public notices shall include all of the following:

1. Publication of a class 1 notice under ch. 985.

2. Providing a copy of the notice to any person or group upon request of the person or group.

3. Publication of the notice through an electronic notification system established by the department.

4. Publication of the notice on the department's Internet Web site.

(am) For the purpose of determining the date on which public notice is provided under this subsection, the date on which the department first publishes the notice on its Internet Web site shall be considered the date of public notice.

(b) The department shall provide a period of not less than 30 days after the date of the public notice during which time interested persons may submit their written comments on the department's intention to issue, renew, modify, or revoke a general permit under sub. (1) (a) or (am) or s. 30.2065. All written comments

submitted during the period for comment shall be retained by the department and considered by the department in acting on the general permit.

(c) Every public notice issued by the department under par. (a) shall include a description of any activities to be authorized under the general permit.

(2m) PUBLIC HEARING. (a) 1. The department shall provide an opportunity for any interested state agency or federal agency or person or group of persons to request a public hearing with respect to the department's intention to issue, renew, modify, or revoke a general permit under sub. (1) (a) or (am) or s. 30.2065. Such request for a public hearing shall be filed with the department within 30 days after the provision of the public notice under sub. (2b) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted.

2. The department shall hold a public hearing upon a request under subd. 1. if the department determines that there is a significant public interest in holding such a hearing. Hearings held under this section are not contested cases under s. 227.01 (3).

(b) Public notice of any hearing held under this subsection shall be provided in accordance with the requirements under sub. (2b). The public notice shall include the time, date, and location of the hearing, a summary of the subject matter of the general permit, and information indicating where additional information about the general permit may be viewed on the department's Internet Web site. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the general permit.

(3) PROCEDURES FOR CONDUCTING ACTIVITIES UNDER GENERAL PERMITS. (a) A person wishing to proceed with an activity that may be authorized by a general permit under this section or s. 30.2065 shall apply to the department, with written notification of the person's wish to proceed, not less than 30 days before commencing the activity authorized by a general permit. The notification shall provide information describing the activity in order to allow the department to determine whether the activity is authorized by the general permit and shall give the department consent to enter and inspect the site, subject to s. 30.291. The department may make a request for additional information one time during the 30−day period. If the department makes a request for additional information, the 30−day period is tolled from the date the person applying for authorization to proceed receives the request until the date on which the department receives the information.

(b) If within 30 days after a notification under par. (a) is submitted to the department the department does not require any additional information about the activity that is subject to the notification and does not inform the applicant that an individual permit will be required, the activity will be considered to be authorized by the general permit and the applicant may proceed without further notice, hearing, permit or approval if the activity is carried out in compliance with all of the conditions of the general permit.

(c) Upon completion of an activity that the department has authorized under a general permit, the applicant for the general permit shall provide to the department a statement certifying that the activity is in compliance with all of the conditions of the general permit and a photograph of the activity.

(3r) INDIVIDUAL PERMIT IN LIEU OF GENERAL PERMIT. (a) The department may decide to require a person who has applied under sub. (3) for authorization to proceed under a general permit to apply for and be issued an individual permit or be granted a contract if either of the following applies:

1. The department determines that the proposed activity is not authorized under the general permit.

2. The department has conducted an investigation and visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in s. 299.01 (4), or material injury to the riparian rights of any riparian owner.

(b) A decision by the department to require an individual permit under this subsection shall be in writing.

(5) FAILURE TO FOLLOW PROCEDURAL REQUIREMENTS. Failure to follow the procedural requirements of this section may result in forfeiture but may not, by itself, result in abatement of the activity.

(5m) LEGISLATIVE REVIEW OF GENERAL PERMITS. (a) In this subsection:

1. "Appropriate senate committee" means the standing committee of the senate with jurisdiction over natural resources matters as determined by the presiding officer of the senate.

2. "Appropriate assembly committee" means the standing committee of the assembly with jurisdiction over natural resources matters as determined by the presiding officer of the assembly.

(b) If, by a majority vote of a quorum of the appropriate senate committee and the appropriate assembly committee, each of those committees suspends any general permit, the committees shall jointly publish a Class 1 notice under ch. 985 of the suspension in the official state newspaper and give any other notice that the committees consider appropriate.

(c) If the appropriate senate committee and the appropriate assembly committee suspend a general permit as provided in par. (b), each of the committees shall, within 30 days after the suspension, meet and take executive action regarding the introduction in the respective house of the legislature of a bill to support the suspension. The appropriate senate committee and the appropriate assembly committee shall each introduce a bill within 5 working days after taking executive action in favor of introduction of the respective bill unless the bill cannot be introduced during this time period under the rules of the respective house of the legislature. If a bill cannot be introduced during this time period, the bills shall be introduced on the first day on which the rules of the respective house of the legislature allow introduction.

(d) 1. If both of the bills introduced under par. (c) are adversely disposed of, or fail to be enacted in any other manner before the last day of the regular session of the legislature in which the bills are introduced, the general permit remains in effect and may not be suspended under this subsection again. If either bill is enacted, the general permit is permanently suspended and may not be issued again unless a subsequent law specifically authorizes issuance of the general permit.

2. If a person commences to conduct an activity under the authority of a general permit, and the general permit is subsequently suspended under this subsection, the person may continue to conduct the activity in the manner, and for the period, originally authorized under the general permit notwithstanding the suspension of the general permit.

(6) REQUEST FOR INDIVIDUAL PERMIT. A person proposing an activity for which a general permit has been issued under this section or s. 30.2065 may request an individual permit under the applicable provisions of this subchapter or ch. 31 in lieu of seeking authorization under the general permit.

(7) INAPPLICABILITY. This section does not apply to an application for a general permit for the Wolf River and Fox River basin area or any area designated under s. 30.207 (1m).

(8) REPORT. (a) Within 30 days after issuing, renewing, modifying, or revoking a general permit, the department shall prepare a report that gives notification of the department's action. If the action being reported is the issuance, renewal, or modification of a general permit, the department shall include a copy of the permit with the report. If the action being reported is the renewal, modification, or revocation of a general permit, the report shall include an analysis of the implementation and activities conducted under the general permit and shall contain all of the following information:

1. The number of times notifications to proceed under the general permit were received by the department under sub. (3) (a).

2. The number of times the department requested additional information under sub. (3) (b).

3. The number of times the department informed applicants under sub. (3) (b) that individual permits would be required.

(b) A report under par. (a) shall cover the time period beginning with the date of original issuance of the general permit, or the date of the most recent prior modification or renewal, and ending with the date of the revocation, modification, or renewal that causes the report to be required.

(c) The department shall distribute the report to the governor and to the appropriate standing committees of the legislature in the manner provided under s. 13.172 (3).

History: 1987 a. 374; 1995 a. 227; 1997 a. 174; 2003 a. 89, 118, 326; 2007 a. 96, 204; 2011 a. 167; 2013 a. 75.

Cross−reference: See also ss. NR 320.06, 323.04, 328.05, 328.35, 341.08 and ch. NR 310, Wis. adm. code.

30.2065 General permit for certain wetland restoration activities. (1) DEFINITION. In this section, "activity" means a wetland restoration activity sponsored by a federal agency.

(2) ISSUANCE; VALIDITY. (a) The department may issue a general permit to a person wishing to proceed with an activity. A permit issued under this subsection is in lieu of any permit or approval that would otherwise be required for that activity under this chapter or s. 31.02, 31.12, 31.33, 281.15, or 281.36.

(b) A general permit issued under this subsection is valid for a period of 5 years except that an activity that the department determines is authorized by a general permit remains authorized under the permit until the activity is completed.

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

1. Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.

2. Location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.

3. Restrictions to protect areas of special natural resource interest.

History: 2009 a. 391; 2011 a. 167.

30.207 General permit pilot program. (1) GEOGRAPHICAL AREA. For purposes of this section and s. 30.2023, the Wolf River and Fox River basin area consists of all of Winnebago County; the portion and shoreline of Lake Poygan in Waushara County; the area south of STH 21 and east of STH 49 in Waushara County; that portion of Calumet County in the Lake Winnebago watershed; all of Fond du Lac County north of STH 23; that portion of Outagamie County south and east of USH 41; that portion of Waupaca County that includes the town of Mukwa, city of New London, town of Caledonia, town of Fremont; and the portion and shoreline of Partridge Lake and the Wolf River in the town of Weyauwega.

(1m) OPTIONAL AREA. In addition to the Wolf River and Fox River basin area, the secretary may designate another area of the state in which general permits may be issued under this section. If the secretary designates an area under this subsection, the secretary shall do so within 6 months after the effective date of the first permit issued for the Wolf River and Fox River basin area.

(2) ACTIVITIES COVERED. Within the Wolf River and Fox River basin area or any area designated under sub. (1m), the department may issue a general permit under this section authorizing any activity that would require a permit or approval under this chapter if the department determines that it is appropriate to issue a general permit under sub. (6). The department may issue a general permit on its own initiative or based on an application submitted under sub. (3).

(3) APPLICATION FOR GENERAL PERMIT. (a) Any local entity, as defined in s. 30.77 (3) (dm), any group of 10 riparian owners who will be affected by the issuance of a general permit, or any contractor who is or has been involved in the construction of structures or along navigable waters may apply for a general permit under this section.

(b) Upon the request of a prospective applicant specified in par. (a), and before an application is submitted, the department shall meet with the prospective applicant, and other interested persons as determined by the prospective applicant or the department, to make a preliminary analysis of the likelihood that the department will issue the general permit.

(c) An application for a general permit under this section shall include all of the following:

1. The name, legal address and telephone number of each applicant.

2. A U.S. geological survey map or similar map that has a scale of not less than one inch per 2,000 feet and that shows the proposed permit area.

3. A general legal description to quarter−quarter section of the proposed permit area.

4. A diagram to scale showing the activity proposed for the general permit with contours and cross−section profiles that show a representative example of existing conditions and a representative example of any alteration to navigable waters or the adjacent lands that may result from the activity.

5. Topographic, bathymetric, soil or other maps, photographs or other data to demonstrate the characteristics of the proposed permit area if the maps, photographs or data are reasonably available.

6. The names and addresses of at least 5 persons who own real property adjacent to the navigable waters located in the proposed permit area. If fewer than 5 persons own real property adjacent to such waters, the application shall include the names and addresses of all of these persons.

(d) The department shall respond to the application in writing within 90 business days after receiving the application. In its response the department shall do either of the following:

1. Deny the application and specify the reason for the denial.

2. Specify the department's plans for proceeding on the application.

(4) ENVIRONMENTAL ANALYSIS; HEARING; CONSULTATION. After receiving an application that the department does not deny under sub. (3) (d) 1. and before determining whether to issue the general permit, the department shall do all of the following:

(a) Conduct an environmental analysis.

(c) Consult with any of the following as the department considers appropriate:

1. Any local entity, as defined in s. 30.77 (3) (dm), that has an interest in the quality or use of or that has jurisdiction over the navigable waters located in the proposed permit area.

2. Any contractor who is or has been involved in the construction of structures or improvements in or along navigable waters located in the proposed permit area.

3. Any riparian owners whose property rights may be affected by the issuance of the general permit.

4. Any other interested party, as determined by the department or the applicant.

(6) ISSUANCE OF GENERAL PERMITS. (a) The department shall issue a general permit under this section if the department determines that the cumulative adverse environmental impact of the activity in the proposed permit area is insignificant and that the issuance of the general permit will not injure public rights or interest, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owners.

(b) The standards for the activity contained in a general permit issued under this section shall supersede any conflicting standards required under this chapter for the activity.

(7) ACTIVITIES UNDER GENERAL PERMITS. (a) At least 15 days before beginning the activity that is authorized by a general permit under this section the person who wishes to conduct the activity shall submit a notice to the department and shall pay the fee specified in s. 30.28 (1) (d). The notice shall describe the activity, state the name of the person that will be conducting the activity and state the site where the activity will be conducted. The notice shall also contain a statement signed by the person conducting the activity that the person will act in conformance with the standards contained in the general permit.

(b) Upon receipt of a notice that complies with par. (a), the department may inform the person that the activity may not be conducted under the general permit if conditions at the site where the activity would be conducted would cause adverse environmental impact, injure public rights and interests or cause environmental pollution, as defined in s. 299.01 (4). The department shall respond to the person within 15 days after receiving the notice. Failure of the department to respond within 15 days shall constitute the department's approval of the activity under the general permit.

(c) A person conducting an activity that is authorized by a general permit under this section shall comply with any applicable local ordinances.

(8) OPTION TO REQUEST INDIVIDUAL PERMITS. A person proposing an activity for which a general permit has been issued under this section may apply for an individual permit under this chapter in lieu of seeking authorization under the general permit. A person proposing an activity for which a general permit has not been issued under this section may apply for an individual permit under this chapter.

(9) ACCESS TO PROPERTY. For inspection purposes, an employee or agent of the department shall have free access during reasonable hours to any site where an activity is proposed to be, is or has been authorized under a general permit issued under this section if the employee or agent shows to any person who is present at the site and who owns the site or is otherwise in control of the site either of the following:

(a) For an employee of the department, proper identification issued by the department.

(b) For an agent who is not an employee of the department, written documentation that the agent is authorized by the department to have access for inspection purposes.

(10) SUNSET. The department may not issue any further general permits under this section on or after the date on which 5 years have lapsed after the effective date of the first general permit issued under this section.

History: 1997 a. 174; 2001 a. 16, 103; 2003 a. 118; 2005 a. 253; 2011 a. 118.

30.208 Applications for individual permits and contracts; department determinations. (1) APPLICATION REQUIRED. A person who seeks to obtain or modify an individual permit under this subchapter or to enter into a contract under s. 30.20 shall submit an application to the department. The application may contain a request for a public hearing on the application.

(2) PROCEDURE FOR COMPLETING APPLICATIONS. (a) *Review; no additional information required.* In issuing individual permits or entering contracts under this subchapter, the department shall review an application, and within 30 days after the application is submitted, the department shall determine that either the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30−day period, and the date on which the notice under this paragraph is sent shall be considered the date of closure for purposes of sub. (3) (a).

(b) *Additional information requested.* If the department determines that the application is incomplete, the department shall notify the applicant in writing and may make only one request for additional information during the 30−day period specified in par. (a). Within 10 days after receiving all of the requested information from the applicant, the department shall notify the applicant in writing as to whether the application is complete. The date on which the 2nd notice under this paragraph is sent shall be set as the date of closure for purposes of sub. (3) (a). The department may request additional information from the applicant to supplement the application, but the department may not request items of information that are outside the scope of the original request unless the applicant and the department both agree. A request for any such additional information may not affect the date of closure.

(c) *Specificity of notice; limits on information.* Any notice stating that an application has been determined to be incomplete or any other request for information that is sent under par. (b) shall state the reason for the determination or request and the specific items of information that are still needed.

(d) *Failure to meet time limits.* If the department fails to meet the 30−day time limit under par. (a) or 10−day time limit under par. (b), the application shall be considered to have a date of closure that is the last day of that 30−day or 10−day time period for purposes of sub. (3) (a).

(3) NOTICE OF COMPLETE APPLICATION; REQUEST FOR PUBLIC HEARING; DECISION. (a) Within 15 days after the date of closure, as determined under sub. (2) (a) or (b), the department shall provide notice of pending application to interested members of the public, as determined by the department. If the applicant has requested a public hearing as part of the submitted application, a notice of public hearing shall be part of the notice of pending application.

(b) If the notice of pending application does not contain a notice of public hearing, any person may request a public hearing in writing or the department may decide to hold a public hearing with or without a request being submitted if the department determines that there is a significant public interest in holding a hearing.

(c) A request for a public hearing under par. (b) must be submitted to the department or the department's decision to hold a public hearing must occur within 20 days after the department provides the notice of pending application. The department shall provide notice of public hearing within 15 days after the request for public hearing is submitted or the department makes its decision to hold a public hearing.

(d) The department shall hold a public hearing within 30 days after the notice of hearing has been provided under par. (a) or (c).

(e) Within 20 days after the period for public comment under sub. (4) (b) has ended or, if no public hearing is held, within 30 days of the 30−day comment period under sub. (4) (a), the department shall render a decision issuing, denying, or modifying the permit or approving or disapproving the contract that is the subject of the application submitted under sub. (1).

(eg) 1. The department and the applicant may agree to extend the 20−day or 30−day time period specified in par. (e) one time for a specific number of additional days. The extension may not exceed 30 days.

2. The department may also extend the 20−day or 30−day time period specified in par. (e) if adverse weather conditions prevent the department from conducting an accurate on−site inspection during the 20−day or 30−day time period. The department shall give notice to the applicant of this extension. The department shall complete the inspection as soon as weather conditions permit, but the extension may not exceed 30 days under any circumstances.

(er) If the decision rendered by the department under par. (e) is a denial or disapproval, the department shall include in the decision the specific grounds and reasons as to how the applicable pro-

visions of this subchapter were not met. If the denial or disapproval is based on an incomplete application, the department shall inform the applicant of the areas of the application that were incomplete.

(f) If the department fails to comply with the time periods under par. (e), a decision issuing the permit, modifying the permit, or approving the contract shall be considered to be rendered. The permit that is issued or is modified, or the contract that is approved, shall authorize the activity as proposed by the applicant, but the department may impose terms and conditions on the permit or contract that are consistent with the applicant's basic proposal.

(3m) NOTICE TO DOWNSTREAM COMMUNITIES. When the department receives an application for an individual permit under s. 30.12 for a structure through which water transferred from the Great Lakes basin would be returned to the source watershed through a stream tributary to one of the Great Lakes, the department shall provide notice of the application to the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream.

(4) PUBLIC COMMENT. (a) The department shall provide a period for public comment after the department has provided a notice of pending application under sub. (3) (a), during which time any person may submit written comments with respect to the application for the permit or contract. The department shall retain all of the written comments submitted during this period and shall consider all of the comments in the formulation of the final decision on the application. The period for public comment shall end on the 30th day following the date on which the department completes providing the notice of pending application, except as provided in par. (b).

(b) If a public hearing is held, the period for public comment shall end on the 10th day following the date on which the public hearing is completed.

(d) The department shall promulgate rules to establish procedures for the conduct of public hearings held under this subsection. Notwithstanding s. 227.42, a public hearing held under this subsection shall be an informational hearing and may not be treated as, nor converted to, a contested case under s. 227.01 (3).

(5) NOTICE REQUIREMENTS. (a) The department shall, by rule, establish procedures for providing notices of pending applications and notices of public hearings to be provided under sub. (3), and notices of administrative hearings to be provided under s. 30.209 (1m). The procedures shall require all of the following:

1. That the notice be published as a class 1 notice under ch. 985.

2. That the notice be mailed to any person or group upon request.

3. That the notice be published on the department's Internet Web site.

(b) The department shall, by rule, prescribe the form and content of notices of pending applications and notices of public hearings to be provided under sub. (3), and notices of administrative hearings to be provided under s. 30.209 (1m). Each notice shall include all of the following information:

1. The name and address of each applicant or permit holder.

2. A brief description of each applicant's activity or project that requires the permit.

3. The name of the waterway in or for which the activity or project is planned.

3m. For a notice of public hearing under sub. (3), the time, date, and location of the hearing.

3r. For a notice of pending application and a notice of public hearing under sub. (3), a brief, precise, easily understandable, plain language description of the subject matter of the pending application and information indicating where the pending application may be viewed on the department's Internet Web site.

4. For a notice of pending application and a notice of public hearing under sub. (3), a statement of the tentative determination to issue, modify, or deny a permit, or to approve or disapprove a contract, for the activity or project described in the application.

5. For a notice of pending application and a notice of public hearing under sub. (3), a brief description of the procedures for the formulation of final determinations, including a description of the comment period required under sub. (4).

(bm) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet Web site.

(c) 1m. The department may delegate the department's requirement to provide notice under sub. (3) in the manner specified under par. (a) 1. or 2. or to provide notice under s. 30.209 (1m) by doing any of the following:

a. Requiring that the applicant for the permit or contract provide by publication, mailing, or other distribution one or more of the notices.

b. Requiring that the applicant for the permit or contract pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.

2m. If, under subd. 1m., the department delegates to an applicant the requirement to provide notice under sub. (3) by publishing a class 1 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request that the department publish the class 1 notice. The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing under this chapter class 1 notices under ch. 985.

History: 2003 a. 118 ss. 6, 149; 2007 a. 227; 2011 a. 167; 2013 a. 69; 2013 a. 151 s. 27; 2013 a. 165 s. 115.

30.209 Contracts and individual permits; administrative and judicial review. (1) DEFINITION. In this section, "applicant" means any person applying to receive a permit or contract under this subchapter or any person who has received a permit or contract under this subchapter.

(1m) REQUEST FOR ADMINISTRATIVE REVIEW. (a) Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any individual permit issued or contract entered into under this subchapter.

2. The imposition of, or failure to impose, a term or condition on any individual permit issued or contract entered into under this subchapter.

(b) If the petitioner is not the applicant, the petition shall describe the petitioner's objection to the permit or contract and shall contain all of the following:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this subchapter may be violated if the proposed activity or project under the permit or contract is allowed to proceed.

2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the activity or project, as proposed, may result in a violation of the provisions of this subchapter.

3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

(c) The activity or project shall be stayed pending an administrative hearing under this section, if the petition contains a request for the stay showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

(d) If a stay is requested under par. (c), the stay shall be in effect until either the department denies the request for an administrative hearing or the hearing examiner determines that the stay is not necessary.

(e) The petitioner shall file a copy of the petition with the department. If the petitioner is not the applicant, the petitioner shall simultaneously provide a copy of the petition to the applicant. The applicant may file a response to the petition with the department. If the applicant files a response under this paragraph, it shall be filed within 15 days after the petition is filed.

(f) The department shall grant or deny the petition within 30 days after the petition is filed. The failure of the department to dispose of the petition within this 30−day period is a denial. The department shall deny the petition if any of the following applies:

1. The petitioner is not the applicant and the petition does not comply with the requirements of par. (b).

2. The objection contained in the petition is not substantive. The department shall determine that an objection is substantive if the supporting facts contained in the objection appear to be substantially true and raise reasonable grounds to believe that the provisions of this subchapter may be violated if the activity or project is undertaken.

(fm) If the department denies the petition, the department shall send the petitioner the denial in writing, stating the reasons for the denial.

(g) If the department grants a petition under this subsection, the department shall refer the matter to the division of hearings and appeals in the department of administration within 15 days after granting the petition unless the petitioner and the applicant agree to an extension.

(2) ADMINISTRATIVE HEARINGS. (a) An administrative hearing under this section shall be treated as a contested case under ch. 227.

(b) If a stay under sub. (1m) (c) is in effect, the hearing examiner shall, within 30 days after receipt of the referral under sub. (1m) (g), determine whether continuation of the stay is necessary to prevent significant adverse impacts or irreversible harm to the environment pending completion of the administrative hearing. The hearing examiner shall make the determination based on the request under sub. (1m) (c), any response from the applicant under sub. (1m) (e), and any testimony at a public hearing or any public comments. The determination shall be made without a hearing.

(c) An administrative hearing under this section shall be completed within 90 days after receipt of the referral of the petition under sub. (1m) (g), unless all parties agree to an extension of that period. In addition, a hearing examiner may grant a one−time extension for the completion of the hearing of up to 60 days on the motion of any party and a showing of good cause demonstrating extraordinary circumstances justifying an extension.

(d) Notwithstanding s. 227.44 (1), the department shall provide a notice of the administrative hearing at least 30 days before the date of the hearing to all of the following:

1. The applicant.

2. Each petitioner, if other than the applicant.

3. Any other persons required to receive notice under the rules promulgated under s. 30.208 (5).

(e) In an administrative hearing under this section, the petitioner shall proceed first with the presentation of evidence and shall have the burden of proof.

(3) JUDICIAL REVIEW. (a) Any person whose substantial interest is affected by a decision of the department under sub. (1m) (a) 1. or 2. may commence an action in circuit court to review that decision.

(b) Any party aggrieved by a decision of a hearing examiner under sub. (2) may commence an action in circuit court to review that decision.

History: 2003 a. 118, 326, 327; 2011 a. 167.

30.2095 Limits and conditions for permits and contracts. (1) (a) Except as provided in par. (b), every permit or contract issued under ss. 30.01 to 30.29 for which a time limit is not provided by s. 30.20 (2) is void unless the activity or project is completed within 3 years after the permit or contract was issued.

(b) The department may specify a time limit of less than 3 years for an individual permit or contract issued under ss. 30.01 to 30.29. The department shall extend the time limit for an individual permit or contract issued under ss. 30.01 to 30.29 for no longer than an additional 5 years if the grantee requests an extension prior to expiration of the initial time limit.

(2) For good cause, the department may modify or rescind any permit or contract issued under ss. 30.01 to 30.29 before its expiration.

History: 1987 a. 374; 2003 a. 118 s. 15; Stats. 2003 s. 30.2095; 2011 a. 167.

30.21 Use of beds of Great Lakes by public utilities. (1) WATER INTAKE FACILITIES. Upon compliance with such applicable regulations as may be imposed by the government of the United States and subject to chs. 196 and 197 and rules and orders of the public service commission issued pursuant thereto, any public utility may, pursuant to permit granted by resolution of the governing body of any city, village or town situated on any waters of Lake Michigan or Lake Superior or in the Great Lakes basin, construct, maintain and operate, upon and under the bed thereof adjoining such city, village or town, all cribs, intakes, basins, pipes and tunnels necessary or convenient for securing an adequate supply of water suitable for the purposes of such utility, provided only, that concurrently with the construction of facilities for the withdrawal of water from the lakes, the city, town or village must construct sewage treatment and disposal works adequate to treat completely all sewage of the municipality. Any city, village or town, the limits of which are within 50 miles of any such waters and any public utility serving the same shall be deemed to be situated on such waters within the meaning of this section and such municipality or public utility serving the same shall, subject to this section, have authority to acquire and own or lease sufficient real estate, not to exceed 50 miles beyond the corporate limits of such municipality, for the purpose of constructing, maintaining and operating thereon or thereunder, transmission facilities and structures, including cribs, intakes, basins, pipes and tunnels, necessary or convenient for securing an adequate supply of water suitable for the purposes of such municipality or utility. Such facilities shall be so constructed, maintained and operated as to avoid material obstruction to existing navigation or the use of private property not owned by such utility.

(2) HARBOR FACILITIES; PUBLIC UTILITY STRUCTURES. Pursuant to the authority and conditions specified in sub. (1), any such utility may also:

(a) Improve the navigability of any of the waters specified in sub. (1) and construct upon the shore and the adjoining bed of such waters, harbor facilities adapted for the reception, docking, unloading and loading of vessels carrying supplies required for the operation of such utility.

(b) Place any public utility structure, including all or part of any plant for the generation of electricity and the appurtenances, upon the bed of any of the waters specified in sub. (1), provided the utility first obtains approval under this chapter and obtains the approval of the public service commission as required by s. 196.49 or rules or orders of the public service commission issued pursuant thereto, and also obtains the approval of the department to the making of any payment to be made to the municipality with respect to the erection of such structure.

(3) COMPLIANCE WITH OTHER PERMIT REQUIREMENTS. (a) Each public utility operating under a permit under this section on January 1, 1986, shall comply with s. 281.35 (2), if applicable.

(b) On and after January 1, 1986, no city, village or town may issue a permit under sub. (1) unless the public utility applying for the permit complies with s. 30.18 (2) (b), if applicable.

History: 1985 a. 60; 1995 a. 227.

30.24 Bluff protection. (1) DEFINITIONS. In this section:

(a) "Obligate" has the meaning given in s. 23.0917 (1) (e).

(b) "Protect" includes to restore.

(2) AUTHORIZATION. For the purposes of protecting bluff land, the department may expend money from the appropriation under s. 20.866 (2) (ta) for a program under which the department may do all of the following:

(a) Acquire bluff land or interests in bluff land along the Great Lakes.

(b) Award grants to nonprofit conservation organizations to acquire these lands or interests under s. 23.096.

(3) BAN ON LOCATION RESTRICTIONS. In exercising its authority under sub. (2) (a), the department may not limit acquisitions of bluff lands to bluff lands that are within the boundaries of projects established by the department.

(4) LIMIT ON GRANTS. Except as provided in s. 23.096 (2m), a grant awarded under this section or under s. 23.096 to protect bluffs may not exceed 50% of the acquisition costs.

(5) RULES. The department shall promulgate rules to administer and implement this section, including standards for awarding grants to protect bluffs under this section and under s. 23.096 grants. The department by rule shall define "bluff land" for purposes of this section.

History: 1999 a. 9; 2007 a. 20.

30.25 Wolf River protection. (1) Except as provided under sub. (2), no person may make any effort to improve the navigation on the Wolf River north of the southern boundary of Shawano County nor shall any dam be authorized for construction in that portion of the Wolf River. Any permit issued or in effect by virtue of or under authority of any order or law authorizing the construction of any dam in the Wolf River in Langlade County is void. This declaration does not affect permits for or the operation or maintenance of any dam in existence on August 24, 1963.

(2) A person may engage in a minor dredging project to improve access to or to improve the aesthetics of the Wolf River in Shawano County if a permit issued by the department under s. 30.20 authorizes the project.

History: 1987 a. 374.

30.255 Florence Wild Rivers Interpretive Center. Beginning with fiscal year 2007−08, the department shall provide a grant in the amount of $27,000 in each fiscal year to the Florence Wild Rivers Interpretive Center to be used for park and recreation uses, forestry education, and tourist information provided by the center and for its operational costs.

History: 2007 a. 20.

30.26 Wild rivers. (1) LEGISLATIVE INTENT. In order to afford the people of this state an opportunity to enjoy natural streams, to attract out−of−state visitors and assure the well−being of our tourist industry, it is in the interest of this state to preserve some rivers in a free flowing condition and to protect them from development; and for this purpose a system of wild rivers is established, but no river shall be designated as wild without legislative act.

(2) DESIGNATION. (a) The following rivers, or portions of rivers, are designated as wild rivers:

1. The Pike River in Marinette County.

2. The Pine River and its tributary Popple River in Florence and Forest counties.

3. The portion of the Brunsweiler River, described as follows: from the point at which the Brunsweiler River leaves the SW−1/4 of the SW−1/4 of Sec. 22, T. 44 N., R. 4 W. downstream to the point at which the Brunsweiler River crosses the boundary of the Chequamegon−Nicolet National Forest in the NW−1/4 of Sec. 22, T. 45 N., R. 4 W. This portion of the Brunsweiler River shall be known as the "Martin Hanson Wild River".

3m. Portions of the Totogatic River as follows:

a. From the outlet of Totogatic Lake located in Bayfield County to the upstream end of Nelson Lake at the Southern edge of the walleye spawning refuge located in Sawyer County.

b. From a point 500 feet below the dam in the Totogatic Wildlife Area located in Washburn County to the upstream end of the Colton Flowage located in Washburn County.

c. From a point 500 feet below the dam that forms the Colton Flowage located in Washburn County to the point where the river crosses the Washburn−Douglas County line immediately above the upstream end of the Minong Flowage.

d. From the bridge on CTH "I" that crosses the river located in Washburn County to the confluence of the river with the Namekagon River located in Burnett County.

(b) The rivers designated under par. (a) shall receive special management to assure their preservation, protection and enhancement of their natural beauty, and their unique recreational and other inherent values in accordance with guidelines outlined in this section.

(3) DUTIES OF DEPARTMENT. The department in connection with wild rivers shall:

(a) Provide active leadership in the development of a practical management policy.

(b) Consult other state agencies and planning committees.

(c) Collaborate with county and town boards and local development committees or boards in producing a mutually acceptable program for the preservation, protection and enhancement of the rivers.

(d) Administer the management program.

(e) Seek the cooperation of the U.S. forest service, timber companies, county foresters and private landowners in implementing land use practices to accomplish the objectives of the management policy.

(f) Act as coordinator under this subsection.

(4) SNOWMOBILES, ALL−TERRAIN VEHICLES, AND UTILITY TERRAIN VEHICLES. (a) The department may not prohibit the crossing of a bridge over a wild river by an all−terrain vehicle or utility terrain vehicle traveling on an all−terrain vehicle trail, as defined under s. 23.33 (1) (d), or by a snowmobile traveling on a snowmobile trail, as defined under s. 350.01 (17) that is constructed in any of the following locations:

1. Along the Nicolet State Trail where the trail crosses the existing railroad trestle over the Pine River and the Popple River.

3. In Florence County along County Highway N where the trail would cross the Pine River.

(b) The state shall permit all−terrain vehicles, utility terrain vehicles, and snowmobiles to travel in a corridor across any state land that separates an all−terrain vehicle trail or a snowmobile trail and the bridges constructed at the locations listed under par. (a).

(5) BRUNSWEILER RIVER. (a) As part of the management of the designated portion of the Brunsweiler River, all of the following shall apply:

1. The U.S. forest service may maintain the dam that impounds Beaver Dam Lake that is in place on April 29, 2009. If the U.S. forest service receives authorization from the department to abandon the dam, the department may carry out restoration activities to restore the natural appearance of the lake and the river.

2. The U.S. forest service may maintain or replace the boat landing on Mineral Lake that is in place on April 29, 2009.

3. Any pier that is in place on the river on April 29, 2009, may be maintained or replaced. A replacement pier may have no more boat slips than did the original pier. A replacement pier shall either be limited to the dimensions of the original pier or the dimension requirements specified in s. 30.12 (1g) (f), whichever dimensions result in a smaller square area for the pier and any accompanying platform.

(b) Compliance with any applicable permitting or other requirements under chs. 30 and 31 is required for the maintenance and replacement activities authorized under this subsection.

(5m) TOTOGATIC RIVER. (a) As part of the management of the designated portions of the Totogatic River, all of the following shall apply:

1. The department may authorize the removal of natural obstructions from the portion of the river specified in sub. (2) (a) 3m. a. if needed for the protection or growth of wild rice.

2. Any pier that is in place on the river on July 25, 2009, may be maintained or replaced. A replacement pier may have no more boat slips than did the original pier and may not have a loading platform. A replacement pier shall either be limited to the dimensions of the original pier or the dimension requirements specified for piers in s. 30.12 (1g) (f), whichever dimensions result in a smaller square area for the pier.

3. Any bridge or water crossing that is used for recreational or forestry purposes and that is in place on the river on July 25, 2009, may be maintained, modified, or replaced to the extent necessary to ensure public safety. Any such maintenance, modification, or replacement shall be performed in a manner that results in the least impact on the beauty and the natural condition of the river.

(b) Compliance with any applicable permitting or other requirements under ch. 30 is required for the maintenance, modification, and replacement activities authorized under this subsection.

History: 2003 a. 248; 2009 a. 7, 32, 276; 2011 a. 208.

Cross−reference: See also ch. NR 302 and ss. NR 102.10 and 103.04, Wis. adm. code.

30.265 Adopt a river program. The department shall establish an adopt a river program to encourage program volunteers to clean up a specified portion of a lake, river, wetland, or ravine. The department shall supply to the volunteers educational support and necessary supplies. The department shall keep records of information related to the program, including the pounds of rubbish collected, the number of volunteer hours provided, and descriptions of the debris found. The department shall publicly recognize volunteers who participate in the program.

History: 2001 a. 16, 104.

30.27 Lower St. Croix River preservation. (1) PURPOSE. The Lower St. Croix River, between the dam near St. Croix Falls and its confluence with the Mississippi River, constitutes a relatively undeveloped scenic and recreational asset. The preservation of this unique scenic and recreational asset is in the public interest and will benefit the health and welfare of the citizens of Wisconsin. The state of Wisconsin is therefore determined that the Lower St. Croix River be included in the national wild and scenic rivers system under the wild and scenic rivers act, as amended, 16 USC 1271 to 1287, and the Lower St. Croix River act of 1972, 16 USC 1274 (a) (9). The purpose of this section is to ensure the continued eligibility of the Lower St. Croix River for inclusion in the national wild and scenic rivers system and to guarantee the protection of the wild, scenic and recreational qualities of the river for present and future generations.

(2) ZONING GUIDELINES. (a) As soon as possible after May 7, 1974, the department shall adopt, by rule, guidelines and specific standards for local zoning ordinances which apply to the banks, bluffs and bluff tops of the Lower St. Croix River. The guidelines shall designate the boundaries of the areas to which they apply. In drafting the guidelines and standards, the department shall consult with appropriate officials of counties, cities, villages and towns lying within the affected area. The standards specified in the guidelines shall include, but not be limited to, the following:

1. Prohibition of new residential, commercial and industrial uses, and the issuance of building permits therefor, where such uses are inconsistent with the purposes of this section.

2. Establishment of acreage, frontage and setback requirements where compliance with such requirements will result in residential, commercial or industrial uses which are consistent with the purposes of this section.

(b) The standards established under par. (a) shall be consistent with but may be more restrictive than any pertinent guidelines and standards promulgated by the secretary of the interior under the wild and scenic rivers act. If it appears to the department that the purposes of this section may be thwarted or the wild, scenic or recreational values of the river adversely affected prior to the implementation of rules under this section, the department may exercise its emergency rule−making authority under s. 227.24, and such rules shall be effective and implemented and enforced under sub. (3) until permanent rules are implemented under sub. (3).

(c) The guidelines and standards established under par. (a) for nonconforming structures that are subject to a city, village or town zoning ordinance adopted under sub. (3) shall be the same as the guidelines and standards for nonconforming structures that are subject to a county zoning ordinance adopted under sub. (3). The guidelines and standards established under par. (a) shall allow a county, city, village or town zoning ordinance adopted under sub. (3) to differentiate between nonconforming structures and nonconforming uses.

(3) IMPLEMENTATION. Counties, cities, villages and towns lying, in whole or in part, within the areas affected by the guidelines adopted under sub. (2) are empowered to and shall adopt zoning ordinances complying with the guidelines and standards adopted under sub. (2) within 30 days after their effective date. If any county, city, village or town does not adopt an ordinance within the time limit prescribed, or if the department determines that an adopted ordinance does not satisfy the requirements of the guidelines and standards, the department shall immediately adopt such an ordinance. An ordinance adopted by the department shall be of the same effect as if adopted by the county, city, village or town, and the local authorities shall administer and enforce the ordinance in the same manner as if the county, city, village or town had adopted it. No zoning ordinance so adopted may be modified nor may any variance therefrom be granted by the county, city, village or town without the written consent of the department, except nothing in this section shall be construed to prohibit a county, city, village or town from adopting an ordinance more restrictive than that adopted by the department.

History: 1973 c. 197; 1983 a. 192; 1985 a. 182 s. 57; 1995 a. 225; 1999 a. 153.

Cross−reference: See also ch. NR 118, Wis. adm. code.

The federal Wild and Scenic Rivers Act did not preempt state and local governmental regulation of the Lower St. Croix River. The state has authority to exercise its police power in the federal zone, and this section remains in full force and effect. State v. St. Croix County, 2003 WI App 173, 266 Wis. 2d 498, 668 N.W.2d 743, 02−1645.

30.275 Scenic urban waterways. (1) LEGISLATIVE INTENT. In order to afford the people of this state an opportunity to enjoy water−based recreational activities in close proximity to urban areas, to attract out−of−state visitors and to improve the status of the state's tourist industry, it is the intent of the legislature to improve some rivers and their watersheds. For this purpose a system of scenic urban waterways is established, but no river shall be designated as a scenic urban waterway without legislative act.

(2) DESIGNATION. The following waters are designated scenic urban waterways and shall receive special management as provided under this section:

(a) The Illinois Fox River and its watershed and the Fox River, extending from Lake Winnebago to Green Bay, and its watershed.

(b) The Rock River consisting of all of the following:

1. The river from the point that the river flows into the city of Watertown to the point that it flows out of the city of Watertown.

2. The river from the point it flows into the city of Jefferson to the point it flows out of the city of Fort Atkinson.

3. The river from the point it flows into the city of Janesville to the Illinois border.

(3) DUTIES OF DEPARTMENT. The department in connection with scenic urban waterways shall:

(a) Provide active leadership in the development of a practical management policy.

(b) Consult with other state agencies and planning committees and organizations.

(c) Collaborate with municipal governing bodies and their development committees or boards in producing a mutually

acceptable program for the preservation, protection and enhancement of the rivers and watersheds.

(d) Administer the management program.

(e) Seek the cooperation of municipal officials and private landowners in implementing land use practices to accomplish the objectives of the management policy.

(f) Act as coordinator under this section.

(g) Develop the Wisconsin Fox River scenic urban waterway, as designated in sub. (2), as a historic and recreational site.

(4) DEPARTMENT AUTHORITY. The department in connection with scenic urban waterways may:

(a) Acquire and develop land for parks, open spaces, scenic easements, public access, automobile parking, fish and wildlife habitat, woodlands, wetlands and trails.

(b) Lay out and develop scenic drives.

(c) Undertake projects to improve surface water quality and surface water flow.

(d) Provide grants to municipalities, lake sanitary districts, as defined in s. 30.50 (4q), and public inland lake protection and rehabilitation districts to undertake any of the activities under pars. (a) to (c).

History: 1983 a. 410; 1985 a. 29; 1987 a. 399; 1989 a. 31, 336, 352, 359; 1995 a. 349; 2003 a. 33.

Cross−reference: See also ch. NR 50, Wis. adm. code.

30.277 Urban rivers grant program. (1b) DEFINITION. In this section:

(a) "Governmental unit" means a city, village, town, county or the Kickapoo reserve management board.

(b) "Nature−based outdoor recreation" has the meaning given by the department by rule under s. 23.0917 (4) (f).

(1m) FUNDING. Beginning in fiscal year 1992−93, from the appropriation under s. 20.866 (2) (tz), the department shall award grants to governmental units to assist them in projects on or adjacent to rivers that flow through urban areas. The department may award these grants from the appropriation under s. 20.866 (2) (ta) beginning on July 1, 2000.

(2) PURPOSES OF GRANTS. (a) Grants awarded under this section from the appropriation under s. 20.866 (2) (tz) shall be used for projects that emphasize the preservation or restoration of urban rivers or riverfronts for the purposes of economic revitalization and encouraging outdoor recreation activities that involve the enjoyment of the state's natural resources. These outdoor recreation activities include, but are not limited to fishing, wildlife observation, enjoyment of scenic beauty, canoeing, boating, hiking and bicycling.

(b) A grant awarded to a governmental unit under this section may be used to acquire land and may be used for a shoreline enhancement project. For purposes of this paragraph, "land" includes rights in land.

(c) Grants awarded under this section from the appropriation under s. 20.866 (2) (ta) shall only be used for nature−based outdoor recreation.

(3) CRITERIA FOR GRANTS. The department shall consider all of the following criteria in awarding grants for projects under this section:

(a) The extent to which diverse outdoor recreational opportunities will be made available to all segments of the population.

(b) The extent of preservation or restoration, under the project, of an urban riverfront.

(c) The aesthetic value of the project.

(d) The project's potential for increasing tourism.

(e) Whether significant planning has occurred in the area subject to the jurisdiction of the governmental unit prior to its request for a grant under this section.

(f) The level of support for the project demonstrated by the governmental unit, including financial support.

(g) Whether the project involves a joint effort by 2 or more governmental units.

(h) The potential benefits of the project to the overall economy of the area subject to the jurisdiction of the governmental unit.

(i) The extent to which the project preserves or highlights an area with significant historical or cultural value.

(j) The extent to which access by the public to the riverfront will be improved.

(k) Whether the project is related to brownfields redevelopment, as defined in s. 23.09 (19) (a) 1.

(4) CAP ON GRANTS. No governmental unit may receive in any fiscal year more than 20% of the funds that are available for grants under this section.

(4m) GRANTS FOR KICKAPOO. The department may not award a grant under this section from the appropriation under s. 20.866 (2) (tz) to the Kickapoo reserve management board.

(5) MATCHING CONTRIBUTIONS. Except as provided in s. 23.096 (2m), to be eligible for a grant under this section, at least 50% of the acquisition costs for land or of the project costs shall be funded by private, local or federal funding, by in−kind contributions or by state funding. For purposes of this subsection, state funding may not include grants under this section, moneys appropriated to the department under s. 20.370 or money appropriated under s. 20.866 (2) (ta), (tp) to (tw), (ty) or (tz).

(6) RULES. The department shall promulgate rules for the administration of this section, including rules that specify the weight to be assigned to each criterion under sub. (3) and the minimum number of criteria under sub. (3) in which an applicant must perform satisfactorily in order to be awarded a grant. In specifying the weight to be assigned to the criteria under sub. (3), the department shall assign the greatest weight to the criterion under sub. (3) (k). The department shall promulgate a rule specifying the types of projects that qualify as a shoreline enhancement project under this section.

History: 1991 a. 269; 1993 a. 16, 343; 1997 a. 27; 1999 a. 9; 2001 a. 38, 105; 2003 a. 33; 2007 a. 20.

Cross−reference: See also ch. NR 50, Wis. adm. code.

30.28 Fees for permits, other approvals, and determinations. (1) FEES REQUIRED. The department shall charge a fee for reviewing, investigating, and making decisions on determinations and on whether to issue or grant permits, contracts, authorizations, or other approvals under this subchapter. The required fee shall accompany the application or other submitted documentation. The department shall set each type of fee in the amount that is necessary to meet the costs incurred by the department except as follows:

(a) For an individual permit issued under s. 30.208, the application fee shall be $600.

(b) For authorization to proceed under a general permit issued under s. 30.206, the application fee shall be $300.

(c) For an application for a general permit submitted under s. 30.207 (3), the fee shall be $2,000.

(d) For a notice submitted under s. 30.207 (7), the fee shall be $100.

(1m) ADDITIONAL FEES. (a) In addition to the fees required under sub. (1), the department may set and charge fees for making any of the following determinations:

1. An identification of an ordinary high−water mark.

2. A determination of navigability.

3. Any other determination that is necessary for reviewing, investigating, or making a decision on applications for permits, contracts, authorizations, or other approvals under this chapter.

(b) The department shall set each fee authorized under this subsection in the amount that is necessary to meet the costs incurred by the department.

(2m) ADJUSTMENTS IN FEES. (a) The department shall refund a fee charged under sub. (1) (a) if the applicant requests a refund before the department determines that the application is complete.

Except as provided in par. (am), the department may not refund a fee after the department determines that the application is complete unless required to do so under a rule promulgated under s. 299.05.

(am) The department shall refund 50% of the fee specified in sub. (1) (c) if the department denies an application for a general permit under s. 30.207 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

(b) If a person applies for a permit or otherwise seeks authorization or gives notice for a project or activity after the project or activity is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

(d) The department may increase any fee specified in sub. (1) or (1m) only if the increase is necessary to meet the costs incurred by the department in performing the activities for which the fee is charged.

(2r) FEE FOR EXPEDITED SERVICE. (a) The department, by rule, may charge a supplemental fee for a permit, contract, authorization, other approval, or determination that is in addition to the fee charged under this section if all of the following apply:

1. The applicant requests in writing that the permit, approval authorization, or determination be issued or the contract be granted within a time period that is shorter than the time limit under the rule promulgated under par. (b) for that type of permit, contract, authorization, approval, or determination.

2. The department verifies that it will be able to comply with the request.

(b) If the department promulgates a rule under par. (a), the rule shall contain a time limit for each type of permit, contract, authorization, approval, or determination.

(2v) WEB SITE INFORMATION FEE. In addition to each fee charged under sub. (1), the department shall charge a supplemental fee to be used by the department to maintain a computerized system by which an applicant may determine the status of an application submitted under this subchapter. The department shall estimate the amount that the fee needs to be to provide sufficient funding for the cost of administering the computerized system. The department shall then set the fee to equal $3 or the amount of the estimated fee, whichever is less.

(3) EXEMPTIONS. This section does not apply to projects funded in whole or in part by any federal agency or state agency.

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118; 2011 a. 118, 167.

Cross−reference: See also ch. NR 300, Wis. adm. code.

The department of natural resources has subject matter jurisdiction to issue after−the−fact permits, as well as those issued prior to the commencement of construction. Capoun Revocable Trust v. Ansari, 2000 WI App 83, 234 Wis. 2d 335, 610 N.W.2d 129, 99−1146.

Wisconsin's Wetland Reform Act. Kent and Jordan. Wis. Law. Feb. 2013.

30.285 Records of exemptions and permitted activities. (1) On an annual basis, the department shall keep records of all of the following:

(a) The number of exempted activities that are conducted under ss. 30.12 (1g) and (1k), 30.123 (6), 30.19 (1m), and 30.20 (1g) of which the department is aware.

(b) The number of exemptions under par. (a) for which the department required applications for individual permits or contracts.

(c) The number of exemptions under par. (a) for which the department required applications to seek authorizations to proceed under general permits.

(d) The number of activities that are authorized under general permits for which the department requires applications for individual permits or contracts.

(e) The number of piers and wharves for which the department issued a permit authorizing the configuration of the pier or wharf under s. 30.12 (1j) (c).

(2) For each record kept under sub. (1) (b) to (e), the department shall include all of the following:

(a) The type of permit or contract application required.

(b) The date of the application.

(c) The date of the department's decision whether to issue the individual permit, grant authorization under the general permit, or to grant the contract.

(d) The county in which the activity or project is located.

History: 2003 a. 118; 2005 a. 253; 2007 a. 204.

30.29 Operation of motor vehicles in waters prohibited. (1) DEFINITIONS. In this section:

(a) "Control" has the meaning given in s. 23.22 (1) (a).

(b) "Motor vehicle" includes a utility terrain vehicle, as defined in s. 23.33 (1) (ng), and an all−terrain vehicle, as defined in s. 340.01 (2g).

(c) "Outlying waters" has the meaning given in s. 29.001 (63).

(2) PROHIBITION. Except as provided under sub. (3), no person may operate a motor vehicle in or on any navigable water or the exposed bed of a navigable water.

(3) EXEMPTIONS. This section does not apply to:

(a) *Stream crossing.* A person operating a motor vehicle to cross a stream by use of a bridge, culvert, ford or similar structure if the crossing is in the most direct manner practical, if the crossing is from a highway or private road or from an established trail and if the person operates the motor vehicle at the minimum speed required to maintain controlled forward motion of the motor vehicle.

(b) *Agriculture activities.* A person operating a motor vehicle while the person is engaged in agricultural use, as defined under s. 91.01 (2).

(c) *Department activities.* The department or any agent of the department operating a motor vehicle while the person is engaged in activities authorized by the department.

(d) *Activities for which a permit is issued.* A person or agent of a person who is engaged in activities as authorized under a general or individual permit issued under this subchapter or as authorized under a contract entered into under this subchapter.

(e) *Amphibious vehicles.* A person operating an amphibious motor vehicle registered as a boat with the department if the amphibious vehicle enters the water at a boat launch or a ford.

(f) *Boat launching.* A person operating a motor vehicle to launch or load a boat, canoe or other watercraft.

(g) *On frozen waters.* A person operating a motor vehicle on the surface of any navigable waters which are frozen.

(h) *Access to frozen waters.* A person operating a motor vehicle to cross the bed or banks of a navigable water in order to reach the surface of any navigable waters which are frozen if the crossing is in the most direct manner practical, if the crossing is from a highway or private road or from an established trail and if the person operates the motor vehicle at the minimum speed required to maintain controlled forward motion of the motor vehicle.

(i) *Controlling Phragmites.* A person operating a motor vehicle in compliance with sub. (3m).

(3m) CONTROLLING PHRAGMITES IN OUTLYING WATERS. *Requirements for exemption.* A person may operate a motor vehicle in outlying waters if the operation meets all of the following requirements:

(a) The operation of the motor vehicle is for the purpose of mowing or applying a herbicide for the purpose of controlling Phragmites australis.

(b) The operation of the motor vehicle occurs only on the exposed bed of the outlying water.

(c) The operation of the motor vehicle occurs between the period beginning on July 1 of a given year and ending on March 15 of the following year.

(d) The mowing or application of the herbicide interferes with or destroys native species only to the degree that is necessary to control the invasive species Phragmites australis.

(4) PENALTY. A person who violates this section shall forfeit $50 for the first offense and shall forfeit not more than $100 upon conviction of the same offense a 2nd or subsequent time within one year.

History: 1981 c. 189; 1987 a. 374; 1991 a. 39; 2003 a. 118; 2009 a. 28, 377; 2011 a. 208; 2011 a. 260 s. 80.

30.291 Inspections for certain exemptions and permitted activities. (1) For purposes of determining whether an exemption is appropriate under s. 30.12 (1k), (2m) or (2r), 30.123 (6m) or (6r), or 30.20 (1m) or (1r), whether a general permit is appropriate under s. 30.206 (3), or whether authorization to proceed under a general permit is appropriate under s. 30.206 (3r), any employee or other representative of the department, upon presenting his or her credentials, may enter the site and inspect any property on the site.

(3) The department shall provide reasonable advance notice, before entering the site and inspecting the property.

(4) If the owner of the site refuses to give consent for an entry and inspection to determine whether authorization to proceed under a general permit is appropriate under s. 30.206 (3r), the department shall deny authorization to proceed under the general permit and shall allow an application to be submitted for an individual permit for the activity.

History: 2003 a. 118; 2007 a. 204.

30.292 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person does any of the following:

(a) Directly commits the violation.

(b) Aids and abets the commission of the violation.

(c) Is a party to a conspiracy with another to commit the violation or advises, hires, counsels or otherwise procures any person to commit it.

History: 1987 a. 374.

30.294 Nuisances, abatement. Every violation of this chapter is declared to be a public nuisance and may be prohibited by injunction and may be abated by legal action brought by any person.

History: 1987 a. 374.

A citizen may bring suit under this section, pursuant to the public trust doctrine, directly against a private party for abatement of a public nuisance when the citizen believes that the department of natural resources has inadequately regulated the private party. When a municipality is a defendant, filing a notice of claim under s. 893.80 (1) (b) is not required if an injunction is sought under this section, whether or not the injunction will be directed against the municipality. Gillen v. City of Neenah, 219 Wis. 2d 806, 580 N.W.2d 628 (1998), 96−2470.

30.298 Penalties. (1) Any person who violates any provision of ss. 30.12 to 30.21 for which a penalty is not provided under the applicable section or by sub. (2) or (3) shall forfeit not less than $100 nor more than $10,000 for the first offense and shall forfeit not less than $500 nor more than $10,000 upon conviction of the same offense a 2nd or subsequent time.

(2) Any person who violates s. 30.18 (2) (a) 1. or 30.195 (1) shall forfeit not less than $500 nor more than $10,000 for the first offense and shall forfeit not less than $1,000 nor more than $10,000 upon conviction of the same offense a 2nd or subsequent time.

(3) Any person who violates a general permit under s. 30.206 or 30.2065 shall forfeit not less than $10 nor more than $500 for the first offense and shall forfeit not less than $50 nor more than $500 upon conviction of the same offense a 2nd or subsequent time.

(4) A violation of a permit, contract or order issued under this chapter is a violation of the statute under which the permit, contract or order was issued.

(5) In addition to the forfeitures specified under subs. (1) to (3), the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest in navigable waters. The court may order abatement of a nuisance, restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

History: 1987 a. 374; 2003 a. 118; 2009 a. 391.

SUBCHAPTER III

DEVELOPMENT AND OPERATION OF HARBORS

30.30 Municipal authority to make harbor improvements. Every municipality having navigable waters within or adjoining its boundaries may exercise the following powers:

(1) HARBOR IMPROVEMENT. By proper filling or excavating or dredging and docking, create or improve any inner or outer harbor and such turning basins, slips, canals and other waterways within its boundaries as it determines are necessary.

(2) REPAIRS AND ALTERATIONS. Keep in repair and from time to time alter, extend, enlarge or discontinue any improvement mentioned in sub. (1).

(3) DOCK WALLS AND SHORE PROTECTION WALLS. (a) Either by itself or in conjunction with another municipality, construct, maintain or repair suitable dock walls or shore protection walls along the shore of any waterway adjoining or within the limits of such municipality, exclusive of privately owned slips. Such structures may be located within or without the municipal limits.

(b) Whenever an improvement, alteration, repair or extension of a dock wall or shore protection wall along the bank or shore of any waterway adjoining or within the limits of a municipality is required in order to eliminate menaces to navigation, or to promote the public health, safety or welfare, or to eliminate dilapidation, blight or obsolescence of such dock wall or shore protection wall, the board of harbor commissioners, if such board has been established within the municipality, or the local legislative body if no such board has been created, shall make a determination by resolution that it is essential that such dock wall or shore protection wall be improved, altered, repaired or extended. A certified copy of such resolution shall be served on the owners of the property of which such dock wall or shore protection wall is a part, by either forwarding such certified copy of the resolution by registered mail to the owners or by serving a certified copy of such resolution personally upon such owners if they can be found within the municipality. The resolution shall also specify a period of 90 days within which the owners shall be required to commence work for the improvement, alteration, repair or extension of the dock wall or shore protection wall.

(c) If the owners of the property on which the dock wall or shore protection wall is located fail to notify the board of harbor commissioners or the local legislative body within the 90−day period that the work will be commenced as specified in the resolution, the board of harbor commissioners or the local legislative body shall request the city attorney, village attorney, town attorney or corporation counsel for the commencement of an action in the circuit court in the county in which the property is located for determination of whether or not the improvement, alteration, repair or extension of the dock wall or shore protection wall is required and for the fixing of the time by the court within which time the work must be commenced and completed. The action shall be entitled in the name of the state and the municipality, and the attorney general shall participate on behalf of the state. The complaint shall recite the type of improvement, alteration, repair

or extension which is required, the approximate cost thereof, the need for such work as related to the reasons stated in par. (b), and such other allegations as may be pertinent. The owners of the property within which the dock wall or shore protection wall is located shall be named defendants. They shall be permitted to plead as provided for in civil actions. The action shall be brought to trial in the circuit court as promptly as possible. If the circuit court determines that the work shall be performed, it shall make a finding to that effect and enter an order directing the owners of the property to commence the work and to complete it within a period of time fixed by the court in the order, or in the alternative provide that the municipality may complete the work and charge the cost thereof to the owners of the property. If the work is performed by the municipality, the cost shall be recovered from the owners of the property as special assessments for benefits to lands provided for in s. 66.0703. Either party to the action may appeal from the determination of the circuit court and the appeal shall be given preference. Only that portion of the cost of the work shall be assessed against the owners which is of benefit to their lands.

(4) SPECIAL ASSESSMENTS. Make special assessments for benefits to lands on account of any of the improvements specified in sub. (3) and also in those cases where the owners of the property to be benefited by improvements in navigable waters consent in advance to such assessments, and in no other case, but the cost of protecting the ends of public streets and highways and other public grounds shall be paid wholly by the municipality.

(5) ACQUISITION OF LAND. Acquire such lands or interests therein as it deems necessary for properly carrying out its powers under this chapter, including such lands outside the municipal limits as are necessary to protect its property or to carry out its powers under sub. (3). Such acquisition may be by condemnation proceedings.

(6) COOPERATION WITH FEDERAL GOVERNMENT IN HARBOR IMPROVEMENTS. Prepare the necessary plats and otherwise cooperate with the federal government when it indicates its intention to aid in the improvement of any harbor over which the municipality has jurisdiction, including the authority granted by s. 66.0315. If the municipality has established a board of harbor commissioners, such board shall have charge of the preparation of the plats and other necessary cooperation. The title to any lands acquired for the purpose of such harbor improvement may be transferred to the U.S. government for use in improving the harbor of the municipality.

(7) DOING OF WORK. Contract for the doing of the work authorized by this section or purchase the necessary equipment for the doing of the work itself, but if the municipality has established a board of harbor commissioners such board shall have charge of the letting of contracts and shall supervise the doing of the work, except as provided in ss. 30.31 (1) and 30.32 (2).

(8) LEASE OF WHARFING PRIVILEGES. Lease the wharfing privileges of navigable waters at the ends of streets, giving preference to owners of adjoining land, and prescribe or regulate the fees to be charged for wharfage at such places. No buildings shall be erected on the ends of streets, and a free passage over the same for all persons with their baggage shall be reserved; but nothing herein shall be construed to prohibit the erection of public buildings by a municipality within a filled in area of a lake or river where such municipality has been granted specific authority therefor by the legislature, or in conjunction therewith, in any street end or approaches thereto. No such construction on any street end or approaches shall prevent access to the navigable water. If the municipality has established a board of harbor commissioners, the municipality may delegate to such board the powers conferred by this subsection.

History: 1977 c. 187 s. 134; 1983 a. 219; 1989 a. 31; 1993 a. 246; 1999 a. 150 s. 672.

Judicial Council Note, 1983: Sub. (3) (c) is amended to replace the appeal deadline of 30 days after entry of the order by the standard time specified in s. 808.04 (1), stats. The subsection is further amended to eliminate the superfluous provision that the appeal be perfected in the same manner as other civil appeals. The manner of perfecting civil appeals is established by s. 809.11, stats. [Bill 151−S]

30.31 Procedural and other requirements to be followed in making harbor improvements. (1) SUPERVISION OF WORK. In exercising the powers granted by s. 30.30 (1) to (3) a municipality shall be governed by the law governing the laying out, improvement and repair of streets and bridges in such municipality, so far as applicable, except that no petition of property owners for doing any such work is necessary. If the municipality has established a board of harbor commissioners, such board shall be in charge of the work unless the board determines that it is not equipped to supervise the work and by resolution delegates such function to the agency which ordinarily performs such function for the municipality. If the municipality does not have a board of harbor commissioners, the municipality's board of public works or, in the event there is no such board, the municipality's governing body shall be in charge of the work.

(2) WORK REQUIRING APPROVAL OF STATE OR FEDERAL GOVERNMENT. No work for which the approval of the department or of the United States is required shall be commenced unless the plans and specifications for such work have been submitted to and approved by the department or the proper officer of the United States, as the case may be. When the plans and specifications have been so approved, the work shall be done only in accordance with such plans and specifications.

(3) GOVERNMENT AID IN DREDGING OF HARBOR CHANNELS AND FLOOD CONTROL PROJECTS. Whenever the U.S. government indicates its intention to aid in any flood control project or in the improvement of any harbor by dredging of harbor channels at federal expense, subject to the proviso that the local interests save the federal government harmless from all liability and claims for damages resulting from such project or dredging, the governing body of such municipality may, by resolution, assume liability for and on behalf of both public and private ownership adjacent to, within, under and over the channels, land area and construction works in flood control projects, involved in such federal projects. Such municipality may provide adequate insurance coverage, indemnifying such municipality for all damage resulting from such project or dredging.

(4) ACQUISITION OF LAND. In acquiring land by condemnation for any of the purposes specified in this chapter, a municipality shall be governed by the law relating to condemnation of land for public grounds or street purposes. Whenever land is acquired through a land contract arrangement, such contract may create a lien on such lands for the purchase price and interest thereon but shall not create any liability therefor on the part of the municipality.

(5) COOPERATION AMONG MUNICIPALITIES. Whenever 2 or more municipalities propose to cooperate in erecting, maintaining or repairing a dock wall or shore protection wall, their governing bodies shall first meet and adopt a method of proceeding and a plan of apportioning to each its share of the entire cost. Such method of proceeding and plan of apportionment shall be embodied in a resolution adopted by the governing bodies of the cooperating municipalities acting jointly and later such resolution shall be adopted by each of the governing bodies acting separately. Municipalities acting under this section shall have the powers conferred by s. 66.0301.

(6) SPECIAL ASSESSMENTS. Special assessments for benefits to lands, when authorized by s. 30.30 (4), shall be made and enforced as provided by s. 66.0703, except that at any time within the 90−day period immediately following the publication of the final resolution as required by s. 66.0703 (8) (d), the owner of any property along which such improvement is to be made may elect to make the improvement along the owner's property at the owner's expense in accordance with the approved plans and specifications or in a manner which conforms to good engineering practice and which provides for materials and designs which, with respect to strength and permanence, are at least equal to the requirements of the approved plans and specifications. If the owner makes the improvement at the owner's expense, no assessment of benefits

shall be made therefor. If such owner fails to commence the work within the 90−day period specified herein or fails to carry on and complete the work with due diligence, the work may be done or completed by the municipality and assessment of benefits made therefor.

(7) BUILDING PERMITS FOR MARINE SHIPPING STRUCTURES. Before any permit for building or improving any structure directly affecting marine shipping is issued by a municipality or any of its departments, the plans therefor shall be submitted to the municipality's board of harbor commissioners, if any. If the board finds that the location or design of the structure will adversely affect the orderly development of the harbor or the orderly movement of traffic to or within the harbor, the board may disapprove the plans, giving its specific reasons for such disapproval. No permit for building or improving any such structure shall be issued until the plans therefor have been approved by the board of harbor commissioners. The governing body of the municipality may delegate to the board of harbor commissioners the power to issue permits for construction of dock walls.

History: 1991 a. 316; 1999 a. 150 s. 672.

30.32 Contracts; competitive bidding; exceptions. **(1)** COMPETITIVE BIDDING REQUIRED. Except as otherwise provided in this section, all work to be let relative to the construction, repair or maintenance of a harbor or harbor facility and all purchases of equipment, supplies or materials relative to carrying out the purposes of the statutes relating to harbors shall be by contract awarded to the lowest competent and reliable bidder in accordance with the laws of this state and ordinances then applicable to such municipality with reference to the letting of public work.

(2) BOARD OF HARBOR COMMISSIONERS TO HAVE CHARGE OF LETTING CONTRACTS. If a municipality has established a board of harbor commissioners, such board shall be in charge of the letting of contracts relative to construction, repair or maintenance of a harbor or harbor facility or the purchase of equipment, supplies or materials relative to carrying out the purposes of the statutes relating to harbors, in lieu of the officer or agency which otherwise would be in charge of the letting of public work, except that if the board determines that it is not equipped to handle the contracting formalities required under this section, it may by resolution delegate all or part of its functions under this section to the agency which ordinarily performs such functions for the municipality.

(3) EXCEPTIONS TO COMPETITIVE BIDDING. Subsection (1) does not apply in any of the following cases, and work to be done or equipment, supplies or materials to be acquired may be contracted for or acquired without competitive bidding and in such manner as the officer or agency in charge of the work or acquisition may direct:

(a) The work to be done or equipment, supplies or materials to be acquired will cost less than $25,000.

(b) The work to be done or equipment, supplies or materials to be acquired involve marine construction or repair work requiring the use of floating scows, pile drivers or other floating equipment and will involve an expenditure of less than $50,000.

(c) The equipment, supplies or materials to be acquired is a patented article or process or an article or process made by one party only.

(d) The work to be done or equipment, supplies or materials to be acquired involves an emergency repair as set forth in sub. (4).

(4) EMERGENCY REPAIRS. Whenever repairs become necessary to any harbor facility which, in the judgment of the official having executive charge of such facility, constitutes an emergency in that it interrupts the ordinary use and operation of such facility, such official may order such repairs to be made by some competent party without compliance with sub. (1) or the intervention of a formal contract. In all cases of such emergency repairs the official causing the repairs to be made shall report the circumstances thereof, including the agreed price or estimated costs of the repairs, to the officer or agency in charge of the operation of the harbor and shall also forthwith send a copy of such report to the clerk of the municipality or, in the case of a city, to the chief auditing officer. Whenever any party is liable, under a lease or otherwise, to reimburse such municipality for repairs or cost of maintenance of such harbor facility, the official causing the repairs to be made shall also send a copy of such report to the party so liable.

(5) COMPETENCY AND RELIABILITY OF BIDDERS. Whenever any bidder for any work to be let by an officer or agency in charge of a harbor is, in the judgment of such officer or agency, incompetent or otherwise unreliable for the performance of the work for which the bidder bids, the officer or agency may accept the bid of the person who, in its judgment, is the lowest competent and reliable bidder for such work, stating its reasons therefor, or may relet the same anew. Such officer or agency may permit a sum of money or a certified check payable to its order to be filed with any bid or proposal in such an amount as in its judgment will save the municipality from any loss if the bidder fails to execute a contract pursuant to law, in case the bidder's bid is accepted and the contract awarded to the bidder.

(6) CONTRACTS TO PROVIDE FOR LIQUIDATED DAMAGES. Every contract executed pursuant to sub. (1) shall contain either of the following agreements on the part of the contractor and the contractor's sureties:

(a) An agreement that in case such contractor fails to fully and completely perform the contract within the time therein limited for the performance thereof, the contractor shall pay to the municipality as liquidated damages for such default, a fixed sum to be named in the contract, which shall be such a sum as in the judgment of the officer or agency in charge of letting the contract will save the municipality harmless on account of such default and insure the prompt completion of the contract; or

(b) An agreement that in case such contractor fails to fully and completely perform the contractor's part of the contract within the time therein limited for the performance thereof, the contractor shall pay to the municipality as liquidated damages for such default, a definite sum to be named in the contract for each day's delay in completing such contract after the time therein limited for its completion, which daily sum shall be such an amount as in the judgment of the officer or agency in charge of letting the contract will save the municipality harmless on account of such default and insure the prompt completion of the contract.

(7) CONTRACTS TO BE EXECUTED BY SURETIES. Every contract executed pursuant to sub. (1) shall also be executed by at least 2 sufficient sureties, or a surety company, to be approved by the officer or agency letting the contract. Such sureties or surety company shall guarantee the full performance of the contract by the contractor to the satisfaction of such officer or agency, according to the plans and specifications of such officer or agency, and shall be liable for such performance of the contract, as sureties, in an amount equal to such officer's or agency's estimate of the aggregate cost of the work.

(8) PAYMENT BEFORE COMPLETION OF CONTRACT. When a contractor proceeds properly and with due diligence to perform a contract, the officer or agency which let the contract may, in its discretion, from time to time as the work progresses, grant to the contractor an estimate of the amount already earned for the work done, withholding in all cases until final completion and acceptance of the contract 15% of such estimate when such estimate is less than $100,000, and 10% of such estimate when such estimate is $100,000 or over, which shall entitle the contractor to receive such estimate less the amount withheld.

(9) OPTIONAL CONTRACT PROVISIONS. The officer or agency in charge of negotiating the contract may insert in the specifications of the work reasonable and lawful conditions as to hours of labor and the residence and character of workers to be employed by the contractor and especially, so far as is practicable in the judgment of such officer or agency, such reasonable and lawful conditions as will tend to confine employment on such work, in whole or in part, to permanent and bona fide residents of this state. The officer or agency may do any part of such work by day labor under such conditions as it prescribes. The officer or agency may demand of

such bidders and contractors that all contracts shall be let subject to chs. 102, 103 and 105, to the end that the officer or agency and municipality shall be held harmless. The officer or agency may reject any or all bids or parts thereof for any such work or supplies or materials.

(10) CONFLICTS WITH FEDERAL REGULATIONS. Contracts for projects involving federal funds shall be let under such regulations and conditions as are prescribed by the federal agency controlling such funds, so far as such regulations and conditions conflict with this section.

History: 1979 c. 89; 1981 c. 208; 1991 a. 197, 316; 1995 a. 27.

30.33 Harbor railway belt lines. (1) BOARD TO HAVE POWERS OF RAILROAD CORPORATION. Any municipality operating a public harbor through a board of harbor commissioners may, through such board, construct, maintain or operate railway facilities or a harbor belt line connecting various harbor facilities with one another or with other railroads within the municipality or its vicinity. The board of harbor commissioners is granted all of the rights, powers and privileges conferred upon railroad corporations by ss. 190.02 and 190.025 (3), except such rights, powers and privileges as are conferred upon railroad corporations by s. 190.02 (9). Such facilities or belt line may be constructed, maintained or operated partly outside the corporate limits of the municipality. In constructing, maintaining or operating such facilities or belt line, the board of harbor commissioners has the powers and privileges of railroad corporations and shall be subject to the same restrictions as railroad corporations and to the supervision of the office of the commissioner of railroads, except as to the system of accounting and the payment of wages to employees.

(2) MUNICIPALITY MAY ORGANIZE HARBOR RAILWAY CORPORATION. Any municipality mentioned in sub. (1) may, with the consent of its board of harbor commissioners, organize a railroad corporation for the purpose of constructing, maintaining or operating a harbor belt line or may subscribe for stock in an existing railroad corporation organized for such purpose. If the municipality decides to organize a railroad corporation for such purpose, the governing body thereof may, by resolution, authorize the chief executive officer or presiding officer of such municipality to act, together with 4 citizens to be designated by the officer, as incorporators of such company. Such incorporators shall proceed to incorporate the railroad corporation in accordance with chs. 190 to 192, so far as applicable. Such harbor railroad corporation is subject to the supervisory and regulatory powers of the office of the commissioner of railroads to the same extent as other railroad corporations. The municipality may subscribe to the stock of such harbor railroad corporation and may pay for such stock out of any funds it may lawfully have available for that purpose, including the proceeds of harbor improvement bonds.

History: 1977 c. 29 s. 1654 (9) (f); 1977 c. 273; 1981 c. 347 s. 80 (2); 1993 a. 16, 123; 1997 a. 254.

30.34 Financing harbor improvements and operations generally. (1) HARBOR FUND TO BE CREATED. All municipalities operating a public harbor through a board of harbor commissioners shall establish in the municipal treasury a revolving fund to be known as the "harbor fund". Moneys for such fund may be raised by appropriation from the general fund or by taxation or loan as other moneys in the general fund are raised. Moneys in such fund may be expended only as provided in s. 30.38 (13).

(2) FINANCING DOCK WALLS AND SHORE PROTECTION WALLS. A municipality may pay either or both the assessable and nonassessable parts of the cost of the construction, maintenance or repair of any dock wall or shore protection wall, authorized by s. 30.30 (3), out of its general fund or other available funds, or it may finance such work through the issuance of its negotiable bonds as provided in ch. 67, except that it is not necessary to include such bonds in the municipal budget or to submit the question of their issuance to a referendum vote of the electors. The bonds shall be serial bonds, payable at any time within 10 years and shall bear interest payable either annually or semiannually as the governing body determines. The bonds shall be a direct obligation of the municipality and the full faith and credit of the municipality shall be pledged for their payment. No such bonds shall be issued unless at or before the time of their issuance the governing body levies a direct annual tax sufficient to pay the principal and interest thereon as they fall due.

(3) FINANCING BY MEANS OF NOTES, BONDS OR ASSIGNMENTS OF NET PROFITS. (a) Any municipality may, with the consent of its board of harbor commissioners, finance the cost of acquisition, construction, alteration or repair of any harbor facility by issuing evidences of indebtedness payable only out of the revenue obtained from the public harbor facilities. Such evidences of indebtedness may be revenue bonds, refunding bonds or bond anticipation notes issued under s. 30.35 or 66.1103 or may be pledges or assignments of net profits, issued pursuant to s. 66.0621 (5) as if the harbor facility were a public utility.

(b) The moneys received from the sale of such evidences of indebtedness shall be used solely for the specific purpose for which they were issued. The municipality issuing them shall not be deemed obligated or indebted thereon, and no funds or money of such municipality, except the revenues from the public harbor facilities, shall ever be used for payment or redemption of the evidences of indebtedness, except that the municipality issuing such evidences of indebtedness may at any time, with the consent of its auditing officer or committee, and by a vote of two−thirds of its governing body, assume the obligation of paying the principal and interest of such evidences of indebtedness as are then outstanding. Thereafter, such evidences shall in every respect be held to be outstanding indebtedness of such municipality. The governing body of any municipality assuming an indebtedness under this paragraph shall levy an annual irrepealable tax to pay interest thereon and discharge the principal thereof as required by article XI, section 3, of the constitution.

(c) The holders of evidences of indebtedness issued as authorized by this subsection shall have the rights accorded by s. 66.0621 (4) (b) to holders of revenue bonds issued pursuant to s. 66.0621, but in case of sale by order of any court, there shall be sold only the facility itself without the land on which it is erected. The purchaser at such sale may either remove such facility or may continue to operate the same and collect the revenue thereof, in a fair and businesslike manner, under the supervision of the court, until the outstanding evidences of indebtedness, together with interest until payment, have been paid, together with all costs and charges as determined by the court.

(4) EMERGENCY REPAIR FUND. Any municipality having established a board of harbor commissioners to operate its harbor facilities may create a contingent fund for the purpose of permitting the secretary of the board to pay for repairs to harbor facilities which constitute emergency repairs within the meaning of s. 30.32 (4). The secretary may pay for such repairs out of such fund on the secretary's signature alone.

(5) OTHER FINANCING. Nothing in this section is intended to prevent a municipality not operating its harbor as a commercial enterprise from raising and appropriating funds for construction, improvement, alteration or repair of its harbor and harbor facilities in the same manner as it may raise and appropriate funds for other legitimate municipal purposes.

History: 1973 c. 172; 1981 c. 238; 1983 a. 192; 1983 a. 207 ss. 3, 93 (3); 1991 a. 316; 1999 a. 150 s. 672.

30.35 Financing harbor improvements through bonds or notes. (1) ISSUANCE OF BONDS OR NOTES TO BE AUTHORIZED BY ORDINANCE. Whenever the governing body of a municipality, after having obtained the consent of the board of harbor commissioners, determines to finance the acquisition, construction, alteration or repair of a harbor facility through revenue bonds, refunding bonds or bond anticipation notes, the governing body shall proceed by ordinance to authorize the issuance and sale of such bonds or notes. The ordinance shall set forth the purposes for which the bonds or notes are to be issued and shall state either the

amount of such issue or an amount which such issue shall not exceed. The ordinance shall be offered and read at a regular meeting of the governing body and a notice of the amount and purposes of such bonds or notes shall be published as a class 1 notice, under ch. 985, not less than 10 days prior to the meeting at which such ordinance is to be considered for final passage. The ordinance is not valid unless supported by the affirmative vote of at least three−fourths of all of the members of the governing body taken at a regular meeting held after such publication. No referendum is required before such revenue bonds, refunding bonds or bond anticipation notes are issued.

(2) CONTENTS OF ORDINANCE AUTHORIZING BOND OR NOTE ISSUE. The ordinance authorizing the issuance of revenue bonds, refunding bonds or bond anticipation notes constitutes a contract with the holder of such bonds or notes and shall include covenants and provisions for the security of the bondholders and noteholders and the payment of the bonds or notes as the governing body deems necessary or desirable for the security of the bondholders and noteholders, including, but not limited to, provisions for the establishment of adequate rates or charges for the use of the public harbor facilities, insurance against loss and covenants against the sale or alienation of such facilities and establishment of budgets relating to operation of such facilities. Any such ordinance shall contain provisions for:

(a) Maintenance and operation of the public harbor facilities.

(b) The establishment of a debt amortization and interest fund sufficient to provide for the payment of the principal of, and interest on, the bonds or notes authorized by the ordinance.

(c) The establishment of the bond proceeds funds and reserve funds that the governing body believes necessary or desirable for the security of the bondholders and noteholders.

(2a) MUNICIPALITY TO FIX ADEQUATE RATES. The municipality shall fix rates and charges for the use of the harbor facilities sufficient for the payment of the cost of operation and maintenance of such facilities, for the payment of principal of and interest on any indebtedness incurred for such harbor facilities, and to provide revenues sufficient to comply with any covenants or agreements made by the municipality in any ordinance providing for the issuance of obligations to pay the cost of the acquisition, construction, alteration or repair of such harbor facilities. Equal rates and charges shall be fixed for equal services except that a municipality may fix higher rates and charges for boats that are used for recreational purposes, that do not carry passengers for a fee and that are one or more of the following:

(a) Exempt from the certificate of number and registration requirements under s. 30.51 (2) (a) 3., 5. or 9.

(b) Exempt from the registration requirement under s. 30.51 (2) (c) 3.

(c) Owned by persons who are not residents of this state.

(2m) TERMS OF THE BONDS AND NOTES. The provisions applicable to revenue bonds under s. 66.0621 (4) (i) and (L) apply to revenue bonds, refunding bonds and bond anticipation notes under this section. The provisions applicable to revenue bonds under s. 66.0621 (4) (a) shall apply to revenue bonds, refunding bonds and bond anticipation notes under this section except that the ordinance or resolution authorizing the bonds or notes may specify the time they mature, the amounts in which they mature, the conditions of redemption, the number of times they are issuable and the ranking of the issues.

(3) FORM OF THE BONDS OR NOTES. Revenue bonds, refunding bonds and bond anticipation notes shall be in the form designated by the governing body, shall be executed as provided in s. 67.08 (1) and may be registered under s. 67.09.

(4) BONDS AND NOTES NOT AN OBLIGATION OF THE MUNICIPALITY. Bonds and notes issued pursuant to this section shall not be the general obligation of the municipality and shall expressly so state on their face. Any indebtedness created pursuant to this section is deemed to be incurred for a public utility, and shall not be included in indebtedness subject to any debt limitation.

(5) SALE OF THE BONDS OR NOTES. The governing body may authorize the purchase of a part or all of such revenue bonds, refunding bonds or bond anticipation notes out of moneys accruing to or held in the debt amortization and interest fund or any other municipal funds not immediately needed, and such funds may be invested in such bonds or notes. If the municipality does not purchase such bonds or notes, as authorized by this subsection, or determines to sell such bonds or notes after having so purchased them, the bonds or notes shall be offered at sale in the manner and at the time and place that the governing body determines. In cities of the 1st class, such bonds or notes shall be sold under the direction of the public debt commission.

(6) BONDHOLDERS AND NOTEHOLDERS HAVE LIEN. Title to all of the harbor facilities for which revenue bonds, refunding bonds or bond anticipation notes are issued remains in the municipality, but a statutory lien exists in favor of the bondholders and noteholders against the facilities which have been acquired, constructed, altered or remodeled and the cost of which has been financed with funds obtained through the issuance of such bonds and notes. To provide further security for the bondholders and noteholders, the ordinance or resolution authorizing the issuance of revenue bonds, refunding bonds or bond anticipation notes may provide for a pledge of the revenues of the facilities, including, if the facilities are leased under sub. (6), an assignment of all or part of the municipality's rights as lessor.

(7) BONDS AND NOTES MAY BE PURCHASED BY FIDUCIARIES. Bonds and notes issued pursuant to this section are hereby made securities in which any of the following may legally invest any funds, including capital, belonging to them or within their control:

(a) State and municipal officers and bodies.

(b) Banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business.

(d) Personal representatives, guardians, trustees, and other fiduciaries.

(e) Persons authorized to invest in bonds or other obligations of the state.

(8) BONDS AND NOTES MAY BE ACCEPTED BY STATE OR MUNICIPAL OFFICER. The bonds and notes issued pursuant to this section are made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency for which the deposit of bonds or other obligations of the state is authorized.

History: 1973 c. 172; 1979 c. 279; 1981 c. 238; 1983 a. 24; 1983 a. 207 s. 93 (3); 1991 a. 39; 1999 a. 150 s. 672; 2001 a. 16, 102.

30.37 Boards of harbor commissioners authorized. **(1)** WHO MAY CREATE. (a) Except as provided in par. (b), a municipality situated on a navigable waterway may create a board of harbor commissioners to exercise the powers and perform the duties conferred upon such boards by law.

(b) A county may not create a board of harbor commissioners if there exists an active town, village or city board of harbor commissioners within the county.

(2) HOW CREATED. Boards of harbor commissioners shall be created by resolution of the governing body of the municipality. Such resolution shall state whether the board is to be composed of 3, 5, 7 or 9 members and shall fix the date of commencement of the original term of office. Such resolution also shall state the length of the term of each member of the first board to be appointed, so that the term of one or more will expire in one year, one or more in 2 years, and one or more in 3 years.

(3) APPOINTMENTS, TERMS, QUALIFICATION AND COMPENSATION OF MEMBERS. As soon as possible after the passage of the resolution creating such board, the chief executive officer of the municipality, in the case of a city or village board of harbor commissioners, or the chairperson of the town board or the chairperson of the county board, in the case of a town or county board of harbor commissioners, shall appoint the members of the board and designate

the length of the term of each member thereof in accordance with the resolution creating the board. Thereafter, at the expiration of the term of any member, he or she shall appoint a successor for a 3−year term. All appointments are subject to confirmation by the governing body of the municipality. A person appointed to the board shall be a qualified elector of the municipality which created the board and a resident of the municipality for at least 3 years. Not more than one member of the governing body of such municipality is eligible for appointment to the board. A person appointed to the board shall serve until a successor has been appointed and qualifies. Members of the board shall receive no compensation for their services but they shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

(4) ORGANIZATION; OFFICERS. As soon as possible after the appointment and confirmation of the members of the board, they shall meet and organize by electing from among their members a president and a vice president. The board shall hold meetings at such times and places as it determines and may adopt such bylaws consistent with law as seem practicable for its government.

(5) EMPLOYEES. The board shall employ a secretary, not a member of the board, and fix the secretary's salary, and may employ such other persons, including a harbor master, as it deems necessary for the proper performance of its functions, and fix their duties and compensation. If the municipality which created the board has a civil service system for its employees, all appointments shall be made pursuant to such system.

(6) EFFECT OF REVISION ON EXISTING HARBOR BOARDS. Boards of harbor commissioners, harbor commissions or dock and harbor boards in existence on January 1, 1960 are deemed to be valid boards of harbor commissioners as if created pursuant to this section and are vested with all the powers and duties conferred upon boards of harbor commissioners by this chapter. The members of such boards may continue to hold office until their terms expire, notwithstanding any provision of this section which would otherwise disqualify them, but appointments made after January 1, 1960 shall be made only in accordance with this section. Nothing in this subsection is intended to prevent a municipality by resolution from abolishing its board of harbor commissioners, harbor commission or dock and harbor board.

(7) MILWAUKEE COUNTY. Milwaukee County, with respect to the land ceded or granted to Milwaukee County as described in 1997 Wisconsin Act 70, section 3, may directly exercise all of the powers and perform all of the duties conferred on a board of harbor commissioners under ss. 30.34, 30.35 and 30.38, but Milwaukee County may not create a board of harbor commissioners if sub. (1) (b) applies. Milwaukee County shall have exclusive jurisdiction over the operation, administration, maintenance, improvement, alteration and repair of any marina facility or marina related anchorage located on this land.

History: 1983 a. 192; 1987 a. 289; 1989 a. 31; 1989 a. 56. s. 258; 1991 a. 316; 1997 a. 70.

30.38 Powers and duties of boards of harbor commissioners. (1) RELATIONSHIP TO MUNICIPALITY'S GOVERNING BODY. (a) Except as otherwise expressly provided, a board of harbor commissioners may exercise its powers and perform its duties without first obtaining the consent of the governing body of the municipality which created it, but in no event is the board empowered to financially obligate in any manner this state without the consent of the state legislature, or the municipality in which it operates without the consent of the governing body of such municipality.

(b) It is the public policy of this state that, so far as possible, the board of harbor commissioners shall have exclusive control of the commercial aspects of the day−to−day operation of the public harbor and public harbor facilities, as set forth in sub. (8), and the governing body of the municipality shall have exclusive control of the governmental aspects relating to public health, order and safety. No municipality may exercise the powers set forth in subs. (8) (a) or (9), except through a board of harbor commissioners.

(c) Insofar as consistent with the principle set forth in par. (b), all powers not expressly conferred upon the board of harbor commissioners are reserved to the governing body of the municipality.

(2) MUNICIPAL DEPARTMENTS TO ASSIST BOARD OF HARBOR COMMISSIONERS. A board of harbor commissioners may make written requests to any other officer or agency of the municipality for assistance in the performance of its duties and such officer or agency shall comply with such request if the requested assistance involves the type of work normally performed by such officer or agency and the assistance will not substantially affect the budget of such officer or agency. If a difference arises between the officer or agency and the board as to whether such officer or agency is required to render the requested assistance, the ruling of the governing body of the municipality with respect thereto shall be final.

(3) CONTRACT PROCEDURES. In the letting of work relative to the construction, repair or maintenance of a harbor or harbor facility or in the purchase of equipment, supplies or materials relative to carrying out its powers and duties, a board of harbor commissioners shall be governed by the procedures and requirements set forth in s. 30.32.

(4) TITLE TO LANDS AND FACILITIES. Title to harbor lands and facilities shall vest in the municipality.

(5) PLANNING AND EFFECTUATING HARBOR IMPROVEMENTS. A board of harbor commissioners shall make such plans as it deems necessary for the improvement of the harbor over which it has jurisdiction, so as to adequately provide for the needs of commerce and shipping, including the efficient handling of freight and passenger traffic between the waterways of the harbor and air and land transportation terminals. Among other things, such planning may include plans for the acquisition of land for harbor purposes, including industrial sites, plans for laying out service roads, plans for the construction and acquisition of harbor facilities designed to enlarge or improve harbor operations, and plans for the improvement of publicly−owned harbor facilities. In planning for service roads the board shall seek the advice and cooperation of the local highway authorities and in all cases shall seek the advice and cooperation of the municipal planning agency, if any. The board shall not carry out any such plans until they have been submitted to and approved by the governing body of the municipality. When such plans have been so approved, either as submitted or in modified form, the board shall be in charge of carrying such plans into effect.

(6) LEASING HARBOR LANDS AND FACILITIES. A board of harbor commissioners may lease to any party, either for exclusive or common use, such parcels of publicly−owned harbor lands or such publicly−owned harbor facilities as it deems expedient, provided such lease is for any purpose or use requiring, involving or connected with the construction, operation, maintenance or use of any harbor facility. Such board may also lease, for revenue purposes, any of the publicly−owned harbor lands under its jurisdiction, not actually in use for harbor purposes, to be used for any purpose deemed satisfactory to the board. No leases of municipally−owned harbor lands or harbor facilities made pursuant to this subsection are valid until approved by the governing body of the municipality, unless such governing body has authorized the board to make such leases without its approval.

(7) MAINTENANCE OF HARBOR FACILITIES. The board of harbor commissioners shall be in charge of the maintenance of the public harbor facilities. To the extent that funds, including revenue from harbor operations, are available for such purpose, the board may make repairs to harbor facilities without first obtaining the consent of the governing body of the municipality.

(8) HARBOR OPERATION. (a) A board of harbor commissioners shall have exclusive control over the commercial aspects of the day−to−day operation of the public harbor and public harbor facilities. Among other things the board may:

1. Operate publicly−owned or leased wharf and terminal facilities and handling equipment.

2. Operate publicly−owned railroad beltlines or other essential railroad facilities, or lease railroad facilities.

3. Assign berths at publicly−owned or leased harbor facilities.

4. Maintain guards at publicly−owned or leased harbor facilities.

(b) When so authorized by the municipal governing body, a board of harbor commissioners also may:

1. Operate airport facilities owned or leased by the municipality and located on or contiguous to the harbor lands.

2. Operate municipal harbor craft, such as fireboats, tugs, dredges, barges, lighters and inspection boats.

3. Acquire, charter and operate vessels for use in domestic and foreign commerce.

(c) In lieu of operating the publicly−owned harbor facilities, a board of harbor commissioners may lease such facilities for operation by the lessee, but the board shall retain such control over the lessee as will enable it to make certain that the harbor is operated in accordance with the public policy set forth in par. (e). No lease of municipally−owned facilities is valid until approved by the governing body of the municipality, unless such governing body has authorized the board to make such lease without its approval.

(d) A board of harbor commissioners may adopt rules to facilitate the exercise of its powers and duties under this subsection. Copies of such rules shall be made available to interested persons upon request.

(e) In exercising its powers under this subsection, a board of harbor commissioners shall be guided by a policy designed to maintain the operation of the harbor in a continuous, peaceful and efficient manner and shall maintain its services so as to effectuate this policy and shall handle without discrimination, any valid and legitimate cargo. But nothing in this subsection shall prevent the board or its lessees from adopting reasonable rules regarding noxious cargo or explosives.

(f) A board of harbor commissioners shall have no jurisdiction over public bridges.

(9) FIXING FEES. A board of harbor commissioners shall fix and regulate all fees and charges for use of the publicly owned and operated harbor facilities and for other services rendered. All such fees and charges are subject to the approval of the governing body of the municipality. Copies of the schedule of fees and charges shall be made available to interested persons upon request. Equal fees shall be charged for equal services except that higher fees may be charged for boats that are used for recreational purposes, that do not carry passengers for a fee and that are one or more of the following:

(a) Exempt from the certificate of number and registration requirements under s. 30.51 (2) (a) 3., 5. or 9.

(b) Exempt from the registration requirement under s. 30.51 (2) (c) 3.

(c) Owned by persons who are not residents of this state.

(10) ACCOUNTS AND STATISTICS. A board of harbor commissioners shall maintain an adequate system of accounts with respect to its operations, which system of accounts shall be in conformity with the system used by the municipality. The board also shall maintain statistics with respect to the traffic and finances of the port.

(11) PROMOTION ACTIVITIES. A board of harbor commissioners may engage in activities designed to promote trade and traffic through the port and for this purpose may, among other things, make representations before official public bodies and intervene in rate case proceedings.

(12) RESPONSIBILITIES RELATIVE TO JOINT HARBORS. If a board of harbor commissioners is in charge of a harbor which lies partly in this state and partly in another state, the board shall be the official body that represents the interests of the municipality that created the board in such joint harbor, including the harbor's facilities and shipping interests. The board shall study the needs of the joint harbor, including the harbor's facilities and shipping interests, with reference to both its joint aspects and its aspects relating to this state. The board from time to time shall make such recommendations, as the board considers needful and practical, to the proper authorities for the proper maintenance, improvement and betterment of the joint harbor, including the harbor's facilities and shipping interests. The board may take steps within its power as seem practicable to cause such recommendations to be carried into effect. The board may also meet and act jointly with the agency representing the interests of the other state in the joint harbor, on matters of common interest and which affect the joint harbor including the harbor's facilities. It may join with such agency in adopting a general plan for the development of the joint harbor and in making such other recommendations as seem advisable and may act jointly with such agency in doing all things within its power to cause such plans and recommendations to be carried into effect.

(13) FUNDS; DISBURSEMENTS; NET REVENUE. (a) All moneys appropriated to a board of harbor commissioners, all revenues derived from the operation of the public harbor except in the case of a joint harbor revenue from joint improvements before division thereof, and all other revenues of the board shall be paid into the municipal treasury and credited to the harbor fund, except that revenues assigned or pledged under s. 30.35 (6) or 66.1103 shall be paid into the fund or funds provided for in the ordinance or resolution authorizing the issuance of the bonds and shall be applied in accordance with that ordinance or resolution.

(b) Subject to the limitations and conditions otherwise expressed in this section and to a budget approved by the municipal governing body, moneys in the harbor fund may be used for the acquisition, construction, improvement, repair, maintenance, operation and administration of the public harbor and harbor facilities and for the acquisition, chartering and operation of vessels under sub. (8) (b) 3. Except as provided in s. 30.34 (4), such moneys shall be paid out of the harbor fund only on orders signed by the president and secretary of the board, or some other official authorized by the board, after the allowance of claims by the board or on orders entered in the minutes of the board. Disbursements from the harbor fund shall be audited as other municipal disbursements are audited; however, the board may determine on some other procedure it deems appropriate for the consideration of claims and the reporting thereof notwithstanding the provisions of this paragraph. If a procedure other than that set forth in this paragraph is prescribed by the board, the approval of the chief auditing officer shall be obtained.

(c) At the end of each fiscal year, the board shall compute its net revenue, if any, after paying the costs of operating, maintaining and improving the harbor. Thereupon, the board shall certify the amount of such net revenue, if any, to the municipal treasurer who shall cause such amount to be transferred from the harbor fund to the general fund of the municipality.

(14) REPORTS OF EXPENDITURES. A board of harbor commissioners shall, on or before October 1 of each year, file with the clerk of the municipality which created the board, a detailed statement of the amount of money that will be required to meet its expenses and needs for the ensuing year, and the clerk shall place such statement before the governing body in due course so that it may levy such taxes and make such appropriations as it deems practical to defray the expenses and meet the needs and requirements of the board in the performance of its functions.

(15) ANNUAL REPORTS. A board of harbor commissioners shall make a report annually to the governing body of the municipality which created it, giving an account of its activities and an account of its revenues and expenditures in the preceding calendar year. Such report may contain such other matters as the board deems of interest, including such recommendations as it deems to

be for the best interest of the municipality and its harbor, harbor facilities and shipping interests.

History: 1981 c. 238; 1985 a. 29; 1987 a. 27; 1991 a. 39; 1995 a. 130, 225; 1999 a. 150 s. 672; 2001 a. 16.

A fee assessed for revenue purposes, which bears no relation to the costs of maintaining harbor facilities, is a tax that is not authorized under sub. (9). Racine Marina Associates v. City of Racine, 175 Wis. 2d 614, 499 N.W.2d 715 (Ct. App. 1993).

SUBCHAPTER IV

LOWER WISCONSIN STATE RIVERWAY

Cross−reference: See also RB and s. NR 103.04, Wis. adm. code.

30.40 Definitions. In ss. 30.40 to 30.49:

(1) "Agricultural use" means beekeeping; dairying; egg production; feedlots; grazing; floriculture; raising of livestock; raising of poultry; raising of fruits, nuts and berries; raising of grains, grass, mint and seed crops; raising of vegetables; and sod farming.

(1r) "Bluff zone" means land in the riverway in the areas that are 200 feet in width from behind the bluff line to 100 feet below the bluff line.

(2) "Board" means the Lower Wisconsin State Riverway board.

(3) "Boat" has the meaning given in s. 30.50 (2).

(3g) "Forester" means a person who is employed by the department to carry out assigned forest management responsibilities or who has received a bachelor's or higher degree from a school of forestry with curriculum accredited by the society of American foresters in the management of forest resources.

(3r) "High−voltage transmission line" means a conductor of electric energy exceeding one mile in length designed for operation at a nominal voltage of 100 kilovolts or more, together with associated facilities or structures.

(4) "Highway" means a way or thoroughfare, except a waterway, that is used for vehicular travel by the public.

(6) "Mobile home" has the meaning given in s. 101.91 (10).

(7) "Modify" means to renovate, remodel, expand in size or otherwise change a structure that is not damaged or destroyed.

(7m) "Nonmetallic mining" has the meaning given in s. 295.11 (3).

(8) "Pedestrian" has the meaning given in s. 340.01 (43).

(9) "Person" means a natural person, corporation, limited liability company, partnership, association, cooperative, unincorporated cooperative association, municipality or other local governmental unit, private or public utility, municipal power district, estate or trust, the United States, a federal agency, the state of Wisconsin or a state agency.

(10) Notwithstanding s. 30.01 (5), "pier" means a structure extending into the river from the shore with water on both sides.

(10m) "Private drive" means a way in private ownership that is used for vehicular travel upon a single parcel of real property.

(11) "Private road" means a way or thoroughfare in private ownership and used for vehicular travel between 2 or more parcels of real property, not under common ownership, and a highway.

(12) "Public access site" means a site owned by the state or a municipality and that provides public access to the river for boats and for recreational users. "Public access site" includes a structure in conjunction with the site that is necessary for the operation and use by the public of the site.

(12m) "Recreational trail" means an unpaved trail or pathway that is used for recreational purposes and is not necessary for access to the river due to the difficulty of the terrain.

(13) "Refuse" means combustible and noncombustible rubbish, including, but not limited to, ashes, paper, glass, cloth, wood, metal and litter.

(14) "River" means the Wisconsin River downstream from the dam at Prairie du Sac.

(14m) "River edge zone" means land in the riverway in the areas that begin from the point at which tree growth begins at the edge of the river and that extend 75 feet landward from that point.

(15) "Riverway" means the area within the boundaries of the Lower Wisconsin State Riverway.

(16) "Solid waste" has the meaning given in s. 289.01 (33).

(17) "Stairway" means a structure constructed of wood or other material that is necessary due to the steepness of a slope for access to the river.

(18) "Structure" means a building, facility or other unit that is constructed or otherwise erected.

(18m) "Timber" means standing trees which, because of their size, quality and number, are marketable.

(19) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for one of the following:

(a) The transmission or distribution of electrical power or light that is not a high−voltage transmission line.

(b) The transmission, distribution or delivery of heat, water, gas, sewer, telegraph or telecommunication services.

(20) "Visible from the river" means possible to be seen from any point on the river.

(21) "Visually inconspicuous" means difficult to be seen and not readily noticeable from any point on the river during the time when the leaves are on the deciduous trees.

(22) "Walkway" means a paved or unpaved trail or pathway or a structure constructed of wood or other material that is necessary due to the difficulty of the terrain for access to the river.

(22m) "Waterproof container" means a can, bucket, bag, box or other similar receptacle made of a material that retains its usefulness when exposed to water.

(23) Notwithstanding s. 30.01 (8), "wharf" means a structure in the river extending along the shore and generally connected with the uplands throughout its length.

(23m) "Woody vegetation" includes trees that are not timber.

(24) "Working day" has the meaning given in s. 227.01 (14).

History: 1989 a. 31; 1991 a. 76; 1993 a. 112; 1995 a. 211, 227; 1997 a. 35; 2005 a. 441; 2007 a. 11.

30.41 Creation. (1) There is created a Lower Wisconsin State Riverway consisting of land as designated by the natural resources board.

(2) The department shall publish as an appendix to ch. NR 45, Wis. adm. code, a map and a description of the riverway.

History: 1989 a. 31.

30.42 Departmental duties, powers, prohibitions. (1) The department shall:

(a) Manage the land in the riverway under its ownership, supervision, management or control in conformity with ss. 30.40 to 30.49.

(b) Promote to the recreational users of the riverway an appreciation of the physical characteristics of the riverway and an appreciation of the local history, traditions and culture of the river valley.

(c) Consult with the board and with municipalities located at least in part in or adjacent to the riverway on issues concerning the riverway.

(d) 1. Promulgate rules that are applicable only to land in the riverway to regulate the cutting and harvesting of timber so that the effect of cutting or harvesting of timber on the scenic beauty and the natural value of the riverway is minimized. For land that is in the river edge zone or the bluff zone, the rules promulgated under this paragraph shall require that the cutting and harvesting of timber be solely by selection cutting and that the minimum basal area for the residual stand of timber be 60 square feet per acre. The rules promulgated under this paragraph do not apply to

any cutting or harvesting of timber subject to regulation under s. 30.43 (3).

2. For purposes of subd. 1., the department shall, by rule, define "basal area" and "selection cutting".

(e) For each county named in s. 15.445 (3) (b), assign a department employee whose office is in the county to serve as a liaison representative on issues concerning the riverway.

(f) Encourage an owner of land who on August 9, 1989, is subject to a contract under subch. I of ch. 77 or an order designating managed forest land under subch. VI of ch. 77 to voluntarily modify the contract or amend the order to require compliance with the rules regulating timber cutting and harvesting promulgated under par. (d).

(2) The department may:

(a) Acquire land in the riverway under s. 23.09 (2) (d) including easements and rights in land under s. 23.09 (10).

(b) Enter into agreements with other agencies or persons to provide continuing and necessary maintenance, management, protection, husbandry and support for the land in the riverway under the ownership, supervision, management or control of the department.

(3) Notwithstanding s. 227.11, the department may not promulgate rules interpreting or establishing procedures for ss. 30.44 to 30.46 except for the promulgation of rules under sub. (1) (d).

History: 1989 a. 31; 1991 a. 76; 1995 a. 27, 211.

Cross−reference: See also ch. NR 37, Wis. adm. code.

30.43 Board duties. The board shall:

(1) Review applications for permits under s. 30.44 (1) to (5) and issue permits for activities that comply with their applicable performance standards.

(3) Promulgate rules establishing procedures for the cutting or harvesting of timber or the cutting of woody vegetation in order to restore or maintain prairies or other native plant communities, to enhance wildlife habitat or to maintain confirmed archaeological sites. The rules shall require the person proposing the cutting or harvesting to prepare a management plan and obtain approval of the management plan from the department.

History: 1989 a. 31; 1991 a. 76; 1995 a. 211.

30.435 Board powers. The board may:

(1) Grant waivers under s. 30.44 (8) (c) and (f) and impose conditions under s. 30.44 (7).

(2) Issue general permits under s. 30.44 (1) (f).

(2m) Promulgate rules and otherwise act under s. 30.443.

(3) Enter into contracts to carry out its duties and powers under ss. 30.40 to 30.49.

(4) Employ staff outside the classified service in accordance with s. 16.505.

(5) Inform or advise a municipality that has land located outside the riverway as to the impact the development of the land may have on the riverway.

(6) Advise or make a recommendation to a city or village that has land adjacent to the riverway to encourage the city or village to adopt ordinances or other rules or regulations that preserve the scenic value of that land.

(7) Report to the legislature on the effectiveness of ss. 30.44 to 30.49.

(8) Advise the department on any conflict between the recreational use in the riverway and ss. 30.44 (1) to (5), 30.445 and 30.45 to 30.48.

(9) Delegate to its staff the power to:

(a) Issue, grant waivers to and impose conditions on permits, other than general permits.

(b) Enter into contracts.

History: 1989 a. 31; 1991 a. 76; 1995 a. 211.

30.44 Permits and waivers; board procedures. **(1)** STRUCTURES; MOBILE HOMES. (a) For purposes of this subsection, notwithstanding s. 30.40 (18), "structure" excludes boat shelters, boathouses, bridges, dams, fishing rafts, fixed houseboats, piers, public access sites, stairways, swimming rafts, high−voltage transmission lines, utility facilities, walkways, wharves and any other structures that the board excludes by rule if the structures excluded by rule are of a minimal size or are of a type that is not visible from the river.

(b) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction of a structure, including clearing or grading the land for the structure.

2. Placement or replacement of a mobile home.

3. Modification of a structure or a mobile home.

4. Repair of a damaged structure or reconstruction of a destroyed structure unless exempt under par. (g).

5. Repair of a mobile home unless exempt under par. (g).

(c) A person may not be issued a permit for an activity in par. (b) on land that is visible from the river and that is in the riverway unless all of the following performance standards are met:

1. Sufficient vegetation exists on the land to allow the structure or mobile home to be visually inconspicuous.

2. The structure or mobile home shall not be higher than the surrounding vegetation during the time when the leaves are on the deciduous trees.

3. Visual impact shall be minimized by the use of exterior colors that harmonize with the natural surroundings during the time when the leaves are on the deciduous trees and by the limited use of glass or other reflective materials, except that a structure that is for agricultural use may be painted in a traditional manner in red or white.

4. The natural slope of the land shall be 20% or less.

4m. The person being issued the permit will comply with any applicable standards that the board imposes under s. 30.443 (2).

(d) A person may not be issued a permit for an activity in par. (b) on land that is not visible from the river and that is in the riverway unless the performance standard in par. (e) is met.

(e) The height of the structure or mobile home shall not result in its being visible from the river.

(f) For land in the riverway that is not visible from the river, the board may issue a general permit for an activity in par. (b) that is applicable to a designated area of the riverway instead of requiring applications for individual permits for the activity under par. (b). A person engaging in an activity in par. (b) in an area for which a general permit has been issued for the activity shall comply with the performance standard in par. (e).

(g) Paragraphs (b) to (f) do not apply to the repair of a damaged structure or mobile home or to the reconstruction of a destroyed structure if all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair or reconstruction.

2. The repaired mobile home or the repaired or reconstructed structure will not be larger in size or more visible from the river than it was immediately before it was damaged or destroyed.

(2) WALKWAYS; STAIRWAYS. (a) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction of a stairway or walkway.

2. Modification of a stairway or walkway.

3. Repair of a damaged stairway or walkway or reconstruction of a destroyed stairway or walkway unless exempt under par. (c).

(b) A person may not be issued a permit for an activity in par. (a) unless the following performance standards are met:

1. The walkway or stairway shall be visually inconspicuous.

2. The walkway or stairway shall have sufficient safeguards to minimize erosion.

3. The walkway or stairway shall be for pedestrians only.

(c) Paragraphs (a) and (b) do not apply to the repair of a damaged stairway or walkway or to the reconstruction of a destroyed stairway or walkway if all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair or reconstruction.

2. The repaired or reconstructed stairway or walkway will not be larger in size or more visible from the river than it was immediately before it was damaged or destroyed.

4. The repaired or reconstructed stairway or walkway shall be for pedestrians only.

(3) FORESTRY. (a) A person shall apply for and receive a permit before cutting or harvesting timber on land in the riverway.

(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (bn) is met.

(bn) The cutting and harvesting of timber shall comply with the rules regulating timber cutting and harvesting promulgated by the department under s. 30.42 (1) (d) or by the board under s. 30.43 (3).

(c) This subsection does not apply to the following:

1. Timber subject to a contract under subch. I of ch. 77 that is in effect on October 31, 1989, except as provided in s. 77.17.

2. Timber subject to an order designating managed forest land under subch. VI of ch. 77 that is in effect on October 31, 1989, except as provided in s. 77.82 (11m).

2m. The cutting of timber that is necessary for maintenance of an easement or a right−of−way for a highway, a railroad, a high−voltage transmission line or a utility facility.

2n. The cutting of timber that is necessary for the construction, reconstruction, modification, repair or maintenance of a recreational trail.

2p. The cutting of timber that is necessary for maintenance of the right−of−way for a private drive or a private road if the width of the area subject to cutting does not exceed the minimum width necessary for safe travel, but not to exceed 20 feet for a private drive or 30 feet for a private road.

2r. Diseased timber if a forester has issued a written determination that the timber is subject to an actual, potential or incipient infestation or infection by an insect or disease that is harmful to the timber.

3. Timber damaged by natural causes.

4. Timber cut on land that is more than 75 feet beyond the high−water mark of the river and that is owned or occupied by a person if the cut timber is used as firewood, fence posts or Christmas trees for agricultural or household use and if the cut timber is not sold or bartered to another person.

5. Timber cut pursuant to a written contract between private parties that is entered into before October 31, 1989, if a copy of the contract has been filed with the board before the next cutting that occurs after December 6, 1991, together with an affidavit on a form supplied by the board. The affidavit shall state that the contract was entered before October 31, 1989, and shall inform the person filing the contract and affidavit of the penalty for false swearing under s. 946.32.

(3e) NONMETALLIC MINING. (a) A person shall apply for and receive a permit before beginning or expanding nonmetallic mining on land in the riverway that is not visible from the river when the leaves are on the deciduous trees.

(b) A person may not be issued a permit for an activity in par. (a) unless the following performance standards are met:

1. Any structure and any stockpiled minerals or soil associated with the nonmetallic mining activity may not be visible from the river when the leaves are on the deciduous trees.

2. The excavation for the nonmetallic mining activity may not be visible from the river when the leaves are on the deciduous trees.

(3m) UTILITY FACILITIES; HIGH−VOLTAGE TRANSMISSION LINES. (a) A person shall apply to and receive a permit from the board before constructing, modifying or relocating a utility facility or high−voltage transmission line that is in the riverway.

(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (c) is met and, for a high−voltage transmission line, the board finds that the activity will not impair, to the extent practicable, the scenic beauty or natural value of the riverway.

(c) All reasonable efforts, as determined by the board, shall be taken to minimize the visual impact of the utility facility.

(d) The use of an aboveground utility facility shall not be a basis for the board to determine that all reasonable efforts will not be taken to minimize the visual impact. The board may not require a high−voltage transmission line to be placed underground in order to make the finding specified in par. (b).

(4) PUBLIC ACCESS SITES. (a) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction or modification of a public access site.

2. Repair of a damaged public access site or reconstruction of a destroyed public access site unless exempt under par. (d).

(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (c) is met.

(c) All reasonable efforts, as determined by the board, shall be taken to minimize the visual impact of the public access site, including the use of exterior colors that harmonize with the surroundings and the limited use of glass or other reflective materials.

(d) Paragraphs (a) to (c) do not apply to the repair of a damaged public access site or to the reconstruction of a destroyed public access site if all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair or reconstruction.

2. The repaired or reconstructed public access site will not be larger in size or more visible from the river than it was immediately before it was damaged or destroyed.

(5) BRIDGES. (a) A person shall apply for and receive a permit before starting any of the following activities on land in the riverway:

1. Construction, modification or reconstruction of a bridge.

2. Repair of a bridge unless exempt under par. (d).

(b) A person may not be issued a permit for an activity in par. (a) unless the performance standard in par. (c) is met.

(c) Visual impact shall be minimized by the use of exterior colors that harmonize with the surroundings and by the limited use of glass or other reflective materials.

(d) Paragraphs (a) and (b) do not apply to the repair of a bridge in the riverway if all of the following are applicable:

1. No municipal ordinance or other municipal regulation prohibits the repair.

2. The repaired bridge will not be larger in size or more visible from the river than it was immediately before it was damaged.

(7) CONDITIONS ON PERMITS. The board may impose on a permit a condition that is necessary to assure compliance with the performance standards in subs. (1) to (5) or to assure that the activity is completed within a reasonable time.

(8) BOARD PROCEDURE. (a) Except as provided under sub. (1) (f), a person shall apply for and be issued by the board a permit for an activity in subs. (1) to (5) for land in the riverway.

(b) The board may not issue a permit under par. (a) if the performance standards for the activity are not met.

(c) The board may grant a waiver of a performance standard for an activity in sub. (1) (b) and issue a permit under par. (a) or may grant a waiver authorizing an activity prohibited under s. 30.45 (3) or (3m) for land in the riverway if one of the following applies:

1. A municipality requests the waiver that is necessary for municipal purposes.

2. An individual requests the waiver, enforcement of the performance standard or prohibition will cause unnecessary hardship to the individual and the visual impact of the activity will be minimized to the greatest degree possible.

(d) For purposes of par. (c) 2., unnecessary hardship must be:

1. Compelling personal needs of the individual that are not self−imposed or self−created and that are not solely based on the financial hardship of the individual; or

2. Natural causes beyond the control of the individual.

(e) The board may not grant a waiver under par. (c) 2. for unnecessary hardship due to natural causes beyond the control of the individual if the reason for granting the waiver is based solely on the financial hardship of the individual.

(f) 1. The board may grant a waiver to modify a limitation for a wharf in the riverway, as specified under s. 30.45 (9) (a), if an individual requests the waiver, if enforcement of the limitation will cause unnecessary hardship to the individual and if the visual impact of the wharf will be minimized to the greatest degree possible.

2. For purposes of subd. 1., unnecessary hardship must be compelling personal needs of the individual that are not self−imposed or self−created and that are not solely based on the financial hardship of the individual.

(10) REVOCATION OF PERMIT. (a) The board shall revoke a permit issued under sub. (8) or s. 30.44 (9), 1993 stats., if a person fails to comply with the performance standards for the permit that are not waived under sub. (8) (c) or s. 30.44 (9) (c), 1993 stats.

(b) The board shall revoke a general permit issued under sub. (1) (f) if it finds the performance standard under sub. (1) (e) is not being met in the designated area.

History: 1989 a. 31; 1991 a. 76, 189; 1995 a. 201, 211; 1997 a. 35, 204.
Cross−reference: See also chs. NR 37 and RB 2, Wis. adm. code.

30.443 Erosion prevention and control. (1) For activities under s. 30.44 (1) (b), the board may do any of the following:

(a) Promulgate rules establishing standards for erosion prevention or control at sites in the riverway that are not subject to the standards established under s. 101.1206 (1), 101.653 (2), or 281.33 (3) (a) and that have a natural slope of 20% or less.

(b) Promulgate rules establishing standards for erosion prevention or control that are in addition to standards established under ss. 101.1206 (1) and 101.653 (2) for sites in the riverway that are subject to those standards and that have a natural slope of 12% or more but 20% or less.

(2) The board may impose any of the applicable standards established under sub. (1) (a) or (b) or ss. 101.1206 (1) or 101.653 (2) as a condition for receiving a permit under s. 30.44 (1), and the board may promulgate rules to enforce these standards in the riverway.

History: 1995 a. 211; 2009 a. 28; 2011 a. 32; 2013 a. 20.

30.445 Piers. (1) No person may construct, relocate or modify a pier or reconstruct a destroyed pier in the riverway.

(2) No person may have or maintain a pier in the riverway after November 30, 1990, unless the board has issued a permit for the pier under sub. (3) and the board has not revoked the permit under sub. (6).

(3) Any person who owns a pier in the riverway that was in existence on October 31, 1989, may, before September 1, 1990, apply for a permit from the board to have and maintain the pier. Upon application the board shall issue the permit.

(3m) (a) Notwithstanding subs. (2), (3) and (7), the board shall issue a permit to have and maintain a pier in the riverway to an owner of a pier in the riverway that was in existence on October 31, 1989, if the person applies for the permit before September 1, 1992, and if at least a two−thirds majority of the board votes to approve the issuance of the permit.

(b) If an owner fails to apply for a permit under par. (a) before September 1, 1992, or to remove the pier before that date, or if the board fails to approve the permit, the owner shall remove the pier before July 1, 1993.

(4) A permit issued under sub. (3) or (3m) authorizes the person to whom the permit is issued to have and maintain the pier in the riverway on the condition that it be maintained in at least as good condition as it was in on the date of the application for the permit.

(5) A permit issued under sub. (3) or (3m) authorizes repairs to the pier unless any of the following applies:

(a) A municipal ordinance or other municipal regulation prohibits the repair.

(b) The repaired pier will be larger in size or more visible from the river than it was immediately before the damage.

(6) The board shall revoke any permit issued under sub. (3) or (3m) if the owner of the pier does not comply with sub. (4) or (5).

(7) If a person who owns a pier in the riverway that was in existence on October 31, 1989, does not apply for a permit from the board or has not removed the pier before September 1, 1990, the person shall remove the pier by November 30, 1990.

(8) If a permit issued under sub. (3) or (3m) has been revoked, the owner of the pier shall remove the pier within 15 days after the revocation, or if the board grants additional time for the removal, within that time.

(9) Subsections (1) to (8) do not apply to a pier that is not located in the river and that is constructed after December 6, 1991.

History: 1989 a. 31; 1991 a. 76, 189, 315.

30.45 Prohibited and restricted activities in the riverway. In the riverway:

(1) No person may start or engage in an activity under s. 30.44 (1) to (5) or 30.445 without having any permit that is required under s. 30.44 or 30.445.

(1g) No person may cut or harvest timber unless par. (c) applies and either par. (a) or (b) applies:

(a) The person has a permit under s. 30.44 (3).

(b) The cutting or harvesting of the timber is exempt under s. 30.44 (3) (c).

(c) The cutting or harvesting complies with any rule promulgated under s. 30.42 (1) (d) which the person must comply with under s. 77.17 or 77.82 (11m).

(1r) No person may construct, modify or relocate a high−voltage transmission line unless it has been approved under s. 30.44 (3m) or 196.491 (3) (d) 3m.

(2) No person may violate a condition imposed under s. 30.44 (7) or under s. 30.44 (11) (d), 1993 stats.

(3) No person may cut woody vegetation below the ordinary high−water mark or within 75 feet beyond the ordinary high−water mark of the river except for the amount necessary for:

(a) One strip 15 feet or less in width for each separately owned parcel of land on the river that is necessary for gaining access to the river.

(ag) An activity for which a permit has been issued under s. 30.44 or 30.445 and has not been revoked under s. 30.44 (10) or 30.445 (6).

(ar) An activity that s. 30.44 or 30.445 exempts from a permit.

(b) Maintenance of an easement or right−of−way for a utility facility.

(bn) Construction, reconstruction, modification, relocation, repair or maintenance of a high−voltage transmission line.

(cg) Construction, modification, reconstruction or repair of a wharf as allowed under sub. (9).

(cr) Maintenance of a structure by a person who complies with any provision of ss. 30.44 to 30.46 and subs. (1), (2) and (4) to (13) that applies to the structure.

(d) Maintenance of a right−of−way for a highway, private road, private drive or a railroad.

(de) Construction, reconstruction, modification or repair of a highway or a railroad.

(df) Construction, reconstruction, modification or repair of a private drive or private road if the width of the area subject to cutting does not exceed the minimum width necessary for safe travel, not to exceed 20 feet for a private drive or 30 feet for a private road.

(dg) Construction, reconstruction, modification, repair or maintenance of a recreational trail.

(dh) Modification, repair or reconstruction of a dam.

(dp) Removal of diseased woody vegetation if a forester has issued a written determination that the woody vegetation is subject to an actual, potential or incipient infestation or infection by an insect or disease that is harmful to the woody vegetation.

(dt) Cutting or harvesting timber if the cutting or harvesting complies with any rule promulgated under s. 30.42 (1) (d) which the landowner must comply with under s. 77.17 or 77.82 (11m).

(e) Removal of woody vegetation damaged by natural causes.

(f) Removal of woody vegetation that poses an imminent hazard to life or property.

(g) Cutting woody vegetation if the cutting complies with the rules promulgated under s. 30.43 (3).

(3m) No person may cut woody vegetation on land that is more than 75 feet beyond the ordinary high−water mark of the river except:

(a) As specified in sub. (3) (a) to (g).

(b) For woody vegetation cut on land owned or occupied by a person if the cut woody vegetation is used as firewood, fence posts or Christmas trees for agricultural or household use and if the cut woody vegetation is not sold or bartered to another person.

(3p) The restrictions against the cutting of woody vegetation under subs. (3) and (3m) do not apply to the cutting of woody vegetation that complies with sound horticultural or arboricultural practices, that does not involve the severing of the woody vegetation from the ground and that does not increase the visibility of any structure from the river.

(4) No person may store or dispose of junk as defined in s. 84.31 (2) (e).

(4m) Except as provided in sub. (4p), no person may store or dispose of solid waste unless the solid waste is:

(a) Nonhazardous sludges from a treatment work, as defined under s. 283.01 (18), that is spread as a soil conditioner or a nutrient on land that is in agricultural use; or

(b) Unmanipulated animal or vegetable manure, as defined in s. 94.64 (1) (t), that is spread as a soil conditioner or a nutrient on land that is in agricultural use.

(4p) No person may dispose of the debris resulting from the demolition of a building or a building foundation unless the disposal is on the same parcel on which the demolition site is located, the debris is of a type that is not required under s. 289.43 (8) (b) 1. to be disposed of in a licensed solid waste disposal facility and the debris is buried.

(5) No person may begin a mining activity or expand a mining activity, except as provided in sub. (5m) or s. 30.44 (3e).

(5m) No person may begin or expand a nonmetallic mining activity on land that is visible from the river when the leaves are on the deciduous trees.

(6) No person may construct, reconstruct or alter a highway or private road unless the highway or private road and any embankments, grading, rock cuts or associated structures are visually inconspicuous and are constructed with sufficient safeguards to prevent erosion.

(6m) No person may construct, reconstruct or alter a recreational trail unless the recreational trail and any embankments, grading and associated structures are visually inconspicuous and are constructed with sufficient safeguards to prevent erosion.

(7) No person may erect a sign that is visible from the river other than:

(a) A sign erected by the department that is necessary for public use of the riverway.

(b) A sign erected by the state or municipality in charge of a highway.

(c) A sign that does not exceed 12 inches high by 12 inches long prohibiting or authorizing entry onto land.

(9) No person may:

(a) Construct or modify a wharf or reconstruct a destroyed wharf unless it will be 20 feet or less in length and 3 feet or less in width and it will not have a railing or other structure extending above its deck.

(b) Repair a damaged wharf unless all of the following apply:

1. No municipal ordinance or other municipal regulation prohibits the repair.

2. The repaired wharf will not be larger in size or more visible from the river than it was immediately before it was damaged.

(10) No person may:

(a) Construct, relocate, replace or reconstruct a boat shelter.

(b) Have or maintain a boat shelter after November 15, 1990.

(13) No person may have or maintain a stairway or walkway unless sufficient safeguards are taken to minimize erosion.

History: 1989 a. 31; 1991 a. 76, 315; 1995 a. 211, 227, 451; 1997 a. 204.

30.452 Prohibited activities in the river. In the river, no person may:

(1) Construct, relocate, replace or reconstruct a swimming raft.

(2) Have or maintain a swimming raft after November 15, 1990.

History: 1991 a. 76, s. 42; Stats. 1991 s. 30.452.

30.455 Department of transportation activities. **(1)** Construction, reconstruction, design, maintenance, modification or repair activities, or nonmetallic mining activities in the riverway, that are carried out under the direction and supervision of the department of transportation are not subject to ss. 30.44 to 30.45. At the earliest practical time before the commencement of these activities, the department of transportation shall notify and consult with the department and the board on the location, nature and extent of the proposed work.

(2) (a) The exemption under sub. (1) does not apply unless the standard in par. (b) is met.

(b) To the extent it is economically and technically feasible, the department of transportation shall minimize the visual impact of the activity and any resulting highway or structure.

(c) The department of transportation, in consultation with the department, shall adopt standards to implement par. (b).

(3) If the department determines that there is reasonable cause to believe that an activity being carried out under this section or a resulting highway or structure is not in compliance with the standard in sub. (2) (b), it shall notify the department of transportation. If the secretary and the secretary of transportation are unable to agree upon the methods or time schedules to be used to correct the alleged noncompliance, the secretary, notwithstanding the exemption provided in this section, may proceed with enforcement actions as the secretary considers appropriate.

(4) Except as may be required under s. 1.11, no public notice or hearing is required in connection with any interdepartmental consultation and cooperation under this section.

History: 1989 a. 31; 1991 a. 76, 189; 1995 a. 211.

30.46 Agricultural use. (1) A person may develop or use land in the riverway for agricultural use that is not in agricultural use on October 31, 1989, if:

(a) The development and use comply with the rules for the soil and water resource management program promulgated by the department of agriculture, trade and consumer protection under s. 92.14; and

(b) The person otherwise complies with this subchapter in developing or using the land for agricultural use.

(2) Notwithstanding sub. (1) (b), a person is not required to comply with rules for the soil and water resource management program promulgated under s. 92.14 by the department of agriculture, trade and consumer protection for land in the riverway and that is in agricultural use on October 31, 1989.

(3) Notwithstanding sub. (1) (b), s. 30.44 (1) does not apply to the construction, modification, repair or reconstruction of a structure that is used exclusively for agricultural use on land in the riverway if the land is in agricultural use on October 31, 1989.

History: 1989 a. 31; 1991 a. 189.

30.47 Restrictions on recreational use. (1) No natural person may operate a boat on public waters in the riverway without having an adequately sized waterproof container in the boat in which to place refuse.

(2) No person may leave refuse on land in the riverway owned, managed, supervised or controlled by the department or on public waters in the riverway.

(3) (a) Except as provided in par. (b), no person may have a glass container on land in the riverway owned, managed, supervised or controlled by the department or on islands or public waters in the riverway.

(b) 1. Paragraph (a) does not apply to a natural person or his or her guest having a glass container on land in the riverway that the natural person owns or occupies as a tenant.

2. Paragraph (a) does not apply to a natural person having a glass container on land in the riverway that is also in a state park.

History: 1989 a. 31; 1993 a. 73.

30.48 Applicability. (1) Sections 30.44 to 30.47 are in addition to and are not superseded by any law, rule, ordinance or other regulation governing an activity that occurs in the riverway.

(2) Sections 30.44 to 30.47 do not apply to land that is located in a city or village on October 31, 1989, or to land located within 0.5 mile of the corporate limits of a city or village on October 31, 1989, that is annexed to the city or village after October 31, 1989.

History: 1989 a. 31; 1991 a. 189.

30.49 Enforcement. (1) FORFEITURES. (a) Any person who knowingly violates ss. 30.44 to 30.455 or 30.46 (1) shall forfeit not more than $1,000 for each violation.

(b) Each day that a violation under par. (a) continues is a separate violation.

(c) Any person who violates ss. 30.44 to 30.455 or 30.46 (1) shall forfeit not more than $1,000 for each violation.

(d) Any person who intentionally violates s. 30.47 shall forfeit not more than $500.

(e) Paragraph (b) does not apply to a violation under par. (c) or (d).

(f) 1. For violations under par. (c), if the alleged violator has not previously received a warning notice for a violation of the same statutory provision, the law enforcement officer or warden shall issue the violator a warning notice and may not issue a citation.

2. The warning notice under subd. 1. shall inform the alleged violator of the action the alleged violator is required to take to be in compliance with the applicable statutory provision. If the warning notice requires the alleged violator to remedy the effects of the violation, the alleged violator has 30 days to do so unless subd. 3. applies.

3. The alleged violator may request in writing from the board an extension of time to remedy the effects of the violation. The board for good cause may grant an extension of time.

4. If the alleged violator fails to comply with the warning notice, the law enforcement officer or warden may issue a citation. If the alleged violator complies with the warning notice, the law enforcement officer or warden may not issue a citation.

5. The department shall record the issuances of warning notices for purposes of this paragraph.

(2) CIVIL REMEDIES. (a) The state, board or a municipality may file a civil action to enforce ss. 30.44 to 30.46.

(b) If the plaintiff prevails in a civil action under par. (a), the court may grant:

1. Injunctive relief under ch. 813.

2. A declaratory judgment under s. 806.04.

3. A decree for specific performance for which the court may supervise compliance.

(3) OTHER RIGHTS, REMEDIES. This section does not limit any other right or remedy provided by law.

History: 1989 a. 31.

Cross−reference: See also ch. NR 301, Wis. adm. code.

SUBCHAPTER V

REGULATION OF BOATING

30.50 Definitions. In ss. 30.50 to 30.80:

(1e) "Alcohol beverage" has the meaning specified under s. 125.02 (1).

(1g) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

(1j) "Application" includes the form designated by the department and any supporting document or other information that is submitted to the department.

(1m) "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c).

(1s) "Associated equipment" means any system, part or component of a boat as originally manufactured or any similar system, part or component manufactured or sold for replacement, repair or improvement of the system, part or component; any accessory or equipment for, or appurtenance to, a boat and any marine safety article, accessory or equipment intended for or used by a person on board a boat except radio equipment.

(2) "Boat" or "vessel" means every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water and a fishing raft.

(3) "Certificate of number" means the certificate of number certificate, certificate of number card, certification decal, and identification number issued by the department under the federally approved numbering system unless the context clearly indicates otherwise.

(3b) "Certification or registration documentation" means a certificate of number certificate, certificate of number card, certification decal, registration certificate, registration card, or registration decal.

(3d) "Commercial motorboat" means a motorboat while it is being operated to transport property or passengers for hire or while it is being used by its operator or owner to earn a livelihood or to gain a profit or both.

(3g) "Controlled substance" has the meaning specified under s. 961.01 (4).

(3h) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(3r) "Drug" has the meaning specified under s. 450.01 (10).

(4) "Employ" means to make use of for any purpose other than maintenance.

(4b) "Great bodily harm" has the meaning given in s. 939.22 (14).

(4c) "Hazardous inhalant" means a substance that is ingested, inhaled, or otherwise introduced into the human body in a manner that does not comply with any cautionary labeling that is required for the substance under s. 100.37 or under federal law, or in a manner that is not intended by the manufacturer of the substance, and that is intended to induce intoxication or elation, to stupefy the central nervous system, or to change the human audio, visual, or mental processes.

(4e) "Intoxicant" means any alcohol beverage, hazardous inhalant, controlled substance, controlled substance analog or other drug, or any combination thereof.

(4m) "Intoxicated boating law" means s. 30.681 (1) or a local ordinance in conformity with that subsection, s. 30.681 (2) or, if the operation of a motorboat is involved, s. 940.09 or 940.25.

(4q) "Lake sanitary district" means a town sanitary district that has within its boundaries at least 60% of the footage of shoreline of a public inland lake, as defined in s. 60.782 (1), for which a public inland lake protection and rehabilitation district is not in effect.

(4s) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

(5) "Manufacturer" means any person engaged in the manufacture, construction or assembly of boats or associated equipment; the manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly and the importation into this state for sale of boats, associated equipment or components for boats.

(6) "Motorboat" means any boat equipped with propulsion machinery, whether or not the machinery is the principal source of propulsion.

(7) "Nonmotorized boat" means a boat which is not a motorboat but which is designed and constructed to be used as a boat for transportation of a person or persons on water. This term includes, but is not limited to, any canoe, sailboat, inflatable boat or similar device, row boat, raft and dinghy which is not a motorboat.

(8) "Operate" or "use" when used with reference to a motorboat, boat or vessel means to navigate or otherwise employ.

(8g) "Operation of a motorboat" means controlling the speed or direction of a motorboat, except a sailboat operating under sail alone.

(8r) "Operator" means a person who is engaged in the operation of a motorboat, who is responsible for the operation of a motorboat or who is supervising the operation of a motorboat.

(9) "Owner" means the person who has lawful possession of a boat by virtue of legal title or equitable interest therein which entitles the person to lawful possession.

(9b) "Patrol boat" means a boat authorized by this state or by a local governmental unit for the purpose of law enforcement, search and rescue, fire fighting, emergency response, or water safety operations, including a water safety patrol unit.

(9d) "Personal watercraft" means a motorboat that uses an inboard motor powering a water jet pump or a caged propeller as its primary source of motive power and that is designed to be operated by a person standing on, kneeling on or sitting astride the watercraft.

(9g) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity or concentration of alcohol or other intoxicant in a person's blood, breath or urine.

(9x) "Refusal law" means s. 30.684 (5) or a local ordinance in conformity with that subsection.

(10) "Registration" means the registration certificate, registration card, and registration decal issued by the department.

(10m) "Restricted controlled substance" means any of the following:

(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

(b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta−9−tetrahydrocannabinol.

(11) "Sailboard" means a sailboat with a hull resembling a surfboard which has little or no cockpit or seating area and which is designed to be sailed by a person in a standing position.

(12) "Slow−no−wake" means that speed at which a boat moves as slowly as possible while still maintaining steerage control.

(13) "State of principal use" means the state where the boat is used or is to be used most during the year.

(13m) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

(14) "Waters of this state" means any waters within the territorial limits of this state, including the Wisconsin portion of boundary waters.

History: 1979 c. 275; 1983 a. 27, 100; 1985 a. 279, 331; 1987 a. 3, 374; 1989 a. 145; 1991 a. 39, 257, 316; 1995 a. 290, 349, 436, 448; 1997 a. 198; 1999 a. 9; 2001 a. 16; 2003 a. 97; 2005 a. 25, 308; 2013 a. 83.

Recreational boating law in Wisconsin. Whipple. 61 MLR 425.

Wisconsin's Boating Rules of the Road. Whipple. Wis. Law. June 2000.

30.501 Capacity plates on boats. (1) Every vessel less than 20 feet in length designed to carry 2 or more persons and to be propelled by machinery as its principal source of power or designed to be propelled by oars shall, if manufactured or offered for sale in this state, have affixed permanently thereto by the manufacturer a capacity plate as required by this section. As used in this section "manufacture" means to construct or assemble a vessel or alter a vessel so as to change its weight capacity.

(2) A capacity plate shall bear the following information permanently marked thereon so as to be clearly visible and legible from the position designed or normally intended to be occupied by the operator of the vessel when under way:

(a) For all vessels designed for or represented by the manufacturer as being suitable for use with outboard motor:

1. The total weight of persons, motor, gear and other articles placed aboard which the vessel is capable of carrying with safety under normal conditions.

2. The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall such presumed weight per person be less than 150 pounds.

3. Clear notice that the information appearing on the capacity plate is applicable under normal conditions and that the weight of the outboard motor and associated equipment is considered to be part of total weight capacity.

4. The maximum horsepower of the motor the vessel is designed or intended to accommodate.

(b) For all other vessels to which this section applies:

1. The total weight of persons, gear and other articles placed aboard which the vessel is capable of carrying with safety under normal conditions.

2. The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall such presumed weight per person be less than 150 pounds.

3. Clear notice that the information appearing on the capacity plate is applicable under normal conditions.

(3) The information relating to maximum capacity required to appear on capacity plates by sub. (2) shall be determined in accordance with such methods and formulas as are prescribed by rule promulgated by the department. In prescribing such methods and formulas, the department shall be guided by and give due regard to the necessity for uniformity in methods and formulas lawful for use in determining small vessel capacity in the several states and to any methods and formulas which may be recognized or recommended by the U.S. coast guard.

(4) Any vessel to which this section applies not having a capacity plate, meeting the requirements of law, affixed thereto by the manufacturer thereof may have such affixed by any other person in accordance with such rules as the department promulgates, and may thereafter be offered for sale in this state, but no action taken pursuant to this subsection, or as described herein, shall relieve any manufacturer from liability for failure to comply with this section.

(5) The information appearing on a capacity plate shall be deemed to warrant that the manufacturer, or the person affixing the capacity plate as permitted by sub. (4), has correctly and faithfully employed a method and formula for the calculation of maximum weight capacity prescribed by the department and that the information appearing on the capacity plate with respect to maximum weight capacity and recommended number of persons is the result of applying such method and formula, and with respect to information concerning horsepower limitations that such information is not a deliberate or negligent misrepresentation.

(6) If any vessel required by this section to have a capacity plate affixed thereto is of such design or construction as to make it impracticable or undesirable to affix such plate, the manufacturer, or other person having the responsibility for affixing the plate, may represent such impracticability or undesirability to the department in writing. Upon determination by the department that such representation has merit and that a proper and effective substitute for the capacity plate which will serve the same purpose is feasible, the department may authorize such alternative compliance and such alternative compliance shall thereafter be deemed compliance with the capacity plate requirements of this section.

(7) The department may by rule exempt from the requirements of this section vessels which it finds to be of such unconventional design or construction that the information required on capacity plates would not assist in promoting safety or is not reasonably obtainable.

(8) The department may promulgate rules to carry out the purposes of this section, but rules on vessel capacity requirements shall conform with appropriate federal regulations.

(9) This section applies to vessels manufactured after January 1, 1966 and prior to November 1, 1972. All vessels manufactured after November 1, 1972, shall comply with appropriate federal regulations and the capacity information shall be displayed as required.

History: 1979 c. 275; 1985 a. 332 ss. 44, 251 (1); 1987 a. 403; 1997 a. 198.
Cross−reference: See also s. NR 5.12, Wis. adm. code.

30.505 Certificate of number system to conform to federal system. The certificate of number system and the issuance of identification numbers employed by the department shall be in conformity with the overall system of identification numbering for boats established by the U.S. government. The department shall promulgate rules as are necessary to bring the state certificate of number system and the issuance of identification numbers into conformity with this federal system.

History: 1983 a. 27 s. 858; 1997 a. 198.

30.51 Certificate of number and registration; requirements; exemptions. (1) REQUIREMENTS. (a) *Certificate of number.* No person may operate, and no owner may give permission for the operation of, any boat on the waters of this state unless the boat is covered by a certificate of number issued under this chapter or is exempt from the certificate of number requirements of this chapter.

(b) *Registration.* No person may operate, and no owner may give permission for the operation of, any boat on the waters of this state unless the boat is covered by a registration issued under this chapter or is exempt from the registration requirements of this chapter.

(2) EXEMPTIONS. (a) *Exemptions from both certificate of number and registration requirements.* A boat is exempt from both the certificate of number and the registration requirements of this chapter if it is:

1. A nonmotorized boat which is not a sailboat.

2. A nonmotorized boat which is a sailboat but which either is 12 feet in length or less or is a sailboard.

3. Covered by a valid certificate of number issued under federal law or a federally approved numbering system of another state, with the identification number properly displayed on each side of the forward half, but this exemption does not apply if the boat has been within this state for a period in excess of 60 consecutive days or if this state is the state of principal use of the boat.

3m. Covered by a valid certificate of number issued under a federally approved numbering system under a registration program established by a federally recognized American Indian tribe or band, if all of the following apply:

a. The registration program of the tribe or band is covered by an agreement under s. 23.35.

b. The boat displays the identification number required by the tribe or band on each side of the forward half.

c. The boat has not been, for more than 60 consecutive days, in that portion of this state that is outside the boundaries of the reservation where it is registered.

d. The area of this state that is outside of the reservation where it is registered is not the area in which the boat is used or will be used most during the year.

4. Operated within a period of 60 days after application for a certificate of number has been made and the required fee has been paid, if proof of application is carried on board.

5. From a country other than the United States temporarily using the waters of this state.

6. A military or public boat of the United States, except recreational−type public vessels.

7. A boat whose owner is a state or subdivision of a state, which is used principally for governmental purposes, and which is clearly identifiable.

8. A ship's lifeboat.

9. Present in this state, for a period of not to exceed 10 days, for the express purpose of competing in a race conducted under a permit from a municipality or an authorized agency of the U.S. government.

(b) *Exemption from certificate of number requirements.* A boat is exempt from the certificate of number requirements of this chapter if it is a federally documented vessel.

(c) *Exemption from registration requirements.* A boat is exempt from the registration requirements of this chapter if it is:

1. Covered by a certificate of number issued under this chapter.

2. A federally documented vessel which is a commercial fishing boat operated under a license issued under s. 29.519.

3. A federally documented vessel with a home port located outside this state. This exemption does not apply if the boat has been within this state for a period in excess of 60 consecutive days or if this state is the state of principal use of the boat.

4. Operated within 60 days after an application for registration is made and the required fee is paid if proof of the application for registration is carried on board the boat.

History: 1973 c. 302; 1979 c. 275; 1983 a. 27; 1985 a. 279; 1993 a. 405; 1997 a. 198, 248; 2001 a. 16; 2005 a. 288.

The boating registration law does not violate Art. IX, s. 1. State v. Jackman, 60 Wis. 2d 700, 211 N.W.2d 480 (1973).

The state has jurisdiction to enforce this section over tribal members operating motorboats on non−reservation waters. Enforcement does not conflict with members' treaty rights or federal law and is not discriminatory. State v. Big John, 146 Wis. 2d 741, 432 N.W.2d 576 (1988).

30.52 Certificate of number and registration; application; certification and registration period; fees; issuance. (1) ISSUANCE OF CERTIFICATES AND REGISTRATIONS. (a) *Application for certificate of number.* 1. Any person who owns a boat required to be covered by a certificate of number shall apply to the department for a certificate of number.

3. If a boat otherwise subject to the certificate of number requirements of this chapter is covered by a valid certificate of number issued under federal law or the federally approved numbering system of another state and is used in this state in excess of 60 consecutive days or if this state becomes the state of principal use, the owner of the boat shall immediately apply to the department for a certificate of number.

(b) *Application for registration.* 1. Any person who owns a boat required to be registered under this chapter shall apply to the department for registration.

1m. Any person who owns a nonmotorized boat that is exempt from the certificate of number and the registration requirement under s. 30.51 (2) (a) 1. or 2. may apply to the department for registration.

1r. A person applying for registration of a federally documented vessel shall submit as part of the application a photocopy of the front and back of the federal certificate of documentation for the vessel, which must be current at the time of applying for registration.

2. If a federally documented vessel with a home port located outside this state is used in this state in excess of 60 consecutive days or if this state becomes the state of principal use, the owner of the boat shall immediately apply to the department for registration.

(c) *Application for duplicate.* If a certificate of number card, a registration card, a certification decal or registration decal is lost or destroyed the owner of a boat may apply for a duplicate.

(1m) PROCEDURES. (a) *Issuers.* For the issuance of original or duplicate certification or registration documentation and for the transfer or renewal of certification or registration documentation, the department may do any of the following:

1. Directly issue, transfer, or renew the certification or registration documentation with or without using the expedited service under par. (ag) 1.

3. Appoint persons who are not employees of the department as agents of the department to issue, transfer, or renew the certification or registration documentation using the service under par. (ag) 1.

(ag) *Methods of issuance.* 1. For the issuance of original or duplicate certification or registration documentation and for the transfer or renewal of certification or registration documentation, the department may implement a procedure under which the department or an agent appointed under par. (a) 3. accepts applications for certification or registration documentation and issues to each applicant all or some of the items of the certification or registration documentation at the time the applicant submits the application accompanied by the required fees.

2. Under the procedure under subd. 1., the applicant shall receive any remaining items of certification or registration documentation directly from the department at a later date. The items of certification or registration documentation issued at the time of the submittal of the application shall be sufficient to allow the boat for which the application is submitted to be operated in compliance with the registration requirements under this section and ss. 30.51 and 30.523.

(ar) *Supplemental fees.* In addition to the applicable fee under sub. (3), the department or the agent appointed under par. (a) 3. shall collect an expedited service fee of $5 each time the expedited service under par. (ag) is provided. The agent shall remit to the department $1 of each expedited service fee the agent collects.

(e) *Receipt of fees.* All fees remitted to or collected by the department under par. (ar) shall be credited to the appropriation account under s. 20.370 (9) (hu).

(f) *Inapplicability.* 1. A dealer in boats who assists a customer in applying for a certification of number or registration without using the procedure specified in par. (ag) 1., may charge the customer a reasonable fee for providing this assistance.

2. Paragraphs (a) to (ar) do not apply to certificates of numbers issued to manufactures or dealers in boats who pay the fee under sub. (3) (im).

(1r) RULES FOR ISSUERS. The department may promulgate rules to establish eligibility and other criteria for the appointment of agents under sub. (1m) (a) 3. and to regulate the activities of these agents.

(2) CERTIFICATION AND REGISTRATION PERIOD. Except as provided in sub. (3g), the certification and registration period runs for 3 years, commencing on April 1 of the year in which the certificate of number or registration is issued and, unless sooner terminated or discontinued in accordance with this chapter, expiring on March 31 of the 3rd year after issuance. A certificate of number or registration is valid only for the period for which it is issued.

(3) FEES. (a) *Payment of fee required.* Except as provided in sub. (3g), a person who applies for the issuance or renewal of a certificate of number or registration shall pay the department the fee required under this subsection for the whole or any part of a certification and registration period.

(b) *Fee for boats under 16 feet.* The fee for the issuance or renewal of a certificate of number for a boat less than 16 feet in length is $22.

(c) *Fee for boats 16 feet or more but less than 26 feet.* The fee for the issuance or renewal of a certificate of number for a boat 16 feet or more but less than 26 feet in length is $32.

(d) *Fee for boats 26 feet or more but less than 40 feet.* The fee for the issuance or renewal of a certificate of number for a boat 26 feet or more but less than 40 feet in length is $60.

(e) *Fee for boats 40 feet or longer.* The fee for the issuance or renewal of a certificate of number for a boat 40 feet or more in length is $100.

(f) *Fee for nonmotorized sailboats.* Notwithstanding pars. (b) to (e), the fee for the issuance or renewal of a certificate of number for a sailboat which is not a motorboat is $17.

(fm) *Fee for voluntarily registered boats.* Notwithstanding pars. (b) to (f), the fee for issuance or renewal of registration for a boat registered pursuant to sub. (1) (b) 1m. is $11.

(g) *Fee for documented vessels.* The fee for the issuance or renewal of registration for a federally documented vessel is the same as the fee for the issuance or renewal for a certificate of number under pars. (b) to (e).

(h) *Fee for issuance upon transfer of ownership.* Notwithstanding pars. (b) to (g), the fee for the issuance of a certificate of number or registration to the new owner upon transfer of ownership of a boat certified or registered under this chapter by the previous owner is $3.75 if the certificate of number or registration is issued for the remainder of the certification and registration period

for which the previous certificate of number or registration was issued.

(i) *Fleet fees.* A person owning or holding 3 or more boats may, at the person's option, pay a fleet rate for these boats instead of the fees which otherwise would be payable under pars. (b) to (g). Notwithstanding pars. (b) to (g), the fee for the issuance or renewal of certificates of number or registrations for boats under the fleet rate is $27 plus 50% of the fees which would otherwise be applicable for the boats under pars. (b) to (g).

(im) *Dealer or manufacturer fees.* A manufacturer or dealer in boats may, at the manufacturer's or dealer's option, pay a fee of $75 for the issuance or renewal of a certificate of number.

(j) *Fee for issuance of duplicates.* The fee for the issuance of each duplicate certificate of number card, registration card, certification decal, or registration decal is $2.50.

(3g) EXEMPTION. (a) A boat that is present in this state and used exclusively as part of an advertisement being made for the manufacturer of the boat shall be issued a certificate of number for a period not to exceed 15 days. The department may not charge a fee for the issuance of a certificate of number under this paragraph.

(b) The department shall promulgate rules for the issuance of certificates of number under par. (a).

(3m) VOLUNTARY CONTRIBUTIONS; INVASIVE SPECIES GRANTS. (a) Any applicant for the issuance or renewal of a certificate of number or registration under sub. (3) (b) to (im) may, in addition to paying the fee charged for the certificate, elect to make a voluntary contribution of at least $2 to be used for research by the department concerning invasive species that are aquatic species and for grants under s. 23.22 (2) (c) to control invasive species that are aquatic species.

(am) If a person appointed under sub. (1m) (a) 3. collects a voluntary contribution under par. (a) from an applicant for the issuance or renewal of a certificate of number or registration, the person collecting the voluntary contribution may retain 50 cents of the voluntary contribution to compensate for the person's services in collecting the voluntary contribution.

(b) All moneys collected under par. (a), less the amount retained as authorized under par. (am), shall be deposited into the account under s. 20.370 (3) (is).

(4) SALES AND USE TAXES. The department shall collect from the applicant any sales and use taxes due under s. 77.61 (1) on any boat for which a certificate of number or registration is applied for and the report in respect to those taxes. The department shall use collection and accounting methods approved by the department of revenue.

(5) ISSUANCE. (a) *Certificate of number; card; decals; number.* 1. Upon receipt of a proper application for the issuance or renewal of a certificate of number accompanied by the required fee, a sales tax report, the payment of any sales and use tax due under s. 77.61 (1), and any other information the department determines to be necessary, the department or an agent appointed under sub. (1m) (a) 3. shall issue to the applicant a certificate of number card. The certificate of number card shall state the identification number awarded, the name and address of the owner, and other information the department determines to be necessary. The certificate of number card shall be of pocket size and of durable water resistant material.

2. The department or an agent appointed under sub. (1m) (a) 3. shall issue 2 certification decals per boat for each application that involves the issuance of certification decals. The certification decals shall bear the year of expiration of the current certification and registration period. The department shall provide the applicant with instructions concerning the attachment of the certification decals to the boat.

3. At the time the department or an agent appointed under sub. (1m) (a) 3. issues a certificate of number card, the department or agent shall award an identification number and shall provide the applicant with instructions concerning the painting or attachment of the awarded identification number to the boat. The identification number shall be awarded to a particular boat unless the owner of the boat is a manufacturer of or dealer in boats, motors, or trailers who has paid the fee under sub. (3) (im) and the identification number is used on that boat.

4. At the time a person receives the certification decals, the person shall be furnished with a copy of the state laws pertaining to operation of boats or informational material based on these laws.

(b) *Registration; card; decals.* 1. Upon receipt of a proper application for the issuance or renewal of a registration accompanied by the required fee, a sales tax report, the payment of any sales and use tax due under s. 77.61 (1) and any other information the department determines to be necessary, the department or an agent appointed under sub. (1m) (a) 3. shall issue to the applicant a registration card. The registration card shall state the name and address of the owner and other information the department determines to be necessary. The registration card shall be of pocket size and of durable water resistant material.

1m. The issuance or renewal of a registration card for a boat registered pursuant to sub. (1) (b) 1m. does not authorize the use of a motor on the boat.

2. The department or an agent appointed under sub. (1m) (a) 3. shall issue 2 registration decals per boat for each application that involves the issuance of registration decals. The registration decals shall bear the year of expiration of the current certification and registration period. The department shall provide the applicant with instructions concerning the attachment of the registration decals to the boat.

3. At the time a person receives registration decals, the person shall be furnished with a copy of the state laws pertaining to the operation of boats or informational material based on these laws.

(bn) *Sales tax information required.* 1. For an application submitted under par. (a) 1. or (b) 1., the purchaser of the boat shall complete the sales tax information required by the department on the application unless subd. 2. applies.

2. For an application submitted under par. (a) 1. or (b) 1., if the seller is a manufacturer or a dealer, the manufacturer or dealer shall complete the sales tax information if the manufacturer or dealer agrees to do so on behalf of the purchaser.

History: 1971 c. 215; 1973 c. 302; 1977 c. 29, 418; 1979 c. 34, 221, 275; 1983 a. 27 ss. 847 to 862; 1983 a. 192, 405; 1987 a. 290; 1991 a. 39; 1995 a. 27; 1997 a. 27, 198; 1999 a. 9; 2001 a. 16, 104; 2005 a. 25, 481; 2007 a. 20; 2009 a. 28.

30.523 Certification or registration card to be on board; display of decals and identification number. **(1)** CARD TO BE ON BOARD; EXCEPTION. (a) *Certificate of number card.* If a boat is required to be covered by a certificate of number issued under this chapter and if the owner of the boat has received the certificate of number card for the boat, any person operating the boat shall have the card available at all times for inspection on the boat, unless the department determines the boat is of the use, size, or type as to make the retention of the card on the boat impractical.

(b) *Registration card.* If a boat is required to be covered by a registration issued under this chapter and the owner of the boat has received the registration card for the boat, any person operating the boat shall have the card available at all times for inspection on the boat unless the department determines the boat is of the use, size, or type as to make the retention of the card on the boat impractical.

(2) DISPLAY OF DECALS. (a) *Certification decals.* Upon being issued certification decals, the owner of the boat shall attach or affix the decals to each side of the forward half of the boat in the manner prescribed by rules promulgated by the department. The owner shall maintain the decals in a legible condition at all times.

(b) *Registration decals.* Upon being issued registration decals, the owner of the boat shall attach or affix the decals in the manner

prescribed by rules promulgated by the department. The owner shall attach or affix the registration decals to the transom of the boat on each side of the federally documented name of the vessel in a manner so both decals are visible. The owner shall maintain the decals in a legible condition at all times.

(c) *Decals for boats owned by manufacturers and dealers.* Notwithstanding par. (a), a manufacturer or dealer in boats, motors, or trailers who has paid the fee under s. 30.52 (3) (im) may attach or affix the certification decals to removable signs to be temporarily but firmly mounted upon or attached to the boat while the boat is being operated.

(d) *Restriction on other stickers and decals.* No stickers or decals other than the certificate of number decals, other stickers or decals that may be provided by the department, and stickers or decals authorized by reciprocity may be attached, affixed, or displayed on either side of the forward half of a boat.

(3) DISPLAY OF IDENTIFICATION NUMBER. Upon being issued a certificate of number card and awarded an identification number, the owner of the boat shall paint on or attach the identification number to each side of the forward half of the boat in the manner prescribed by rules promulgated by the department. The owner shall paint or attach the identification number so it is clearly visible and shall maintain the identification number in a legible condition at all times. A manufacturer or dealer in boats, motors or trailers who has paid the fee under s. 30.52 (3) (im) may paint the identification number on or attach the identification number to removable signs to be temporarily but firmly mounted upon or attached to the boat while being operated. No number other than the identification number awarded by the department or granted reciprocity under this chapter may be painted, attached or otherwise displayed on either side of the forward half of a boat.

History: 1973 c. 302; 1979 c. 275; 1983 a. 27; 1987 a. 397 s. 3; Stats. 1987 s. 30.523; 1997 a. 198; 2001 a. 16.

Cross−reference: See also ss. NR 5.001, 5.01, 5.02, 5.04, 5.05, 5.06, and 19.01, Wis. adm. code.

30.525 Voluntary contributions for nonmotorized boats. The department shall encourage owners of boats which are exempt from the certificate of number requirement under s. 30.51 (2) (a) 1. or 2. to contribute funds to be utilized for the development or enhancement of programs or services which provide benefits relating directly to nonmotorized boating activities. The department shall make reasonable efforts to publicize the nonmotorized boat voluntary contribution program and the purposes for which these revenues are to be utilized.

History: 1983 a. 27.

30.53 Certificate of origin; requirements; contents. (1) REQUIREMENTS. No manufacturer, importer, dealer or other person may sell or otherwise dispose of a new boat to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's or importer's certificate of origin executed in accordance with this section and with those assignments on the certificate as are necessary to show title in the purchaser of the boat. No dealer may purchase or acquire a new boat without obtaining from the seller of the boat the manufacturer's or importer's certificate of origin.

(2) CONTENTS. A manufacturer's or importer's certificate of origin of a boat shall contain, in the form and together with the information the secretary requires, the following information:

(a) A description of the boat, including, if applicable, the make, year, length, series or model, hull type and hull identification number of the boat and, for a boat with an inboard motor, the make of the engine and the engine serial number.

(b) Certification of the date of transfer of the boat to a distributor, dealer or other transferee, and the name and address of the transferee.

(c) Certification that this transaction is the first transfer of the new boat in ordinary trade and commerce.

(d) The signature and address of a representative of the transferor.

(3) ASSIGNMENT. An assignment of a manufacturer's or importer's certificate of origin shall be printed on the reverse side of the manufacturer's or importer's certificate of origin in the form prescribed by the secretary. The assignment form shall include the name and address of the transferee, a certification that the boat is new and a warranty that the title at the time of delivery is subject only to the liens and encumbrances that are set forth and described in full in the assignment. Nothing in this subsection requires the transferee to apply for a certificate of title under s. 30.533.

(4) NONAPPLICABILITY. Subsection (3) does not apply to or affect:

(a) A lien given by statute or rule of law to a supplier of services or materials for the boat.

(b) A lien given by statute to the United States, this state or any political subdivision of this state.

(c) A security interest in a boat created by a manufacturer or dealer who holds the boat for sale, which shall be governed by the applicable provisions of ch. 409.

History: 1987 a. 397.

30.531 Certificate of title; requirements; exemptions. (1) CERTIFICATE. The owner of a boat subject to registration or certificate of number requirements in this state, whether or not the boat is operated on the waters of this state, shall make application for certificate of title for the boat under the following circumstances:

(a) If the owner has newly acquired the boat, he or she shall make application under s. 30.533.

(b) If the owner applies for registration of a boat without holding a valid certificate of title previously issued to that owner by the department for the boat, he or she shall at the same time apply for a certificate of title.

(2) PREREQUISITE TO REGISTRATION. Except as provided in sub. (3), an applicant's eligibility for a certificate of title is a prerequisite to registration of the boat. If the applicant for registration holds a valid certificate of title previously issued to the applicant by the department for the boat, that is prima facie evidence of ownership of the boat and the applicant need not apply for a new certificate of title when applying for registration.

(3) EXEMPTION. (a) *Boats exempt from registration requirements.* A boat is exempt from both the certificate of origin and certificate of title requirements of this chapter if it is exempt under s. 30.51 (2) (a) from the certificate of number and registration requirements or exempt under s. 30.51 (2) (b) from the certificate of number requirements of this chapter.

(b) *Boats under 16 feet.* A boat is exempt from both the certificate of origin and certificate of title requirements of this chapter if it is less than 16 feet in length.

(bn) *Boats voluntarily registered.* A boat issued a registration card pursuant to s. 30.52 (1) (b) 1m. is exempt from both the certificate of origin and certificate of title requirements of this chapter.

(c) *Boats purchased by nonresidents.* A nonresident who purchases a boat in this state and who intends to title and register the boat in another state is not required to apply for a certificate of title under this chapter. A nonresident who purchases a boat in this state may apply for a certificate of title under this chapter.

History: 1987 a. 397; 1991 a. 39, 269; 1997 a. 198.

30.533 Application for certificate of title; hull and engine identification numbers. (1) CERTIFICATE; CONTENTS. An application for a certificate of title shall be made to the department and shall be accompanied by the required fee. Each application for certificate of title shall contain the following information:

(a) The name and address of the owner.

(b) The name and address of the previous owner.

(c) A description of the boat, including, if applicable, the make, year, length, series or model, hull type and hull identification number of the boat, the make of the engine and the engine serial number for a boat with an inboard motor, and any other

information which the department may reasonably require for proper identification of the boat.

(d) If the boat is a new boat being registered for the first time, the signature of a dealer authorized to sell such new boat and the manufacturer's certificate of origin. Such certificate of origin shall contain such information as is prescribed by the department.

(e) If the boat is a used boat which was last previously registered in another jurisdiction, the applicant shall furnish any certificate of ownership issued by the other jurisdiction and a statement pertaining to the title history and ownership of the boat, such statement to be in the form the department prescribes.

(f) If the boat is a used boat which was last previously registered or titled in this state, or both, the applicant shall furnish any certificate of number or other evidence of registration and any certificate of title previously issued by this state and a statement pertaining to the title history and ownership of the boat, such statement to be in the form the department prescribes.

(g) A signed statement by the applicant that the applicant has inspected the hull identification number and the engine serial number, if any, to ensure that such numbers conform with the numbers recorded on the application for a certificate of title.

(h) Any further evidence of ownership which may reasonably be required by the department to enable it to determine whether the owner is entitled to a certificate of title.

(2) HULL IDENTIFICATION NUMBER. If the boat contains a permanent hull identification number placed on the boat by the manufacturer of the boat, this number shall be used as the hull identification number. If there is no manufacturer's hull identification number, or if the manufacturer's hull identification number has been removed, obliterated or altered, the application for certificate of title shall so state and the secretary shall assign a hull identification number to the boat. The assigned hull identification number shall be permanently affixed to, or imprinted on, the starboard side of the transom of the boat to which the hull identification number is assigned.

(3) ENGINE SERIAL NUMBER. If the boat has an inboard motor which contains an engine serial number, this number shall be recorded on the certificate of title as the engine serial number. If the boat has an inboard motor which does not contain an engine serial number, or if the engine serial number has been removed, obliterated or altered, the application for certificate of title shall so state and the certificate of title shall not contain an engine serial number.

History: 1987 a. 397; 1989 a. 128; 1997 a. 198.

30.535 Department to examine records. Before issuing a certificate of title for a boat, the department shall check the application against the records of stolen boats in the national crime information center.

History: 1987 a. 397.

30.537 Certificate of title; issuance, records, fees. (1) ISSUANCE. The department shall file each application for certificate of title received by it and, when satisfied as to its genuineness and regularity and that the applicant is entitled to the issuance of a certificate of title, shall issue and deliver a certificate to the owner of the boat.

(2) RECORDS. The department shall file and retain for at least 5 years a record of all applications for certificate of title, including, if applicable, the manufacturer's certificate of origin, and all certificates of title issued by it:

(a) According to title number.

(b) According to hull identification number or engine serial number or both.

(c) Alphabetically, according to name of owner.

(d) In any other manner which the department determines to be desirable.

(3) SEARCH FEE. The department shall conduct a title search upon the request of an applicant for a certificate of title and shall charge a fee of $5 for each search.

(4) TITLE FEES. The department shall require that:

(a) The owner of the boat pay a $5 fee to file an application for the first certificate of title.

(b) The owner of the boat pay a $5 fee for a certificate of title after a transfer.

(c) The owner of the boat pay a $5 fee for a replacement certificate of title.

(d) The owner of a boat pay a single $5 fee for the original notation and subsequent release of a security interest on a certificate of title.

(e) A person who has perfected a security interest and who is notified under s. 30.571 pay a $2 fee for each notification.

(f) An assignee of a security interest pay a $2 fee to be named a secured party on a certificate of title.

(5) FEE RESTRICTION. The department shall not charge any fee for services under this section except as specified in subs. (3) and (4).

History: 1987 a. 397; 1989 a. 128; 1991 a. 39.

30.539 Contents of certificate of title. (1) INFORMATION. Each certificate of title issued by the department shall contain:

(a) The name and address of the owner.

(b) The title number assigned to the boat.

(c) A description of the boat, including, if applicable, the make, year, length, series or model, hull type and hull identification number of the boat and, for a boat with an inboard motor, the make of the engine and the engine serial number.

(d) Any other data which the department deems pertinent and desirable.

(2) FORMS. The certificate of title shall contain forms for assignment and warranty of title by the owner, and for assignment and warranty of title by a dealer, or insurance company, and may contain forms for applying for a certificate of title by a transferee.

History: 1987 a. 397; 1997 a. 198.

30.54 Lost, stolen or mutilated certificates. (1) If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a replacement upon furnishing information satisfactory to the department. The replacement certificate of title shall contain the legend "This is a replacement certificate and may be subject to the rights of a person under the original certificate".

(2) If a person applies for a replacement certificate under sub. (1), conservation wardens or local law enforcement officials, after presenting appropriate credentials to the owner or legal representative of the owner named in the certificate of title, shall inspect the boat's engine serial number or hull identification number, for purposes of verification or enforcement.

(3) The department shall not issue a new certificate of title to a transferee upon application made on a replacement until 15 days after receipt of the application.

(4) A person recovering an original certificate of title for which a replacement has been issued shall promptly surrender the original certificate to the department.

History: 1987 a. 397.

30.541 Transfers of boat titles. (1) OWNERS. If an owner transfers an interest in a boat, other than by the creation of a security interest, the owner shall, at the time of the delivery of the boat, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of origin and deliver the certificate of origin and the certificate of title to the transferee. The transferee shall make application for a new certificate of title

as provided under s. 30.549 (2) and shall include in the application the certificate of origin.

(2) DEALERS. If a dealer acquires a new or used boat and holds it for resale the dealer need not send the certificate of title or application for original certificate to the department. Upon transferring the boat to another person the dealer shall immediately give such person on a form prescribed by the department a receipt for all title, registration, security interest and sales tax moneys paid to the dealer for transmittal to the department when required. The dealer shall promptly execute the assignment and warranty of title, showing the name and address of the transferee and of any secured party holding a security interest created or reserved at the time of the resale, in the spaces provided therefor on the certificate of origin or the certificate of title, and shall, within 7 business days following the sale or transfer, deliver the certificate of origin and the certificate of title or application for certificate of title to the transferee.

(3) INVOLUNTARY TRANSFERS. (a) If the interest of an owner in a boat passes to another other than by voluntary transfer, the transferee shall, except as provided in par. (b), promptly mail or deliver to the department the last certificate of title, if available, and the documents required by the department to legally effect such transfer, and an application for a new certificate in the form the department prescribes.

(b) If the interest of the owner is terminated or the boat is sold under a security agreement by a secured party, the transferee shall promptly mail or deliver to the department the last certificate of title, an application for a new certificate in the form the department prescribes, and an affidavit made by or on behalf of the secured party that the boat was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement.

(c) A person holding a certificate of title whose interest in the boat has been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate, and the action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of an owner or secured party.

(d) 1. In all cases of the transfer of a boat owned by a decedent, except under subd. 2., ward, trustee or bankrupt, if the department receives all of the following the department shall accept the following as sufficient evidence of the transfer of ownership:

a. Evidence satisfactory to the department of the appointment of a trustee in bankruptcy or of the issuance of letters testamentary or other letters authorizing the administration of a decedent's estate, letters of guardianship, or letters of trust.

b. Title executed by the personal representative, guardian, or trustee.

c. Evidence concerning payment of sales or use taxes required under s. 77.61 (1) or evidence that the transfer is exempt from sales or use taxes.

2. a. The department shall transfer the decedent's interest in a boat to his or her surviving spouse upon receipt of the title executed by the surviving spouse and an affidavit signed by the spouse that includes the date of death of the decedent; the approximate value and description of the boat; and a statement that the spouse is personally liable for the decedent's debts and charges to the extent of the value of the boat, subject to s. 859.25.

b. The transfer shall not affect any lien on the boat.

c. Except as provided in subd. 2. d., no more than 5 boats may be transferred under this subdivision.

d. The limit in subd. 2. c. does not apply if the surviving spouse proceeds under s. 867.03 (1g) and the total value of the decedent's property subject to administration in the state, including boats transferred under this subdivision, does not exceed $50,000.

3. Upon compliance with this paragraph, neither the secretary nor the department shall bear any liability or responsibility for the transfer of a boat in accordance with this paragraph.

(4) NEW CERTIFICATES ISSUED. (a) The department, upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other transfer documents required by law, to support the transfer, shall issue a new certificate of title in the name of the transferee as owner.

(b) The department, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner.

(c) The department shall file and retain for 5 years a record of every surrendered certificate of title, the file to be maintained so as to permit the tracing of title of the boat designated therein.

History: 1987 a. 397; 1989 a. 56, 128; 1991 a. 269; 1997 a. 27; 1999 a. 94; 2001 a. 102; 2005 a. 216.

Cross−reference: See also s. NR 5.07, Wis. adm. code.

30.543 Report of stolen or abandoned boats. Each sheriff and police department in the state shall immediately report to the department of justice each boat reported stolen or recovered within its jurisdiction and the department of justice shall subsequently report such information to the national crime information center.

History: 1987 a. 397.

30.544 Inspection of boats purchased out−of−state. For purposes of enforcement, conservation wardens or local law enforcement officials, after presenting appropriate credentials to the owner of a boat which was purchased outside of this state and which is subject to the certificate of title requirements of this chapter, shall inspect the boat's engine serial number or hull identification number.

History: 1987 a. 397.

30.547 Alterations and falsifications prohibited. (1) No person may intentionally falsify an application for a certificate of title or a certificate of title issued under s. 30.537 (1) or 30.541 (4).

(2) No person may intentionally falsify an application for a certificate of number or registration issued under s. 30.52.

(3) No person may intentionally alter, remove or change any number or other character in an engine serial number.

(4) No person may do any of the following:

(a) Intentionally alter, remove or change any number or other character in a hull identification number.

(b) Manufacture a hull identification number that the person knows to be false to be placed on a boat that is manufactured after November 1, 1972.

(c) Place a hull identification number that the person knows to be false on a boat that is manufactured after November 1, 1972.

History: 1987 a. 397; 1997 a. 198; 2001 a. 16.

30.549 Transfer of ownership of boats with a certificate of title, certificate of number or registration. (1) DUTY OF SELLER. (a) If the owner of a boat transfers all or any part of the owner's interest in the boat, other than by the creation of a security interest, the owner shall give the current certificate of number card or the registration card to the new owner and shall deliver the current certificate of title, if the boat is required to be titled, to the new owner as provided under s. 30.541 (1). If the owner does not possess a current certificate of number or registration or a current title, the owner shall provide to the department any documentation or information the department determines to be necessary to effect the transfer of ownership.

(b) When the owner of a boat that is voluntarily registered pursuant to s. 30.52 (1) (b) 1m. transfers all or any part of the owner's

interest in the boat, other than by the creation of a security interest, the owner shall send written notification of the transfer to the department within 15 days after the date of transfer.

(2) DUTY OF PURCHASER. (a) Transfer of the ownership of a boat terminates the certificate of title and the certificate of number or registration for the boat except in the case of a transfer of a part interest which does not affect the transferor's right to operate the boat. The transferee shall make application for a new certificate of title and a new certificate of number or registration within 10 days after the date of purchase as prescribed by the department. Upon receipt of the application accompanied by the required fee, the department shall issue a new certificate of title and a new certificate of number card or registration card for the boat.

(b) The purchaser of a boat that is voluntarily registered pursuant to s. 30.52 (1) (b) 1m. need not register the boat upon transfer of ownership.

(c) Notwithstanding s. 30.52 (5) (a) 2. or (b) 2., the department may not issue new certification decals or new registration decals if the fee specified under s. 30.52 (3) (h) rather than the appropriate fee specified under s. 30.52 (3) (b) to (g) is paid. The department shall not award a new identification number to the boat unless compliance with federal numbering regulations requires otherwise.

History: 1979 c. 275; 1983 a. 27; 1987 a. 397 s. 5; Stats. 1987 s. 30.549; 1991 a. 39; 1997 a. 198; 2001 a. 16.

30.55 Notice of abandonment or destruction of boat or change of address. (1) DESTRUCTION OR ABANDONMENT. If a boat covered by a certificate of title and certificate of number or registration issued by this state is destroyed or abandoned, the owner shall notify the department of that fact within 15 days after the destruction or abandonment and shall at the same time return the certificate of title and certificate of number card or registration card to the department for cancellation.

(2) CHANGE OF ADDRESS. If a person, after applying for a certificate of title and certificate of number or registration or after receiving a certificate of title and certificate of number card or a registration card, moves from the address given in the application or the card, he or she, within 15 days after moving, shall notify the department in writing of both the old and new address and of any identification numbers awarded under this chapter.

History: 1973 c. 302; 1983 a. 27; 1987 a. 397.

30.553 Sharing boat title records. (1) At time intervals to be determined by the department, but at least quarterly, the department shall, upon request, provide boat manufacturers with the department's records under ss. 30.537 (2) and 30.541 (4) (c) for the primary purpose of validating the hull identification numbers and engine serial numbers provided by applicants for certificate of title.

(2) Upon examination, if a boat manufacturer discovers a discrepancy between the information contained in the department's records and the manufacturer's records, the manufacturer shall notify the department of the discrepancy and the department shall investigate and determine which is the correct information.

History: 1987 a. 397.

30.57 Perfection of security interests. (1) Except as provided in sub. (2), a security interest in a boat of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or secured parties of the boat unless perfected as provided in this section and ss. 30.572 and 30.573.

(2) Sections 30.57 to 30.576 do not apply to any of the following:

(a) A lien given by statute to a supplier of services or materials for a boat.

(b) A lien given by statute to the United States, this state or a political subdivision of this state.

(c) A security interest governed by ch. 409 that is created by a manufacturer or dealer who holds the boat for sale.

(3) Except as provided in sub. (4), a security interest is perfected by the delivery to the department of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party, and the required fee. The security interest is perfected as of the later of the time of its delivery or the time of the attachment of the security interest.

(4) If a secured party whose name and address is contained on the certificate of title for a boat acquires a new or additional security interest in the boat, the new or additional security interest is perfected at the time of its attachment under s. 409.203.

(5) An unperfected security interest is subordinate to the rights of persons described in s. 409.317.

(6) The rules of priority stated in s. 409.322, the other sections referred to in that section, and subch. III of ch. 409 shall, to the extent appropriate, apply to conflicting security interests in a boat of a type for which a certificate of title is required.

(7) The rules stated in subch. VI of ch. 409 governing the rights and duties of secured parties and debtors and the requirements for, and effect of, disposition of a boat by a secured party, upon default shall, to the extent appropriate, govern the rights of secured parties and owners with respect to security interests in boats perfected under this section and ss. 30.572 and 30.573.

(8) If a boat is subject to a security interest when brought into this state, s. 409.316 states the rules which determine the validity and perfection of the security interest in this state.

History: 1991 a. 39; 2001 a. 10.

30.571 Notification of person who has perfected security interest. If the department receives information from another state that a boat that is titled in this state is being titled in the other state and the information does not show that a perfected security interest, as shown by the records of the department, has been satisfied, the department shall notify the person who has perfected the security interest. The person shall pay the department the fee under s. 30.537 (4) (e) for each notification.

History: 1991 a. 39.

30.572 Duties on creation of security interest. (1) Subsections (2) to (4) apply if an owner creates a security interest in a boat of a type for which a certificate of title is required, unless the name and address of the secured party already appears on the certificate of title for the boat.

(2) At the time that the security interest is created, the owner shall complete, in the space provided on the certificate of title or on a separate form prescribed by the department, an application to name the secured party on the certificate, showing the name and address of the secured party. The owner shall deliver the certificate, application and the fee required under s. 30.537 (4) (d) to the secured party.

(3) Within 10 days after receipt, the secured party shall deliver the certificate, application and fee to the department.

(4) Upon receipt of the certificate of title, application and fee, the department shall issue to the owner a new certificate containing the name and address of the new secured party. The department shall deliver to the new secured party and to the register of deeds for the county in which the debtor resides, memoranda, in a form prescribed by the department, of the notation of the security interest upon the certificate. The department shall deliver to the secured party and to the register of deeds additional memoranda of any assignment, termination or release of the security interest.

(5) A register of deeds may maintain a file of all memoranda received from the department under sub. (4). A filing, however, is not required for a perfection, assignment or release of a security interest, which is effective upon compliance with ss. 30.57 (3), 30.573 and 30.574.

History: 1991 a. 39.

30.573 Assignment of security interest. (1) Except as otherwise provided in s. 409.308 (5), a secured party may assign, absolutely or otherwise, the secured party's security interest in a boat to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing with the secured party as the holder of the security interest and the secured party remains liable for any obligations as a secured party until the assignee is named as secured party on the certificate of title.

(2) Subject to s. 409.308 (5), to perfect an assignment, the assignee may deliver to the department the certificate of title, the fee required under s. 30.537 (4) (f) and an assignment by the secured party named in the certificate in the form the department prescribes. Upon receipt, the department shall name the assignee as a secured party on the certificate and issue a new certificate.

History: 1991 a. 39; 2001 a. 10.

30.574 Release of security interest. (1) Within one month, or within 10 days following written demand by the debtor, after there is no outstanding obligation and no commitment to make advances, incur obligations or otherwise give value, secured by the security interest in a boat under any security agreement perfected under ss. 30.57, 30.572 and 30.573 between the owner and the secured party, the secured party shall execute and deliver to the owner a release of the security interest in the form and manner prescribed by the department and a notice to the owner stating in no less than 10−point boldface type the owner's obligation under sub. (2). If the secured party fails to execute and deliver the release and notice of obligation as required by this subsection, the secured party is liable to the owner for $25 and for any loss caused to the owner by the failure.

(2) Within 5 days after receipt of the release and notice of obligation, the owner, other than a dealer holding the boat for resale, shall mail or deliver the certificate and release to the department. The department shall release the secured party's rights on the certificate and issue a new certificate.

History: 1991 a. 39.

30.575 Secured party's and owner's duties. (1) A secured party named in a certificate of title shall, upon written request of the owner or of another secured party named on the certificate, disclose any pertinent information about the secured party's security agreement and the indebtedness secured by it.

(2) An owner shall promptly deliver the certificate of title to any secured party who is named on it or who has a security interest in the boat described in it under any applicable prior law of this state, upon receipt of a notice from the secured party that the secured party's security interest is to be assigned, extended or perfected.

(3) A secured party who fails to disclose information under sub. (1) shall be liable to the owner for any loss caused by the failure to disclose.

(4) An owner who fails to deliver the certificate of title to a secured party requesting it under sub. (2) shall be liable to the secured party for any loss caused to the secured party by the failure to deliver.

History: 1991 a. 39.

30.576 Method of perfecting exclusive. (1) Except as provided in sub. (2) and subject to s. 409.311 (4), the method provided in ss. 30.57 to 30.575 of perfecting and giving notice of security interests subject to those sections is exclusive. Security interests subject to ss. 30.57 to 30.575 are exempt from the provisions of law that otherwise require or relate to the filing of instruments creating or evidencing security interests.

(2) Subsection (1) does not affect the validity of a security interest perfected before January 1, 1992.

History: 1991 a. 39; 2001 a. 10.

30.577 Suspension or revocation of certificate of title. (1) The department shall suspend or revoke a certificate of title for a boat if it finds any of the following:

(a) The certificate of title was fraudulently procured, erroneously issued or prohibited by law.

(b) The boat has been scrapped, dismantled or destroyed.

(c) A transfer of title is set aside by a court by order or judgment.

(2) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.

(3) When the department suspends or revokes a certificate of title, the owner or person in possession of the certificate shall, within 5 days after receiving notice of the suspension or revocation, mail or deliver the certificate to the department.

(4) The department may seize and impound a certificate of title that is suspended or revoked.

History: 1991 a. 39.

30.578 Grounds for refusing issuance of certificate of title. The department shall refuse issuance of a certificate of title if any required fee is not paid or if it has reasonable grounds to believe that any of the following exists:

(1) The person alleged to be the owner of the boat is not the owner.

(2) The application contains a false or fraudulent statement.

(3) The applicant fails to furnish information or documents required by the department.

History: 1991 a. 269.

30.60 Classification of motorboats. For the purposes of ss. 30.61 and 30.62, motorboats are divided on the basis of their length into 4 classes as follows:

(1) Class A—those less than 16 feet.

(2) Class 1—those 16 feet or over but less than 26 feet.

(3) Class 2—those 26 feet or over but less than 40 feet.

(4) Class 3—those 40 feet or over.

30.61 Lighting equipment. (1) WHEN LIGHTS REQUIRED; PROHIBITED LIGHTS. (a) No person shall operate any motorboat at any time from sunset to sunrise unless such motorboat carries the lighting equipment required by this section and unless such equipment is lighted when and as required by this section.

(b) No owner shall give permission for the operation of a motorboat at any time from sunset to sunrise unless such motorboat is equipped as required by this section.

(c) No person shall exhibit from or on any motorboat when under way at any time from sunset to sunrise any light which may be mistaken for those required by this section.

(2) LIGHTS FOR MOTORBOATS OF CLASSES A AND 1. All motorboats of classes A and 1 when under way at any time from sunset to sunrise shall carry and have lighted the following lamps:

(a) One lamp aft showing a bright white light all around the horizon.

(b) One combined lamp in the fore part of the motorboat and lower than the white light aft, showing green to starboard and red to port and so fixed that each side of the combined lamp throws a light from directly ahead to 2 points abaft the beam on its respective side.

(3) LIGHTS FOR MOTORBOATS OF CLASSES 2 AND 3. All motorboats of classes 2 and 3 when under way at any time from sunset to sunrise shall carry and have lighted the following lamps:

(a) One lamp in the fore part of the boat as near the stem as practicable, so constructed as to show an unbroken bright white light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light from directly ahead to 2 points abaft the beam on either side.

(b) One lamp aft showing a bright white light all around the horizon and higher than the white light forward.

(c) On the starboard side, one lamp showing a green light, and on the port side, one lamp showing a red light, both fitted with inboard screens of sufficient height and so set as to prevent these lights from being seen across the bow. Each such side lamp shall be so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and shall be so fixed as to throw the light from directly ahead to 2 points abaft the beam on its respective side.

(4) SAILBOATS WITH MOTORS. Sailboats equipped with motors and being propelled in whole or in part by such motor must comply with sub. (2) or (3), whichever is applicable. Whenever such a sailboat is being propelled entirely by sail at any time from sunset to sunrise, it shall have lighted the lamps showing the colored lights specified in sub. (2) or (3), but not the lamps showing the white lights, and shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(5) SAILBOATS WITHOUT MOTORS AND ROWBOATS. Every boat propelled by muscular power and every sailboat not equipped with a motor, when under way at any time from sunset to sunrise, shall carry ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(6) CERTAIN MOORED, ANCHORED OR DRIFTING BOATS; OTHER STRUCTURES. (a) Except as provided under par. (b), any moored, anchored or drifting boat or any other fixed and floating structure outside designated mooring areas or beyond 200 feet from the shoreline is required to be lighted from sunset to sunrise by a white light visible all around the horizon.

(b) This subsection does not require any light to be shone from duck blinds constructed on emergent vegetation.

(7) PERFORMANCE SPECIFICATIONS FOR LAMPS. Every white light prescribed by this section shall be of such character as to be visible at a distance of at least 2 miles on a dark night with clear atmosphere. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile on a dark night with clear atmosphere.

(8) OPTIONAL LIGHTING REQUIREMENTS. Any boat may carry and exhibit the lights required by the federal regulations for preventing collisions at sea, 1948, federal act of October 11, 1951, (33 USC 143−147d) as amended, in lieu of the lights required by subs. (2) and (3).

(9) DEPARTMENT TO PROMULGATE RULES. The department shall promulgate rules modifying or supplementing the lighting requirements of this section as necessary to keep the requirements in conformity with the lighting rules adopted by the U.S. coast guard.

(10) OPERATION OF PERSONAL WATERCRAFT. (a) Notwithstanding subs. (1), (2), (8) and (9), no person may operate a personal watercraft at any time from sunset to sunrise.

(b) If a person operates a personal watercraft in violation of par. (a), the operation shall be subject to additional penalties for any failure to comply with the applicable lighting requirements under subs. (1), (2), (8) and (9).

History: 1973 c. 302; 1979 c. 275; 1985 a. 243; 1987 a. 399; 1989 a. 359; 1991 a. 257.

Cross−reference: See also s. NR 5.17, Wis. adm. code.

30.62 Other equipment. (1) WHEN EQUIPMENT REQUIRED. No person shall operate any boat on the waters of this state unless such boat is equipped as required by this section and the rules of the department promulgated under this section. No owner of a boat shall rent such boat to any other person for use upon the waters of this state unless such boat is equipped at the time of rental as required by this section and the rules of the department promulgated under this section. If such boat is properly equipped at the time of rental for conditions then existing, the responsibility of the owner under this section is met, notwithstanding a subsequent change in the number of passengers or a change in time from daylight to dark.

(2) MUFFLER REQUIREMENT AND NOISE LEVEL STANDARDS. (a) *Mufflers.* The engine of every motorboat propelled by an internal combustion engine and used on the waters of this state shall be equipped and maintained with a muffler, underwater exhaust system or other noise suppression device.

(b) *Maximum noise levels for operation.* No person may operate a motorboat powered by an engine on the waters of this state in such a manner as to exceed a noise level of 86 measured on an "A" weighted decibel scale.

(c) *Maximum noise levels for sale.* No person may sell, resell or offer for sale any motorboat for use on the waters of the state if the motorboat has been so modified that it cannot be operated in such a manner that it will comply with the noise level requirements under par. (b).

(d) *Maximum noise level for manufacture.* 1. No person may manufacture and offer for sale any motorboat for use on the waters of this state if the motorboat cannot be operated in such a manner so as to comply with the noise level requirements under par. (b).

2. The department may promulgate rules establishing testing procedures to determine noise levels for the enforcement of this section.

3. The department may revise these rules as necessary to adjust to advances in technology.

(e) *Tampering.* No person may remove or alter any part of a marine engine, its propulsion unit or its enclosure or modify the mounting of a marine engine on a boat in such a manner as to exceed the noise levels prescribed under par. (b).

(f) *Local ordinances.* No political subdivision of this state may establish, continue in effect or enforce any ordinance that prescribes noise levels for motorboats or which imposes any requirement for the sale or use of marine engines at prescribed noise levels unless the ordinance is identical to the provisions of this subsection or rules promulgated by the department under this subsection.

(g) *Exemption for specific uses.* This subsection does not apply to any of the following:

1. A motorboat while competing in a race conducted under a permit from a town, village or city or from an authorized agency of the federal government.

2. A motorboat designed and intended solely for racing, while the boat is operated incidentally to the testing or tuning up of the motorboat and engine for the race in an area designated by and operated under a permit specified under subd. 1.

3. A motorboat on an official trial for a speed record if conducted under a permit from a town, village or city.

4. The operation of a commercial or nonrecreational fishing boat, ferry or other vessel engaged in interstate or international commerce, other than a tugboat.

(h) *Exemption by rule.* The department may promulgate by rule exemptions from compliance with this subsection for certain activities for certain types of motorboats for specific uses and for specific areas of operation.

(2m) OVERPOWERING. No person may sell, equip or operate, and no owner of a boat may allow a person to operate, a boat with any motor or other propulsion machinery beyond its safe power capacity, taking into consideration the type and construction of such watercraft and other existing operating conditions.

(3) PERSONAL FLOTATION DEVICES. (a) Every boat, except a sailboard and except as provided in par. (b), shall carry at least one personal flotation device prescribed by federal regulations for each person on board or being attended by the boat, so placed as to be readily accessible and available to the persons.

(b) No person may operate a personal watercraft unless each person riding on the personal watercraft is wearing a personal

flotation device that is a type I, type II, type III or type V personal flotation device as specified under 33 CFR part 175, subpart B.

(3m) SAFETY DEVICES FOR PERSONAL WATERCRAFT. No person may operate a personal watercraft that is equipped by the manufacturer with an engine cutoff switch activated by a lanyard unless the engine cutoff switch is in good working order and the lanyard is attached in the manner prescribed by the manufacturer to the operator or the operator's clothing or personal flotation device. No person may sell a personal watercraft manufactured after January 1, 1993, unless the personal watercraft is equipped by the manufacturer with an engine cutoff switch activated by a lanyard or is equipped by the manufacturer with a self−circling safety feature.

(4) FIRE EXTINGUISHERS. (a) Every motorboat, except outboards of open construction, shall be provided with such number, size and type of fire extinguishers, capable of promptly and effectively extinguishing burning gasoline, as prescribed by rules of the department. Such fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible. "Open construction" means construction which will not permit the entrapment of explosive or flammable gases or vapors.

(b) This subsection does not apply to a motorboat while competing in a race conducted pursuant to a permit from a town, village or city or from an authorized agency of the U.S. government, nor does it apply to a boat designed and intended solely for racing, while the boat is operated incidentally to the tuning up of the boat and engine for the race at the race location on the day of the race.

(5) BACKFIRE FLAME ARRESTERS. Every boat equipped with an inboard motor using gasoline as a fuel shall have the carburetors of every inboard gasoline motor fitted with an efficient device for arresting backfire flames. The device shall meet the specifications prescribed by federal regulations.

(6) BILGE, ENGINE AND FUEL COMPARTMENT VENTILATORS. Every boat, except open boats, using as fuel any liquid of a volatile nature, shall be provided with an efficient natural or mechanical ventilation system which is capable of removing resulting inflammable or explosive gases.

(8) BATTERY COVER. Every motorboat equipped with storage batteries shall be provided with suitable supports and secured against shifting with the motion of the boat. Such storage batteries shall be equipped with a nonconductive shielding means to prevent accidental shorting of battery terminals.

(9) DEPARTMENT MAY PROMULGATE RULES. The department shall promulgate such rules modifying or supplementing the associated equipment requirements of this section as are necessary to keep those requirements in conformity with federal regulations.

History: 1973 c. 302; 1979 c. 275; 1983 a. 316; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 224, 359; 1991 a. 257; 1993 a. 167, 437; 1997 a. 198; 2005 a. 308.

Cross−reference: See also ss. NR 5.001, 5.10, 5.11, 5.125, and 5.13, Wis. adm. code.

30.625 Rental of motorboats. (1) No person who is engaged in the rental or leasing of motorboats to the public may do any of the following:

(a) Rent or lease a motorboat for operation by a person who will be operating a motorboat for the first time in each calendar year and who does not hold a valid certificate issued under s. 30.74 (1) unless the person engaged in the rental or leasing gives the person instruction on how to operate a motorboat in the manner established by the department under s. 30.74 (1) (am).

(b) Rent or lease a personal watercraft to a person under 16 years of age.

(c) Rent or lease a personal watercraft without providing the person who will be operating the personal watercraft with a personal flotation device that meets the requirements specified under s. 30.62 (3) (b).

(1m) No person who is under 16 years of age may rent or lease a personal watercraft.

History: 1991 a. 257; 2005 a. 356 ss. 1b to 1e, 8; 2009 a. 180; 2011 a. 260 s. 81.

Cross−reference: See also s. NR 5.16, Wis. adm. code.

30.63 Sale and use of certain outboard motors restricted. (1) SALE. No person may sell any new outboard motor for use in the waters of this state unless such motor is equipped with a crankcase effectively sealed to prevent the drainage of raw fuel into the waters in which the motor is operated.

(2) USE. Beginning January 1, 1990, no person may operate an outboard motor in the waters of this state unless such motor is equipped with a crankcase effectively sealed to prevent the drainage of raw fuel into the waters in which such motor is operated.

History: 1973 c. 125; 1989 a. 56.

30.635 Motorboat prohibition. On lakes 50 acres or less having public access, motorboats may not be operated in excess of slow−no−wake speed, except when such lakes serve as thoroughfares between 2 or more navigable lakes. The department by rule may modify or waive the requirements of this section as to particular lakes, if it finds that public safety is not impaired by such modification or waiver.

History: 1973 c. 302; Stats. 1973 s. 30.63; 1973 c. 336; Stats. 1973 s. 30.635.

Cross−reference: See also ss. NR 5.20 and 5.21, Wis. adm. code.

30.64 Patrol boats. (1) The operator of a patrol boat, including a commission warden, as defined in s. 939.22 (5), when responding to an emergency call or when in pursuit of an actual or suspected violator of the law, need not comply with this subchapter or ordinances under s. 30.77 when a siren or emergency light is activated or, if the patrol boat is equipped with a siren and an emergency light, when both the siren and emergency light are activated, and if due regard is given to the safety of other persons in the vicinity. If an emergency light is used, it shall be of a type and design specified under 33 CFR 88.11 or 88.12.

(2) Upon the approach of a patrol boat, including a patrol boat operated by a commission warden, as defined in s. 939.22 (5), giving an audio or visual signal, the operator of a boat shall reduce the boat speed to slow−no−wake and yield the right−of−way to the patrol boat until it has passed.

(3) No person operating a boat may refuse to stop after being requested or signaled to do so by a law enforcement officer or a commission warden, as defined in s. 939.22 (5).

History: 1979 c. 275; 1993 a. 167; 2005 a. 308; 2007 a. 27.

30.65 Traffic rules. (1) MEETING; OVERTAKING; RIGHT−OF−WAY. Every person operating a boat shall comply with the following traffic rules, except when deviation therefrom is necessary to comply with federal pilot rules while operating on the navigable waters of the United States:

(a) When 2 motorboats are approaching each other "head and head," or so nearly so as to involve risk of collision, each boat shall bear to the right and pass the other boat on its left side.

(b) When 2 motorboats are approaching each other obliquely or at right angles, the boat which has the other on her right shall yield the right−of−way to the other. "Right" means from dead ahead, clockwise to 2 points abaft the starboard beam.

(d) When a motorboat and a boat propelled entirely by sail or muscular power are proceeding in such a direction as to involve risk of collision, the motorboat shall yield the right−of−way to the other boat.

(e) A boat may overtake and pass another boat on either side if it can be done with safety but the boat doing the overtaking shall yield the right−of−way to the boat being overtaken, notwithstanding any other rule in this section to the contrary.

(f) A boat granted the right−of−way by this section shall maintain her course and speed, unless to do so would probably result in a collision.

(2) ADDITIONAL TRAFFIC RULES. The department may promulgate such additional traffic rules as it deems necessary in the interest of public safety. Such rules shall conform as nearly as possible to the federal pilot rules.

History: 1985 a. 332 s. 251 (1); 1993 a. 490.

30.66 Speed restrictions. (1) SPEED TO BE REASONABLE AND PRUDENT. No person shall operate a motorboat at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a motorboat shall be so controlled as to avoid colliding with any object lawfully in or on the water or with any person, boat or other conveyance in or on the water in compliance with legal requirements and exercising due care.

(2) FIXED LIMITS. In addition to complying with sub. (1), no person may operate a motorboat at a speed in excess of the posted notice as established by regulatory markers.

(3) PROHIBITED OPERATION. (a) No person may operate a motorboat within 100 feet of any dock, raft, pier, or buoyed restricted area on any lake at a speed in excess of slow−no−wake.

(ag) 1. Except as provided in subd. 2., no person may operate a motorboat, other than a personal watercraft, at a speed in excess of slow−no−wake within 100 feet of the shoreline of any lake.

2. In its ordinances enacted under s. 30.77, a city, village, town, public inland lake protection and rehabilitation district, or a town sanitary district may provide an exemption from the prohibition in subd. 1. or may substitute a lesser number of feet.

3. This paragraph does not affect any of the following:

a. The authority of a local governmental unit specified in subd. 2. to enact more restrictive ordinances under s. 30.77.

b. The authority of the Dane County board to enact more restrictive ordinances under s. 33.455 (3).

(ar) No person may operate a personal watercraft at a speed in excess of slow−no−wake within 200 feet of the shoreline of any lake.

(b) No person may operate a personal watercraft at a speed in excess of slow−no−wake within 100 feet of any other boat.

(c) Paragraphs (a) to (b) do not apply to pickup or drop areas that are marked with regulatory markers and that are open to operators of personal watercraft and to persons and motorboats engaged in water skiing or similar activity.

History: 1973 c. 302; 1981 c. 303; 1991 a. 257; 1997 a. 198; 2009 a. 31.
Cross−reference: See also s. NR 5.001, Wis. adm. code.

30.67 Accidents and accident reports. (1) DUTY TO RENDER AID. Insofar as the operator of a boat can do so without serious danger to the operator's boat or to persons on board, the operator of a boat involved in a boating accident shall stop the operator's boat and render to other persons affected thereby such assistance as may be practicable and necessary to save them from or minimize any danger caused by the accident. The operator shall give the operator's name and address and identification of the operator's boat to any person injured and to the owner of any property damaged in the accident.

(2) DUTY TO REPORT. (a) If a boating accident results in death or injury to any person, the disappearance of any person from a boat under circumstances indicating death or injury, or property damage, every operator of a boat involved in an accident shall, without delay and by the quickest means available, give notice of the accident to a conservation warden or local law enforcement officer and shall file a written report with the department on the form prescribed by it. The department shall promulgate rules necessary to keep accident reporting requirements in conformity with rules adopted by the U.S. coast guard.

(b) If the operator of a boat is physically incapable of making the report required by this subsection and there was another occupant in the boat at the time of the accident capable of making the report the other occupant shall make such report.

(3) TERMS DEFINED. In this section:

(a) "Boating accident" means a collision, accident or other casualty involving a boat.

(b) "Injury" means any injury of a physical nature resulting in medical treatment, disability for more than 24 hours or loss of consciousness.

(c) "Total property damage" means the sum total cost of putting the property damaged in the condition it was in before the accident, if repair thereof is practical, and if not practical, the sum total cost of replacing the property.

(4) REPORTS CONFIDENTIAL. No report required by this section to be filed with the department shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any person who has or claims to have made such a report, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made.

(5) TRANSMITTAL OF INFORMATION TO FEDERAL AND STATE AUTHORITIES. If any request for information available on the basis of reports filed pursuant to this section is duly made by an authorized official or agency of the U.S. government or of the state which registered the boat involved or the state where the accident occurred, the department shall compile and furnish such information in accordance with such request.

(6) CORONERS AND MEDICAL EXAMINERS TO REPORT; REQUIRE BLOOD SPECIMEN. (a) Every coroner or medical examiner shall on or before the 10th day of each month report in writing to the department the death of any person within his or her jurisdiction during the preceding calendar month as the result of an accident involving a boat and the circumstances of the accident.

(b) In cases of death involving a boat in which the person died within 6 hours of the time of the accident, a blood specimen of at least 10 cc. shall be withdrawn from the body of the decedent within 12 hours after his or her death, by the coroner or medical examiner or by a physician so designated by the coroner or medical examiner or by a qualified person at the direction of the physician. All funeral directors, as defined in s. 445.01 (5), shall obtain a release from the coroner or medical examiner prior to proceeding with embalming any body coming under the scope of this section. The blood so drawn shall be forwarded to a laboratory approved by the state health officer for analysis of the alcoholic content of the blood specimen. The coroner or medical examiner causing the blood to be withdrawn shall be notified of the results of each analysis made and shall forward the results of each analysis to the state health officer. The state health officer shall keep a record of all examinations to be used for statistical purposes only. The cumulative results of the examinations, without identifying the individuals involved, shall be disseminated and made public by the state health officer. The department shall reimburse coroners and medical examiners for the costs incurred in submitting reports and taking blood specimens and laboratories for the costs incurred in analyzing blood specimens under this section.

History: 1973 c. 302; 1979 c. 275; 1989 a. 359; 1991 a. 316; 2005 a. 266.
Cross−reference: See also s. NR 5.08, Wis. adm. code.

30.675 Distress signal flag. The display on a boat or by a person of an orange flag approximately 18 by 30 inches in size shall indicate that such boat or person is in need of help.

(1) Insofar as is possible without serious danger to the operator's boat or persons on board, the operator of a boat observing a distress signal shall render to the boat or person displaying the signal such assistance as may be practicable and necessary to save the boat or person or to minimize any danger to them.

(2) No person shall display a flag like that described in sub. (1) unless such person is in need of assistance to prevent bodily injury or destruction of property.

History: 1991 a. 316.

30.678 Boating safety certificates; requirements; exemptions; operation by minors. (1) MOTORBOATS OTHER THAN PERSONAL WATERCRAFT. (a) No person under 10 years of age may operate a motorboat.

(b) No person who is at least 10 years of age but under 12 years of age may operate a motorboat unless he or she is accompanied in the motorboat by a parent or guardian or by a person who is at least 18 years of age and who is designated by a parent or guardian.

(c) No person who is at least 12 years of age but under 16 years of age may operate a motorboat unless one of the following applies:

1. The person holds a valid boating safety certificate issued under s. 30.74 (1) (a) or a valid boating safety certificate that is honored under s. 30.74 (1) (c).

2. The person is accompanied in the motorboat by a parent or guardian or by a person who is at least 18 years of age and who is designated by a parent or guardian.

(d) No person who was born on or after January 1, 1989, and who is 16 years of age or older may operate a motorboat unless the person holds a valid safety certificate issued under s. 30.74 (1) (a) or a valid boating safety certificate that is honored under s. 30.74 (1) (c).

(e) Paragraphs (a) to (d) do not apply to the operation of a personal watercraft.

(2) PERSONAL WATERCRAFT. (a) No person under 12 years of age may operate a personal watercraft.

(b) No person who is 12 years of age or older but under 16 years of age may operate a personal watercraft unless he or she is in possession of a valid certificate issued under s. 30.74 (1) (a) or a valid boating safety certificate that is honored under s. 30.74 (1) (c).

(c) No person who was born on or after January 1, 1989, and who is 16 years of age or older may operate a personal watercraft unless the person holds a valid safety certificate issued under s. 30.74 (1) (a) or a valid boating safety certificate that is honored under s. 30.74 (1) (c).

(3) EXEMPTION. Subsections (1) (b), (c), and (d) and (2) (b) and (c) do not apply to a person while the person is operating a motorboat as may be required as part of a boating safety course under s. 30.74 (1).

(4) PARENT AND GUARDIAN LIABILITY. A violation of sub. (1) (a), (b), (c), or (d) or (2) (a), (b), or (c) that is done with the knowledge of a parent or guardian shall be considered a violation by the parent or guardian and shall be punishable under s. 30.80.

History: 2005 a. 356 ss. 1m to 3, 7, 9, 10.

Cross−reference: See also s. NR 5.16, Wis. adm. code.

30.68 Prohibited operation. (2) NEGLIGENT OPERATION. No person may operate or use any boat, or manipulate any water skis, aquaplane or similar device upon the waters of this state in a careless, negligent or reckless manner so as to endanger that person's life, property or person or the life, property or person of another.

(3) OPERATION BY INCAPACITATED PERSON. No person in charge or control of a boat shall authorize or knowingly permit the boat to be operated by any person who by reason of physical or mental disability is incapable of operating such boat under the prevailing circumstances.

(4) CREATING HAZARDOUS WAKE OR WASH. (a) No person shall operate a motorboat so as to approach or pass another boat in such a manner as to create a hazardous wake or wash.

(b) An operator of a motorboat is liable for any damage caused to the person or property of another by the wake or wash from such motorboat unless the negligence of such other person was the primary cause of the damage.

(4m) FACING BACKWARDS. No person may operate a personal watercraft while facing backwards.

(5) OPERATING IN CIRCULAR COURSE. No person may operate a motorboat repeatedly in a circuitous course around any other boat, or around any person who is swimming, if such circuitous course is within 200 feet of such boat or swimmer; nor shall any boat or water skier operate or approach closer than 100 feet to any skin diver's flag or any swimmer unless the boat is part of the skin diving operation or is accompanying the swimmer, or unless physical conditions make compliance impossible.

(5m) TOWING BY A PERSONAL WATERCRAFT. A person may use a personal watercraft to tow a stranded or disabled boat if, during towing, the speed of the personal watercraft does not exceed slow−no−wake.

(6) RIDING ON DECKS AND GUNWALES. No person operating a motorboat may ride or sit, or may allow any other person in the motorboat to ride or sit, on the gunwales, tops of seat backs or sides or on the decking over the bow of the boat in an unsafe manner while under way, unless such person is inboard of guards or railings provided on the boat to prevent persons from being lost overboard. Nothing in this section shall be construed to prohibit entry upon the decking over the bow of the boat for the purpose of anchoring, mooring or casting off or other necessary purpose.

(7) RESTRICTED AREAS. No person shall operate a boat within a water area which has been clearly marked by buoys or some other distinguishing device as a bathing or swimming area; nor operate a boat in restricted use areas contrary to regulatory notice pursuant to s. 30.74 (2).

(8) ANCHORING IN TRAFFIC LANES. No person may anchor, place, affix or abandon any unattended boat, raft, float or similar structure in the traveled portion of any river or channel or in any traffic lane established and legally marked, so as to prevent, impede or interfere with the safe passage of any other boat through the same.

(8m) MOORING. (a) No person may use a mooring or attach a boat to a mooring buoy if the mooring or mooring buoy violates s. 30.772 or 30.773.

(b) No person may use a piling for mooring a boat, except for mooring a boat in Lake Michigan or Lake Superior or on the Mississippi River.

(9) OVERLOADING. No person may operate, and no owner of a boat may allow a person to operate, a boat that is loaded with passengers or cargo beyond its safe carrying capacity, taking into consideration weather and other existing operating conditions.

(11) UNNECESSARILY SOUNDING WHISTLES. No person shall unnecessarily sound a horn, whistle or other sound−producing device on any boat while at anchor or under way. The use of a siren on any boat except a patrol boat on patrol or rescue duty is prohibited.

(12) MOLESTING OR DESTROYING AIDS TO NAVIGATION AND REGULATORY MARKERS. No unauthorized person shall move, remove, molest, tamper with, destroy or attempt to destroy, or moor or fasten a boat (except to mooring buoys) to any navigation aids or regulatory markers, signs or other devices established and maintained to aid boaters.

History: 1971 c. 40 s. 93; 1971 c. 219; 1973 c. 302; 1975 c. 22, 39; 1983 a. 459; 1985 a. 146 s. 8; 1985 a. 243, 331; 1991 a. 257, 316; 1993 a. 236; 1997 a. 198; 2005 a. 308, 356.

Cross−reference: See also s. NR 5.001, Wis. adm. code.

30.681 Intoxicated boating. (1) OPERATION. (a) *Operating while under the influence of an intoxicant.* No person may engage in the operation of a motorboat while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation.

(b) *Operating after using a controlled substance or alcohol.* 1. No person may engage in the operation of a motorboat while the person has an alcohol concentration of 0.08 or more. This subdivision does not apply to commercial motorboats.

1m. No person may engage in the operation of a motorboat while the person has a detectable amount of a restricted controlled substance in his or her blood.

2. No person may engage in the operation of a commercial motorboat while the person has a blood alcohol concentration of

0.04% or more by weight of alcohol in his or her blood. No person may engage in the operation of a commercial motorboat while the person has 0.04 grams or more of alcohol in 210 liters of his or her breath.

(bn) *Operating with alcohol concentrations at specified levels; below legal drinking age.* A person who has not attained the legal drinking age, as defined in s. 125.02 (8m), may not engage in the operation of a motorboat while he or she has a blood alcohol concentration of more than 0.0 but less than 0.08.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) or (b) 1., 1m., or 2., the offenses shall be joined. If the person is found guilty of any combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m., and 2. each require proof of a fact for conviction which the others do not require.

(d) *Defenses.* In an action under par. (b) 1m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol.

(2) CAUSING INJURY. (a) *Causing injury while under the influence of an intoxicant.* No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe motorboat operation may cause injury to another person by the operation of a motorboat.

(b) *Causing injury after using a controlled substance or alcohol.* 1. No person who has an alcohol concentration of 0.08 or more may cause injury to another person by the operation of a motorboat. This subdivision does not apply to commercial motorboats.

1m. No person who has a detectable amount of a restricted controlled substance in his or her blood may cause injury to another person by the operation of a motorboat.

2. No person who has a blood alcohol concentration of 0.04% or more by weight of alcohol in his or her blood may cause injury to another person by the operation of a commercial motorboat. No person who has 0.04 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of a commercial motorboat.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) or (b) 1., 1m., or 2. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m., and 2. each require proof of a fact for conviction which the others do not require.

(d) *Defenses.* 1. a. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a motorboat that is not a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration of 0.08 or more or a detectable amount of a restricted controlled substance in his or her blood.

b. In an action under par. (b) 1m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol.

2. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration of 0.04% or more by weight of alcohol in his or her blood or 0.04 grams or more of alcohol in 210 liters of his or her breath.

History: 1985 a. 331; 1989 a. 275; 1995 a. 290, 436; 1997 a. 35, 198; 2003 a. 30, 97, 326.

30.682 Preliminary breath screening test. (1) REQUIREMENT. A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated boating law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(2) USE OF TEST RESULTS. A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated boating law or for the purpose of deciding whether or not to request a chemical test under s. 30.684. Following the preliminary breath screening test, chemical tests may be required of the person under s. 30.684.

(3) ADMISSIBILITY. The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under s. 30.684.

(4) REFUSAL. There is no penalty for a violation of sub. (1). Section 30.80 (1) and the general penalty provision under s. 939.61 do not apply to that violation.

History: 1985 a. 331.

30.683 Implied consent. Any person who engages in the operation of a motorboat upon the waters of this state is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 30.684. Any person who engages in the operation of a motorboat upon the waters of this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 30.684.

History: 1985 a. 331.

30.684 Chemical tests. (1) REQUIREMENT. (a) *Samples; submission to tests.* A person shall provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated boating law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated boating law and if he or she is requested to submit to the test by a law enforcement officer.

(b) *Information.* A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under par. (a) shall inform the person at the time of the request and prior to obtaining the sample or administering the test:

1. That he or she is deemed to have consented to tests under s. 30.683;

2. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under sub. (5) and is subject to the same penalties and procedures as a violation of s. 30.681 (1) (a); and

3. That in addition to the designated chemical test under sub. (2) (b), he or she may have an additional chemical test under sub. (3) (a).

(c) *Unconscious person.* A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated boating law, one or more chemical tests may be administered to the person without a request under par. (a) and without providing information under par. (b).

(2) CHEMICAL TESTS. (a) *Test facility.* Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

(b) *Designated chemical test.* A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

(c) *Additional chemical test.* A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under par. (b), which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

(d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this section. Blood may be withdrawn from a person arrested for a violation of the intoxicated boating law only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

(e) *Report.* A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this section shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the person who provided the sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(3) ADDITIONAL AND OPTIONAL CHEMICAL TESTS. (a) *Additional chemical test.* If a person is arrested for a violation of the intoxicated boating law or is the operator of a motorboat involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer the additional chemical test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

(b) *Optional test.* If a person is arrested for a violation of the intoxicated boating law and if the person is not requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under sub. (2) (b) or the additional chemical test under sub. (2) (c).

(c) *Compliance with request.* A test facility shall comply with a request under this subsection to administer any chemical test it is able to perform.

(d) *Inability to obtain chemical test.* The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under subs. (1) and (2).

(4) ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated boating law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(5) REFUSAL. No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under sub. (1). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of sub. (1) or this subsection are limited to:

(a) Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated boating law.

(b) Whether the person was lawfully placed under arrest for violating the intoxicated boating law.

(c) Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under sub. (1) (b) or whether the request and information was unnecessary under sub. (1) (c).

(d) Whether the person refused to provide a sample or to submit to a chemical test.

History: 1985 a. 331; 1987 a. 3; 1993 a. 105; 1995 a. 27 s. 9126 (19); 2003 a. 97; 2007 a. 20 s. 9121 (6) (a); 2013 a. 224.

Cross−reference: See also s. NR 5.22, Wis. adm. code.

30.686 Report arrest to department. If a law enforcement officer arrests a person for a violation of the intoxicated boating law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

History: 1985 a. 331.

30.687 Officer's action after arrest for violating intoxicated boating law. A person arrested for a violation of the intoxicating boating law, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 30.684 (1) (a) shows that the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

History: 1985 a. 331; 1995 a. 436.

30.69 Water skiing. (1) PROHIBITED AT CERTAIN TIMES; EXCEPTIONS. (a) Except as provided in par. (b), no person may operate a motorboat towing a person on water skis, aquaplane or similar device unless there is in the boat a competent person in addition to the operator in a position to observe the progress of the person being towed. An observer shall be considered competent if that person can in fact observe the person being towed and relay any signals to the operator. This observer requirement does not apply to motorboats classified as Class A motorboats by the

department actually operated by the persons being towed and so constructed as to be incapable of carrying the operator in or on the motorboat. No person may engage in water skiing, aquaplaning or similar activity, at any time from sunset to sunrise. This restriction of the hours of water skiing does not prevent restrictions of the hours of water skiing between sunrise and sunset by local ordinances enacted pursuant to s. 30.77 (3).

(b) Paragraph (a) does not apply to duly authorized water ski tournaments, competitions, exhibitions or trials therefor, where adequate lighting is provided.

(c) In addition to complying with par. (a), no person may operate a personal watercraft that is towing a person who is on water skis, an aquaplane or similar device unless the personal watercraft is designed to seat at least 3 persons.

(2) CAREFUL AND PRUDENT OPERATION. A person operating a motorboat having in tow a person on water skis, aquaplane or similar device shall operate such boat in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(3) RESTRICTIONS. (a) No person operating a motorboat that is towing persons engaged in water skiing, aquaplaning or similar activity may operate the motorboat within 100 feet of any occupied anchored boat, any personal watercraft or any marked swimming area or public boat landing.

(b) No person who is engaged in water skiing, aquaplaning or similar activity may get within 100 feet of a personal watercraft or allow the tow rope while in use to get within 100 feet of a personal watercraft.

(c) No person may operate a personal watercraft within 100 feet of any of the following:

1. A motorboat towing a person who is engaged in water skiing, aquaplaning or similar activity.

2. The tow rope of a motorboat towing a person who is engaged in water skiing, aquaplaning or similar activity.

3. A person who is engaged in water skiing, aquaplaning or similar activity.

(d) Paragraphs (a) to (c) do not apply to pickup or drop areas that are marked with regulatory markers and that are open to operators of personal watercraft and to persons and motorboats engaged in water skiing or similar activity.

(4) INTOXICATED OPERATION. No person may use water skis, an aquaplane or a similar device while under the influence of an intoxicant to a degree which renders him or her incapable of safely using water skis, an aquaplane or a similar device, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely using water skis, an aquaplane or a similar device.

History: 1973 c. 302; 1985 a. 331; 1991 a. 257, 315, 316; 1993 a. 437; 2009 a. 31.

30.70 Skin diving. No person may engage in underwater diving or swimming with the use of swimming fins or skin diving in waters other than marked swimming areas or within 150 feet of shoreline, and no person may engage in underwater diving or swimming with the use of self−contained underwater breathing apparatus in waters other than marked swimming areas, unless the location of such diving or swimming is distinctly marked by diver's flag, not less than 12 inches high and 15 inches long, displaying one diagonal white stripe 3 inches wide on a red background, and of height above the water so as to be clearly apparent at a distance of 100 yards under normal conditions, and so designed and displayed as to be visible from any point on the horizon. Except in case of emergency, anyone engaging in such diving or swimming shall not rise to the surface outside of a radius of 50 feet from such flag. No person engaged in such diving or swimming shall interfere with the operation of anyone fishing nor engage in such diving or swimming in established traffic lanes; nor shall any such person alone or with another, intentionally or unintentionally, block or obstruct any boat in any manner from proceeding to its destination where a reasonable alternative is unavailable. A reasonable alternative route is available when the otherwise unobstructed boat can proceed to its destination without reducing its lawful speed, by passing to the right or to the left of a marked diving operation.

History: 1973 c. 302.

30.71 Disposal of waste from boats equipped with toilets. (1) In this section, "outlying waters" has the meaning given in s. 29.001 (63).

(2) No person may, while maintaining or operating any boat equipped with toilets on the waters of this state, dispose of any toilet wastes in any manner into the water.

(3) No person may operate for compensation or reward an establishment that has the capacity of providing berths or moorings to 5 or more boats that are equipped with toilets and that is located on an outlying water of this state unless the establishment provides adequate fixed onshore disposal facilities for disposal of toilet wastes from the boats for which the establishment provides berths or moorings. If the establishment is unable to provide fixed onshore disposal facilities due to problems of accessibility to the boats, the establishment shall provide adequate portable disposal facilities for these toilet wastes.

(4) Any rules necessary to carry out the purposes of this section shall be promulgated jointly by the department of safety and professional services and the department of natural resources.

History: 1977 c. 395; 1979 c. 221; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1); 1995 a. 27 ss. 1691, 9116 (5); 1997 a. 248, 330; 1999 a. 32; 2011 a. 32.

The Mississippi River is an inland water of Wisconsin. The boat toilet law may be enforced on the entire width of the river bordering Minnesota and up to the center of the main channel bordering Iowa. 61 Atty. Gen. 167.

30.72 Watercraft use rules, Lower St. Croix River. (1) WATER SURFACE USE RULES. (a) The department shall promulgate rules to govern the operation of boats on the Lower St. Croix River. The rules may restrict any or all of the following:

1. The type of boats which may be used on the waters affected by the rules;

2. The areas of water which may be used by boats;

3. Speed of boats; or

4. The hours during which boating is permitted.

(b) In promulgating the rules required under par. (a), the department shall consider the physical characteristics of the waters affected, their historical uses, shoreland uses and classification, the classification of river segments under the Lower St. Croix national scenic riverway master plan, and any other features unique to the Lower St. Croix River, as well as the views of appropriate officials of counties, cities, villages and towns lying within the affected area, and of appropriate officials of agencies of the federal government and the state of Minnesota which have jurisdiction over the waters of the Lower St. Croix River.

(2) CONCURRENT REGULATIONS REQUIRED. Rules promulgated under this section are effective upon adoption of laws, rules or regulations providing for similar limitations or prohibitions on the operation and use of boats on the same segments of the Lower St. Croix River by the state of Minnesota or its agencies. In exercising the authority granted by this section, the department may enter into necessary agreements with the federal government and its agencies, or with the state of Minnesota and its agencies under s. 66.0303.

(3) ENFORCEMENT. In addition to the enforcement powers granted to the department under s. 30.74 (3), the rules promulgated under this section may be enforceable by officers of water safety patrol units having jurisdiction on waters of the Lower St. Croix River under s. 30.79 (3). All officers so empowered by this section may exercise reciprocal powers which may be conferred upon them by the state of Minnesota or its agencies or political

subdivisions relating to enforcement of regulations governing the use or operation of boats on the Lower St. Croix River.

History: 1975 c. 208; 1985 a. 332 s. 251 (7); 1989 a. 159; 1999 a. 150 s. 672.

NOTE: Chapter 208, laws of 1975, which created this section, contains a statement of legislative purpose in section 1. See the 1975 session law volume.

Cross−reference: See also ss. NR 5.30, 5.31, 5.32, 5.33, 5.34, and 5.36, Wis. adm. code.

30.73 Use regulations, Brule River. (1) PROHIBITED USES. No person may operate, occupy or use any motorboat or any pneumatic inner tube, inflatable raft or similar device on the Brule River or any of its stream tributaries in Douglas County. This subsection does not prohibit a person from operating, occupying or using a noninflatable nonmotorized boat, canoe or kayak.

(2) EXCEPTIONS. Subsection (1) does not apply to:

(a) Peace officers or rescue units engaged in emergency operations.

(b) Agents of the department while engaged in fish management or law enforcement activities.

(c) Persons on the Brule River within one mile of its mouth.

(3) ENFORCEMENT; LITTERING. The department shall enforce this section and restrictions on littering in the area of the Brule River and its stream tributaries in Douglas County.

(4) PENALTY. A person who violates this section is subject to the penalties provided under s. 30.80 (1).

History: 1981 c. 303.

30.74 Additional functions of department. (1) BOATING SAFETY PROGRAMS. (a) The department shall create comprehensive courses on boating safety and operation. These courses shall be offered in cooperation with schools, including tribal schools, as defined in s. 115.001 (15m), private clubs and organizations, and may be offered by the department in areas where requested and where other sponsorship is unavailable. The department shall issue certificates to persons 10 years of age or older successfully completing such courses. The department shall prescribe the course content and the form of the certificate.

(am) The department may promulgate rules to establish minimum standards and procedures for the instruction given under s. 30.625 (1) (a).

(b) The department by rule shall set the instruction fee for the course. A person conducting a course or giving instruction under this subsection shall collect the instruction fee from each person who receives instruction. The department may determine the portion of this fee, which may not exceed 50%, that the person may retain to defray expenses incurred by the person in conducting the course or giving the instruction. The person shall remit the remainder of the fee or, if nothing is retained, the entire fee to the department. The department shall issue a duplicate certificate of accomplishment to a person who is entitled to a duplicate certificate of accomplishment and who pays a fee of $2.75.

(bn) A certificate issued to a person under this subsection is valid for life unless revoked by a court under s. 30.80 (2m) or (6) (e) or 938.343 (5).

(c) A valid certificate issued by another state, as defined in s. 115.46 (2) (f), or a province of Canada that is held by a person will be honored if the course content substantially meets that established by the department.

(d) The department shall also prepare and disseminate information on water safety to the public, including the informational pamphlets specified in s. 30.52 (5) (a) 4. and (b) 3.

(2) UNIFORM NAVIGATION AIDS. (a) The department by rule shall establish uniform marking of the water areas of this state through the placement of aids to navigation and regulatory markers. These rules shall establish a marking system compatible with the system of aids to navigation prescribed by the U.S. coast guard and shall give due regard to the system of uniform waterway markers approved by the advisory panel of state officials to the merchant marine council, U.S. coast guard. No municipality or person may mark the waters of this state in any manner in conflict with the marking system prescribed by the department. Any regulatory marker or aid to navigation that does not comply with this marking system is considered an unlawful obstruction to navigable waters and may be removed in accordance with law. The department may not prohibit the placement of a regulatory marker or an aid to navigation if it complies with this marking system and if it is being placed pursuant to an ordinance that has been enacted in compliance with s. 30.77.

(b) For purposes of this section "aids to navigation" means buoys, beacons and other fixed objects in the water which are used to mark obstructions to navigation or to direct navigation through safe channels; "regulatory markers" means any anchored or fixed marker in the water or anchored platform on the surface of the water, other than aids to navigation, and shall include but not be limited to bathing beach markers, speed zone markers, information markers, mooring buoys, fishing buoys and restricted activity area markers.

(3) ENFORCEMENT. The department shall assist in the enforcement of ss. 30.50 to 30.80 and in connection therewith maintain patrol boats and operate such patrol boats at such times and places as the department deems necessary in the interest of boating safety and the effective enforcement of boating laws.

History: 1973 c. 302; 1983 a. 27 s. 2202 (38); 1995 a. 152; 1997 a. 198; 1999 a. 9; 2005 a. 356 ss. 1e, 10g, 10r; 2007 a. 20; 2009 a. 302.

Cross−reference: See also ss. NR 5.09 and 5.18, Wis. adm. code.

30.742 Water exhibitions and races; rules. For water exhibitions or races, the department may promulgate rules that provide exemptions from any of the requirements or restrictions under s. 30.61, 30.62, 30.65, 30.66, 30.678, 30.68 or 30.69.

History: 1991 a. 257; 2005 a. 356.

30.745 Limited jurisdiction for administration and enforcement of navigation aids by municipalities. (1) DEFINITIONS. As used in this section:

(a) "Adjacent outlying waters" means the outlying waters adjacent to the boundaries of a municipality and extending outward for a distance of one−half mile.

(b) "Municipality" means any town, village or city.

(2) EXERCISE OF LIMITED JURISDICTION. (a) *Authority to enact ordinances.* A municipality may enact by ordinance a navigation aids system and regulations affecting moorings, markers and buoys in adjacent outlying waters if the system and regulations are not in conflict with the uniform navigation aids system established by the department under s. 30.74 (2) or with any county ordinance.

(b) *Conflicts.* Any municipal ordinance enacted under this section which conflicts with the uniform navigation aids system established by the department under s. 30.74 (2) or with any county ordinance is void.

(c) *Administration and enforcement.* A municipality may exercise jurisdiction over adjacent outlying waters for the purpose of administering and enforcing an ordinance enacted under this section.

History: 1981 c. 222; 1983 a. 27 s. 2202 (38); 1997 a. 248.

30.75 Service of process on nonresident. (1) HOW SERVED. Service of process upon a nonresident defendant in any action claiming injury to person or property arising out of the operation of a boat in this state may be either by personal service within or without this state or by registered mail as provided in sub. (2).

(2) SERVICE BY REGISTERED MAIL. If service of process is to be by registered mail, the original and necessary copies of the summons shall be left with the clerk of circuit court in which the action is to be brought, together with a sum of 75 cents to cover the cost of mailing. The clerk of circuit court shall mail a copy to the defendant at the defendant's last address as known to the plaintiff or clerk of circuit court, with the return receipt signed by the addressee requested. Service of the summons is considered com-

pleted when it is mailed. The clerk of circuit court shall enter upon the court record the date when the summons is mailed and the name of the person to whom mailed.

History: 1991 a. 316; 1995 a. 224.

30.77 Local regulation of boating. (1) LOCAL REGULATION PROHIBITED; EXCEPTIONS. Sections 30.50 to 30.71 shall be uniform in operation throughout the state. No municipality, public inland lake protection and rehabilitation district or town sanitary district may:

(a) Enact any ordinance or local regulation requiring local numbering, registration or licensing of boats or any ordinance or local regulation charging fees for inspection, except as provided in sub. (3) (e); or

(b) Except as provided in subs. (2) and (3), enact any ordinance or local regulation that in any manner excludes any boat from the free use of the waters of this state or that pertains to the use, operation or equipment of boats or which governs any activity regulated by ss. 30.50 to 30.71.

(2) ORDINANCES CONFORMING TO STATE LAW. Any municipality may enact ordinances which are in strict conformity with ss. 30.50 to 30.71 or rules of the department promulgated under those sections.

(3) ORDINANCES. (a) Any town, village or city may, in the interest of public health, safety or welfare, including the public's interest in preserving the state's natural resources, enact ordinances applicable on any waters of this state within its jurisdiction if the ordinances are not contrary to or inconsistent with this chapter and if the ordinances relate to the equipment, use or operation of boats or to any activity regulated by ss. 30.60 to 30.71.

(ac) Except as provided under s. 33.455 (3) (b), no ordinance that pertains to the equipment, use or operation of a boat on an inland lake is valid unless one of the following occurs:

1. All towns, villages and cities having jurisdiction over the lake have enacted an identical ordinance.

2. At least 50% of the towns, villages and cities having jurisdiction over the lake have enacted an identical ordinance and at least 60% of the footage of shoreline of the lake is within the boundaries of these towns, villages and cities.

(ae) If a town, village or city proposes to amend or repeal an ordinance that it enacted under par. (ac), and if the amendment or repeal will result in less than 50% of the towns, villages or cities with jurisdiction over the lake still having in effect the current ordinance or if the amendment or repeal will result in less than 60% of the footage of shoreline of the lake being within the boundaries of the towns, villages and cities with the current ordinance still in effect, the town, village or city proposing the amendment or repeal shall hold a hearing on the issue at least 30 days before the amendment or repeal will take effect and shall give notice as required under par. (aw) 2. If, after holding the hearing, the town, village or city amends or repeals the ordinance that it enacted under par. (ac), all of the identical ordinances are void.

(am) 1. A public inland lake protection and rehabilitation district may, in the interest of public health, safety or welfare, including the public's interest in preserving the state's natural resources, enact and enforce ordinances applicable to a lake entirely within its boundaries if one of the following occurs:

a. Each town, village and city having jurisdiction over the lake adopts a resolution authorizing the lake district to do so.

b. At least 50% of the towns, villages and cities having jurisdiction over the lake adopt resolutions authorizing the lake district to enact and enforce ordinances, and at least 60% of the footage of shoreline of the lake is within the boundaries of these towns, villages and cities.

1m. A town sanitary district may, in the interest of public health, safety or welfare, including the public's interest in preserving the state's natural resources, enact and enforce ordinances applicable to a lake if at least 60% of the footage of shoreline of the lake is within its boundaries, if no public inland lake protection and rehabilitation district has in effect any ordinances enacted under subd. 1. for the lake and if any one of the following occurs:

a. Each town, village and city having jurisdiction over the lake adopts a resolution authorizing the town sanitary district to do so.

b. At least 50% of the towns, villages and cities having jurisdiction over the lake adopt resolutions authorizing the town sanitary district to enact and enforce ordinances, and at least 60% of the footage of shoreline of the lake is within the boundaries of these towns, villages and cities.

2. An ordinance enacted under subd. 1. or 1m. may not be contrary to or inconsistent with this chapter and shall relate to the equipment, use or operation of boats or to an activity regulated by ss. 30.60 to 30.71.

3. If a public inland lake protection and rehabilitation district enacts an ordinance under this paragraph, the lake district ordinance supersedes all conflicting provisions of a town, village or city ordinance enacted under par. (a) that are applicable to the lake.

3m. If a town sanitary district enacts an ordinance under this paragraph, the town sanitary district ordinance supersedes all conflicting provisions of a town, village or city ordinance enacted under par. (a) that are applicable to the lake.

3r. If a public inland lake protection and rehabilitation district is created for an inland lake after a town sanitary district has enacted ordinances under subd. 1m. for the lake, any ordinances enacted by the public inland lake protection and rehabilitation district supersede all of the following:

a. Any conflicting provisions of a town, village or city ordinance enacted under par. (a) that are applicable to the lake.

b. Any conflicting provisions of a town sanitary district ordinance enacted under subd. 1m. that are applicable to the lake.

4. If a town, village or city proposes to rescind a resolution that it adopted under subd. 1. or 1m., and if the recision will result in less than 50% of the towns, villages or cities with jurisdiction over the lake still having in effect resolutions adopted under subd. 1. or 1m. or will result in less than 60% of the footage of shoreline of the lake being within the boundaries of the towns, villages and cities with resolutions still in effect, the town, village or city proposing to rescind the resolution shall hold a hearing on the recision at least 30 days before the recision will take effect and shall give notice as required under par. (aw) 2. If, after holding the hearing, the town, village or city rescinds the resolution that it adopted under subd. 1. or 1m., the public inland lake protection and rehabilitation district ordinances or the town sanitary district ordinances are void.

(aw) 1. If one or more towns, villages or cities propose to enact an ordinance for an inland lake under par. (ac) 2. or a public inland lake protection and rehabilitation district or town sanitary district proposes to enact an ordinance for an inland lake under par. (am) 1. b. or 1m. b., it shall hold a public hearing on the proposed ordinance at least 30 days before its enactment.

2. The town, village or city that has the most footage of shoreline of the lake within its boundaries and that is supporting the proposal shall publish a notice of the public hearing under subd. 1. or par. (ae) or (am) 4. at least 30 days before the date of the hearing in one or more newspapers likely to give notice of the hearing in all towns, villages or cities that have jurisdiction over the lake. The notice shall be a class 1 notice under ch. 985. The town, village or city publishing the notice shall send a copy of the notice at least 30 days before the date of the hearing to the department, each municipality having jurisdiction over the lake and each lake association for the lake.

(b) Any county may, in the interest of public health, safety or welfare, including the public's interest in preserving the state's natural resources, enact an ordinance applicable on any river or stream within its jurisdiction if the ordinance is not contrary to or inconsistent with this chapter, and if the ordinance relates to the equipment, use or operation of boats or to any activity regulated by ss. 30.60 to 30.71. If a county enacts an ordinance under this

paragraph, the county ordinance supersedes all provisions of a town, village or city ordinance enacted under par. (a) that is inconsistent with the county ordinance.

(c) If any county operates any marina development adjacent to any waters of this state, the authority conferred upon any town, village or city under par. (a) shall exclusively vest in the county in respect to enactment of local ordinances that relate to the development, operation and use of the marina facility and its adjoining waters.

(cm) In enacting ordinances under par. (a), (am) or (b) for a given body of water, municipalities and public inland lake protection and rehabilitation districts shall take into account factors that include all of the following:

1. The type, size, shape and depth of the body of water and any features of special environmental significance that the body of water has.

2. The amount, type and speed of boating traffic on the body of water and boating safety and congestion.

3. The degree to which the boating traffic on the body of water affects other recreational uses and the public's health, safety and welfare, including the public's interest in preserving the state's natural resources.

(cr) The types of ordinances that may be enacted under par. (a), (am) or (b) include the following:

1. Restrictions on speed.

2. Restrictions on certain types of boating activities on all, or in specified parts, of the lake, river or stream.

3. Restrictions on certain types of boating activities during specified hours of the day or specified days of the week.

(d) Ordinances pertaining to the equipment, use or operation of boats on inland lakes shall be subject to advisory review by the department as provided under this paragraph. Proposed ordinances subject to review under this paragraph shall be submitted by the local town, village or city clerk or by the public inland lake protection and rehabilitation district or town sanitary district to the department at least 60 days prior to final action thereon by the town, village, city or district governing body. Advisory reports regarding town, village, city, lake district or town sanitary district ordinances that regulate the equipment, use or operation of boats on inland lakes shall be based on consideration of the effect of the ordinance on the state from the standpoint of uniformity and enforcement and the effect of the ordinance on an affected town, village, city, lake district or town sanitary district in view of pertinent local conditions. Advisory reports shall state in what regard such ordinances are considered consistent or inconsistent with this chapter as to public health, safety or welfare, including the public's interest in preserving the state's natural resources, and shall be accompanied by suggested changes, if any. No later than 20 days after receipt by the department of proposed ordinances, the department shall advise the town, village, city, lake district or town sanitary district in writing as to the results of its advisory review under this paragraph. The department shall address the results sent to a town, village or city to its clerk.

(dm) 1. In this paragraph:

a. "Boating organization" means a nonstock corporation organized under ch. 181 whose primary purpose is to promote boating activities.

b. "Local entity" means a city, village, town, county, qualified lake association, nonprofit conservation organization, as defined in s. 23.0955 (1), town sanitary district, public inland lake protection and rehabilitation district, or another local governmental unit, as defined in s. 66.0131 (1) (a), that is established for the purpose of lake management.

c. "Qualified lake association" means an association that meets the qualifications under s. 281.68 (3m) (a).

2. If the department or a local entity objects to an ordinance enacted under par. (a), (ac) 2. or (am) 1. b., on the grounds that all or a portion of the ordinance is contrary to or inconsistent with this chapter, the procedure under subd. 2r. shall apply.

2g. If a local entity or a boating organization objects to an ordinance enacted under par. (a) that applies to a river or stream, or to an ordinance enacted under par. (b), on the grounds that all or a portion of the ordinance is not necessary for public health, safety, welfare or the public's interest in preserving the state's natural resources, the procedure under subd. 2r. shall apply.

2r. a. Upon receipt of an objection under subd. 2. or 2g., the department shall order a hearing on the objection under ch. 227. The hearing shall be a contested case hearing, and the administrator of the division of hearings and appeals in the department of administration shall assign a hearing examiner to the hearing as provided in s. 227.43. Persons who are not parties to the contested case may present testimony and evidence at the hearing.

b. The hearing examiner shall issue an order on the objection within 90 days after the date on which the hearing is ordered under subd. 2r. a.

c. For an objection under subd. 2., if the hearing examiner determines that the ordinance or the portion of the ordinance is contrary to or inconsistent with this chapter, the hearing examiner shall issue an order declaring the ordinance or that portion of the ordinance void. For an objection under subd. 2g., if the hearing examiner determines that the ordinance or the portion of the ordinance is not necessary for public health, safety, welfare or the public's interest in preserving the state's natural resources, the hearing examiner shall issue an order declaring the ordinance or that portion of the ordinance void. An order issued under this subd. 2r. c. shall prohibit the enforcement of all or any portion of the ordinance declared to be void.

3. The procedure under this paragraph does not supersede any other legal right or procedure that a person has to contest an ordinance enacted under this section.

(e) Notwithstanding the prohibition in sub. (1) (b) against ordinances or local regulations that exclude any boat from the free use of the waters of the state:

1. A municipality, a public inland lake protection and rehabilitation district or a town sanitary district that has in effect an ordinance under par. (am) may charge boat operators reasonable fees for any of the following:

a. Use of a public boat launching facility that the municipality or lake district owns or operates.

b. The municipality's or district's costs for operating or maintaining a water safety patrol unit, as defined in s. 30.79 (1) (b) 2.

c. The municipality's or district's costs for providing other recreational boating services.

2. A town, village or city may enact ordinances to regulate the operation, equipment, use and inspection of those boats carrying passengers for hire that operate from a base within its jurisdiction and may charge reasonable fees for such inspection.

(4) PUBLICIZING ORDINANCES. All ordinances enacted under sub. (3) shall be prominently posted by the local authority which enacted them and, for ordinances enacted under sub. (3) (ac) 2., by all local authorities having jurisdiction over the lake, at all public access points within the local authority's jurisdiction and also shall be filed with the department.

History: 1973 c. 302; 1987 a. 99; 1989 a. 159, 324, 359; 1993 a. 167; 1995 a. 152, 349; 1997 a. 35; 1999 a. 9; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16.

Cross−reference: See also ss. NR 1.91, 5.15, and 5.19, Wis. adm. code.

Sub. (3) is an exception to sub. (2). A local ordinance prohibiting the operation of a motorboat on a lake on Sunday will not be held invalid pending determination of whether it is in the interest of public health or safety. Menzer v. Elkhart Lake, 51 Wis. 2d 70, 186 N.W.2d 290 (1971).

A village was authorized under ss. 30.77 (3) and 61.34 (1) to enact an ordinance that granted exclusive temporary use of a portion of a lake for a public water exhibition. State v. Village of Lake Delton, 93 Wis. 2d 78, 286 N.W.2d 622 (Ct. App. 1979).

Reasonable fees under sub. (3) (e) 1. are discussed. Town of LaGrange v. Martin, 169 Wis. 2d 482, 485 N.W.2d 287 (Ct. App. 1992).

Department of natural resources authority to insure free access to the state's waters implicitly extends to the shore and public access facilities. Ordinances limiting nonresident parking at boating facilities and prohibiting boat trailer parking on streets

were invalid. State v. Town of Linn, 205 Wis. 2d 426, 556 N.W.2d 394 (Ct. App. 1996), 95−3242.

The delegation of authority to local governments to collect boater fees for miscellaneous "recreational boating services" under ss. 30.77 (3) (e) 1. c. and 33.475 is unconstitutional. 79 Atty. Gen. 185.

30.772 Placement and use of moorings; restrictions; permits. (1) AUTHORITY. The department is authorized to regulate the placement and use of moorings.

(2) RESTRICTIONS. No mooring may be placed or used in any navigable waters if:

(a) The mooring obstructs or interferes with public rights or interest in the navigable waters.

(b) The riparian owner does not give written permission for the placement and use of the mooring.

(c) The mooring or use of the mooring interferes with the rights of other riparian owners.

(d) The mooring or use of the mooring adversely affects critical or significant fish or wildlife habitat.

(e) The mooring anchor is placed more than 150 feet from the ordinary high−water mark, or more than 200 feet from the ordinary high−water mark if sub. (3) (a) 5. applies, unless one of the following occurs:

1. A permit is obtained from the appropriate municipality and approved by the department.

2. A permit is obtained from the department.

3. The mooring is properly within a designated mooring area.

(f) The placement or use of the mooring violates a condition or restriction on a permit issued under sub. (4) or violates department rules.

(3) MUNICIPAL REGULATION OF MOORINGS; MUNICIPAL PERMITS; PROCEDURE. (a) Subject to department approval, the governing body of a municipality with jurisdiction over navigable waters may, by ordinance, adopt local regulations relative to the placement and use of moorings, including but not limited to regulations governing:

1. The number of moorings for a specific distance of frontage or within a specific area.

2. The number of boats to be attached to any mooring.

3. The distance between moorings.

4. The safe distance of moored boats from any other moored boats, properly marked and established traffic lanes, properly marked swimming or bathing areas, or structures, including piers, rafts, docks and wharves.

5. The placement or use of moorings up to 200 feet from the ordinary high−water mark, subject to all of the requirements of this section and s. 30.773, if applicable.

(am) If the governing body of a municipality adopts an ordinance under par. (a) 5., any boat moored or anchored to a mooring placed within 200 feet of the ordinary high−water mark or within a designated mooring area is not required to be lighted, as provided in s. 30.61 (6) (a), regardless of whether the moored or anchored boat drifts beyond 200 feet from the ordinary high−water mark or outside of the designated mooring area, unless the local regulations require the boat to be so lighted.

(b) The regulations shall not conflict with the uniform navigation aids system established by the department under s. 30.74 (2) or any rules adopted by the department under s. 30.74 (2).

(c) A municipality shall submit local regulations proposed under this subsection to the department at least 30 days before the municipality votes to adopt the regulations. The department shall advise the municipality in writing of its approval or disapproval of each such regulation. No regulation disapproved by the department may be adopted by the municipality. Permits issued for moorings more than 150 feet from the ordinary high−water mark, or more than 200 feet from the ordinary high−water mark if par. (a) 5. applies, shall be submitted to the department for approval unless the permit is for a mooring within a designated mooring area.

(d) The governing body of a municipality may, by ordinance, require a permit authorizing the placement and use of moorings, subject to all of the following:

1. Mooring permits shall be issued only after the governing body, or a person designated by the governing body, determines that the mooring conforms to the provisions of this section and all applicable local regulations adopted under this section.

2. Except as provided under subd. 4., if a mooring permit is issued under this section, no subsequent permit may be required unless the mooring location is changed.

3. After a mooring permit is issued, the governing body of a municipality may revoke the mooring permit if the mooring subsequently violates any provision of this section or any local regulation adopted under this section.

4. The provisions and procedures of ch. 68 shall apply to the grant, denial or revocation of a mooring permit by a municipality.

(e) Any mooring, mooring anchor or mooring buoy which is placed or used in any navigable water in violation of this section or any local regulation adopted by a municipality under this subsection constitutes a public nuisance subject to s. 30.294. A municipality may, by ordinance, provide that any person who violates any local regulation adopted under this subsection is subject to a forfeiture not to exceed $50 for each such violation. The ordinance may also provide that each day during which the violation exists is a separate offense.

(f) In addition to, or as an alternative to, the penalties specified in par. (e), the governing body of a municipality may remove unlawful moorings as provided under and pursuant to the procedures of s. 30.13 (5m).

(4) DEPARTMENT PERMITS. The department may issue a permit authorizing the placement or use of a mooring beyond 150 feet from the ordinary high−water mark if the municipality does not have an established permit procedure, or more than 200 feet from the ordinary high−water mark if sub. (3) (a) 5. applies. The department may place conditions or restrictions on any permit issued under this subsection.

(5) EXCEPTION. The restrictions under this section do not apply to the fleeting of barges on the Mississippi River and its tributaries.

History: 1985 a. 243; 1987 a. 374; 1987 a. 399; 1999 a. 150 ss. 5, 672; 2001 a. 30 s. 97.

30.773 Designated mooring areas. (1) ESTABLISHMENT OF DESIGNATED MOORING AREAS. Subject to department approval, a municipality with jurisdiction over navigable waters may establish designated mooring areas as provided in this section.

(2) PROCEDURES. A municipality authorized to establish a bulkhead line under s. 30.11 may establish a designated mooring area in the same manner as it is authorized to establish the bulkhead line except that if the municipality created a board of harbor commissioners, the municipality is required to obtain the approval of that board in addition to the approval of the department.

(3) STANDARDS FOR APPROVAL. In addition to requiring compliance with standards and procedures under s. 30.11 and sub. (2), the department shall grant an approval for the establishment of a designated mooring area only if:

(a) The designated mooring area is more than 150 feet from the ordinary high−water mark.

(b) The establishment and operation of the mooring area does not materially obstruct navigation.

(c) The establishment and operation of the mooring area is not detrimental to public rights or interest in the waterway.

(d) The mooring area is not within and does not adversely affect a critical or significant fish or wildlife habitat area.

(e) The establishment and operation of the mooring area complies with all applicable zoning requirements.

(f) The riparian owners agree in writing to the establishment of the mooring area and the area is to be used by the riparian owners or by others with the written consent of the riparian owners.

(g) Use of the mooring area is not unfairly restricted or used to assert exclusive privileges for use of the navigable waters.

(h) The mooring area is marked in a manner which notifies the public of the boundaries of the mooring area and assists in navigation near the mooring area. These markers shall be consistent with the uniform aids to navigation established under s. 30.74 (2).

(4) PERMITS AND REGULATIONS. (a) Department permits under s. 30.772 (4) or department approval of municipal permits under s. 30.772 (3) (c) are not required for moorings placed within a designated mooring area.

(b) A municipality may regulate the placement and use of moorings within designated mooring areas in the manner provided under s. 30.772 (3).

(5) EXCEPTION. The restrictions under this section do not apply to the fleeting of barges on the Mississippi River and its tributaries.

History: 1985 a. 243.

30.78 Local regulation of seaplanes. (1) CITY, VILLAGE AND TOWN ORDINANCES. Any city, village or town adjoining or surrounding any waters may, after public hearing, by ordinance:

(a) Prescribe reasonable safety regulations relating to the operation on the surface of such waters of any aircraft capable of landing on water.

(b) Prescribe the areas which may be used as a landing and take−off strip for the aircraft or prohibit the use of the waters altogether.

(c) Provide proper and reasonable penalties for the violation of any such ordinance.

(1g) LAKE DISTRICT ORDINANCES. (a) A public inland lake protection and rehabilitation district, after public hearing, may enact and enforce local ordinances applicable to a lake entirely within its boundaries if each town, village and city having jurisdiction on the lake adopts a resolution authorizing the lake district to do so.

(b) Ordinances authorized under par. (a) are limited to the type of ordinances authorized under sub. (1) (a) to (c).

(c) If any town, village or city having jurisdiction on the lake rescinds the resolution authorizing the public inland lake protection and rehabilitation district to enact and enforce ordinances under this paragraph, the lake district ordinances are void.

(1r) NOTICE TO DEPARTMENT OF TRANSPORTATION. The department of transportation shall receive timely notice of the public hearing required under subs. (1) and (1g) and shall have an opportunity to present testimony on the proposed ordinance. An ordinance under sub. (1) (b) or (1g) that regulates or restricts an area of surface waters for landing or take−off purposes shall be filed with the department of transportation.

(2) MARKING OF REGULATED OR RESTRICTED AREAS. Any ordinance that regulates or restricts an area of surface waters under sub. (1) or (1g) shall direct that the area be marked by standard marking devices.

(3) CONFLICTING ORDINANCES. (a) If a public inland lake protection and rehabilitation district enacts an ordinance under sub. (1g), the lake district ordinance supersedes all conflicting provisions of a town, village or city ordinance enacted under sub. (1) that are applicable to that lake.

(b) Any conflict in jurisdiction arising from the enactment of ordinances by 2 or more municipalities shall be resolved under s. 66.0105.

History: 1975 c. 269; 1989 a. 159; 1993 a. 167; 1999 a. 150 s. 672.

30.79 Local water safety patrols; state aids. (1) DEFINITIONS. In this section:

(a) "Local governmental unit" means a municipality, a public inland lake protection and rehabilitation district or a lake sanitary district.

(am) "State aid" means payment by the state to a local governmental unit for or toward the cost of the operation or maintenance of a water safety patrol unit.

(b) "Water safety patrol unit" means one of the following:

1. A unit within an existing municipal law enforcement agency or a separate municipal agency, created by a municipality or by a number of municipalities riparian to a single body of water for the purpose of enforcing ss. 30.50 to 30.80 and any rules promulgated and ordinances enacted under ss. 30.50 to 30.80 and for the purpose of conducting search and rescue operations.

2. A unit created by a public inland lake protection and rehabilitation district, by a lake sanitary district or by a number of local governmental units riparian to a single lake, at least one of which is a lake district or a lake sanitary district, for the purposes specified in subd. 1.

(2) STATE AID. In order to protect public rights in navigable waters and to promote public health, safety and welfare and the prudent and equitable use of the navigable waters of the state, a system of state aids for local enforcement of ss. 30.50 to 30.80 and ordinances enacted under ss. 30.50 to 30.80 and for conducting search and rescue operations is established.

(2m) RULES FOR ELIGIBILITY. (a) The department shall promulgate rules that restrict the costs eligible for state aid under this section. The rules shall establish the following:

1. A method for calculating the maximum number of hours spent on enforcement activities or on search and rescue operations by a water safety patrol unit that will be eligible for state aid.

2. The maximum number of crew members on a boat operated by a water safety patrol unit whose compensation will be eligible for state aid.

3. The types and location of navigable waters on which a water safety patrol unit may operate for the local governmental unit operating the water safety patrol unit to be eligible for state aid.

(b) In establishing the method of calculation under par. (a) 1., the department shall include the amount of boating activity and the size of the navigable water as factors to be used in making these calculations.

(c) In addition to the rules promulgated under par. (a) the department may promulgate rules that relate to making the operation or maintenance of a water safety patrol unit more cost−effective.

(3) ENFORCEMENT POWERS. Officers patrolling the waters as part of a water safety patrol unit may stop and board any boat for the purpose of enforcing ss. 30.50 to 30.80 or any rules promulgated or ordinances enacted under ss. 30.50 to 30.80 and for conducting search and rescue operations, if the officers have reasonable cause to believe there is a violation of the sections, rules or ordinances or the stopping and boarding of any boat is essential to conduct a search and rescue operation.

(4) JURISDICTION. Upon petition by any local governmental unit or group of local governmental units operating or intending to operate a water safety patrol unit, the department shall, if it finds that it is in the interest of efficient and effective enforcement to do so, by rule define the waters which may be patrolled by the unit, including waters lying within the territorial jurisdiction of some other town, village or city if the town, village or city consents to the patrol of its waters. Such consent is not required if the petitioner is a local governmental unit containing a population of 5,000 or more, bordering upon the waters to be affected by the rule in counties having a population of less than 500,000. Officers patrolling the waters as part of the water safety patrol unit shall have the powers of sheriff in enforcing ss. 30.50 to 30.80, or rules promulgated or ordinances enacted under ss. 30.50 to 30.80 and in conducting search and rescue operations, on any of the waters so defined, whether or not the waters are within the jurisdiction of the local governmental unit for other purposes.

(5) PAYMENT OF AIDS. On or before January 31 of the year following the year in which a local governmental unit operated a water safety patrol unit, it shall file with the department on the forms prescribed by it a detailed statement of the costs incurred by the local governmental unit in the operation of the water safety patrol unit during the past calendar year and of the receipts resulting from fines or forfeitures imposed upon persons convicted of violations of ordinances enacted under s. 30.77. The department shall audit the statement and determine the net costs that are directly attributable to the operation and maintenance of the water safety patrol unit, including a reasonable amount for depreciation of equipment. In calculating the net costs, the department shall deduct any fines or forfeitures imposed on persons convicted of violations of ordinances under s. 30.77 and any costs that do not comply with the rules promulgated under sub. (2m). The department shall compute the state aids on the basis of 75% of these net costs and shall cause the aids to be paid on or before April 1 of the year in which the statements are filed. If the state aids payable to local governmental units exceed the moneys available for such purpose, the department shall prorate the payments. No local governmental unit may receive state aid amounting to more than 20% of the funds available.

History: 1973 c. 302; 1977 c. 29, 274; 1989 a. 31, 159, 359; 1995 a. 349.

Cross−reference: See also ch. NR 50, Wis. adm. code.

Water patrol officers in a county patrol have sheriff's powers when directly enforcing ss. 30.50 to 30.80. Deputization of such officers by the sheriff is not necessary but desirable. 65 Atty. Gen. 169.

30.80 Penalties. (1) Any person violating any provision of ss. 30.50 to 30.80 for which a penalty is not provided under subs. (2) to (6) shall forfeit not more than $50 for the first offense and shall forfeit not more than $100 upon conviction of the same offense a 2nd or subsequent time within one year.

(2) Any person violating s. 30.68 (2) shall be fined not more than $200 or imprisoned for not more than 6 months or both.

(2g) Any person violating any provision of s. 30.67 (1):

(a) Shall be fined not less than $300 nor more than $1,000 or imprisoned not more than 6 months or both if the accident did not involve death or injury to a person.

(b) Shall be fined not more than $10,000 or imprisoned for not more than 9 months or both if the accident involved injury to a person but the person did not suffer great bodily harm.

(c) Is guilty of a Class I felony if the accident involved injury to a person and the person suffered great bodily harm.

(d) Is guilty of a Class H felony if the accident involved death to a person.

(2m) Any person violating s. 30.678 or 30.68 shall be required to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1). If the person has a valid certificate at the time that the court imposes sentence under sub. (1) or (2), the court shall permanently revoke the certificate and order the person to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1).

(2r) Any person violating s. 30.67 (2) shall forfeit not more than $200.

(3) Any person violating s. 30.71 or any rule promulgated under that section shall forfeit not more than $100 for the first offense and shall forfeit not more than $200 upon conviction of the same offense a 2nd or subsequent time within one year.

(3m) Any person violating s. 30.547 (1), (3) or (4) is guilty of a Class H felony.

(4) Any person violating any provision of s. 30.72 or the rules promulgated under s. 30.72 shall forfeit not more than $100 for the first offense and shall forfeit not more than $200 upon conviction of the same offense a 2nd or subsequent time within one year.

(5) Any person violating s. 30.68 (8m) shall forfeit not more than $100. Each day during which such violation exists constitutes a separate offense.

(5m) Any person violating any provision of s. 30.07 (2) or (6) shall forfeit not more than $500 for the first offense and shall forfeit not more than $2,000 upon conviction of the same offense a 2nd or subsequent time within 3 years.

(6) (a) *Penalties related to prohibited operation of a motorboat; intoxicants; refusal.* 1. Except as provided under subds. 2. to 5., a person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the refusal law shall forfeit not less than $150 nor more than $300.

2. A person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the refusal law and who, within 5 years prior to the arrest for the current violation, was convicted one time previously under the intoxicated boating law or the refusal law shall be fined not less than $300 nor more than $1,000 and shall be imprisoned for not less than 5 days nor more than 6 months.

3. A person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the refusal law and who, within 5 years prior to the arrest for the current violation, was convicted 2 times previously under the intoxicated boating law or refusal law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned for not less than 30 days nor more than one year in the county jail.

4. A person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the refusal law and who, within 5 years prior to the arrest for the current violation, was convicted 3 times previously under the intoxicated boating law or refusal law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned for not less than 60 days nor more than one year in the county jail.

5. A person who violates s. 30.681 (1) (a) or (b), a local ordinance in conformity with s. 30.681 (1) (a) or (b) or the refusal law and who, within 5 years prior to the arrest for the current violation, was convicted 4 or more times previously under the intoxicated boating law or refusal law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned for not less than 6 months nor more than one year in the county jail.

6. A person who violates s. 30.681 (1) (bn) or a local ordinance in conformity with s. 30.681 (1) (bn) shall forfeit $50.

(b) *Penalties related to causing injury; intoxicants.* A person who violates s. 30.681 (2) shall be fined not less than $300 nor more than $2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

(c) *Calculation of previous convictions.* In determining the number of previous convictions under par. (a) 2.to 5., convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(d) *Alcohol, controlled substances or controlled substance analogs; examination.* In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

(e) *Certificate of satisfactory completion of safety course.* In addition to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a motorboat, shall be ordered by the court to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1). If the person has a valid certificate at the time that the court imposes sentence, the court shall permanently revoke the certificate and order the person to

obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1).

History: 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145; 1995 a. 448; 1997 a. 198, 283; 2001 a. 109; 2005 a. 356; 2009 a. 55.

30.81 Local regulations on icebound inland waters. (1) TOWN, VILLAGE AND CITY ORDINANCES. Any town, village or city, in the interest of public health or safety, may enact ordinances that are not inconsistent with this chapter, relative to the use or operation of boats and other craft, including snowmobiles and other motor vehicles, on icebound inland lakes, but an ordinance is not valid unless each town, village and city having jurisdiction over any portion of the lake has enacted an identical ordinance. When the identical ordinances have been enacted, the ordinance of any individual town, village or city is in effect on the entire lake.

(1m) LAKE DISTRICT ORDINANCES. (a) A public inland lake protection and rehabilitation district, in the interest of public health or safety, may enact and enforce ordinances applicable to a lake entirely within its boundaries if each town, village and city having jurisdiction on the lake adopts a resolution authorizing the lake district to do so.

(b) An ordinance enacted under par. (a) must be consistent with this chapter and must relate to the use or operation of boats and other craft, including snowmobiles and other motor vehicles, on icebound inland lakes.

(c) If a public inland lake protection and rehabilitation district enacts an ordinance under this subsection, the district ordinance supersedes all conflicting provisions of a town, village or city ordinance enacted under sub. (1) that are applicable to the lake.

(d) If a town, village or city having jurisdiction on the lake rescinds the resolution authorizing the public inland lake protection and rehabilitation district to enact and enforce ordinances under this paragraph, the lake district ordinances are void.

(2) COUNTY ORDINANCES. Any county, in the interest of public health or safety, may enact ordinances not inconsistent with this chapter, relative to the use or operation of boats and other craft, including snowmobiles and other motor vehicles, on any of the icebound inland waters over which it has jurisdiction, except inland icebound lakes that are regulated by valid local ordinances enacted pursuant to sub. (1) or (1m).

(3) LIABILITY OF LOCAL GOVERNMENT. All traffic on icebound, inland waters shall be at the risk of the traveler. An ordinance by any municipality or any public inland lake protection and rehabilitation district that is enacted under this section permitting traffic on icebound inland waters shall not render the municipality or lake district enacting the ordinance liable for any accident to those engaged in permitted traffic while the ordinance is in effect.

(4) ENFORCEMENT. A law enforcement officer of a town, village or city that is subject to an ordinance enacted under sub. (1) or (1m) has the powers of sheriff in enforcing the ordinance on any portion of the lake, whether or not that portion of the lake is within the jurisdiction of the town, village or city for other purposes.

History: 1989 a. 159; 1993 a. 167.

30.90 Public access to Lake Lions. (1) As long as Lake Lions in the town of Alban, Portage County, continues to be used as a recreational area for the physically handicapped, all of the following shall apply:

(a) Neither the county or town may provide, nor shall any subdivider be required or permitted to provide, public access to Lake Lions, if the public access will in any way interfere with the use of the lake as a recreational area for the physically handicapped.

(b) The department may stock Lake Lions with fish, any provision in ch. 29 to the contrary notwithstanding.

(2) The town board of the town of Alban shall have jurisdiction over Lake Lions and may enact and enforce any ordinances necessary to prevent any deterioration of the waters of Lake Lions or any nuisances that would adversely affect the health or safety of the people.

History: 2001 a. 103.

30.92 Recreational boating projects. (1) DEFINITIONS. In this section:

(a) "Commission" means the Wisconsin waterways commission established under s. 15.345 (1).

(b) "Governmental unit" means the department, a municipality, a lake sanitary district, a public inland lake protection and rehabilitation district organized under ch. 33, the Milwaukee River revitalization council, the Lower Wisconsin State Riverway board, or any other local governmental unit, as defined in s. 66.0131 (1) (a), that is established for the purpose of lake management.

(bg) "Great Lakes" means Lake Superior and Lake Michigan and includes Chequamegon Bay and Green Bay.

(bk) "Inland lake" means an inland water that is a lake.

(bn) "Inland water" has the meaning given in s. 29.001 (45).

(br) "Qualified lake association" means an association that meets the qualifications under s. 281.68 (3m) (a).

(c) "Recreational boating facilities" means places where the public has access to the water by means of breakwaters and other similar physical structures, either naturally or artificially constructed, that provide safety and convenience for operators of recreational boats. "Recreational boating facilities" includes harbors of refuge, public accesses, launching ramps and locks and facilities that provide access between waterways for operators of recreational boats.

(2) STUDIES. (a) The commission may cause to be conducted appropriate studies, including feasibility studies, and inventories to aid in assessing the need for recreational boating projects.

(b) Feasibility studies shall be used to determine whether the construction of recreational boating facilities is feasible from environmental, economic and engineering viewpoints. The commission may conduct feasibility studies or cooperate with other state agencies in conducting feasibility studies. Feasibility studies conducted by state agencies or private persons shall be reviewed by the commission to ensure that appropriate data have been collected and analyzed in detail to substantiate the recommendations made in the feasibility study.

(c) Feasibility studies may be conducted upon the request of the affected governmental unit or qualified lake association. Feasibility studies shall be of sufficient detail to allow affected governmental units or qualified lake associations to decide if a recreational boating facility construction project should be supported.

(d) The following factors shall be considered by the commission in assigning priorities for feasibility studies:

1. Estimated cost of the study.

2. Available funds.

3. Expression of support by the governmental unit or qualified lake association.

4. For a recreational boating facility, the distance of the site of the proposed facility from other recreational boating facilities.

5. Work previously completed.

(e) A decision by a governmental unit or a qualified lake association to support a recreational boating project feasibility study shall be made by a resolution indicating support for a more detailed inquiry into the engineering, environmental and economic feasibility of a project. Support of a recreational boating project feasibility study does not commit the affected governmental unit or qualified lake association to cost−sharing in the project.

(3) PROJECT PRIORITY LIST. (a) Only those proposed recreational boating projects found to be feasible and supported by the affected governmental unit or qualified lake association and approved by the commission shall be placed on a priority list by the commission. The department shall maintain the list of priority

projects. Annually, the department shall inform all affected governmental units, except itself, and all qualified lake associations of their positions on the priority list.

(b) The following factors shall be considered in establishing priorities for projects:

1. For a recreational boating facility, the distance of the site of the proposed facility from other recreational boating facilities.

2. Demand for safe recreational boating facilities.

3. Expression of support by the governmental unit or qualified lake association.

4. Existing recreational boating projects.

5. Projects underway.

6. Commitment of funds.

7. Location of the proposed project within the region identified in s. 25.29 (7) (a).

(4) AIDS. (a) The department shall develop and administer, with the approval of the commission, a financial assistance program for governmental units, including itself, and qualified lake associations for the construction and rehabilitation of capital improvements related to recreational boating facilities, for the improvement of locks and facilities which provide access between waterways and for the projects specified in par. (b) 8. No financial assistance under this section may be provided to the department other than for projects for access to inland lakes without a public access facility.

(b) The following standards shall apply to the state funding of all recreational boating projects:

1. To the greatest extent possible, state funds shall be used to match other funding sources. Other funding sources may include, but are not limited to, the federal land and water conservation fund, the U.S. army corps of engineers, U.S. economic development administration, general revenue sharing, gifts, grants and contributions and user fees.

2. a. The department may cost−share, with the approval of the commission, with a qualified lake association or an affected governmental unit, including itself, at a rate of up to 50% of any construction, acquisition, rehabilitation, feasibility study or other project costs or any combination of these costs, for the recreational boating project if the costs are the type that qualify for funding under this section.

b. The department, with the approval of the commission, may increase the maximum cost−share rate under subd. 2. a. from 50% to 80% if the commission determines that the recreational boating project is a project of statewide or regional significance.

c. The department may pay, with the approval of the commission, an additional 10% of the costs of a construction project if the municipality conducts a boating safety enforcement and education program approved by the department.

2m. The qualified lake association or governmental unit that cost−shares under subd. 2. may make its contribution in matching funds or in−kind contributions or both.

3. No more than 10% of the state funds available for recreational boating aids under this section may be expended for feasibility studies in one year. No more than 1% of the state funds available for recreational boating aids under this section may be expended for any one feasibility study in one year.

4. No funds may be used for the purchase of land or the construction of facilities commonly used to berth boats.

6. Forty percent of the state funds available for recreational boating aids under this section shall be expended for Great Lakes projects. Forty percent of the state funds available for recreational boating aids under this section shall be expended for inland water projects. The commission may designate recreational boating aids for locks and facilities that provide access between the Great Lakes and inland waters as aids expended for inland waters, as aids expended for projects deemed necessary by the commission without regard to location or as aids under a combination of these 2 types of projects. Twenty percent of the state funds available for recreational boating aids under this section shall be expended for projects deemed necessary by the commission without regard to location.

6m. Notwithstanding subd. 6., the department, with the approval of the commission, may reallocate for expenditure for recreational boating aids without complying with the percentages under subd. 6. any state funds that are not encumbered for expenditure for a fiscal year before the first day of the 4th quarter of that fiscal year.

7. Projects qualifying for funds available for recreational boating aids under this section include, but are not limited to, construction, rehabilitation and improvement of harbors of refuge on the Great Lakes; accommodation of motor−powered recreational watercraft; construction, rehabilitation and improvement of public access and related facilities on inland waters where motor−powered recreational watercraft are permitted; and improvement of locks and facilities that provide access between waterways for the operators of recreational watercraft.

8. In addition to those projects specified under subd. 7., the following projects qualify for funds available for recreational boating aids under this section:

a. A project for the dredging of a channel in a waterway to the degree that is necessary to accommodate recreational watercraft.

am. A project that uses chemicals to remove Eurasian water milfoil.

b. Acquisition of capital equipment that is necessary to cut and remove aquatic plants that are detrimental to fish habitat if the acquisition is pursuant to a plan to cut and remove aquatic plants that is approved by the department.

bn. Acquisition of capital equipment that is necessary to collect and remove floating trash and debris from a waterway.

bp. Acquisition of capital equipment that is necessary to control and remove invasive aquatic plants, as defined in s. 23.24 (1) (g), if the equipment will be used to control and remove them as authorized by an aquatic plant management permit issued under s. 23.24 (3).

c. Acquisition of aids to navigation, as defined in s. 30.74 (2) (b).

d. Acquisition of regulatory markers, as defined in s. 30.74 (2) (b).

9. A governmental unit or a qualified lake association may not receive funds under subd. 8. a. for the same waterway more than once every 10 years.

10. Funds for a project under subd. 8. b. for capital equipment that will be used on the Great Lakes may only be expended from the 40% allocation of state funds that is available for Great Lake projects under subd. 6.

11. Not more than $75,000 in each fiscal year may be expended for projects under subd. 8. am.

(4r) CHAIR FACTORY DAM. Of the amounts appropriated under s. 20.370 (5) (cq), and before applying the percentages under sub. (4) (b) 6., the department shall expend the amount that is necessary for the renovation and repair or the removal of the Chair Factory Dam in Grafton, but the amount shall not exceed $264,000. Notwithstanding sub. (1) (c), the dam project specified under this subsection is a recreational boating facility for the purpose of expending moneys under this section. This project need not be placed on the priority list under sub. (3) (a).

(4t) LINNIE LAC DAM. Of the amounts appropriated under s. 20.370 (5) (cq) and before applying the percentages under sub. (4) (b) 6., the department shall provide to the Linnie Lac Management District the amount that is necessary for the repair, removal or reconstruction of the Linnie Lac Dam, but the amount shall not exceed $250,000. The Linnie Lac Management District need not assume ownership of the Linnie Lac Dam and, notwithstanding sub. (4) (b) 2., the Linnie Lac Management District need not contribute any moneys to match the amount expended from the appropriation under s. 20.370 (5) (cq). Notwithstanding sub. (1) (c), the

dam project specified under this subsection is a recreational boating facility for the purpose of expending moneys under this section. This project need not be placed on the priority list under sub. (3) (a).

(5) RULES. (a) The commission shall recommend rules for promulgation by the department as necessary to implement this section. The commission shall recommend rules relating to the type and content of studies to be conducted, cost−sharing arrangements under sub. (4) and liaison arrangements between the state and federal agencies, other state agencies, governmental units, qualified lake associations and other persons.

(b) For purposes of sub. (4) (b) 2. b., the department shall promulgate rules to be used to determine whether a recreational boating project is a recreational boating project of statewide or regional significance.

(6) COOPERATION AND ASSISTANCE. (a) The department shall provide governmental units and qualified lake associations with technical assistance in all phases of implementing or participating in the program under this section. The department shall also coordinate the program under this section with all other related state and federal programs.

(b) The department shall assign staff to the commission for management of the program under this section. All staff activities, including but not limited to budgeting, program coordination and related administrative management functions, shall be consistent with the policies of the department and the natural resources board.

History: 1977 c. 274; 1979 c. 34 s. 2102 (39) (a); 1979 c. 154, 221; 1981 c. 20; 1983 a. 27 ss. 870, 2202 (38); 1985 a. 29, 332; 1989 a. 31, 160; 1991 a. 39, 269; 1995 a. 8, 27, 349; 1997 a. 27 ss. 1144q, 1144r, 1144s, 1145, 1146, 1146d, 1146g, 1146h, 5503g; 1997 a. 79, 248; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 33; 2005 a. 25.

Cross−reference: See also ch. NR 7, Wis. adm. code.

30.99 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

History: 1975 c. 365.