



2011 SENATE BILL 133

June 21, 2011 – Introduced by Senators LASEE and GALLOWAY, cosponsored by Representatives STEINEKE, RIVARD, BIES, BROOKS, CRAIG, ENDSLEY, JACQUE, KAUFERT, KRUG, PETRYK, PRIDEMORE, TIFFANY, TRANEL and WEININGER. Referred to Committee on Natural Resources and Environment.

1 **AN ACT** *to renumber and amend* 30.208 (2); *to amend* 30.18 (4) (a), 30.208 (3)
2 (a), 30.208 (3) (b), 30.208 (3) (c), 30.208 (3) (e), 30.208 (4) (a), 30.208 (5) (a)
3 (intro.), 30.208 (5) (b) (intro.), 30.208 (5) (b) 4., 30.208 (5) (b) 5., 30.209 (2) (a),
4 30.209 (2) (b), 30.209 (2) (c) and 30.209 (2) (d) (intro.); and *to create* 30.208 (2)
5 (d), 30.208 (3) (f), 30.208 (4m) and 30.209 (2) (e) of the statutes; **relating to:**
6 procedures for applications and hearings relating to permits and contracts for
7 structures, deposits, and other activities in or near navigable waters.

Analysis by the Legislative Reference Bureau

Under current law, an individual permit or contract from the Department of Natural Resources (DNR) is required to place a structure or deposit in, or withdraw water from, a navigable water or to conduct a certain activity in or near a navigable water unless the structure, deposit or activity is exempt or is authorized by a general permit.

In issuing a permit or approving a contract, DNR reviews the application, determines whether it is complete, and notifies the applicant within 30 days after receiving the application whether the application is complete (30-day review period). If the application is incomplete, the applicant may supplement the application, but DNR may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete, with

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limited exceptions. Current law imposes no time limits on this process for determining whether an application is complete other than the 30-day review period.

Once DNR determines the application is complete, current law imposes time limits on the notice and public hearing procedures that apply to the application. Within 15 days, DNR must provide notice to the public that the application is complete (application notice). If the applicant has requested a public hearing as part of the application, a notice of public hearing shall be included in the application notice.

If the application notice does not contain a notice of public hearing, any person may request a public hearing, or DNR may decide on its own to hold a public hearing if DNR determines that there is a significant public interest in holding a hearing. The public hearing request must be submitted by the interested person, or DNR's decision to hold a public hearing must occur, within 30 days after DNR provides the application notice. Within 15 days after the public hearing request is submitted by an interested person or DNR makes its decision, DNR must give notice of the public hearing (separate notice of hearing). DNR must hold the hearing within 30 days after the notice of public hearing is either issued as part of the application notice or as an independent separate notice of hearing.

Also, DNR must provide a period to receive public comments. This period last for 30 days after the date on which DNR provides notice to the public that the application is complete or for ten days after the date that a public hearing ends, if one is held. Within 30 days after the public hearing is held or, if no public hearing is held, within 30 days of the 30-day comment period, DNR must render a decision, issuing the individual permit or contract.

Under the bill, the time limits for giving application notice and notice of public hearing are not totally dependent on the date that the application is determined by DNR to be complete. If, upon reviewing the application, DNR determines that the application is complete and that no additional information is needed, DNR shall inform the applicant of that fact within the 30-day review period. The date on which this notice is sent triggers the time limits for the public hearing process and for receiving public comments.

If DNR determines that the application is not complete, it may make only one request for additional information during the 30-day review period. There is no time limit on the applicant for providing the additional information but once it is submitted, DNR must notify the applicant within ten days as to whether the application is complete. Even if the application is not complete, the date on which this second notice is sent triggers the time limits for the public hearing process and for receiving public comments. Under the bill, the term used for such a date that triggers the time limits is a "date of closure." DNR may ask for information to supplement the one-time request for information, but such a request may not affect the date of closure.

The bill shortens some of the time limits under the public hearing and comment process. The 30-day time period for an interested party to request a public hearing or for DNR to make a decision on its own to hold a public hearing is shortened from

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30 days to 10 days and the 30-day time period for the rendering a decision is shortened from 30 days to 20 days.

Under the bill, if DNR fails to comply with 30-day and ten-day time limits relating to determining whether an application is complete, the date of closure shall be the last day of the 30-day or ten-day time period. If DNR fails to comply with the time limits relating to the public hearing and comment process, the application for the permit or contract shall be considered to have been approved.

Under rules promulgated by DNR, in an administrative hearing in which an applicant is contesting DNR's decision regarding a permit or contract, the applicant has the burden of proof. Under the bill, DNR has the burden of proof if the applicant is the person who requested the hearing. If the applicant is not the petitioner, the petitioner has the burden of proof.

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

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

- 1 **SECTION 1.** 30.18 (4) (a) of the statutes is amended to read:
- 2 30.18 (4) (a) ~~Upon receipt of a complete application, the department shall~~
- 3 ~~follow the notice and hearing procedures under s. 30.208 (3) to (5)~~ The notice and
- 4 hearing provisions of s. 30.208 (3) to (5) shall apply to an application under sub. (3).
- 5 In addition to providing notice as required under s. 30.208 (3) to (5), the department
- 6 shall mail a copy of the notice to every person upon whose land any part of the canal
- 7 or any other structure will be located, to the clerk of the next town downstream, to
- 8 the clerk of any village or city in which the lake or stream is located and which is
- 9 adjacent to any municipality in which the withdrawal will take place and to each
- 10 person specified in s. 281.35 (5) (b) or (6) (f), if applicable.
- 11 **SECTION 2.** 30.208 (2) of the statutes is renumbered 30.208 (2) (a) and amended
- 12 to read:
- 13 30.208 (2) (a) Review; no additional information required. In issuing
- 14 individual permits or entering contracts under this subchapter, the department shall

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1 ~~initially determine whether a complete application for the permit or contract has~~
2 ~~been submitted and, no later than review an application, and within 30 days after~~
3 ~~the application is submitted, the department shall determine that either the~~
4 ~~application is complete or that additional information is needed. If the department~~
5 ~~determines that the application is complete, the department shall notify the~~
6 ~~applicant in writing about the initial determination of completeness of that fact~~
7 ~~within the 30-day period, and the date on which the notice under this paragraph is~~
8 ~~sent shall be considered the date of closure for purposes of sub. (3) (a).~~

9 (b) Additional information requested. If the department determines that the
10 application is incomplete, the department shall notify the applicant in writing and
11 may make only one request for additional information during the 30-day period
12 specified in par. (a). Within 10 days after receiving the additional information from
13 the applicant, the department shall notify the applicant in writing as to whether the
14 application is complete. The date on which the 2nd notice under this paragraph is
15 sent shall be set as the date of closure for purposes of sub. (3) (a). The department
16 may request additional information from the applicant to supplement the
17 application, but the department may not request items of information that are
18 outside the scope of the original request unless the applicant and the department
19 both agree. A request for any such additional information may not affect the date
20 of closure.

21 (c) Specificity of notice; limits on information. Any notice stating that an
22 application has been determined to be incomplete or any other request for
23 information that is sent under par. (b) shall state the reason for the determination
24 or request and the specific items of information necessary to make the application
25 complete. An applicant may supplement and resubmit an application that the

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1 department has determined to be incomplete. There is no limit on the number of
2 times that an applicant may resubmit an application that the department has
3 determined to be incomplete under this section. The department may not demand
4 items of information that are not specified in the notice as a condition for determining
5 whether the application is complete unless both the department and the applicant
6 agree or unless the applicant makes material additions or alterations to the activity
7 or project for which the application has been submitted that are still needed.

8 (e) Refund of fees. The rules promulgated under s. 299.05 apply only to
9 applications for individual permits or contracts under this subchapter that the
10 department has determined to be complete.

11 **SECTION 3.** 30.208 (2) (d) of the statutes is created to read:

12 30.208 (2) (d) *Failure to meet time limits.* If the department fails to meet the
13 30-day time limit under par. (a) or 10-day time limit under par. (b), the application
14 shall be considered to have a date of closure that is the last day of that 30-day or
15 10-day time period for purposes of sub. (3) (a).

16 **SECTION 4.** 30.208 (3) (a) of the statutes is amended to read:

17 30.208 (3) (a) ~~Upon determination by the department under sub. (2), that an~~
18 ~~application submitted under sub. (1) is complete~~ Within 15 days after the date of
19 closure, as determined under sub. (2) (a) or (b), the department shall provide notice
20 of complete pending application to interested and potentially interested members of
21 the public, as determined by the department. ~~The department shall provide the~~
22 ~~notice within 15 days after the determination that the application is complete.~~ If the
23 applicant has requested a public hearing as part of the submitted application, a
24 notice of public hearing shall be part of the notice of complete pending application.

25 **SECTION 5.** 30.208 (3) (b) of the statutes is amended to read:

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1 30.208 (3) (b) If the notice of ~~complete~~ pending application does not contain a
2 notice of public hearing, any person may request a public hearing in writing or the
3 department may decide to hold a public hearing without a request being submitted
4 if the department determines that there is a significant public interest in holding a
5 hearing.

6 **SECTION 6.** 30.208 (3) (c) of the statutes is amended to read:

7 30.208 (3) (c) A request for a public hearing under par. (b) must be submitted
8 to the department or the department's decision to hold a public hearing must occur
9 within ~~30~~ 10 days after the department ~~completes providing~~ provides the notice of
10 ~~complete~~ pending application. The department shall provide notice of public hearing
11 within 15 days after the request for public hearing is submitted or the department
12 makes its ~~determination~~ decision to hold a public hearing.

13 **SECTION 7.** 30.208 (3) (e) of the statutes is amended to read:

14 30.208 (3) (e) Within ~~30~~ 20 days after the public hearing is held ~~completed~~ or,
15 if no public hearing is held, within 30 days of the 30-day comment period under sub.
16 (4) (a), the department shall render a decision, ~~issuing, denying, or modifying the~~
17 permit or ~~approving or disapproving~~ the contract that is the subject of the application
18 submitted under sub. (1).

19 **SECTION 8.** 30.208 (3) (f) of the statutes is created to read:

20 30.208 (3) (f) If the department fails to comply with the time periods in this
21 subsection or sub. (4), a decision issuing the permit, modifying the permit in the
22 manner requested by the applicant for the permit, or approving the contract shall be
23 considered to be rendered.

24 **SECTION 9.** 30.208 (4) (a) of the statutes is amended to read:

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1 30.208 (4) (a) The department shall provide a period for public comment after
2 the department has provided a notice of ~~complete~~ pending application under sub. (3)
3 (a), during which time any person may submit written comments with respect to the
4 application for the permit or contract. The department shall retain all of the written
5 comments submitted during this period and shall consider all of the comments in the
6 formulation of the final decision on the application. The period for public comment
7 shall end on the 30th day following the date on which the department completes
8 providing the notice of ~~complete~~ pending application, except as provided in par. (b).

9 **SECTION 10.** 30.208 (4m) of the statutes is created to read:

10 30.208 (4m) DENIALS. If a decision is issued by the department under this
11 section that denies a permit or a modification of a permit or disapproves a contract,
12 the notice of denial or disapproval shall set forth the specific reasons as to how the
13 applicable provisions of this subchapter were not met. The notice of denial or
14 disapproval may not be based on a determination that the application for the permit
15 or contract was incomplete.

16 **SECTION 11.** 30.208 (5) (a) (intro.) of the statutes is amended to read:

17 30.208 (5) (a) (intro.) The department shall, by rule, establish procedures for
18 providing notices of ~~complete~~ pending applications and notices of public hearings to
19 be provided under sub. (3), and notices of administrative hearings to be provided
20 under s. 30.209 (1m). The procedures shall require all of the following:

21 **SECTION 12.** 30.208 (5) (b) (intro.) of the statutes is amended to read:

22 30.208 (5) (b) (intro.) The department shall, by rule, prescribe the form and
23 content of notices of ~~complete~~ pending applications and notices of public hearings to
24 be provided under sub. (3), and notices of administrative hearings to be provided
25 under s. 30.209 (1m). Each notice shall include all of the following information:

SENATE BILL 133**SECTION 13**

1 **SECTION 13.** 30.208 (5) (b) 4. of the statutes is amended to read:

2 30.208 (5) (b) 4. For a notice of ~~complete~~ pending application and a notice of
3 public hearing under sub. (3), a statement of the tentative determination to issue,
4 modify, or deny a permit for the activity or project described in the application.

5 **SECTION 14.** 30.208 (5) (b) 5. of the statutes is amended to read:

6 30.208 (5) (b) 5. For a notice of ~~complete~~ pending application and a notice of
7 public hearing under sub. (3), a brief description of the procedures for the
8 formulation of final determinations, including a description of the comment period
9 required under sub. (4).

10 **SECTION 15.** 30.209 (2) (a) of the statutes is amended to read:

11 30.209 (2) (a) An administrative hearing under this ~~subsection~~ section shall be
12 treated as a contested case under ch. 227.

13 **SECTION 16.** 30.209 (2) (b) of the statutes is amended to read:

14 30.209 (2) (b) If a stay under sub. (1m) (c) is in effect, the hearing examiner
15 shall, within 30 days after receipt of the referral under sub. (1m) (g), determine
16 whether continuation of the stay is necessary to prevent significant adverse impacts
17 or irreversible harm to the environment pending completion of the administrative
18 hearing. The hearing examiner shall make the determination based on the request
19 under sub. (1m) (c), any response from the applicant under sub. (1m) (e), and any
20 testimony at a public hearing or any public comments. The determination shall be
21 made without a hearing.

22 **SECTION 17.** 30.209 (2) (c) of the statutes is amended to read:

23 30.209 (2) (c) ~~A~~ An administrative hearing under this section shall be
24 completed within 90 days after receipt of the referral of the petition under sub. (1m)
25 (g), unless all parties agree to an extension of that period. In addition, a hearing

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1 examiner may grant a one-time extension for the completion of the hearing of up to
2 60 days on the motion of any party and a showing of good cause demonstrating
3 extraordinary circumstances justifying an extension.

4 **SECTION 18.** 30.209 (2) (d) (intro.) of the statutes is amended to read:

5 30.209 (2) (d) (intro.) Notwithstanding s. 227.44 (1), the department shall
6 provide a notice of the administrative hearing at least 30 days before the date of the
7 hearing to all of the following:

8 **SECTION 19.** 30.209 (2) (e) of the statutes is created to read:

9 30.209 (2) (e) In an administrative hearing under this section, if the applicant
10 is the petitioner, the department shall proceed first with the presentation of evidence
11 and shall have the burden of proof. If the applicant is not the petitioner, the
12 petitioner shall proceed first with the presentation of evidence and shall have the
13 burden of proof.

14 **SECTION 20. Initial applicability.**

15 (1) The treatment of sections 30.18 (4) (a) and 30.208 (3) (a), (b), (c), (e), and (f),
16 (4) (a), (4m), and (5) (a) (intro.) and (b) (intro.), 4., and 5. of the statutes, the
17 renumbering and amendment of section 30.208 (2) of the statutes, and the creation
18 of section 30.208 (2) (d) of the statutes first apply to applications for permits or
19 contracts that are submitted on the effective date of this subsection.

20 (2) The treatment of section 30.209 (2) (e) of the statutes first applies to
21 administrative hearings that are commenced on the effective date of this subsection.

22 (END)