

NATURAL RESOURCES - ENVIRONMENTAL QUALITY

Culvert Permitting Exemptions

Motion:

Move to modify s. 30.123 (6)(d) of the statutes to specify the construction or placement of a culvert, as well as the maintenance thereof, is exempt from waterway permitting requirements if the culvert is replacing an existing culvert and is placed in substantially the same location as a culvert being replaced. Also, require that replacement culverts be constructed or placed using best management practices to comply with water quality standards.

Further, repeal the culvert permit exemption under s. 30.123 (6)(e) of the statutes, for the construction, placement or maintenance of a culvert to replace an existing culvert with an inside diameter not exceeding 24 inches.

Specify if the Department of Natural Resources (DNR) requires a person who replaces a culvert to seek a permit for a culvert that would be otherwise exempt, and if the DNR requires conditions under the new permit that are different than conditions for the culvert under an existing permit, the DNR is required to reimburse the person for the reasonable costs incurred in complying with the different conditions in the permit. Specify reimbursement is to be made from the DNR's general administrative operations GPR appropriation [s. 20.370 (8) (ma)]. Also, specify waterway permit fees would not apply in such instances.

Additionally, require any municipality responsible for replacing a culvert to make and retain a record of the replacement of the culvert, including the following information: (a) the date of the replacement of the culvert; (b) the dimensions of the replacement culvert; and (c) the location of the culvert.

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Note:

Under current law, no person may construct or place a culvert in a navigable waterway unless the culvert has been issued a permit by DNR or the culvert would meet statutory conditions for a permit exemption. Exemptions currently include: (a) the construction or placement of a culvert, as well as the maintenance thereof, to replace an existing culvert that has already been permitted, provided the construction, placement or maintenance would comply with the permit conditions in effect; or (b) the construction or placement of a culvert, as well as the maintenance thereof, to replace a culvert that has an inside diameter not exceeding 24 inches, regardless of whether the existing culvert was previously permitted. Culverts placed in accordance with guidelines of the

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Department of Transportation (DOT) or a DNR-DOT cooperative agreement also may not require permits. In general, new culverts, culverts not previously permitted, or replacements that are of a different size than the culvert being replaced, must obtain coverage under a permit.

Also under current law, DNR may require a person to seek a permit for an otherwise exempt culvert if the Department, upon inspection of the site, has determined a permit is necessary to impose conditions that would prevent any of the following: (a) significant adverse impacts to the public rights and interests; (b) environmental pollution; or (c) material injury to riparian rights of riparian owners.

Under the motion, the replacement of any existing culvert would be exempt if the replacement culvert is placed in substantially the same location as the culvert being replaced. The motion would also specify culverts are to be constructed or placed using best management practices to comply with water quality standards. The exemption relating to culverts not exceeding 24 inches in inside diameter would be repealed.

DNR would retain authority to require permits in lieu of exemptions to prevent certain circumstances noted above. However, the motion would specify if DNR were to require a permit for a previously permitted (and otherwise exempt) culvert, and the new permit were to contain conditions more stringent than those under the existing permit, DNR would be required to reimburse the person placing the culvert for the reasonable costs of complying with the new permit conditions.

Fees for waterway permits under current law are \$303 for general permit coverage and \$603 for issuance of an individual permit, although those fees do not apply for municipal road construction. Fees are deposited to a DNR program revenue appropriation for permitting and regulation of activities affecting waterways and wetlands. No data are immediately available to determine how waterway permit revenues would be affected by the changes to exemptions, if at all. Further, it cannot be determined to what extent DNR would be liable for compensating culvert permit holders for compliance costs associated with altered permits under the motion. DNR reports it has required permits in lieu of culvert exemptions twice since 2004, but none since 2007. The Department does not have any data on costs of compliance in such instances, but amounts would be expected to depend on the scope of a project. No additional funding for potential reimbursements would be provided.