

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee for
Review of
Administrative Rules
(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤ 97hr_JCR-AR_ES_pt05

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

—

April 17, 1997 Public hearing
& Executive Session

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West • State Capitol
Madison, WI 53703
Phone: 608-264-8486

JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES

FEB 13 1997

February 6, 1997

George E. Meyer, Secretary
Department of Natural Resources
101 S. Webster Avenue
Madison, WI 53702

Dear Secretary Meyer:

In recent days we have become aware of an action of the department that is of interest to us. We are informed that the department has entered into cooperative agreements with several holders of commercial fishing licenses on Lake Superior that will retire their licenses and lake trout quotas in exchange for payments from the state. The information we have received to date suggests that the agreements rely on a rule recently promulgated by the department - Clearinghouse Rule 96-098.

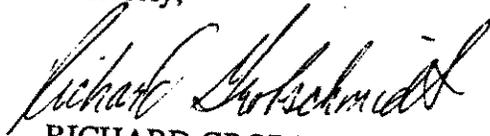
Our initial review of Clearinghouse Rule 96-098, does not give much information about the department's proposal. So that we can get a better understanding of the rule, could you provide us with an explanation of the relationship between the rule and the agreements? Also, could you please furnish us with a sample agreement and explain to us the current status of the agreements?

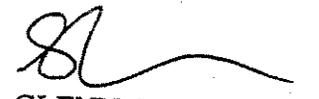
We are also aware from a previous memo sent by you to legislators on January 21st of this year that the department will no longer use Fish and Wildlife Account funds to pay these agreements as was described in the analysis of Clearinghouse Rule 96-098. Could you please provide us a description of the new funding source for this year and future payments?

Meyer
February 6, 1997
page two

Because we have received numerous inquiries about the agreements, and would like additional background to more adequately respond to the questions that have been raised, we would appreciate your response to our request as soon as possible. If you have any questions concerning our request, please do not hesitate to contact us.

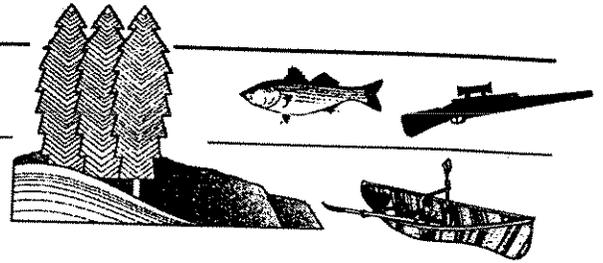
Sincerely,


RICHARD GROBSCHMIDT
Senate Co-Chair


GLENN GROTHMAN
Assembly Co-Chair

RG:GG:js

Assembly Committee on:
Natural Resources
State Representative
DuWayne Johnsrud, Chair



March 10, 1997

Representative Glenn Grothman, Cochairperson
Senator Richard Grobschmidt, Cochairperson
Joint Committee for Review of
Administrative Rules
State Capitol
Madison, WI 53702

Dear Representative Grothman and Senator Grobschmidt:

On Wednesday, March 5, 1997, the Assembly Committee on Natural Resources voted unanimously to object to Clearinghouse Rule 96-041, relating to the transfer of Great Lakes commercial fishing licenses upon the death or incapacity of the licensee, and Clearinghouse Rule 96-042, relating to the transfer of individual licensee catch quotas upon the death or incapacity of the quota holder. The Committee took this action after an informative public hearing and a thorough discussion of these issues. The conclusion of the Committee, which I strongly support, was that these rules exceed statutory authority and fail to comply with legislative intent.

Although I urge the Joint Committee for Review of Administrative Rules to sustain the objection to these rules, I also would like to request that, at the same time you hold a hearing on these rules, you conduct a hearing on the broader issues of license and quota transfers under ss. NR 25.04 and 25.08, Wis. Adm. Code. It has become clear to me that the two proposed rules add to a problem that already exists in current rules.

I think that legitimate questions can be raised as to whether s. 29.33 (2) (d), Stats., allows the kind of license and quota transfers that are permitted under the current rules. In addition to my concerns about statutory authority, I have several fundamental policy concerns about these statutes and rules:

- Both the current rules and the Clearinghouse Rules create elements of property ownership in a public resource. Without judicial resolution, it is unclear whether a property right has been created. The Legislature should be extremely cautious not to contribute, and not to allow agencies to contribute, to a license holder's arguments that the licensee has obtained property rights in public resources.
- The state is the owner of fish and game within its boundaries. The state has a responsibility to manage fish and game for the benefit of the public.

Representative Glenn Grothman
Senator Richard Grobschmidt
March 10, 1997
Page 2

This demands a much more open access to the fishery than is provided in the current rules and the Clearinghouse Rules.

This is a serious concern and has implications in other areas, such as commercial clam harvesting on the Mississippi River and the proposal by the Department of Natural Resources to buy out commercial fishing licenses on Lake Superior. Your hearing on these two Clearinghouse Rules would be an ideal opportunity to air the broader range of issues relating to this subject.

Thank you very much for your consideration of this request.

Sincerely,



Representative DuWayne Johnsrud
Chairperson
Assembly Committee on Natural Resources

DJ:rr

Tommy G. Thompson
Governor

Linda Stewart
Secretary



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Telephone: (608) 266-7552
FAX: (608) 266-1784

State of Wisconsin
Department of Workforce Development

March 20, 1997

The Honorable Richard Grobschmidt
State Senator
Room 404, 100 North Hamilton Street
Madison WI 53702

The Honorable Glenn Grothman
State Representative
125 West, State Capitol
Madison WI 53702

Re: DWD 272 - Minimum Wage

Dear Senator Grobschmidt and Representative Grothman:

We would like to request a second 60 day extension on the Wisconsin Minimum Wage emergency rule which became effective on October 1, 1996. This rule was to expire on February 28, 1997. The first extension has been approved through April 28, 1997.

The Wisconsin Legislative Council assigned Clearinghouse Rule number 96-181 to DWD 272, the Minimum Wage rule.

The public hearing was held on December 17, 1996 and the deadline for written testimony was held open until December 30, 1996. On February 6, 1997, the rule was delivered to the Chief Clerk's Office. The Department expects to have the permanent rule in place by June 1, 1997.

If this emergency rule is not extended, the state minimum wage rate would revert to the rates in effect prior to October 1, 1996. This would be detrimental to Wisconsin employees who receive minimum wage and difficult for the department to audit the labor standards violations which could result.

Thank you again for your consideration of this request. Please contact Katie Mnuik, the Department's Legislative Liaison at 267-3200 if you have any questions concerning this rule extension.

Sincerely,

A handwritten signature in black ink that reads "Linda Stewart".

Linda Stewart
Secretary



State of Wisconsin \ Department of Workforce Development

RULES in FINAL DRAFT FORM

Rule No.:

DWD 272

Relating to:

Minimum Wage

CHAPTER ILHR 272

EMERGENCY RULE RELATING TO THE MINIMUM WAGE

Pursuant to the authority vested in the Wisconsin Department of Workforce Development by §§103.005(1) and 104.04, Stats., the department proposes an order to repeal ILHR 272.001(5); to amend ILHR 272.001(3); and to repeal and recreate ILHR 272.01(11), 272.03(1), (2)(a), and (3), and 272.05, relating to the minimum wage.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The minimum wage set by federal law will be raised to \$4.75 per hour effective October 1, 1996. The federal minimum wage covers many but not all of the employers and employees in the state, and it is not always easy for a particular employer to know if it is covered by state or federal law. If the state did not act quickly to adjust its minimum wage rules in response to the change in federal law, many employers and employees would be subjected to confusion and uncertainty in the calculation and payment of wages.

Analysis

This rule raises the state's basic minimum wage for adult workers from \$4.25 per hour to \$4.75 per hour, effective October 1, 1996. In addition, the rule repeals the current definition of "probationary employe" and adopts an opportunity wage (similar to the new federal law) which applies to employes under 20 years of age during the first 90 days of employment. The rule establishes the following wage rates for opportunity employes and agricultural workers:

| | |
|----------------------------|----------------|
| Opportunity employe | \$4.25 per hr. |
| Adult agricultural employe | \$4.55 per hr. |
| Minor agricultural employe | \$4.20 per hr. |

In addition, there has also been a proportional adjustment of the rates used to assign a value to meals and lodging received as compensation.

SECTION 1. ILHR 272.001(3) is amended to read:

ILHR 272.001(3) Except as provided in s. ILHR 272.03(2), the minimum hourly rate for ~~probationary~~ opportunity employes shall be ~~30~~ 50 cents per hour less than the minimum hourly rate for non-agricultural ~~non-probationary~~ non-opportunity employes.

SECTION 2. ILHR 272.001(5) is repealed.

SECTION 3. ILHR 272.01(11) is repealed and recreated to read:

ILHR 272.01(11) "Opportunity employe" means an employe who is not yet 20 years old and who has been in employment status with a particular employer for 90 or fewer consecutive calendar days from the date of initial employment.

SECTION 4. ILHR 272.03(1) is repealed and recreated to read:

ILHR 272.03(1) MINIMUM RATES. Except as provided in ss. ILHR 272.05 to 272.09, no employer shall employ any employe in any occupation, trade or industry at a lesser hourly rate than is indicated below:

- (a) All employes \$4.75 per hr.
- (b) Opportunity employes \$4.25 per hr.
(Under 20 years of age, first 90 days)

SECTION 5. ILHR 272.03(2)(a) is repealed and recreated to read:

ILHR 272.03(2)(a) Minimum rates for tipped employes:

- (a) All employes \$2.33 per hr.
- (b) Opportunity employes \$2.13 per hr.
(Under 20 years of age, first 90 days)

SECTION 6. ILHR 272.03(3) is repealed and recreated to read:

ILHR 272.03(3) ALLOWANCE FOR BOARD AND LODGING. Where board or lodging or both are furnished by the employer in accordance with s. ILHR 272.04, and accepted and received by a particular employe, an allowance may be made not to exceed the following amounts:

(a) Lodging:

| | |
|--|------------------------------------|
| All employes | \$38.00 per week or \$5.45 per day |
| Opportunity employes (Under 20 years of age, first 90 days) | \$34.00 per week or \$4.85 per day |

(b) Meals:

| | |
|--|-------------------------------------|
| All employes | \$57.00 per week or \$2.70 per meal |
| Opportunity employes (Under 20 years of age, first 90 days) | \$51.00 per week or \$2.45 per meal |

SECTION 7. ILHR 272.05 is repealed and recreated to read:

ILHR 272.05 Agriculture. (1) MINIMUM RATES. The minimum wage of employes employed in agriculture shall be as follows:

| | |
|---|----------------|
| (a) Adult employes | \$4.55 per hr. |
| (b) Minor employes (Under 18 years of age) | \$4.20 per hr. |

(2) ALLOWANCE FOR BOARD AND LODGING. Where board or lodging or both are furnished by the employer in accordance with s. ILHR 272.04, and accepted and received by the employe, an allowance may be made not to exceed the following amounts:

- | | | |
|-----|----------------------------|-------------------------------------|
| (a) | Lodging for adult employes | \$36.40 per week or \$5.20 per day |
| (b) | Lodging for minor employes | \$33.60 per week or \$4.80 per day |
| (c) | Meals for adult employes | \$54.60 per week or \$2.60 per meal |
| (d) | Meals for minor employes | \$50.40 per week or \$2.40 per meal |

SECTION 8. EFFECTIVE DATE. This emergency rule shall take effect on October 1, 1996.

(End)

FISCAL ESTIMATE
DOA-2048 N(R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272
Amendment No. if Applicable

Subject

Emergency Rule on the Minimum Wage

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb
Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The state and local governments will incur increased salary costs in some programs due to the increase in the minimum wage. However, this is caused by the federal legislation amending the Fair Labor Standards Act, and not by this emergency rule, which affects private sector employers that are not covered by the FLSA. The Department will incur some one-time costs, estimated at \$5,000.00, due to reprinting posters and pamphlets and taking other steps to publicize the new minimum wage rate.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Howard Bernstein 266-9427

Authorized Signature/Telephone No.

Howard Bernstein

Date

3/20/96

FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272

Amendment No.

Subject

Emergency Rule on the Minimum Wage

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$5,000.00

II. Annualized Costs:

Annualized Fiscal impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$

\$

-

(FTE Position Changes)

(

FTE)

(-

FTE)

State Operations - Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$

\$

-

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$

-

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$

-

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 0

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)

DWD / HOWARD BERNSTEIN 266-9427

Authorized Signature/Telephone No.

Howard Bernstein

Date

8/20/96

Tommy G. Thompson
Governor

Linda Stewart
Secretary



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State of Wisconsin
Department of Workforce Development

MAR 27 1997

March 19, 1997

The Honorable Richard Grobschmidt
Room 404, 100 North Hamilton Street
Madison, Wisconsin 53702

The Honorable Glenn Grothman
125 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Grobschmidt and Representative Grothman:

Administrative rule DWD 11.135, relating to the 60-month lifetime limit on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works (W-2) employment position or combination thereof, was promulgated as an emergency rule on October 1, 1996, under s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, s. 49.50(2), Stats., and s. 275(3) of 1995 Wisconsin Act 289.

The Wisconsin Legislative Council assigned Clearinghouse Rule number 96-156 to DWD 11.135.

A public hearing was held on DWD 11.135 on November 19, 1996, and the deadline for written testimony was held open until November 26, 1996. The rule was submitted to the presiding officers of the Legislature on January 14, 1997.

The first extension of the emergency rule will expire on April 28, 1997.

This letter is a request for a second 60 day extension of the emergency rule. The Department expects to file the permanent rule in April to become effective on June 1, 1997.

If this emergency rule is not extended, the administrative rules will conflict with the statutory provisions of 1995 Wisconsin Act 289. On the basis of this emergency rule, time-limited benefits were implemented statewide. Failure to extend the emergency rule would cause confusion and disruption in the implementation of this component of the Wisconsin Works program.

Thank you for your consideration of this request. Please contact Katie Mnuk, the Department's Legislative Liaison, at 7-3200, if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
Secretary

CHAPTER DWD 11

RULE RELATING TO THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT POSITION OR A COMBINATION THEREOF

Pursuant to the authority vested in the Wisconsin Department of Workforce Development (DWD) by s. 49.145(2)(n), Stats., the Department proposes an order to renumber ch. HSS 201 to DWD 11 and to create DWD 11.135, relating to circumstances under which the 60-month lifetime limit on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works employment position or a combination thereof may be extended.

Analysis

(1) **Background.** Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wisconsin Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60-month lifetime limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141(2)(b), Stats., as created by 1995 Wisconsin Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to

count toward the 60-month lifetime limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which provides that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the federal Administration for Children and Families on August 22, 1996. The Department implemented time limits on October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS) program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria a county or tribal economic support agency would use to determine whether an extension of the 60-month lifetime limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

(2) **Authority for rule.** s. 49.145(2)(n), Stats., establishes a lifetime limit of 60 months, beginning on an individual's 18th birthday, on the time that an individual may participate in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or the Wisconsin Works (W-2) program under ss. 49.141 to 49.161, Stats. or a

combination thereof. In addition, s. 49.145(2)(n) provides that a W-2 agency may extend the time limit only if the agency determines, "in accordance with rules promulgated by the department, that unusual circumstances exist that warrant an extension of the participation period."

(3) Unusual circumstances. This rule establishes the following as unusual circumstances which may serve as the basis for the determination by a W-2 agency that the 60-month lifetime limit should be extended for a W-2 participant:

(a) A participant is unable to work because of personal disability or incapacity, or because he or she is needed to provide home care for a severely incapacitated member of his or her household.

(b) A participant has significant limitations to employment, such as low achievement ability, learning disability, severe emotional or family problems, or inability to find employment because of local labor market conditions.

(4) Department review. The rule provides that DWD may review and reverse the decision of a W-2 agency to extend a participant's eligibility beyond the 60-month lifetime limit.

(5) Counting sanction months. The rule provides that a month during which a JOBS or W-2 participant receives no payment or a reduced payment due to a sanction does count as a month of participation in JOBS or W-2 for the purposes of the 60-month lifetime limit.

(6) Exceptions. The rule provides that the 60-month lifetime limit does not apply to a dependent 18 year old, an 18 or 19 year old Learnfare participant, or a JOBS participant who is enrolled in a "control group" under the Pay for Performance program.

This is the permanent rule for time limited benefits. This rule replaces the emergency rule which was effective on October 1, 1996.

PROPOSED ORDER

Pursuant to the authority vested in the Department of Workforce Development by s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, s. 49.33(4), Stats., and s.275(3) of 1995 Wisconsin Act 289, the Department of Workforce Development hereby creates a rule interpreting

s. 49.145(2)(n), as created by 1995 Wisconsin Act 289, as follows:

SECTION 1. ch. HSS 201 is renumbered ch. DWD 11.

SECTION 2. DWD 11.135 is created to read:

DWD 11.135 Time Limits. (1) **ELIGIBILITY.** Except as provided in sub. (2) or (5), an individual is not eligible for participation in the job opportunities and basic skills (JOBS) program or in a Wisconsin works (W-2) employment position under s. 49.147(3) to (5), Stats., if, beginning on the date the individual attained the age of 18, he or she has actively participated in the job opportunities and basic skills program or has participated in a Wisconsin works employment position, or both, for 60 months. The months need not be consecutive. Participation in the JOBS program begins to count toward the 60-month lifetime limit beginning on October 1, 1996. In this subsection, "actively participated" means that the individual was enrolled in the JOBS program under s. HSS 206.07.

(2) **ADDITIONAL MONTHS OF ELIGIBILITY.** An agency may extend the 60-month lifetime limit only under unusual circumstances. In this subsection, "unusual circumstances" means any of the following:

(a) A JOBS program participant is unable to work because of personal disability or incapacity, as defined under s. HSS 207.11(1)(a), or is needed as determined under s. DWD 11.19(1)(i) to remain at home to care for another member of the household whose incapacity is so severe that without in-home care provided by the JOBS program participant, the incapacitated AFDC group member's health and well-being would be significantly affected.

(b) A JOBS program participant has significant limitations to employment such as:

1. A JOBS program participant's low achievement ability, learning disability or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for SSI under 42 USC 1381

to 1381d or social security disability insurance under 42 USC 401 to 433.

2. Family problems of such severity that they prevent the JOBS participant from obtaining or retaining unsubsidized employment.

(c) The adult JOBS participant has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity. In this paragraph, "reasonable job opportunity" means a job that pays the federal minimum wage prescribed in 29 USC 206(a)1, and meets the conditions under 45 CFR Part 251.

(3) DEPARTMENT RESPONSIBILITY. The department may review an agency's decision to extend eligibility beyond the 60-month lifetime limit and may overturn an agency's decision.

(4) DETERMINATION OF PARTICIPATION. For the purpose of determining the number of months of participation under s. 49.145(2)(n), Stats., and this section, a participant in the JOBS program or a participant in a W-2 employment position under s. 49.147(3) to (5), Stats., shall be considered to have actively participated in a month in which, as a result of a sanction, a reduced payment or no payment is made to the participant.

(5) WHO IS NOT SUBJECT TO TIME LIMITS. An individual who is one of the following is not subject to sub.(1):

(a) A dependent 18 year old as defined under s. DWD 11.24.

(b) A participant enrolled in JOBS pay for performance control group under s. DWD 11.045(4)(b)1.

(c) An 18 or 19 year old learnfare participant under s. DWD 11.195.

LRB or Bill No./Adm. Rule No.
s.HSS 201.135 (D10011.135)
Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R1094)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

Time Limited Benefits

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or effects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenue
- Decrease Existing Revenue

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenue
 - Permissive Mandatory
- 4. Decrease Revenue
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PPS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This is the emergency rule to implement the time limits on benefits for recipients of Aid to Families with Dependent Children (AFDC) who are participating in the Job Opportunities and Basic Skills (JOBS) program, under s.49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289.

All costs to the Department and local governments for operation of the time limits on benefits were included in 1995 Wisconsin Act 289. There are no additional costs for state government or local governments from promulgation of the administrative rule to implement time limits on benefits.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
DWD/DES Bonnie Kendall 1-6071

Authorized Signature/Telephone No.
[Signature] 267-2979

Date
9-20-96

FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R1094)

◆ ORIGINAL ◆ UPDATED
◆ CORRECTED ◆ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
HSS 201.135

Amendment No.

(DWD 11.135)

Subject

Time Limited Benefits

L One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

| II. Annualized Costs: | | Annualized Fiscal Impact on State funds from: | |
|---|--|---|-----------------|
| | | Increased Costs | Decreased Costs |
| A. State Costs by Category | | \$ | \$. |
| State Operations - Salaries and Fringes | | | |
| (FTE Position Changes) | | (FTE) | (- FTE) |
| State Operations - Other Costs | | | . |
| Local Assistance | | | . |
| Aids to Individuals or Organizations | | | . |
| TOTAL State Costs by Category | | \$ | \$. |
| B. State Costs by Source of Funds | | Increased Costs | Decreased Costs |
| GPR | | \$ | \$. |
| FED | | | . |
| PROPRS | | | . |
| SEG/SEG-S | | | . |
| III. State Revenues - Complete this only when proposal will increase or decrease state revenue (e.g., tax increase, decrease in license fee, etc.) | | Increased Rev. | Decreased Rev. |
| GPR Taxes | | \$ | \$. |
| GPR Earned | | | . |
| FED | | | . |
| PROPRS | | | . |
| SEG/SEG-S | | | . |
| TOTAL State Revenues | | \$ | \$. |

NET ANNUALIZED FISCAL IMPACT

NET CHANGE IN COSTS

\$ SEE TEXT

\$ SEE TEXT

NET CHANGE IN REVENUES

\$ SEE TEXT

\$ SEE TEXT

Agency Prepared by: (Name & Phone No.)

DWD/OES Bonnie Kendall 1-871

Authorized Signature/Telephone No.

B. Kendall

267-2978

Date

9-20-9



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

PO Box 8911
Madison, WI 53708-8911

April 4, 1997

The Honorable Richard Grobschmidt
State Senator
Co-Chair, Joint Administrative Rules Committee
100 North Hamilton, Room 404
P.O. Box 7882
Madison, WI 53707

The Honorable Glen Grothman
State Representative
Co-Chair, Joint Administrative Rules Committee
State Capitol, Room 125 West
P.O. Box 8952
Madison, WI 53708

Dear Senator Grobschmidt and Representative Grothman:

Pursuant to s. 227.24(2) of the Statutes, the Department of Agriculture, Trade and Consumer Protection (DATCP) requests approval of a second and final 60-day extension of its emergency rule creating ch. ATCP 139.04(11), Wis. Adm. Code, which prohibits the sale of flammable, hydrocarbon-based refrigerants for use in mobile air conditioning systems.

The emergency rule on flammable refrigerants was adopted on October 4, 1996. Six public hearings were held on both the emergency rule and an identical proposed permanent rule. Revisions were made to the permanent rule in response to Legislative Council Rules Clearinghouse comments and written testimony from BMW of North American, Inc. and the Association of International Automobile Manufacturers, Inc. The Board of Agriculture, Trade and Consumer Protection approved a final draft of the permanent rule at its March 11, 1997 meeting, and it was referred for legislative standing committee review on March 17.

We anticipate a July 1, 1997 effective date for the permanent rule. Thus, we need a second 60-day extension of the emergency rule in order to avoid a gap in regulatory coverage of the current flammable refrigerant ban.

Your consideration and support of this and our earlier extension request is greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan T. Tracy". The signature is fluid and cursive, with a large, sweeping initial "A" and "T".

Alan T. Tracy,
Secretary



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: April 14, 1997

TO: MEMBERS OF THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

FROM: Ronald Sklansky, Senior Staff Attorney

SUBJECT: Retirement of Commercial Fishing Licenses and Reduction of Lake Trout Harvest Quotas on Lake Superior

This memorandum responds to questions concerning the retirement of commercial fishing licenses and the reduction of lake trout harvest quotas on Lake Superior. These questions were raised at the last meeting of the Joint Committee for Review of Administrative Rules (JCRAR) on March 20, 1997. The changes in the Lake Superior commercial fishery have been effected by cooperative agreements entered into by the Department of Natural Resources (DNR) and commercial fishing licensees. Questions relating to the cooperative agreements and the responses to the questions follow below.

1. What are the basic terms of the cooperative agreements?

The purpose of each cooperative agreement is to reduce the total number of state-licensed commercial fishers on Lake Superior in order to enhance lake trout restoration efforts and the quality of the sport fishery, while preserving the economic viability and stability of the remaining commercial fishery. To accomplish this goal, each state-licensed commercial fisher involved has surrendered the fisher's license and lake trout quota tags to DNR in return for 10 annual monetary payments.

Although a former licensee may continue to work in the commercial fishery as a crew member, the former licensee may not invest in, or aid, other commercial fishing operations in the state.

The effectiveness of each cooperative agreement was conditioned, in part, on the promulgation of administrative rules necessary to reduce the authorized number of commercial fishing licenses for Lake Superior and to reduce the lake trout quota for the commercial fishery. The rule amendments required to make the cooperative agreements operational took effect on February 1, 1997.

2. How have the cooperative agreements been implemented?

Cooperative agreements were entered into by DNR and 11 commercial fishing licensees. The department made the first annual financial payments under the cooperative agreements on February 7, 1997. Additional payments are to be made annually on or about October 1 in each of the years 1997 to 2005, with the last payment made on or about October 1, 2005.

Although the cooperative agreements indicate that the funds used to make the annual payments are to be derived from sport fishing license sales, correspondence from DNR Secretary, George E. Meyer, to JCRAR on March 10, 1997, states in part that:

... However, to address concerns raised by sport anglers, the Department has determined that general purpose revenues (GPR) from the Department's existing budget will be used instead of Fish and Wildlife Account funds. Due to the lateness of the funding source change in this fiscal year, the payments made on February 7, 1997 had to be made from the Division of Resource Management's GPR general program operations appropriation.

...

In fiscal year 1998 and beyond, the payments will be made from the GPR program operations budget within the Department's newly created Water Division

The total amount of funds to be expended over the 10-year period of the cooperative agreements is approximately \$1.6 million.

3. May the state take any action to affect the cooperative agreements?

If legislation were enacted to void the cooperative agreements, a claim could arise challenging the enactment on the grounds that the law violates the prohibition against the impairment of contracts contained in both the U.S. and Wisconsin Constitutions. In general, for such a claim to succeed, it must be shown that a law impairs an existing contractual relationship; that the impairment is substantial; and that the governmental purpose of the legislation does not outweigh the effects of the impairment. An analysis of this type of claim is very fact dependent. That is, the severity of an alleged impairment is determined by reviewing the contract, the particular terms that are alleged to be impaired, the impact of the impairment on the parties affected, the expectations of the parties when the contract was made and the particular problems that were meant to be resolved by the legislation enacted. Because the question is so fact dependent, it is very difficult to predict, in most cases, the outcome of an impairment claim; the issue ultimately would require a judicial resolution.

However, the cooperative agreements themselves may provide a method for further state intervention. The termination clause of each agreement states in part that:

8. **Termination.** This agreement may be terminated by either party upon any of the following:

...
C. The Department may terminate this agreement in whole or part, without penalty, due to non-appropriation of the funds from which the payments . . . are to be paid

Arguably, if legislation were enacted providing that funds appropriated to DNR were not to be used to make the payments prescribed in the cooperative agreements, DNR then could terminate the agreement due to "non-appropriation" of the funds from which the payments were to be made. In other words, because such legislation would clearly state that appropriations were not made available to DNR for the cooperative agreements, the department could exercise the termination clause contained in each cooperative agreement. (For example, see s. 25.29 (4r), Stats., as created by 1997 Wisconsin Act 1, which provides that money from the conservation fund may not be used to retire fishing licenses or the cessation of fishing under those licenses.)

If the department were to exercise the termination clause, it would give each former licensee no less than 10 days written notice of the intent to terminate and a statement of the specific reasons for the termination. Each cooperative agreement provides that if DNR fails to perform the terms or conditions of the agreement, the former licensee may retain all payments made by DNR prior to the termination and, if it is allowed to do so under statutes and administrative rules existing at the time of termination, the department is required to issue a fishing license to the former licensee authorizing fishing on the waters of Lake Superior upon appropriate application and payment of fees.

4. Are any further legislative or agency actions required to finalize the retirement of commercial fishing licenses and a reduction of lake trout harvest quotas on Lake Superior?

There are no other actions required by the Legislature or DNR in order to finalize the retirement of commercial fishing licenses and a reduction of lake trout harvest quotas on Lake Superior.

RS:wu;ksm

APR 15 1997

Contact: Steve Krieser
Office of Rep. Glenn Grothman
Phone 608-264-8486
Fax 608-264-8346

Room 125 West, State Capitol
PO Box 8952
Madison, WI 53708-8952
steve.krieser@legis.state.wi.us

**Joint Committee for
Review of
Administrative Rules**

Backgrounder

Clearinghouse Rules ⁹⁶94-041 and 96-042

Transfers of Commercial Fishing Licenses and Quotas

The rules referenced above were objected to in their entirety by the Assembly Committee on Natural Resources on March 5, 1997. The Natural Resources committee objected to the rules on the statutorily-defined assertions that the rules lack statutory authority and that they fail to comply with legislative intent.

Attached, you will find two memoranda. The first is a memo provided to the Natural Resources committee by Leg. Council attorney Mark Patronsky. While, by its title, it relates specifically to Clearinghouse Rule 96-042, both rules generally relate to the same issue. As a result, the memo does a fine job of addressing the operative and contentious issues of both rules. The other memo is provided by a staff attorney at the Department of Natural Resources. The Lake Michigan Commercial Fishing Board, an instrumentality of the Department, has made modifications to the clearinghouse rules herein referenced. According to the DNR, these changes rectify the statutory authority problem which resulted in the Natural Resources objections.

Executive Options Open to the Committee

The Joint Committee for Review of Administrative Rules is directed by s. 227.19(5)(b), *stats.* to take executive action on clearinghouse rules referred to it subsequent to the objection of a standing committee. The joint committee may choose to do the following with respect to the clearinghouse rules before it in the instant case:

- *The joint committee may choose to nonconcur in the objection of the Assembly Committee on Natural Resources to either CR 96-041, CR 96-042, or both. In this event, the clearinghouse rule for which the objection was nonconcurrent in will be forwarded to the Department for publication and promulgation in its current form.*

- *The joint committee may choose to object to CR 96-041, CR 96-042, or both.* The members may choose to uphold the objection of the Assembly Natural Resources committee to the entire text of either or both clearinghouse rules. Should that occur, the Department may not promulgate to rule which is the subject of the objection. The Joint Committee shall, within 30 days, introduce legislation into both houses codifying the objection(s). If at least one of the bills is enacted, the proposed rule which is the subject of the legislation may not be promulgated. If at least one of the bills fails to be enacted by the end of the biennium, the rule which was the subject of the legislation may be promulgated.
- *The joint committee may choose to object in part to CR 96-041, CR 96-042, or both.* Under s. 227.19(5)(d), *stats.*, the JCRAR has the authority to uphold only a portion of a proposed rule which was the object of an objection by a standing committee. Should the Joint Committee choose to exercise this authority, the objected-to portion of the proposed rule(s) would be subject to the strictures and procedures discussed in the first paragraph on this page. The balance of the proposed rule(s) would be subject to the strictures and procedures described in the last paragraph of the first page.

BACKGROUND INFO - CR 96-042
CR 96-041



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: March 4, 1997
TO: REPRESENTATIVE DU WAYNE JOHNSRUD
FROM: Mark C. Patronsky, Senior Staff Attorney
SUBJECT: Clearinghouse Rule 96-042, Relating to the Transfer of Commercial Fishing Catch Quotas Upon the Death or Incapacity of the Quota Holder

You have scheduled a public hearing and executive session on Clearinghouse Rule 96-042, relating to the transfer of commercial fishing catch quotas upon the death or incapacity of the quota holder, to be held on Wednesday, March 5, 1997. In preparation for the hearing and executive session, you have asked me to prepare a memorandum providing: (a) a description of the current statutes and rules related to commercial fishing catch quotas; (b) a description of Clearinghouse Rule 96-042, which proposes an amendment to the current rule; and (c) a discussion of several issues raised by the proposed rule.

The commercial fishing statutes and rules are complex, and I have attempted to provide a reasonably brief explanation of the rule proposal and its background, without omitting key provisions necessary for understanding this issue. However, you should be aware that I have discussed a number of issues in summary fashion. You should refer to s. 29.33, Stats., and ch. NR 25, Wis. Adm. Code, which constitute the majority of the regulations applicable to commercial fishing in this state, for further information.

A. DESCRIPTION OF CURRENT RULE ON TRANSFER OF COMMERCIAL FISHING CATCH QUOTAS

The Department of Natural Resources (DNR) sets by rule the open seasons, size limits, approved fishing methods and the total amount of commercial harvest for various species of fish that are harvested commercially. The Lake Superior and Lake Michigan Commercial Fishing Boards (the boards) promulgate rules establishing criteria for the allotment of individual licensee catch quotas. Thus, ch. NR 25, Wis. Adm. Code, is a mix of rules promulgated by DNR and the boards.

The purpose of the individual licensee catch quotas is to prescribe the amount of fish that may be taken by each individual holding a license to catch that species of fish. Several different

methods are used to establish quotas for different species of fish, including: (1) quotas that give each licensee an equal share of the total allowable harvest; (2) quotas that give each licensee a share of the total allowable harvest based on the proportion of the total allowable harvest taken by that licensee in the past; and (3) quotas that allow licensees to take any amount of fish until the aggregate number of fish taken by all licensees equals the total allowable harvest.

Both the statutes and rules address the issue of transferability of commercial fishing licenses and quotas. Transferability is an issue both during the life of a licensee and when a licensee dies or becomes incapacitated. The transfer of individual licensee catch quotas is currently addressed by s. NR 25.08, Wis. Adm. Code (copy attached). These rules are currently the same for Lake Michigan and Lake Superior.

Under the current rule, a licensee may transfer his or her quota allocation at any time to another valid licensee. This portion of the current rule is not affected by Clearinghouse Rule 96-042.

Under the current rule, a licensee may designate on the application for a quota the name of a person to receive the quota in case of death or incapacity of the licensee. The person who is designated to receive the quota upon death or disability of the licensee must be eligible to receive the quota. This means that the recipient must have or obtain a valid commercial fishing license and must meet all specific criteria for receiving that quota. The only exception is that if the quota is based on past effort, the recipient does not have to meet the requirements for past history of catching that species of fish. This is the portion of the current rule that is modified by Clearinghouse Rule 96-042.

If the quota cannot be transferred upon death or incapacity of the licensee because the licensee does not designate a transferee or the designated transferee is not eligible, the DNR is required to offer the quota to the following individuals in the licensee's family in this order:

1. Spouse;
2. Children (eldest first);
3. Parents; and
4. Siblings (eldest first).

If the transferee meets eligibility requirements, but intends to use the licensee's equipment, and the equipment has not been distributed through probate, the transferee has two years to qualify for the quota and the quota is held in abeyance during that time. If the designated transferee rejects the quota, fails to accept the quota or does not qualify for the quota, the quota is redistributed for all licensees. This assures that current license holders may continue to take the total amount of the allowable harvest.

B. CONTENTS OF CLEARINGHOUSE RULE 96-042

1. Proposals by the Boards

Clearinghouse Rule 96-042 is proposed by the Lake Superior and Lake Michigan Commercial Fishing Boards. The proposed rule has two parts. The first part creates s. NR 25.08 (3) (b) 1., Wis. Adm. Code, which relates to quotas on Lake Superior. The second part creates s. NR 25.08 (3) (b) 2., Wis. Adm. Code, which relates to quotas on Lake Michigan.

The Natural Resources Board has historically reviewed and "ratified" the rules proposed by the Lake Superior and Lake Michigan Commercial Fishing Boards. The Natural Resources Board ratified the portion of the rule related to Lake Superior, but voted against ratifying the portion of the rule related to Lake Michigan. However, the authority of the Lake Superior and Lake Michigan Commercial Fishing Boards to promulgate rules is independent of the Natural Resources Board, so this ratification is an expression of the Natural Resources Board's opinion, rather than a necessary step in the rule promulgation process.

2. Transfer of Catch Quotas on Lake Superior

The proposed rule repeals that part of the current rule that relates to a transferee of a deceased or incapacitated licensee who intends to meet the eligibility criteria using the fishing gear of that person. In place of this provision, the proposed rule creates a methodology for transferring catch quotas in the event of the death or incapacity of the licensee, as follows:

- Even if the transferee of the quota (either designated by the current licensee or from the list of family members in the rule) is not currently eligible to receive the quota, the DNR is required to offer the quota to that person.
- The transferee has 30 days to accept the offer and two years to meet eligibility requirements.
- If the transferee rejects the offer at any time, if it becomes apparent to the DNR that the person will not be eligible within two years or if the person fails to become eligible within two years, the DNR must offer the quota to the next transferee on the list, if any.
- The DNR holds the quota in abeyance until this procedure is completed.

3. Transfer of Catch Quotas on Lake Michigan

The proposal in Clearinghouse Rule 96-042 for transfer of catch quotas on Lake Michigan includes a procedure that is identical to that described above for Lake Superior, with one key difference.

Removed by LMCFB 3/24/97

On Lake Michigan, the proposed rule would allow a transferee (either designated by the licensee or on the list of family members in the rule) who is ineligible to receive the quota to transfer the quota to any eligible person at any time during the two-year period.

The effect of this provision is to allow the licensee to designate an ineligible transferee, such as a licensee's attorney or executor, to sell the quota to an eligible licensee and distribute the proceeds of the sale to the licensee's heirs. This is not permissible under the current rule or under that portion of the proposed rule related to Lake Superior.

C. ISSUES RELATED TO CLEARINGHOUSE RULE 96-042

1. Statutory Authority for the Boards to Promulgate Clearinghouse Rule 96-042

The statutory authority issue related to Clearinghouse Rule 96-042 is whether the proposed rule can permit a commercial fishing licensee to transfer his or her catch quota to an ineligible person, who in turn can transfer the quota to an eligible person.

The statutes on quota transfers are terse and require a certain amount of interpretation. Section 29.33 (1), Stats., provides, in part:

The department may establish harvest limits and allocate the harvest limits among commercial fishing licensees.

Although this does not refer explicitly to quotas, in a narrow reading of the statute, it is reasonable to interpret this language as directing the DNR, with respect to "harvest limits" (the aggregate limit for a species), to "allocate" (distribute by quota) the harvest limits only to commercial fishing licensees.

Section 29.33 (7), Stats., provides, in part:

The boards shall establish criteria for the allotment of individual licensee catch quotas and shall allot the catch quotas when the department establishes species harvests limits for allocation among licensees.

This statute refers to the Lake Superior and Lake Michigan Commercial Fishing Boards. The last phrase in this sentence, "for allocation among licensees," again can reasonably be interpreted, in a narrow reading, as a limitation that requires catch quotas to be allocated only to licensees.

Both the current rule and the proposed rule require the DNR to hold catch quotas in abeyance for up to two years, to allow a transferee time to become eligible. This is consistent with a narrow interpretation of the statutes, since the quota is not effectively transferred until the transferee becomes eligible to use the quota.

However, this is not the same as allowing an ineligible transferee to transfer the quota to an eligible person, as provided under Clearinghouse Rule 96-042. Although the ineligible

person is not using the quota to catch fish, the ineligible person is exercising one of the basic rights associated with the quota, which is the right to transfer it. This is inconsistent with the narrow reading of statutes quoted above, and with the requirement of current s. NR 25.08 (intro.), Wis. Adm. Code, which allows a quota to be transferred only to "another valid licensee authorized to engage in commercial fishing in the waters to which the quota applies."

On the other hand, the statutes quoted above can be read more liberally to allow a certain amount of flexibility and administrative discretion. The current rule and the proposed rule do not allow, under any circumstances, allow any person other than a commercial fishing license holder to use a quota to catch fish. The statutes do not explicitly prohibit the department or the boards from allowing a quota to be held in abeyance by the department or controlled for a period of time by a person who is not eligible to use the quota.

2. Potential of the Rule to Create a Property Right

The leading court case in Wisconsin on the issue of property rights and commercial fishing is *LeClair v. Natural Resources Board and DNR*, 168 Wis. 2d 227, 483 N.W.2d 278 (Ct. App. 1992). In *LeClair*, the plaintiffs held quotas to take forage fish (chubs and smelt) in Lake Michigan. The DNR proposed to reduce the forage fish quotas, in order to protect the forage fish population. The plaintiffs challenged the rule on several grounds, including an assertion that the rule constituted a deprivation of their property without a due process hearing and without compensation. The Court of Appeals rejected this argument.

The court in *LeClair* quoted from a U.S. Supreme Court case, which stated that property rights:

... are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and support claims of entitlement to those benefits. [*Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).]

The proposed rule clearly raises a concern about the possible creation of property rights, because it expands the ability to transfer catch quotas, and transferability is one of the key elements of an interest in property.

However, it is difficult to make predictions about the outcome of court challenges related to property rights. This is an area of law in which there is very little black and white. Expanding the right to transfer quotas clearly adds an additional element of property ownership to the quotas. The question that cannot be answered, without resort to the courts, is whether this additional increment of property rights tips the balance so as to give commercial fishers as a general matter a property right in the quotas. The following are some of the uncertainties about how *LeClair* might apply to the proposed rule:

- The DNR was acting to protect the forage fish population. It would be a different matter if the DNR or the boards acted to reallocate the quotas among the various users, without reducing the total catch.

- In *LeClair*, the plaintiffs still had the ability to fish, although at a reduced level, and the court noted this. A different result might be possible if the DNR closed the fishery.
- The proposed rule, together with other incremental changes to the commercial fishing rules in the future, could have the cumulative effect of creating a property right.
- This issue has not been considered by the Wisconsin Supreme Court, which could reach a different result than the Court of Appeals in *LeClair*.

3. State Ownership of Fish and Game

Another issue related to the proposed rule is the state's paramount regulatory authority over fish and game. The state is responsible for regulating fish and game for the benefit of the public. Until fish and game is reduced to possession, it is owned by the state and the state's authority over fish and game is an element of state sovereignty. Ample authority can be found for the proposition that the Legislature is powerless to bargain away at the police power. It is often held by courts that the state cannot be held to contracts that surrender essential elements of the state's sovereignty and that such contracts are void.

In any lawsuit attempting to establish a property right of commercial fishers in the use of the fishery resource, the courts will need to consider the relationship between arguments that the rule creates property rights and the state's fundamental regulatory authority.

D. LIEUTENANT GOVERNOR'S RECOMMENDATIONS ON THE CONTINUED EXISTENCE OF STATE AGENCIES

You should note that the Lieutenant Governor, in the February 21, 1997 report, entitled *Wisconsin Evaluation Survey Report*, the Lake Superior and the Lake Michigan Commercial Fishing Boards are recommended for sunset on June 30, 1997. The Lieutenant Governor recommends transfer of the regulatory functions of these boards to the DNR. A copy of the recommendations regarding the boards is included as an attachment to this memorandum.

If I can provide further information on this subject, please feel free to contact me.

MCP:rjl:kja;lah

Attachments

ATTACHMENT

Section NR 25.08, Wis. Adm. Code

NR 25.08 Transfer of individual licensee catch quotas. Individual licensee catch quotas allotted under s. NR 25.07 (1) (a) or (2) (am) 1., (b), (bg), (br), (c), (d), (e) or (f) may be transferred by the licensee receiving the quota allocation to another valid licensee authorized to engage in commercial fishing in the waters to which the quota applies, who meets all criteria for receiving such a quota other than previous fishing history, subject to the conditions stated in this section.

(1) Application for individual licensee catch quota transfers shall be made on forms provided by the department.

(2) All or part of an individual licensee catch quota allotted under s. NR 25.07 (1) (a) or (2) (am) 1., (b), (bg), (br), (c), (d), (e) or (f) may be permanently or temporarily transferred by the quota holder.

(2m) A northern chub fishing zone permit issued under s. NR 25.07 (2) (a) 1., may be permanently transferred by the permit holder only in conjunction with the transfer of the permit holder's valid license authorizing commercial fishing in the outlying waters under s. NR 25.04.

(2t) 1. All or part of an individual licensee catch quota allotted under s. NR 25.07 (2) (g) 5., may be temporarily or permanently transferred by the licensee receiving the quota allocation to another licensee who also holds a valid quota smelt fishery permit and individual licensee catch quota issued under s. NR 25.07 (2) (g) 5.

2. A quota smelt fishery permit and individual licensee catch quota allotted under s. NR 25.07 (2) (g) 5., may be transferred by the licensee receiving the permit and catch quota to a person who does not also hold a valid quota smelt fishery permit and individual licensee catch quota issued under s. NR 25.07 (2) (g) 5., only in conjunction with the transfer of the permit holder's valid license authorizing commercial fishing in the outlying waters under s. NR 25.04.

(3) A licensee may designate on the application for their individual licensee catch quota a person to whom the licensee wishes that quota to be transferred in the event of the licensee's death or incapacity. This designation may be changed during the license year as requested in writing by the licensee. The designated person shall meet the criteria under this section for the transfer to occur.

(a) In the absence of such a designation, or a qualified transferee, or a transferee capable of accepting the transfer under this section, members of the immediate family of the licensee who meet the eligibility requirements of this section shall be offered the quota. The offer shall be made by the department in the following order:

1. Spouse;
2. Children, eldest first, then in order of age;
3. Parents;
4. Siblings, eldest first, then in order of age.

(b) Any transferee under this subsection who relies on commercial fishing gear of a deceased licensee to meet the eligibility criteria of this chapter, but such gear has not been distributed or assigned in accordance with appropriate probate procedures shall have 2 years from the date of acceptance of the transfer to meet those eligibility requirements. During that time, the quota shall be held in abeyance by the department.

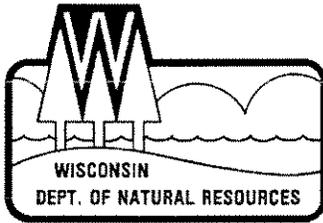
(c) All offers of transfer under this subsection shall be accepted within 30 days from the date of offer or be considered refused.

(d) The provisions of this subsection shall apply to quotas granted for license year July 1, 1983 to June 30, 1984 and subsequent license years.

(4) Individual licensee catch quotas may not be transferred if the quota holder or the recipient are charged with a violation of outlying waters commercial fishing laws under which conviction could cause revocation or suspension of their respective commercial fishing license. This subsection shall apply from issuance of the citation or complaint until the matter is adjudicated or dismissed.

(5) Individual licensee catch quota transfers shall be reviewed and approved or denied by the Lake Superior commercial fishing board or, for Lake Michigan and Green Bay, by the department. Such review and approval or denial shall occur no later than the next regular quarterly meeting of the Lake Superior commercial fishing board or, in the case of Lake Michigan and Green Bay, within 20 business days after receipt by the department of a complete transfer request. Lake Michigan and Green Bay individual licensee catch quota transfer requests which the department determines meet criteria in this section shall be granted by the department without further action by the Lake Michigan commercial fishing board. The Lake Michigan commercial fishing board may review any individual licensee catch quota transfer request that has been denied by the department and may grant the request if it determines that the request meets the criteria in this section.

History: Cr. Register, January, 1985, No. 349, eff. 2-1-85; emerg. am. (intro.), eff. 7-1-89, am. (intro.), Register, October, 1989, No. 406, eff. 11-1-89; am. (intro.) and (2), cr. (2m), Register, November, 1991, No. 431, eff. 12-1-91; am. (2), Register, November, 1993, No. 455, eff. 12-1-93; am. (2m) and (5), Register, March, 1994, No. 459, eff. 4-1-94; am. (intro.) and (2), cr. (2t), Register, October, 1995, No. 478, eff. 11-15-95; correction in (intro.) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

PO Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

April 14, 1997

IN REPLY REFER TO: 8300

Representative Glenn Grothman, Co-Chair
Senator Richard Grobschmidt, Co-Chair
Joint Committee for the Review of Administrative Rules
Capitol
Madison, WI 53702

Dear Representative Grothman and Senator Grobschmidt:

As you know, on March 5, 1997, the Assembly Committee on Natural Resources voted to object to Clearinghouse Rule 96-041 (FM-11-96), relating to the transfer of Great Lakes commercial fishing licenses upon the death or incapacity of the licensee, and Clearinghouse Rule 96-042 (FM-7-96), relating to the transfer of Lake Superior and Lake Michigan individual licensee catch quotas upon the death or incapacity of the quota holder. The Committee concluded that these rules exceed statutory authority and fail to comply with legislative intent. These rules are now pending review by your Committee. A hearing is tentatively scheduled for April 17, 1997.

Earlier, during the adoption process, the Wisconsin Natural Resources Board declined to "ratify" SECTION 2 of FM-7-96, as adopted by the Lake Michigan Commercial Fishing Board on July 25, 1996. Department staff advised the Natural Resources Board that SECTION 2 of FM-7-96 exceeded the fishing board's legal authority; moved Wisconsin in the direction of a property-rights based commercial fishery; and might contravene the Public Trust Doctrine. In contrast, the Natural Resources Board "ratified" SECTION 1 of FM-7-96 (the Lake Superior Commercial Fishing Board's quota transfer rule revision) and it adopted FM-11-96, which is a Department rule dealing with commercial fishing license transfers.

Responding to these events, the Lake Michigan Commercial Fishing Board met on March 24, 1997 and, as a gesture of good faith, revised SECTION 2 of FM-7-96. The revision deletes the provisions which troubled the Natural Resources Board. The deleted provisions would have paradoxically allowed a person who was ineligible to receive a quota transfer to exercise one of the privileges of holding a quota: the privilege of authorizing the transfer of that quota to another party.

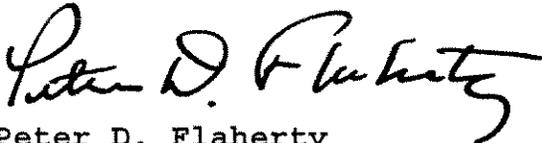
Representative Glenn Grothman
Senator Richard Grobschmidt
April 14, 1997
Page 2

With this revision, the Department believes that the Lake Michigan Commercial Fishing Board's quota transfer rule would be within the scope of the fishing board's rulemaking authority. In addition, the revised rule would no longer move the State in the direction of a property rights-based commercial fishery and no longer potentially conflict with the Public Trust Doctrine. With its concerns satisfied, the Natural Resources Board ratified revised SECTION 2 of FM-7-96 on March 26, 1997.

The Lake Michigan Commercial Fishing Board's revision, which was approved with the hope that it would be considered by your Committee, is essentially identical to the Lake Superior Commercial Fishing Board's quota transfer rule contained in SECTION 1 of FM-7-96.

A copy of FM-7-96, as revised, is attached for your information. Please let me know if the Committee needs more information.

Sincerely,



Peter D. Flaherty
Attorney at Law
Bureau of Legal Services

cc: Rick Johnson, Chair, LMCFB
Bill Horns - FH/4
Paul Heinen - AD/5
Honorable DuWayne Johnsrud, 320 North, Capitol
enc.

ORDER OF THE STATE OF WISCONSIN
LAKE MICHIGAN AND LAKE SUPERIOR COMMERCIAL FISHING BOARDS
REPEALING AND RECREATING AND CREATING RULES

.....
The Lake Michigan and Lake Superior Commercial .
Fishing Boards adopt an order to repeal and .
recreate NR 25.08(3)(b) and to create NR .
25.08(3)(b)2. relating to the transfer of .
individual licensee catch quotas upon the .
death or incapacity of the quota holder .
.....

FM-7-96

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.085, 29.174(3), 29.33(1) and (7) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 29.085 and 29.174(2)(a), Stats.

Under existing rules of the respective commercial fishing boards, individual licensee catch quotas allotted annually under s. NR 25.07 for Lake Superior lake trout and for Lake Michigan chubs, yellow perch, menominee, whitefish and smelt may be transferred (reallocated) by the fishing boards at the request of the licensee who originally received the quota allocation to another person who meets all criteria for receiving such a quota.

General criteria for receiving a quota transfer, found in ss. NR 25.07 and 25.08, include the following:

- The person must have a Great Lakes commercial fishing license for the lake to which the quota applies unless the quota transfer accompanies a license transfer, in which case the person must not already have a license,
- The person must not have a commercial fishing license under suspension or revocation, and
- The person must not be charged with a violation that could result in license revocation or suspension.

A licensee may designate on the annual quota application form a person to whom the licensee wishes that quota to be transferred in the event of the licensee's death or incapacity. In the absence of such a designation, or a qualified transferee, or a transferee capable of accepting the transfer, members of the licensee's immediate family who meet the eligibility requirements are offered the quota in the following order:

1. Spouse;
2. Children, eldest first, then in order of age;
3. Parents;
4. Siblings, eldest first, then in order of age.

If no immediate family members are eligible, the individual allocated quota expires and the share of the harvest limit it represents is permanently redistributed by the department under s. NR 25.07(1), (2) (am) or (7) to other quota holders so that 100% of each allowable annual harvest is allocated every year.

Currently, any unlicensed prospective quota transferee who is also designated or in line to receive a deceased fisher's license and who relies on commercial fishing gear of the deceased licensee to meet the \$5,000 minimum investment licensing eligibility criterion, where such gear has not been distributed or assigned in accordance with appropriate probate procedures, has 2 years from the date of acceptance of the transfer to meet this licensing eligibility requirement. During that time, the quota (along with the license) is held in abeyance by the department. However, if any other eligibility criteria are not met at the time the quota is offered, the department must offer the quota to the next person in the order, if one exists.

These rule revisions adopt a more liberal rule for quota transfers upon the death or disability of a commercial fisher. (This order is a companion to proposed Natural Resources Board Order No. FM-11-96, which adopts similar, more liberal rule for license transfers upon the death or disability of a commercial fisher.) If a designated quota transferee or immediate family member fails to meet one or more of the eligibility criteria (for example, the person is not licensed or the person is only 17 years old), this revision will allow the department to hold the quota in abeyance for up to 2 years, giving the person time to qualify for the quota transfer. In cases where it is apparent to the department that the person cannot possibly qualify within 2 years (for example, if the person is only 14 years old or if the person is permanently incapacitated), the department would be able to offer the quota to the next person in line without waiting for the 2-year qualification period to end.

These rule revisions makes it less likely that a deceased or incapacitated fisher's quotas will be redistributed to other quota holders because of the lack at the time of the fisher's death or incapacitation of a qualified designated transferee or immediate family member.

SECTION 1. sets out the revision for Lake Superior, while SECTION 2. pertains to Lake Michigan.

SECTION 1. NR 25.08(3)(b) is repealed and recreated to read:

NR 25.08(3)(b)1. If a prospective transferee under this

subsection is not eligible under the criteria of s. 29.33, Stats., and this chapter to receive a Lake Superior quota at the time it is offered, but he or she could become eligible within 2 years, the department shall offer the quota to the person. If the person accepts the quota within 30 days of the offer, the person shall have until 2 years from the date of acceptance to show that he or she meets the eligibility requirements of s. 29.33, Stats., and this chapter, during which time the quota shall be held in abeyance by the department. However, if it becomes apparent to the department that the person cannot become eligible within 2 years from the date of acceptance; if the person fails to become eligible within the 2 year period; or if the person does not accept the offer within 30 days, the department shall offer the quota to the next prospective transferee under this subsection, if any exist.

SECTION 2. NR 25.08(3)(b)2. is created to read:

NR 25.08(3)(b)2. If a prospective transferee under this subsection is not eligible under the criteria of s. 29.33, Stats., and this chapter to receive a Lake Michigan quota at the time it is offered, but he or she could become eligible within 2 years, the department shall offer the quota to the person. If the person accepts the quota within 30 days of the offer, the person shall have until 2 years from the date of acceptance to show that he or she meets the eligibility requirements of s. 29.33, Stats., and this chapter, during which time the quota

shall be held in abeyance by the department. However, if it becomes apparent to the department that the person cannot become eligible within 2 years from the date of acceptance; if the person fails to become eligible within the 2 year period; or if the person does not accept the offer within 30 days, the department shall offer the quota to the next prospective transferee under this subsection, if any exist.

SECTION 1. of the foregoing rules was approved and adopted by the State of Wisconsin Lake Superior Commercial Fishing Board on July 31, 1996 and SECTION 2. was approved and adopted by the State of Wisconsin Lake Michigan Commercial Fishing Board on July 25, 1996, with germane modifications made by the State of Wisconsin Lake Michigan Commercial Fishing Board on March 24, 1997.

SECTION 1. of the foregoing rules was ratified by the State of Wisconsin Natural Resources Board on December 4, 1996. SECTION 2. of the foregoing rules was ratified by the State of Wisconsin Natural Resources Board on March 26, 1997.

The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
LAKE MICHIGAN COMMERCIAL FISHING BOARD,
LAKE SUPERIOR COMMERCIAL FISHING BOARD
and STATE OF WISCONSIN DEPARTMENT OF
NATURAL RESOURCES

By _____
George E. Meyer, Secretary
Department of Natural Resources

(SEAL)

Moved by Representative Johnsrud, seconded by Representative Powers, that pursuant to s. 227.19(4)(d)1. and 3., Stats., the Committee objects to **Clearinghouse Rule 96-041** on the grounds that the proposed rule lacks statutory authority and fails to comply with legislative intent.

Ayes: (9) Representative Johnsrud, Powers,
Brandemuehl, Ott, Gunderson, Hutchison,
Black, Huber and Baumgart.

Noes: (0) None.

Absent: (1) Representative Bock.

PURSUANT TO S. 227.19(4)(D)1. AND 3., STATS., THE
COMMITTEE OBJECTS ON THE
GROUNDS THAT THE PROPOSED
RULE LACKS STATUTORY
AUTHORITY AND FAILS TO COMPLY
WITH LEGISLATIVE INTENT
RECOMMENDED, Ayes 9, Noes 0, Absent
1



Thomas M. Liebe
Committee Clerk

ORDER OF
THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING AND RECREATING RULES

.....
The Wisconsin Natural Resources Board adopts an .
order to repeal and recreate s. NR 25.04(2)(b) .
relating to the transfer of Great Lakes commer- .
cial fishing licenses upon the death or incap- .
acity of the licensee .
.....

FM-11-96

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.085, 29.174(3), 29.33(1) and
227.11(2)(a), Stats.

Statutes interpreted: ss. 29.085, 29.174(2)(a) and 29.33(2)(d),
Stats.

Under current law, the appropriate commercial fishing board
(which must act under rules adopted by the department) may grant
a request from a Great Lakes commercial fisher licensed under s.
29.33, Stats., to transfer his or her commercial fishing license
to another person who meets several common law, statutory and
administrative code criteria. Specific criteria are found in ss.
NR 25.03 and 25.04 and s. 29.33, Stats. The person must:

- meet residency requirements,
- be at least 18 years of age,
- not already have a commercial fishing license,
- not have a commercial fishing license under suspension or
revocation,
- not be charged with a violation that could result in
license revocation or suspension,
- show a minimum investment of \$5,000 in commercial fishing
gear, and,
- in the case of Lake Michigan, either be an immediate
family member of the transferor or have served as a
licensed crew member for a licensee for the previous 2
license years.

A transfer application may be submitted anytime. In addition, a
licensee may designate on the annual license application a person
to whom the licensee wishes that license to be transferred in the
event of the licensee's death or incapacity. In the absence of
such a designation, or a qualified transferee or a transferee
capable of accepting the transfer, under s. NR 25.04(2)(a), Wis.
Adm. Code, members of the immediate family of the licensee who
meet the eligibility requirements are offered the license in the
following order:

1. Spouse;
2. Children, eldest first, then in order of age;
3. Parents;
4. Siblings, eldest first, then in order of age.

If no immediate family members are eligible, the license is extinguished if it is for Lake Michigan or it becomes available for reissuance if it is for Lake Superior.

Currently, by rule, a prospective transferee who relies on commercial fishing gear of a deceased licensee to meet the \$5,000 minimum investment eligibility criterion, where such gear has not been distributed or assigned in accordance with appropriate probate procedures, has 2 years from the date of acceptance of the transfer to meet this eligibility requirement. During that time, the license is held in abeyance by the department. However, if any other eligibility criteria are not met at the time the license is offered, the department must offer the license to the next person in the order, if one exists.

This rule revision adopts a more liberal rule for license transfers upon the death or disability of a commercial fisher. (This rule revision is a companion to proposed Order No. FM-7-96, which adopts similar, more liberal rules for individual licensee catch quota transfers upon the death or disability of commercial fishers.) If a designated transferee or immediate family member initially fails to meet any of the eligibility criteria (for example, the person does not meet residency requirements or is only 17 years old), this revision will allow the department to hold the license in abeyance for up to 2 years, giving the person time to qualify for licensing. ~~In cases where it is apparent to the department that the person cannot possibly qualify within 2 years (for example, if the person is only 14 years old or if the person is permanently incapacitated), the department would be able to offer the license to the next person in line without waiting for the 2-year qualification period to end.~~

This rule revision makes it less likely that a deceased or incapacitated fisher's license will be extinguished because of the lack at the time of the fisher's death or incapacitation of a qualified designated transferee or immediate family member.

SECTION 1. NR 25.04(2)(b) is repealed and recreated to read:

NR 25.04(2)(b) If, under the criteria of s. 29.33, Stats., and this chapter, a prospective transferee under this subsection is not eligible to receive a license at the time it is offered,

On Lake Superior

but he or she could become eligible within 2 years, the department shall offer the license to the person. If the person accepts the license within 30 days of the offer, the person shall have 2 years from the date of acceptance to show that he or she meets the eligibility requirements of s. 29.33, Stats., and this chapter, during which time the license shall be held in abeyance by the department. However, if it becomes apparent to the department that the person cannot become eligible within 2 years from the date of acceptance; if the person fails to become eligible within the 2 year period; or if the person does not accept the offer within 30 days, the department shall offer the license to the next prospective transferee under this subsection, if any exist.

The foregoing rules were approved by the State of Wisconsin Natural Resources Board on December 4, 1996.

The rules contained herein shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

Assembly

Record of Committee Proceedings

Committee on Natural Resources

Clearinghouse Rule 96-042

Relating to the transfer of individual licensee catch quotas upon the death or incapacity of the quota holder.

Submitted by the Department of Natural Resources.

January 23, 1997 Referred to committee on Natural Resources.

March 5, 1997 **PUBLIC HEARING HELD**

Present: (9) Representative Johnsrud, Powers,
 Brandemuehl, Ott, Gunderson, Hutchison,
 Black, Huber and Baumgart.

Absent: (1) Representative Bock.

Appearances for

- Charlie Henricksen, Wisconsin Commercial Fisheries Association
- Jack Schmirler, Baileys Harbor
- Rick Johnson, Lake Michigan Commercial Fishing Board
- William Horns, DNR

Appearances against

- None.

Appearances for Information Only

- Peter D. Flaherty, DNR

Registrations for

- None.

Registrations against

- None.

March 5, 1997 **EXECUTIVE SESSION**

Present: (9) Representative Johnsrud, Powers,
 Brandemuehl, Ott, Gunderson, Hutchison,
 Black, Huber and Baumgart.

Absent: (1) Representative Bock.

Moved by Representative Johnsrud, seconded by Representative Powers, that pursuant to s. 227.19(4)(d)1. and 3., Stats., the Committee objects to **Clearinghouse Rule 96-042** on the grounds that the proposed rule lacks statutory authority and fails to comply with legislative intent.

Ayes: (9) Representative Johnsrud, Powers,
Brandemuehl, Ott, Gunderson, Hutchison,
Black, Huber and Baumgart.

Noes: (0) None.

Absent: (1) Representative Bock.

PURSUANT TO S. 227.19(4)(D)1. AND 3., STATS., THE
COMMITTEE OBJECTS ON THE
GROUNDS THAT THE PROPOSED
RULE LACKS STATUTORY
AUTHORITY AND FAILS TO COMPLY
WITH LEGISLATIVE INTENT
RECOMMENDED, Ayes 9, Noes 0, Absent

1



Thomas M. Liebe
Committee Clerk

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West • State Capitol
Madison, WI 53703
Phone: 608-264-8486

JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES

Committee Meeting Attendance Sheet

Joint Committee for Review of Administrative Rules

Date April 17, 1997 Meeting Type Public Hearing

Location North Hearing Room, State Capitol

| COMMITTEE MEMBER | PRESENT | ABSENT | EXCUSED |
|-----------------------------|---------|--------|---------|
| 1. Senator GROBSCHMIDT | ✓ | | |
| 2. Senator WIRCH | ✓ | | |
| 3. Senator POTTER | ✓ | | |
| 4. Senator WELCH | ✓ | | |
| 5. Senator SCHULTZ | ✓ | | |
| 6. Representative GROTHMAN | ✓ | | |
| 7. Representative GUNDERSON | ✓ | | |
| 8. Representative SERATTI | ✓ | | |
| 9. Representative YOUNG | ✓ | | |
| 10. Representative KREUSER | ✓ | | |
| Totals | 10 | 0 | 0 |

s:\comclerk\attend

John Sumi / Steve Krieser, Committee Clerk

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

Room 404 • Hamilton
Madison, WI 53707
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

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Madison, WI 53703
Phone: 608-264-8486

JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES

Committee Meeting Attendance Sheet

Joint Committee for Review of Administrative Rules

Date April 17, 1997 Meeting Type Executive Session

Location North Hearing Room, State Capitol

| COMMITTEE MEMBER | PRESENT | ABSENT | EXCUSED |
|-----------------------------|---------|--------|---------|
| 1. Senator GROBSCHMIDT | ✓ | | |
| 2. Senator WIRCH | ✓ | | |
| 3. Senator POTTER | ✓ | | |
| 4. Senator WELCH | ✓ | | |
| 5. Senator SCHULTZ | ✓ | | |
| 6. Representative GROTHMAN | ✓ | | |
| 7. Representative GUNDERSON | ✓ | | |
| 8. Representative SERATTI | ✓ | | |
| 9. Representative YOUNG | ✓ | | |
| 10. Representative KREUSER | ✓ | | |
| Totals | 10 | 0 | 0 |

s:\comclerk\attend

John Sumi / Steve Krieser, Committee Clerk

APR 22 1997

**Joint Committee for
Review of
Administrative Rules**

Memo

To: Members, JCRAR
From: Rep. Glenn Grothman
Assembly Co-Chair, JCRAR
Date: April 21, 1997
Re: Records of Committee Proceedings

John

Many members of the Joint Committee expressed an interest at the April 17, 1997 hearing in receiving copies of the motions which were entertained by the JCRAR, and the resultant roll calls. I have attached the committee's official Record of all executive actions taken by the Joint Committee on every rule considered by the committee at its most recent meeting for your review.

If you have questions, please feel free to contact me.

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

ROOM 404 • 100 NORTH HAMILTON
MADISON, WI 53707
(608) 266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

ROOM 125 WEST • STATE CAPITOL
MADISON, WI 53702
(608) 264-8486

JOINT COMMITTEE FOR

April 22, 1997 REVIEW OF ADMINISTRATIVE RULES

Alan Tracy, Secretary
Department of Agriculture, Trade, and Consumer Protection
2811 Agriculture Drive
Madison, WI 53704

Dear Secretary Tracy:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 17, 1997 and adopted the following motions:

Emergency Rule ATCP 139.04(11)

Relating to the use of flammable refrigerants in mobile air conditioning systems. Submitted by the Department of Agriculture, Trade, and Consumer Protection.

Moved by Senator Welch, seconded by Senator Schultz that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of ATCP 139.04 by 60 days, at the request of the Department of Agriculture, Trade, and Consumer Protection.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Young, and Kreuser; Senators Grobschmidt, Wirth, Potter, Welch, and Schultz.

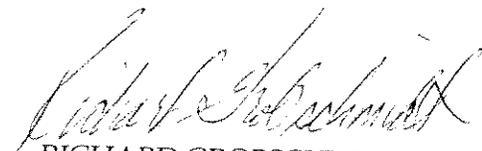
Noes: (0) None.

Absent: (0) None

Motion Carried: Extension Granted.
10 Ayes, 0 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

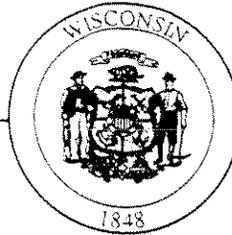

RICHARD GROBSCHMIDT
Senate Co-Chair


GLENN GROTHMAN
Assembly Co-Chair

RG:GSG:swk

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

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MADISON, WI 53707
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REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 22, 1997

George Meyer, Secretary
Department of Natural Resources
101 South Webster Street
Madison, WI 53707-7921

Dear Secretary Meyer:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 17, 1997 and adopted the following motions:

Clearinghouse Rule 96-041

**Relating to the transfer of Great Lakes commercial fishing licenses upon the death or incapacity of the licensee.
Referred by the Assembly Committee on Natural Resources.**

Moved by Representative Seratti, seconded by Representative Grothman that, pursuant to s. 227.19(5)(d), Stats., the Joint Committee for Review of Administrative Rules nonconcur in the objection of the Assembly Committee on Natural Resources to Clearinghouse Rule 96-041.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Young, and Kreuser; Senators Grobschmidt, Wirch, Potter, Welch and Schultz

Noes: (0) None

Absent: (0) None

Motion Carried: Rule Returned to Agency for Promulgation.
10 Ayes, 0 Noes, 0 Absent.

Clearinghouse Rule 96-042

**Relating to the transfer of individual licensee catch quotas upon the death or incapacity of the licensee.
Referred by the Assembly Committee on Natural Resources.**

Moved by Senator Grobschmidt, seconded by Representative Grothman that the Joint Committee for Review of Administrative Rules request modifications to Clearinghouse Rule 96-042 by the Lake Michigan Commercial Fishing Board, such modifications already having been prepared for consideration by the Joint Committee.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Young, and Kreuser; Senators Grobschmidt, Wirch, Potter, Welch and Schultz

Noes: (0) None

Absent: (0) None

Motion Carried: Agency Instructed to Provide Modifications.
10 Ayes, 0 Noes, 0 Absent.

April 17, 1997

Modifications Received from Agency.

April 17, 1997

EXECUTIVE SESSION HELD

Moved by Representative Seratti, seconded by Representative Grothman that, pursuant to s. 227.19(5)(d), Stats., the Joint Committee for Review of Administrative Rules nonconcur in the objection of the Assembly Committee on Natural Resources to Clearinghouse Rule 96-042 as modified.

Ayes: (10) Representatives Grothman, Gunderson,
Seratti, Young, and Kreuser; Senators
Grobschmidt, Wirch, Potter, Welch and
Schultz

Noes: (0) None

Absent: (0) None

Motion Carried: Rule Returned to Agency for Promulgation.
10 Ayes, 0 Noes, 0 Absent.

NR 25.03 and 25.06

Relating to the Trial Incentive Program (license retirement) for certain commercial fishers at Lake Superior.

Moved by Senator Welch, seconded by Representative Grothman that the Joint Committee for Review of Administrative Rules communicate a recommendation to the Joint Committee on Finance to review the Lake Superior Commercial Fishing License Retirement plan to assure that the sources of funding are properly authorized by the Legislature. Be it further moved that the Joint Committee for Review of Administrative Rules requests the Department of Natural Resources to submit a request, pursuant to s. 13.10, stats., for the appropriation associated with the retirement plan to the Joint Committee on Finance.

Ayes: (10) Representatives Grothman, Gunderson,
Seratti, Young, and Kreuser; Senators
Grobschmidt, Wirch, Potter, Welch and
Schultz

Noes: (0) None

Absent: (0) None

Motion Carried.
10 Ayes, 0 Noes, 0 Absent.

Moved by Senator Grobschmidt, seconded by Representative R. Young, that the Joint Committee for Review of Administrative Rules communicate to the Joint Committee on Legislative Organization a request for an opinion of the state Attorney General on the legality of the Lake Superior Commercial Fishing License Retirement program.

Ayes: (9) Representatives Gunderson,
Seratti, Young, and Kreuser; Senators
Grobschmidt, Wirch, Potter, Welch and
Schultz

Noes: (1) Representative Grothman

Absent: (0) None

Motion Carried.
9 Ayes, 1 Noes, 0 Absent.

Moved by Representative R. Young, seconded by Representative Kreuser, that the Joint Committee for Review of Administrative Rules communicate to the Joint Committee on Finance a recommendation that the Joint Committee on Finance withdraw funding for the Lake Superior Commercial Fishing License Retirement program in the 1997-1999 Biennial State Budget.

Ayes: (7) Representatives Gunderson,
Seratti, Young, and Kreuser; Senators
Wirch, Potter, and Schultz

Noes: (3) Representative Grothman; Senators
Grobschmidt and Welch

Absent: (0) None

Motion Carried.
7 Ayes, 3 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



RICHARD GROBSCHMIDT
Senate Co-Chair



GLENN GROTHMAN
Assembly Co-Chair

RG:GSG:swk

cc: Secretary of State La Follette
Revisor of Statutes Gary Poulson

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

ROOM 404 • 100 NORTH HAMILTON
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 22, 1997

Linda Stewart, Secretary
Department of Workforce Development
201 East Washington Avenue
Madison, WI 53707-7946

Dear Secretary Stewart:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 17, 1997 and adopted the following motions:

Emergency Rule DWD11.135

Relating to the 60-month lifetime limit on participation in the Job Opportunities and Basic Skills program. Submitted by the Department of Workforce Development.

Moved by Senator Welch, seconded by Senator Schultz that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of DWD 11.135 by 60 days, at the request of the Department of Workforce Development.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Young, and Kreuser; Senators Grobschmidt, Wirsch, Potter, Welch, and Schultz.

Noes: (0) None.

Absent: (0) None

Motion Carried: Extension Granted.
10 Ayes, 0 Noes, 0 Absent.

Emergency Rule DWD 272

Relating to the minimum wage. Submitted by the Department of Workforce Development.

Moved by Senator Welch, seconded by Senator Schultz that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of DWD 272 by 60 days, at the request of the Department of Workforce Development.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Young, and Kreuser; Senators Grobschmidt, Wirsch, Potter, Welch, and Schultz.

Noes: (0) None.

Absent: (0) None

Motion Carried: Extension Granted.
10 Ayes, 0 Noes, 0 Absent.

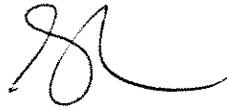
Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



RICHARD GROBSCHMIDT

Senate Co-Chair



GLENN GROTHMAN
Assembly Co-Chair

RG:GSG:swk

cc: Secretary of State La Follette
Revisor of Statutes Gary Poulson

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

ROOM 404 • 100 NORTH HAMILTON
MADISON, WI 53707
(608) 266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

ROOM 125 WEST • STATE CAPITOL
MADISON, WI 53702
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 22, 1997

Senator Brian Burke, Co-chair
Joint Committee on Finance
Lower Level 1, 119 Martin Luther King Jr. Blvd

Representative Scott Jensen, Co-chair
Joint Committee on Finance
Room 315 North - Capitol

Dear Co-chairpersons Burke and Jensen:

We are writing to report recommendations adopted by the Joint Committee for Review of Administrative Rules (JCRAR) related to a program initiated by the Department of Natural Resources referred to as the Lake Superior Commercial Fishing License Retirement Program.

On April 17th, 1997, the JCRAR held a public hearing to take testimony from the Department of Natural Resources and members of the public on the Lake Superior Commercial Fishing License Retirement Program. The retirement program consists of 11 individual agreements between the department and holders of commercial fishing licenses on Lake Superior. The agreements require the license holders to surrender their licenses and discontinue commercial fishing in exchange for 10 annual payments from the department. The agreements were contingent upon the department promulgating a rule that lowered the number of commercial fishing licenses and harvest quotas established for Lake Superior in chapter NR 25.

Following the promulgation of the rule change and the completion of the agreements, the JCRAR received complaints from members of the public concerning the retirement plan. The JCRAR also received a request from the chairperson of the Assembly Committee on Natural Resources asking for additional legislative review of the issue. The joint committee reviewed this issue pursuant to its authority under s. 227.26, Stats.

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As mentioned above, the implementation of the 11 license retirement agreements was contingent upon promulgation of an administrative rule relating to the number of licenses and quotas authorized for Lake Superior. However, an analysis by our committee counsel convinced us, and members of the JCRAR, that post-promulgation review of the rule changes could not lead to the termination or alteration of those agreements. Because members of the JCRAR had serious concerns about the retirement program, the committee did adopt motions that ask the Joint Committee on Finance to review fiscal issues related to the retirement plan.

The first motion adopted by the JCRAR is as follows:

"That the JCRAR communicate a recommendation to the Joint Committee on Finance to review the Lake Superior Commercial Fishing License Retirement Program to assure that the sources of funding are properly authorized by the Legislature. Be it further moved the JCRAR requests the Department of Natural Resources to submit a request, pursuant to s. 13.10, stats, for the appropriation of funds paid as of this date associated with the retirement program."

The vote on this motion was 10 members in favor, none against, and no members absent.

A second motion made the following recommendation:

"That the JCRAR communicate to the Joint Committee on Finance a recommendation that the Joint Committee on Finance withdraw funding for the Lake Superior Commercial Fishing License Retirement Program in the 1997-1999 biennial state budget."

The vote on this motion was 7 members in favor, three against, and no members absent.

The JCRAR adopted one other motion on the license retirement program that is unrelated to the oversight of this matter that could be provided by the Joint Committee on Finance.

"That the JCRAR communicate a request to the Joint Committee on Legislative Organization to seek an opinion of the Wisconsin Attorney General on the legality of the Lake Superior Commercial Fishing License Retirement Program."

The vote on this motion was 9 members in favor, one against, and no members absent.

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We have enclosed some background materials from our committee's review of this issue. If you have any questions concerning the actions of our committee, please do not hesitate to contact us.

Sincerely,



RICHARD GROBSCHMIDT
Senate Co-Chair



GLENN GROTHMAN
Assembly Co-Chair

RG:GG:js

Enclosure