

2001 DRAFTING REQUEST

Senate Amendment (SA-SB55)

Received: 05/18/2001

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Schug

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Addl. Drafters:

Subject: Nat. Res. - nav. waters

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

LFB:.....Schug -

Topic:

Implementation of a project to place fill in Lake Koshkonong

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rkite 05/29/2001	wjackson 05/29/2001	jfrantze 05/30/2001		lrb_docadmin 05/30/2001		

12 WJ 6/6
J 6/7
Self
6/7

FE Sent For:

<END>

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/?	rkite	1 WLj 5/29	Jo 5/30	Jo/KR/6 5/30			

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<END>

Representative Ward

NATURAL RESOURCES -- WATER QUALITY

Lake Koshkonong Comprehensive Project

Motion:

Move to allow the Rock-Koshkonong Lake District, upon DNR approval, to implement a project developed and approved by the U.S. Army Corps of Engineers to place structures and/or fill on the bed of Lake Koshkonong for any of the following purposes: (a) to improve navigation or to provide navigation aids; (b) to restore or protect wetland habitat or water quality; (c) to create, restore or protect fish and wildlife habitat; or (d) to enhance the natural aesthetic value or improve the recreational use of the lake. Specify that the location of any structure or fill placed as part of this project be located within the area that consists of sections 10, 13, 18, 19, 20, 24, 33, 34, 35 of T5N, R13. Further, require that any structure or fill placed as part of the project may only be used as a site for the placement of navigational aids approved by DNR, for activities to protect or improve wildlife or fish habitat, including the placement of DNR-approved fish or wildlife habitat structures, or for open space for recreational activities for the public, subject to reasonable restrictions approved by the District. In addition, exempt the District from meeting general waterway permitting requirements under s. 31.12 of the statutes for the implementation or maintenance of the project.

Require the District to submit plans and specifications before beginning any activity involving the placement of a structure or fill as part of the project to DNR. Require the Department to comply with current law environmental impact requirements and to review the plans and specifications and gather any other information necessary to effectively evaluate the structural and functional integrity of the proposed structures and fill. Further, require DNR to hold a public informational meeting to discuss the proposal and to approve the plan with conditions it determines necessary to protect the public interest in water, if the Department finds that the structure or fill is structurally and functionally sound and that the structure or fill will further a purpose specified under (a) to (d) above, and will not: (a) materially effect the flood flow capacity of the Rock River; (b) materially obstruct navigation; (c) cause material injury to the rights of an owner of lands underlying any such structure or fill or of riparian lands affected by the project; (d) cause environmental pollution; or (e) be detrimental to the public interest.

Require the Rock-Koshkonong Lake District to maintain all structures and fill that are part of the project to assure that the structures and fill do not impair the safety of the public and remain in compliance with above requirements. Provide that the District owns all structures or fill that are part of the project and that they are under DNR jurisdiction. In addition, prohibit the District from transferring ownership of any part of the project unless DNR provides written approval and the

transfer is to a public entity. Require DNR to monitor the Rock-Koshkonong Lake District project to assure that the project is furthering a purpose for which it is authorized. Further, give DNR continuing jurisdiction over the project and allow DNR to order the structure be modified, repaired or removed if necessary to comply with above requirements.



Note:

The motion is modeled on a current law provision regarding DNR's Lake Winnebago Comprehensive Project to address water quality concerns and restore fish, wildlife and wetland habitat primarily on Lakes Winnebago, Butte des Morts, Winneconne and Poygan. However, no funding would be provided under the provision. To date, DNR has spent approximately \$400,000 in general fund supported bonding, \$1.2 million in conservation fund supported bonding and \$100,000 SEG from the conservation fund on the Lake Winnebago Comprehensive Project. In addition, the project has received financial support from the U.S. Army Corps of Engineers.

MO#	193
Burke	N
Decker	N
Moore	N
Shiblski	N
Plache	N
Wirch	N
Darling	N
Welch	N
Gard	N
Kaufert	N
Albers	N
Duff	N
Ward	N
Huebsch	N
Huber	N
Coggs	N

CC: J





(soon)
State of Wisconsin
2001 - 2002 LEGISLATURE

RMB
/1
LRBb0308/P1

RNK...../.....

Wlj

D-Note

LFB:.....Schug – Implementation of a project to place fill in Lake Koshkonong

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 2001 SENATE BILL 55 AND 2001 ASSEMBLY BILL 144

1 At the locations indicated, amend the bill as follows:

2 √ 1. Page 676, line 5: after that line insert:

3 “SECTION 1261m. 30.2025 of the statutes is created to read:

4 30.2025 Lake Koshkonong comprehensive project. (1) DEFINITION. In
5 this section, “district” means the Rock-Koshkonong public inland lake and
6 rehabilitation lake district.

7 (2) AUTHORIZATION. The district may implement a project developed and
8 approved by the U.S. Army Corps of Engineers to place structures or fill or both on
9 the bed of Lake Koshkonong for any of the following purposes:

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

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

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

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

3 (3) LOCATION OF STRUCTURES AND FILL. Any structure or fill placed as part of the
4 project authorized under sub²(~~1~~) shall be located in² Lake Koshkonong within the
5 area that consists of Secs. 10, 13, 18, 19, 20, 24, 33, and 35, T 5 N., R 13.

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

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

12 1. Comply with the requirements under s. 1.11. ✓

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

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

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

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

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

23 (b) It may not materially obstruct navigation.

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

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

5 (e) It may not be detrimental to the public ^tinterest.

6 (f) It must further a purpose specified in sub. (2).[✓]

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

10 (b) The district shall maintain the structures and the fill that are part of the
11 project authorized under sub. (2) so that ~~they~~ ^{the structures and fill} remain in compliance with the
12 requirements listed under sub. (5).

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

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

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

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

22 (c) ~~Open space~~ Open space for recreational activities.

23 (8) OWNERSHIP. (a) The structures or fill that are part of the project authorized
24 under sub. (2) are owned by the district. Except as provided in par. (b), the district

1 may not transfer ownership of any structure or any fill that is part of the project
2 authorized under sub. (2).

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

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

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

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

17 (9) EXEMPTIONS. Section 30.12¹⁰ does not apply to activities that are necessary
18 for the implementation or maintenance of the project authorized under sub. (2).”

19 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0308/P1dn
RNK...../.....
Wlj

David Schug:

It is possible that a Wisconsin court would find that this amendment is a "private or local law" which, under ^{article} art. IV, ^{section} sec. 18, of the Wisconsin Constitution, must be enacted as single-subject legislation. If so, this amendment cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject. Under *Milwaukee Brewers Baseball Club v. Wisconsin Dept. of Health and Social Services*, 130 Wis. 2d 79, 115 (1986), "a legislative provision which is specific to any person, place or thing is a private or local law within the meaning of art. 4, sec. 18, unless: 1) the general subject matter of the provision relates to a state responsibility of statewide dimension; and 2) its enactment will have direct and immediate effect on a specific statewide concern or interest". As it is difficult to predict the potential for and outcome of any court action on this amendment, the committee may wish to consider introducing this proposal as a separate bill.

I have assumed that the "Rock-Koshkonong lake district" is a public inland lake and rehabilitation district rather than a lake sanitary district and have, therefore, referred to it as such in the draft. I have not verified that the location of the project is accurate because I have no means for doing so.

As requested, the draft provides that the district may not transfer ownership of structures or fill, with certain exceptions including an exception for the transfer to a "public entity". Because that term is not defined, the draft requires DNR to define the term. Is this O.K.?

The motion indicates that DNR is to retain "jurisdiction" over the project. Because the district, or its transferee, will own the structures or fill, I'm not certain how that jurisdiction may be exercised. Because I understand that the purpose for which DNR wants to exercise jurisdiction is to maintain the authority to inspect the structures and fill to ensure compliance with the requirements created in the draft, I have provided that DNR has inspection authority and the right to take certain action against the owner or its transferee if the structures or fill are non-compliant. Is this O.K.?

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0308/1dn
RNK:wlj:jf

May 30, 2001

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Per David Scheig

Draft is fine but correct error on
pg. 1 lines 596

Should be "public inland lake and
rehabilitation district"



SOON

LFB:.....Schug – Implementation of a project to place fill in Lake Koshkonong
FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION
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protection

7 (2) AUTHORIZATION. The district may implement a project developed and
8 approved by the U.S. army corps of engineers to place structures, or fill, or both on
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- 10 (a) To improve navigation or to provide navigation aids.
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- 12 (c) To create, restore, or protect fish and wildlife habitat.

1 (d) To enhance the natural aesthetic value or improve the recreational use of
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3 affected by the project.

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