

2007 DRAFTING REQUEST

Bill

Received: **05/15/2007**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-1537**

By/Representing: **Rachel L. and David L.**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Local Gov't - misc**

Extra Copies:

Submit via email: **YES**

Requester's email: **david.lovell@legis.wisconsin.gov**

Carbon copy (CC:) to: **rachel.letzing@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Drainage districts; presumption that drain board orders are reasonable

Instructions:

See Attached. Produce a draft based on WLC 0091/1

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>
/?	mshovers 05/15/2007	jdye 05/16/2007		_____			
/1			rschluet 05/16/2007	_____	sbasford 05/16/2007	lparisi 05/16/2007	

FE Sent For: **N/A**

<END>

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/? mshovers

1 5/16 jld
1 1 MES 5/15/07

FE Sent For:

<END>

1 **AN ACT** *to create* 88.63 (5) of the statutes; **relating to:** creating a presumption of
2 reasonableness for drainage district board orders.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was developed by the joint legislative council's special committee on navigability and drainage ditches. It is based upon drafting instructions given by the committee at its January 23, 2007 meeting.

3 **SECTION 1.** 88.63 (5) of the statutes is created to read:

4 88.63 (5) If a drainage district board issues an order requiring the maintenance or repair
5 of a drain located in the district, and work performed pursuant to the drainage district board
6 order is challenged in an administrative hearing or court proceeding, a hearing examiner or
7 circuit court shall presume that the order is reasonable.

NOTE: This section provides that if a drainage board has issued an order requiring maintenance or repair of a drain in the district, anyone who has an interest in the decision may challenge the order, and a hearing examiner or circuit court must presume that the order is reasonable.

8

(END)

-2736/1

stays

RMNR

2007 BILL

D-NOTE

gen

1 AN ACT to amend 88.21 (12) of the statutes; relating to: creating a presumption
2 of reasonableness for certain drainage board orders.

Analysis by the Legislative Reference Bureau

Under current law, a drainage board is authorized to adopt rules and issue orders related to the functioning of a drainage district.

This bill requires a hearing examiner or circuit court hearing a challenge to an order issued by a drainage board, requiring the repair or maintenance of a drain, to presume that the order is reasonable.

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

3 SECTION 1. 88.21^x (12) of the statutes is amended to read:

4 88.21 (12) Adopt rules and issue orders, which shall be published as a class 1
5 notice under ch. 985. In addition, any order that pertains to a specific named person
6 or property shall be served on the person or owner of the property in the manner
7 provided for service of a summons under s. 801.11. If an order of the drainage board
8 requiring the repair or maintenance of a drain is challenged, the hearing officer or

BILL

1 circuit court hearing the challenge shall presume that the order is reasonable. The
2 court has jurisdiction to enforce an order of the drainage board by injunctive or other
3 appropriate relief.

4 **SECTION 2. Initial applicability.**

5 (1) This act first applies to an order issued by a drainage board on the effective
6 date of this subsection.

7 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

2736
LRB-2572/1dn
MES/jld:sh

April 26, 2007

3 new
date

keep

Marc E. Shovers
Representative Albers:

David Lovell and Rachel Letzing

Please review this draft carefully to ensure that it meets your intent. The instructions proposed the creation of s. 88.63 (5), in a section relating to the maintenance and repair of drains by the drain board. Because that section seems to deal with the repair and maintenance of drains by the drain board and doesn't seem to deal with orders issued by the drain board, I added the presumption in s. 88.21 (12), which deals with the board's authority to issue orders. Is this OK?

In addition, the wording of the draft you submitted seems to indicate that, if a drain board issues an order to maintain or repair drains, the presumption applies only to a challenge that is brought after work pursuant to the order is commenced, instead of after an order is issued but before the work begins. Does the wording in the draft you submitted really reflect your intent, or do you intend for the presumption to apply at any time after the order to repair or maintain a drain is issued?

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2736/1dn
MES:jld:rs

May 16, 2007

David Lovell and Rachel Letzing:

Please review this draft carefully to ensure that it meets your intent. The instructions proposed the creation of s. 88.63 (5), in a section relating to the maintenance and repair of drains by the drain board. Because that section seems to deal with the repair and maintenance of drains by the drain board and doesn't seem to deal with orders issued by the drain board, I added the presumption in s. 88.21 (12), which deals with the board's authority to issue orders. Is this OK?

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Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

Parisi, Lori

From: Lovell, David
Sent: Wednesday, May 16, 2007 10:30 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-2736/1 Topic: Drainage districts; presumption that drain board orders are reasonable

Please Jacket LRB 07-2736/1 for the SENATE.