

2009 DRAFTING REQUEST

Bill

Received: 04/14/2009

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Pat Kreitlow (608) 266-7511

By/Representing: Jeff Buhrandt

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Addl. Drafters:

Subject: Nat. Res. - miscellaneous

Extra Copies: GMM

Submit via email: YES

Requester's email: Sen.Kreitlow@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Use of metal detectors on DNR lands

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>
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/P1	rkite 05/21/2009	jdye 05/22/2009	jfrantze 05/22/2009	_____	mbarman 05/22/2009		
/1	rkite 09/16/2009	jdye 09/17/2009	jfrantze 09/17/2009	_____	sbasford 09/17/2009		
/2	rkite 10/08/2009	jdye 10/09/2009	phenry 10/09/2009	_____	mbarman 10/09/2009		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	rkite 10/15/2009	jdyer 10/16/2009	rschluet 10/16/2009	_____	cduerst 10/16/2009		
/4	rkite 11/10/2009	jdyer 11/13/2009	phenry 11/13/2009	_____	cduerst 11/13/2009	mbarman 12/11/2009	

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*none
needed*

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[Handwritten signatures and initials]
10/16/09 GMM

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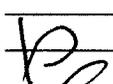
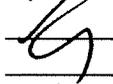
Topic:

Use of metal detectors on DNR lands

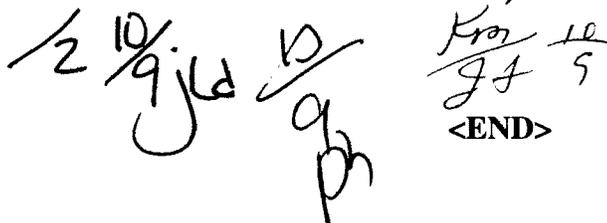
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JJ
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FE Sent For:

<END>

Gibson-Glass, Mary

From: Buhrandt, Jeff
Sent: Tuesday, April 14, 2009 1:36 PM
To: Gibson-Glass, Mary
Subject: The use of metal detectors on DNR land

Mary-

Senator Kreitlow has been asked to look into drafting legislation that would allow the use of metal detectors on DNR property – something that according to the DNR is currently illegal. What we'd like to do is make the use of metal detectors legal, while allowing for the creation of a set of rules that would dictate how items found on DNR managed land was handled since much of the discussion about this topic has focused on protecting valuable and historic items found by people using metal detectors.

I think the best way to do that would be to leave the rulemaking authority to the DNR, maybe through the office of the state archaeologist's office, though I'd like to know what you think on that.

Thanks in advance for your help on this, and please let me know if you have any questions or concerns, or if I need to discuss this with someone else at LRB.

Jeff

Jeff Buhrandt
Office of Senator Pat Kreitlow
Wisconsin State Senate - 23rd District
Room 10 South - State Capitol
PO Box 7882
Madison, WI 53703-7882
Phone: 1-888-437-9436
jeff.buhrandt@legis.wisconsin.gov

can contact state archaeologist or DNR

44.47 ?

Kite, Robin

From: Buhrandt, Jeff
Sent: Tuesday, April 14, 2009 4:17 PM
To: Kite, Robin
Subject: FW: Metal Detectors on DNR land

Jeff Buhrandt
Office of Senator Pat Kreitlow
(608) 266-7511

From: Dudzik, Mark J - DNR [mailto:Mark.Dudzik@Wisconsin.gov]
Sent: Tuesday, March 24, 2009 8:25 AM
To: Buhrandt, Jeff
Cc: Broihahn, John H - WHS; Brown, Chip L - WHS
Subject: RE: Metal Detectors on DNR land

Jeff -

Both - and more.

Like metal detecting in State Natural Areas, and stomping on the protected plants.

Digging up the artifacts *destroys* archaeological context ... and keeping the artifacts only compounds the issue. Archaeologists are not "treasure hunters"; maintaining artifacts *in context* (e.g., within a house floor, within storage features, etc.) is the issue, it is necessary to archaeology.

A several thousand year old, ten inch rat-tail copper spear can be worth upwards of \$1000. How does one enforce things taken in the middle of the woods (e.g., Black River State Forest)? Who's the enforcer (no money for; lotsa staff cuts)?? What's the penalty??

I have had people from Missouri and elsewhere out-of state complaining about the revised policy ... because Wisconsin was "easy pickins' ", I believe, for Old Copper Culture, Fur Trade, and logging era artifacts. And, as I may have mentioned, removing such items from Wisconsin to out-of-state locations is a federal crime, a violation of the "Archaeological Resources Protection Act".

You may wish to contact John Broihahn, the State Archaeologist (at WHS), since the law really applies state-wide to public lands - it is not just a DNR issue.

Broihahn and I will be meeting with the Madison-area metal detectors group this Wednesday to answer questions about the revised policy.

By the way, I have an open records request on the matter - this and other e-mails will be provided as part of that request later this week.

Please do thank Senator Kreitlow for his interest.

M

04/14/2009

Mark J. Dudzik
Departmental Archaeologist

Wisconsin Department of Natural Resources
Bureau of Facilities & Lands
101 South Webster, LF/6
Madison, WI 53707-7921

phone: 608.266.3462; FAX: 608.267.2750
e-mail: mark.dudzik@wisconsin.gov

From: Buhrandt, Jeff [mailto:Jeff.Buhrandt@legis.wisconsin.gov]
Sent: Monday, March 23, 2009 6:15 PM
To: Dudzik, Mark J - DNR
Subject: RE: Metal Detectors on DNR land

Mark-

Thanks for the response. Is the concern here more about disturbing these archeological sites, or more about these groups keeping their findings instead of returning them to the state? Senator Kreitlow is very interested in finding some middle ground on this issue that would allow these groups to continue while protecting any valuable artifacts they come across.

Wouldn't a system that requires the "finder" to return all found artifacts to the state for review before that finder was allowed to take possession of said artifacts work?

Jeff Buhrandt
Office of Senator Pat Kreitlow
(608) 266-7511

From: Dudzik, Mark J - DNR [mailto:Mark.Dudzik@Wisconsin.gov]
Sent: Tuesday, March 17, 2009 12:56 PM
To: Buhrandt, Jeff
Cc: Heinen, Paul H - DNR
Subject: RE: Metal Detectors on DNR land

Jeff -

I have been asked to respond to your query below.

In brief, DNR has been requested by the Wisconsin Historical Society to bring its metal detecting policy in line with extant State statutes which protect archaeological resources - *and which prohibit collection of same from public lands and waters.*

I note that the query is from a group which calls itself "treasure hunters".

The revised policy includes a provision for individuals to recover lost personal items via use of metal detectors.

Do not hesitate to contact me for additional information or clarification.

04/14/2009

M

Mark J. Dudzik
Departmental Archaeologist

Wisconsin Department of Natural Resources
Bureau of Facilities & Lands
101 South Webster, LF/6
Madison, WI 53707-7921

phone: 608.266.3462; FAX: 608.267.2750
e-mail: mark.dudzik@wisconsin.gov

randt, Jeff [mailto:Jeff.Buhrandt@legis.wisconsin.gov]

ay, March 16, 2009 12:41 PM

n, Paul H - DNR

Metal Detectors on DNR land

Paul-

While at a Kreitlow listening session in New Auburn last week, Senator Kreitlow was asked about a change in DNR policy regarding the use of metal detectors on DNR owned land. According to the area's "treasure hunting" group these changes may spur a lawsuit.

Any information on what these changes were and why they were made would be appreciated.

Thanks-

Jeff

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Office of Senator Pat Kreitlow
Wisconsin State Senate - 23rd District
Room 10 South - State Capitol
PO Box 7882
Madison, WI 53703-7882
Phone: 1-888-437-9436
jeff.buhrandt@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

RM run
PPI
LRB-26820
RNK: :...
jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In 5/21

D-Note

X

Gen

1 AN ACT ...; relating to: the use of metal detectors on, and the removal of objects
2 from, certain state-owned land and granting rule-making authority

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 23.21 of the statutes is created to read:
4 23.21 Use of metal detectors. (1) In this section:
5 (a) "Department land" means an area of land that is owned by the state, that
6 is under the jurisdiction of the department, and that is used for one of the purposes
7 specified in s. 23.09 (2) (d).
8 (b) "Land" means land in fee simple, conservation easements, other easements
9 in land, and development rights in land.
10 (2) The department may not prohibit a person from using a metal detector on
11 department land.

1 (3) The department shall promulgate rules that do all of the following:

2 (a) Establish guidelines for the use of metal detectors on department land.

3 (b) Specify categories of items that, if found with the use of a metal detector,
4 may be removed from department land.

5 (c) Establish a method under which a person who finds an item on department
6 land with the use of a metal detector may register the item with the department to
7 determine whether the item may be removed from the department land.

8 SECTION 2. 44.47 (7) (am) of the statutes is created to read:

9 44.47 (7) (am) 1. In this paragraph:

10 a. "Department of natural resources land" means an area of land that is owned
11 by the state, that is under the jurisdiction of the department of natural resources and
12 that is used for one of the purposes specified in s. 23.09 (2) (d).

13 b. "Land" means land in fee simple, conservation easements, other easements
14 in land, and development rights in land.

15 2. A person who removes an object from department of natural resources land
16 and who registers the object in the manner required by rules promulgated by the
17 department of natural resources under s. 23.21 (3) is not subject a penalty for
18 removing that object under par. (a).

19 (END)

d-note
↓

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

LRB-2682/7dn

RNK: 1:...

date

PI
JLD

I have prepared this draft in preliminary form. ✓ Please review the draft to ensure that it is consistent with your intent. ✓

Feel free to contact me if you have any questions about this version of the draft. ✓

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

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

LRB-2682/P1dn
RNK:jld:jf

May 22, 2009

I have prepared this draft in preliminary form. Please review the draft to ensure that it is consistent with your intent.

Feel free to contact me if you have any questions about this version of the draft.

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

Kite, Robin

From: Buhrandt, Jeff
Sent: Thursday, July 16, 2009 12:42 PM
To: Kite, Robin
Subject: Drafting Request re:LRB LRB 2682/P1

Attachments: Recreational Metal Detecting Drafting Instructions.doc

Robin-

After reviewing the preliminary draft, we have some changes we'd like to see added. I've attached a list of the additions we'd like to see.

Thanks and let me know if you have any questions.

Jeff



Recreational Metal
Detecting D...

Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511

**Drafting request for LRB-2682/P1
Metal Detectors on DNR Land**

*DNR to issue
annual license*

- Create a fee to help cover the administration of this program - \$25 in state, \$35 out of state. The fee will be for the purchase of a Recreational Metal Detecting License
 - We may also need to clarify that permits for field archaeology are needed under 44.47
 - This fee should be used to provide information to the licensee on what the rules for metal detecting are, including a map of where it is allowed
 - Require that a list of all DNR land that is off limits to metal detecting be posted and made available to anyone who gets a license
- The penalty for metal detecting without a license or violating any of these rules should be no less than \$200 and no more than \$1000.
- Use the state of Oregon's definition of
 - **ARCHAEOLOGICAL OBJECTS AND SITES**
358.905 Definitions for ORS 258.905 to 358.961; Interpretation. (1) As used in ORS 192.005, 192.501 to 192.505, 358.905 to 358.961 and 390.235" (a) "Archaeological object" means an object that:
 - (A) Is at least 75 years old (change to 125 years old);
 - (B) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and
 - (C) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary byproducts.
- ✓ • Make it clear that campground sites are not open to metal detecting
- ✓ • Define an area as historically and archaeologically significant and not open to metal detectors as:
 - ✓ ○ Sites that have been formally surveyed and found to have historical or archaeological significance
 - ✓ ○ Sites that are presently scheduled for surveying (include emergency rule process for the DNR to add a site to the significance list) *by DNR?*
 - ✓ ○ Any sites that have been mapped under 44.48 and 44.36 would also be off limits to metal detecting
- Allow the DNR to create a process for the submission and review of items found on DNR land. This will include:
 - ✓ ○ Any non-identifiable item that is of nominal value (less than \$25) and is of no obvious historical or archeological significance can be kept by the finder
 - ✓ ○ All identifiable items such as rings, watches wallets and items of greater than nominal value will be returned to the state and the DNR will create a process for the eventual return of said items to finder after 60/90 days if not claimed by original owner
 - Any items that may have historical or archeological significance must be turned in to the DNR by the finder. The DNR (in consultation with the State Historical Society) must create a process for these items to be reviewed and for their timely return to the finder if no significance is found.
 - Create process that would allow metal detector groups to report sites that may be of historical or archaeological significance to the Wisconsin Historical Society for their review

leave alone
if done as historical design

- All digging should be limited to hand tools that can only be used by one hand and are no more than 6 inches wide and 12 inches long.
 - Grass and other vegetation may not be removed or disturbed and digging is allowed in bare soil sand only, or in water from high water mark up to six feet. All soil that is disturbed or displaced shall be returned to it's original state.

- make sure that the agencies cannot disallow recreational metal detecting under 44.40 (4) with the, *just because all land and objects may be significant, excuse they are using now.*

8/28/09

Called Jeff Burkhardt -

discussed issue about whether he wants to let anyone remove found objects even if found w/o metal detector

he said that if current law prohibits a person from taking anything off of DNR land, then everyone should be required to have found items evaluated by DNR, regardless of how they are found
I told him I would contact DNR to get this info -

sent email to Mike Juty at DNR on 8/28

Also - see s170.07

Per Mike Luty -

Cannot use metal detector on DNR land
w/o permit - NR 45.04(3)(i)
cannot take rocks w/o permit 45.04(1)(a)2

Abandoned property (20.909)

DNR policy - can only use metal detector (w/
permit) to locate lost property - i.e.
can't use it generally to find property of
others or abandoned items

state archaeologist has also recently established
policies because people are removing valuable
artifacts

Kite, Robin

From: Buhrandt, Jeff
Sent: Tuesday, September 15, 2009 4:13 PM
To: Kite, Robin
Subject: RE: Metal Detecting

That is correct – thanks Robin.

*Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511*

From: Kite, Robin
Sent: Tuesday, September 15, 2009 3:53 PM
To: Buhrandt, Jeff
Subject: RE: Metal Detecting

Jeff,

It sounds as if you want a bill draft like LRB-3169 except that you want the draft to cover all DNR lands, not just those acquired under the stewardship program. Please let me know if my understanding is correct.

Thanks.

Robin

From: Buhrandt, Jeff
Sent: Tuesday, September 15, 2009 3:50 PM
To: Kite, Robin
Subject: FW: Metal Detecting

Robin-

Here is the other metal detecting bill, this one regarding stewardship land. I like going without the permits – just stating that metal detecting has to be allowed and leave it at that.

I think the more simple the better.

Could you draft something along those lines that would incorporate both the DNR and stewardship?

Thanks-

jeff

*Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511*

From: Hilgemann, Luke
Sent: Tuesday, September 15, 2009 1:52 PM
To: Buhrandt, Jeff
Subject: FW: Metal Detecting

Here you go. When do you plan on moving this?

<< File: 09-31691 (2).pdf >>

LUKE HILGEMANN

*Office of State Representative Scott Suder
Wisconsin's 69th Assembly District
608.267.0280 ~ 888.534.0069 (toll-free)*

From: Buhrandt, Jeff
Sent: Tuesday, September 15, 2009 1:36 PM
To: Hilgemann, Luke
Subject: Metal Detecting

I think you already sent me this, but could you send me a copy of your metal detecting bill? Our drafter wants to look at how you guys addressed some things.

Thanks-

Jeff

*Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511*

9-16-09
Per Jeff Burkhardt

Provide § That DNR may prohibit
metal detecting in areas that
are archaeologically significant
per definition previously provided



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In
9/16

Regen

X

1 AN ACT to create 23.21 and 44.47 (7) (am) of the statutes; relating to: the use
2 of metal detectors on ~~and the removal of objects from~~ certain state-owned land
3 ~~and granting rule-making authority.~~

Analysis by the Legislative Reference Bureau

insert
analysis

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

4 SECTION 1. 23.21 of the statutes is created to read:

5 23.21 Use of metal detectors. (1) In this section:

6 (a) "Department land" means an area of land that is owned by the state, that
7 is under the jurisdiction of the department, and that is used for one of the purposes
8 specified in s. 23.09 (2) (d).

insert 1-8

9 (b) "Land" means land in fee simple, conservation easements, other easements
10 in land, and development rights in land.

1 (2) The department may not prohibit a person from using a metal detector on
2 department land. *do any of the following: ✓*

3 (3) The department shall promulgate rules that do all of the following:

4 (a) Establish guidelines for the use of metal detectors on department land.

5 (b) Specify categories of items that, if found with the use of a metal detector,
6 may be removed from department land.

7 (c) Establish a method under which a person who finds an item on department
8 land with the use of a metal detector may register the item with the department to
9 determine whether the item may be removed from the department land.

10 SECTION 2. 44.47 (7) (am) of the statutes is created to read:

11 44.47 (7) (am) 1. In this paragraph:

12 a. "Department of natural resources land" means an area of land that is owned
13 by the state, that is under the jurisdiction of the department of natural resources,
14 and that is used for one of the purposes specified in s. 23.09 (2) (d).

15 b. "Land" means land in fee simple, conservation easements, other easements
16 in land, and development rights in land.

17 2. A person who removes an object from department of natural resources land
18 and who registers the object in the manner required by rules promulgated by the
19 department of natural resources under s. 23.21 (3) is not subject a penalty for
20 removing that object under par. (a).

21 (END)

insert 2-20

INSERT ANALYSIS

This bill prohibits the Department of Natural Resources (DNR) from preventing a person from using a metal detector on most land under DNR's jurisdiction (DNR land). It also prohibits DNR from requiring a person who uses a metal detector on DNR land to hold a license, permit, or other approval authorizing the use of a metal detector on DNR land. The bill provides an exception to these prohibitions so that the prohibitions do not apply to DNR land that is historically significant. The bill defines historically significant land to include land that the state historical society determines is historic property, land that is included on a map of archaeological resources prepared by the state historical society, and land that is listed on the state register of historic places. *

INSERT 1-8

- 1 (b) "Historic property" has the meaning given in s. 44.31 (3) (c)
- 2 (b) "Historically significant land" means land to which any of the following
- 3 applies:
- 4 1. Land that has been surveyed by the state historical society under s. 44.34
- 5 and that has been determined by the state historical society to be a historic property.
- 6 2. Land that is scheduled to be surveyed by the state historical society under
- 7 s. 44.34.
- 8 3. Land that is included on a map of archaeological resources under s. 44.48.
- 9 4. Land that is listed on the state register of historic places under s. 44.36.

INSERT 2-20

- 10 (a) 1. Prohibit a person from using a metal detector on department land, unless
- 11 the department land is historically significant land.
- 12 (b) 2. Require a person who uses a metal detector on department land to hold a
- 13 permit, license, or other approval authorizing the use of a metal detector on that
- 14 land, unless the department land is historically significant land.

Kite, Robin

From: Kite, Robin
Sent: Friday, September 25, 2009 3:48 PM
To: Buhrandt, Jeff
Subject: FW: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Jeff is out of town until 10/5/09

Jeff:

Do you want me to redraft in accordance with Amy Winters responses?

(per Jeff - per Amy Winters redraft 10/6/09

Robin

From: Amy Winters [mailto:amywinters@capitol-strategies.net]
Sent: Thursday, September 24, 2009 2:10 PM
To: Kite, Robin
Subject: FW: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Hello Robin,

I just got an out of office reply from Jeff Buhrandt and thought forwarding this directly to you might be helpful. I thought he wasn't leaving until next week...

Let me know if you have any questions.

Thanks!!

From: Amy Winters [mailto:amywinters@capitol-strategies.net]
Sent: Thursday, September 24, 2009 2:04 PM
To: 'Buhrandt, Jeff'
Subject: RE: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Hello Jeff, Thanks for forwarding this to me. I have responded to Robin's questions in green. Let me know if you have any questions.

If I do not talk to you before you leave, have a GREAT vacation!

Thanks again!

Best regards,

Amy

Amy Winters, President
Capitol, Strategies, LLC
P.O. Box 771
Madison, WI 53701

09/25/2009

(608) 235-8443
(608) 237-2244 - fax
www.capitol-strategies.net

From: Buhrandt, Jeff [mailto:Jeff.Buhrandt@legis.wisconsin.gov]
Sent: Tuesday, September 22, 2009 3:04 PM
To: Amy Winters
Subject: FW: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511

From: Kite, Robin
Sent: Thursday, September 17, 2009 4:00 PM
To: Buhrandt, Jeff
Subject: RE: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Jeff:

I have some questions:

1. Is it your intention that only people using metal detectors can dig? Can they dig only if they find something with the detector? Or do you want to allow anyone to be able to dig? Only if they find something with a detector, it is the nature of metal detecting that if the detector detects something, they need to be able to retrieve it. We could just leave this out though, unless there is any current policy that would prohibit it.

2. With regard to tools: What kind of tool can only be used with one hand? I think that even if a tool is designed to be used with one hand (like a trowel) it could be used with 2 hands. Or do you want to limit tools to those *designed for use with one hand*? This might be over thinking this a bit, the idea is that they would not be using large shovels or other diggers that would tear up a large area, we got this language from the army corps of engineers metal detecting rules we could leave out the one hand part and just say no more than 8 inches in width and any length.

3. Your language limits the use of tools to those that are no more than 8 inches wide. Can they be of unlimited length? Yes, any length

4. With regard to digging in water: I'm not sure I understand the reference to the high water mark "up to six feet". Six feet deep? Six feet in distance toward the water? Away from the water? This is a **VERY** important one it is digging to six feet deep into the water. I'm not sure what the law is, but I'm pretty sure there is something that covers who owns the water adjacent from land and specifies how deep (pretty sure but not positive that it is 6 feet from the shore/land into the water) After that depth, no matter who the adjacent landowner is, it is DNR/State jurisdiction.

5. What is bare soil sand? Does this mean sand that is not covered with any vegetation? If so, the language seems to suggest that the only digging allowed will be on sand. As a practical matter, digging would be mostly limited to shorelines. Am I correct? After thinking this through it might be better to say that groomed areas (grass, flowers etc) may not be removed (so that we would be allowing detecting on beaches, shoreline, in the water to 6 feet deep, in wooded areas and in fields that are not manicured groomed grass. I do still think that we should also specifically prohibit metal detecting in campsite areas so as to not disturb others enjoyment of these areas.

09/25/2009

Defining an archeological object will also be **VERY** important to this too, as currently the state archeologists think that just about everything and every square inch of the state should be considered an artifact or of archeological significance. If we think the definition below is still too broad, I can dig up another definition, just let me know.

Also as we discussed we should make sure that we somehow state that this does not conflict with the field archeology statute and is an exception to it or is defined as recreational metal detecting so the state archeologists can't claim it is allowing field archeology without a permit. Thus, I still think a nominal license would be helpful to give clear law/rules to the detectors when they get the license.

Thanks.

Robin

From: Buhrandt, Jeff
Sent: Thursday, September 17, 2009 3:35 PM
To: Kite, Robin
Subject: FW: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Robin-

Can we add a provision to cover allow the people using detectors to do some investigation while digging, something limited like:

- All digging should be limited to hand tools that can only be used by one hand and are no more than 8 inches wide
 - Grass and other vegetation may not be removed or disturbed and digging is allowed in bare soil sand only, or in water from high water mark up to six feet. All soil that is disturbed or displaced shall be returned to its original state.

Also, I just want clarify that our bill includes a pretty clear definition of what sites can be considered archeological and which ones cannot. That really seems to be a big issue for the local fools who are interested in the bill.

Thanks again for all of your work on this Robin-

Jeff

*Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511*

From: Amy Winters [mailto:amywinters@capitol-strategies.net]
Sent: Thursday, September 17, 2009 10:21 AM
To: Buhrandt, Jeff
Subject: RE: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Yeah! We have a draft! Thanks Jeff! I am really torn on whether broader is better in light of all the reasons that the state archeologists use to say there should not be metal detecting allowed. I think at a minimum we should probably include the following language:

09/25/2009

- All digging should be limited to hand tools that can only be used by one hand and are no more than 8 inches wide
 - Grass and other vegetation may not be removed or disturbed and digging is allowed in bare soil sand only, or in water from high water mark up to six feet. All soil that is disturbed or displaced shall be returned to its original state.
- Make sure that the agencies cannot disallow recreational metal detecting under 44.40 (4) with the, *just because all land and objects may be significant*, excuse they are using now.
- Define archaeological object as:
 - (a) “Archaeological object” means an object that:
 - (A) Is at least 125 years old;
 - (B) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and
 - (C) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary byproducts.

I really don't think we want to allow detectors all over state parks and stewardship land tearing up turfed areas and according to the state archaeologists, everything is an item of archeological significance and I think they will fight VERY hard against such a broad bill.....

From: Buhrandt, Jeff [mailto:Jeff.Buhrandt@legis.wisconsin.gov]
Sent: Thursday, September 17, 2009 10:12 AM
To: Amy Winters
Subject: FW: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

Good news – we have a draft.

Again, I think leaving it broad and a bit vague is the better approach. The more specific issues we try to address the more angles our opponents have to attack the bill.

Jeff Buhrandt

Office of State Senator Pat Kreitlow

(608) 266-7511

From: Saxler, Charles
Sent: Thursday, September 17, 2009 9:49 AM
To: Buhrandt, Jeff
Subject: Draft review: LRB 09-2682/1 Topic: Use of metal detectors on DNR lands

09/25/2009

<<09-26821.pdf>>

Charles Saxler

Office of Senator Pat Kreitlow

Wisconsin State Senate - 23rd District

Room 10 South - State Capitol

PO Box 7882

Madison, WI 53703-7882

Phone: 608-266-7511 or 888-437-9436

charles.saxler@legis.wisconsin.gov



2009 BILL

In 10/8/09

D-Note

Regen

X

1 AN ACT to create 23.21 of the statutes; relating to: the use of metal detectors
2 on certain state-owned land.

Analysis by the Legislative Reference Bureau

This bill prohibits the Department of Natural Resources (DNR) from preventing a person from using a metal detector on most land under DNR's jurisdiction (DNR land). It also prohibits DNR from requiring a person who uses a metal detector on DNR land to hold a license, permit, or other approval authorizing the use of a metal detector on DNR land. The bill provides an exception to these prohibitions so that the prohibitions do not apply to DNR land that is historically significant. The bill defines historically significant land to include land that the State Historical Society determines is historic property, land that is included on a map of archaeological resources prepared by the State Historical Society, and land that is listed on the state register of historic places.

insert analysis

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

3 SECTION 1. 23.21 of the statutes is created to read:
4 23.21 Use of metal detectors. (1) In this section:

BILL

1 (a) "Department land" means an area of land that is owned by the state, that
2 is under the jurisdiction of the department, and that is used for one of the purposes
3 specified in s. 23.09 (2) (d).

4 (b) "Historic property" has the meaning given in s. 44.31 (3).

5 (c) "Historically significant land" means land to which any of the following
6 applies:

7 1. Land that has been surveyed by the state historical society under s. 44.34
8 and that has been determined by the state historical society to be a historic property.

9 2. Land that is scheduled to be surveyed by the state historical society under
10 s. 44.34.

11 3. Land that is included on a map of archaeological resources under s. 44.48.

12 4. Land that is listed on the state register of historic places under s. 44.36.

13 (d) "Land" means land in fee simple, conservation easements, other easements
14 in land, and development rights in land.

15 (2) The department may not do any of the following:

16 (a) Prohibit a person from using a metal detector on department land, unless
17 the department land is historically significant land.

18 (b) Require a person who uses a metal detector on department land to hold a
19 permit, license, or other approval authorizing the use of a metal detector on that
20 land, unless the department land is historically significant land.

(END)

✓ insert
2-20
21

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2682/2ins.
RNK:.....

INSERT ANALYSIS

* This bill also authorizes a person who uses a metal detector on DNR land that is not historically significant land to use a tool to dig on that land to retrieve and remove found items. The bill provides that a tool used for digging may not be more than 8 inches wide, the digging may not disturb vegetative cover, any soil that is disturbed or removed by digging must be replaced, and the digging may not occur on DNR land that is more than a specified distance into a navigable waterway.

INSERT 2-20

1 (3) If a person uses a metal detector on department land that is not historically
2 significant land, the person may use a tool to dig on the department land to retrieve
3 and remove found items if all of the following apply:

4 (a) The person uses a tool that is not more than 8 inches wide.

5 (b) The person does not disturb vegetative cover.

6 (c) The person replaces soil disturbed or removed by digging.

7 (d) The person does not dig on department land that is more than 6 feet
8 waterward of the ordinary high-water mark of any navigable waterway.

9 SECTION 1. 44.47 (2) of the statutes is amended to read:

10 44.47 (2) UNLICENSED FIELD ARCHAEOLOGY PROHIBITED. No person other than the
11 state archaeologist and individuals licensed by the director may engage in any field
12 archaeology on any state site or site owned by a political subdivision. This subsection
13 does not apply to a person who retrieves and removes found items as authorized
14 under s. 23.21.

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

LRB-2682/2dn

RNK: ↑:...

date

Jld

Please note that this draft specifically allows only persons using metal detectors to dig on DNR lands and to retrieve and remove any items found with a metal detector. It does not authorize a person who finds an item by any other method, including by mere eyesight, to remove and retrieve a found item. It also does not limit the type of item that can be removed by a person using a metal detector. Is this consistent with your intent?

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

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

LRB-2682/2dn
RNK:jld:ph

October 9, 2009

Please note that this draft specifically allows only persons using metal detectors to dig on DNR lands and to retrieve and remove any items found with a metal detector. It does not authorize a person who finds an item by any other method, including by mere eyesight, to remove and retrieve a found item. It also does not limit the type of item that can be removed by a person using a metal detector. Is this consistent with your intent?

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

Kite, Robin

From: Buhrandt, Jeff
Sent: Wednesday, October 14, 2009 9:03 AM
To: Kite, Robin
Subject: RE: LRB 2682/2 - Metal Detectors

Thank you Robin.

Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511

From: Kite, Robin
Sent: Wednesday, October 14, 2009 9:02 AM
To: Buhrandt, Jeff
Subject: RE: LRB 2682/2 - Metal Detectors

Yes.

From: Buhrandt, Jeff
Sent: Wednesday, October 14, 2009 9:02 AM
To: Kite, Robin
Subject: RE: LRB 2682/2 - Metal Detectors

Yes – can we do that without adding too much to the bill?

Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511

From: Kite, Robin
Sent: Wednesday, October 14, 2009 9:01 AM
To: Buhrandt, Jeff
Subject: RE: LRB 2682/2 - Metal Detectors

So do you mean that you want to allow metal detecting on any land purchased with stewardship funds, even if DNR does not own or manage the land?

Robin

From: Buhrandt, Jeff
Sent: Wednesday, October 14, 2009 8:58 AM
To: Kite, Robin
Subject: RE: LRB 2682/2 - Metal Detectors

Robin

Could we add both a stewardship land and campground provision?

Thanks-

Jeff

Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511

From: Kite, Robin
Sent: Tuesday, October 13, 2009 10:26 AM
To: Buhrandt, Jeff
Subject: RE: LRB 2682/2 - Metal Detectors

The draft covers only land owned or under the jurisdiction of DNR whether or not the land was acquired under the stewardship program. Some stewardship funds are used to provide grants to local governments and to nonprofit conservation organizations to acquire land. DNR does not necessarily manage or have control over those properties so the draft would not cover that land.

I can redraft to prohibit the use of metal detectors on campgrounds if you want to add such a provision to the draft.

Please let me know how you would like me to proceed or give me a call if you have any questions.

Robin

From: Buhrandt, Jeff
Sent: Tuesday, October 13, 2009 9:42 AM
To: Kite, Robin
Subject: LRB 2682/2 - Metal Detectors

Robin-

Two quick questions on the most recent draft –

-Does it include property that is being managed through the stewardship program?

-Can we add something to prohibit metal detecting on campsites?

Thanks-

Jeff

*Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511*

Kite, Robin

From: Buhrandt, Jeff
Sent: Thursday, October 15, 2009 10:19 AM
To: Kite, Robin
Subject: Metal Detectors

One more thing on the metal detector bill – there are some concerns over the use of the term vegetative cover on page 3. Can we just remove that language? I think that will work better.

Thanks-

Jeff

*Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511*



2009 BILL

In 10/15

and on land acquired with funding from the Warren Gaylord Nelson Stewardship or its predecessor program open to public access Knowles - 2000 program and that is higher

✓ Regen

1 AN ACT to amend 44.47 (2); and to create 23.21 of the statutes; relating to: the

2 use of metal detectors on certain state-owned land. and the removal of items found on that land

that the
Analysis by the Legislative Reference Bureau

This bill prohibits the Department of Natural Resources (DNR) from preventing a person from using a metal detector on most land under DNR's jurisdiction ~~(DNR land)~~. It also prohibits DNR from requiring a person who uses a metal detector on ~~DNR~~ land to hold a license, permit, or other approval authorizing the use of a metal detector on ~~DNR~~ land. The bill provides an exception to these prohibitions so that the prohibitions do not apply to ~~DNR~~ land that is historically significant. The bill defines historically significant land to include land that the State Historical Society determines is historic property, land that is included on a map of archaeological resources prepared by the State Historical Society, and land that is listed on the state register of historic places.

This bill also authorizes a person who ~~uses a metal detector on DNR land that is not historically significant land~~ to use a tool to dig on the land to ~~remove~~ dig for and remove found items. The bill provides that a tool used for digging may not be more than eight inches wide, ~~the digging may not disturb vegetative cover~~, any soil that is disturbed or removed by digging must be replaced, and the digging may not occur on ~~DNR~~ land that is more than a specified distance into a navigable waterway.

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

or to state campgrounds ✓

is allowed to use a metal detector under the bill ✓

BILL

1 SECTION 1. 23.21 of the statutes is created to read:

2 23.21 Use of metal detectors. (1) In this section:

3 (a) "Department land" means an area of land that is owned by the state, that
4 is under the jurisdiction of the department, and that is used for one of the purposes
5 specified in s. 23.09 (2) (d).

move

6 (b) "Historic property" has the meaning given in s. 44.31 (3).

7 (c) "Historically significant land" means land to which any of the following
8 applies:

- 9 1. Land that has been surveyed by the state historical society under s. 44.34
- 10 and that has been determined by the state historical society to be a historic property.
- 11 2. Land that is scheduled to be surveyed by the state historical society under
- 12 s. 44.34.
- 13 3. Land that is included on a map of archaeological resources under s. 44.48.
- 14 4. Land that is listed on the state register of historic places under s. 44.36.

15 (d) "Land" means land in fee simple, conservation easements, other easements
16 in land, and development rights in land.

insert 2-16

17 (2) The department may not do any of the following:

18 (a) Prohibit a person from using a metal detector on department land unless
19 the department land is historically significant land.

20 (b) Require a person who uses a metal detector on department land to hold a
21 permit, license, or other approval authorizing the use of a metal detector on that
22 land unless the department land is historically significant land.

23 (3) (c) Prohibit a person who uses a metal detector on department land that is not historically
24 significant land, the person may use a tool to dig on the department land to retrieve
25 and remove found items if all of the following apply:

open for searching

open for searching

open for searching from using

BILL

- 1
- 2
- 3
- 4

1. ~~(a)~~ The person uses a tool that is not more than 8 inches wide.

~~(b) The person does not disturb vegetative cover.~~

2. The person replaces soil disturbed or removed by digging. ✓

3. The person does not dig on department land that is more than 6 feet
 5 waterward of the ordinary high-water mark of any navigable waterway. ✓

6 SECTION 2. 44.47 (2) of the statutes is amended to read:

7 44.47 (2) UNLICENSED FIELD ARCHAEOLOGY PROHIBITED. No person other than the
 8 state archaeologist and individuals licensed by the director may engage in any field
 9 archaeology on any state site or site owned by a political subdivision. This subsection
 10 does not apply to a person who retrieves and removes found items as authorized
 11 under s. 23.21. ✓

12 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2682/3ins.
RNK:.....

INSERT 2-16

1 (e) "Land open for searching" means department land and stewardship land
2 but does not include state campgrounds or historically significant land.

3 (f) "Stewardship land" means land that is acquired in whole or in part with
4 funding from one or both stewardship programs and that is open to public access.

5 (g) "Stewardship program" means the stewardship program under s. 23.0915
6 or 23.0917.

Kite, Robin

From: Buhrandt, Jeff
Sent: Monday, October 26, 2009 10:22 AM
To: Kite, Robin
Subject: FW: Revisions
Importance: High

2682

We have a few more changes that need to be made to the metal detecting bill.

Here they are.

Thanks-

Jeff

- Page 3 line 12 add "vegetation and" after "replaces"
- Page 3 lines 8-10 delete language after (c) and replace with "prohibit a metal detector from using a tool to retrieve and remove found items in areas approved for detecting if the following apply. (Or include water from the shoreline to a depth of 6 feet in the definition of "land open for searching")"
- Page 3 line 13, language be changed to "the person does not exceed more than 6 foot depth of water from the shoreline of any navigable waterway." This would also make it consistent with the law that was changed in 2001 that you do not have access to the ordinary high water mark, you have to keep your feet wet.
- Metal detection will not be allowed on hunting land during deer hunting season.

- only deer
only firearms

Jeff Buhrandt
Office of State Senator Pat Kreitlow
(608) 266-7511

10/28/09

Called Jeff - left message

11/6/09

Jeff called back -

he will try & get better explanation on this item & will call me back



2009 BILL

In
11/10

X

Regen

1

AN ACT *to amend* 44.47 (2); and *to create* 23.21 of the statutes; **relating to:** the

2

use of metal detectors on certain land ^{and in lakes} and the removal of items found on that

3

land ^{or in those lakes}

in areas of lakes ^{SIX} that are less than 6 feet deep (shallow water),

^{or in shallow water}

Analysis by the Legislative Reference Bureau

This bill prohibits the Department of Natural Resources (DNR) from preventing a person from using a metal detector on most land under DNR's jurisdiction, and on land acquired with funding from the Warren Knowles-Gaylord Nelson Stewardship 2000 Program or its predecessor program and that is open to public access. It also prohibits DNR from requiring a person who uses a metal detector on that land to hold a license, permit, or other approval authorizing the use of a metal detector on the land. The bill provides an exception to these prohibitions so that the prohibitions do not apply to land that is historically significant or to state campgrounds. The bill defines historically significant land to include land that the State Historical Society determines is historic property, land that is included on a map of archaeological resources prepared by the State Historical Society, and land that is listed on the state register of historic places.

This bill also authorizes a person who is allowed to use a metal detector under the bill to use a tool to dig for and remove found items. The bill provides that a tool used for digging may not be more than eight inches wide, any soil that is disturbed

or in the shallow water

The bill also allows DNR to prohibit the use of metal detectors on land when that land is open to deer hunting

BILL

a lake bed unless ^{the} lake bed is beneath shallow water

or removed by digging must be replaced, and the digging may not occur on land that is more than a specified distance into a navigable waterway

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

1 SECTION 1. 23.21 of the statutes is created to read:

2 **23.21 Use of metal detectors.** (1) In this section:

3 (a) "Department land" means an area of land that is owned by the state, that
4 is under the jurisdiction of the department, and that is used for one of the purposes
5 specified in s. 23.09 (2) (d).

6 (b) "Historically significant land" means land to which any of the following
7 applies:

8 1. Land that has been surveyed by the state historical society under s. 44.34
9 and that has been determined by the state historical society to be a historic property.

10 2. Land that is scheduled to be surveyed by the state historical society under
11 s. 44.34.

12 3. Land that is included on a map of archaeological resources under s. 44.48.

13 4. Land that is listed on the state register of historic places under s. 44.36.

14 (c) "Historic property" has the meaning given in s. 44.31 (3).

15 (d) "Land" means land in fee simple, conservation easements, other easements
16 in land, and development rights in land.

17 (e) "Land open for searching" means department land and stewardship land
18 but does not include state campgrounds or historically significant land.

19 (g) "Stewardship land" means land that is acquired in whole or in part with
20 funding from one or both stewardship programs and that is open to public access.

insert 2-18

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~~(g)~~ ^(h) "Stewardship program" means the stewardship program under s. 23.0915 or 23.0917.

Except as provided in sub.(3), ✓
(2) The department may not do any of the following: *in shallow water or* ✓

(a) Prohibit a person from using a metal detector on land open for searching.

(b) Require a person who uses a metal detector on land open for searching to hold a permit, license, or other approval authorizing the use of a metal detector on that land. ✓

~~(c) Prohibit a person who uses a metal detector on land open for searching from using a tool to dig on the land to retrieve and remove found items if all of the following apply:~~

- ~~1. The person uses a tool that is not more than 8 inches wide.~~
- ~~2. The person replaces ^{vegetation and} soil disturbed or removed by digging.~~
- ~~3. The person does not dig on land that is more than 6 feet waterward of the ordinary high-water mark of any navigable waterway.~~

insert
3-14

SECTION 2. 44.47 (2) of the statutes is amended to read:

44.47 (2) UNLICENSED FIELD ARCHAEOLOGY PROHIBITED. No person other than the state archaeologist and individuals licensed by the director may engage in any field archaeology on any state site or site owned by a political subdivision. This subsection does not apply to a person who retrieves and removes found items as authorized under s. 23.21.

(END)

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LRB-2682/4ins.
RNK:.....

INSERT 2-18

1 (f) "Shallow water" means that part of a lake that is no deeper than 6 feet.

INSERT 3-14

2 (c) Prohibit a person who is using a metal detector on land open for searching
3 or who is using a metal detector in shallow water from digging to remove and retrieve
4 found items if all of the following apply:

- 5 1. If the person digs with a tool, the tool is no more than 8 inches wide.
6 2. If the person digs on land open for searching, the person replaces vegetation
7 and soil disturbed or removed by digging.
8 3. If the person digs on the bed of a lake, the bed of the lake is beneath shallow
9 water.

10 (3) The department may prohibit a person from using a metal detector on land
11 open for searching when the land is open to deer hunting deer with firearms

Barman, Mike

From: Buhrandt, Jeff
Sent: Friday, December 11, 2009 8:29 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-2682/4 Topic: Use of metal detectors on DNR lands

Please Jacket LRB 09-2682/4 for the SENATE.