

2009 DRAFTING REQUEST

Bill

Received: **01/09/2009**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Jauch (608) 266-3510**

By/Representing: **Sarah Barry**

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

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - nav. waters
Nat. Res. - parks and forestry
Agriculture - other
Local Gov't - misc**

Extra Copies: **RCT and MES**

Submit via email: **YES**

Requester's email: **Sen.Jauch@legis.wisconsin.gov**

Carbon copy (CC:) to: **peter.flaherty@wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Invasive species regulation

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 01/16/2009	bkraft 01/20/2009	rschluet 01/20/2009	_____	cduerst 01/20/2009		
/P2	rkite 01/27/2009	bkraft 01/29/2009	jfrantze 01/29/2009	_____	mbarman 01/29/2009		
/P3	rkite	bkraft	rschluet	_____	lparisi		State

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Handwritten notes:
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Handwritten notes: 1/28 bjk, 1/29 Jo, 1/29 ph, END

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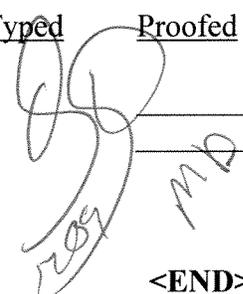
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Kite, Robin

From: Barry, Sarah
Sent: Thursday, January 08, 2009 3:04 PM
To: Kite, Robin
Subject: Bill Draft Request: Senator Jauch

Attachments: IS gaps bill draft updated.doc; RE: Follow ups for Sen. Jauch

Robin,

I am writing to request a bill draft on behalf of Senator Jauch. He is interested in the following DNR proposal:



IS gaps bill draft
updated.doc...

The purpose of the bill is to create new legislation surrounding invasive species enforcement, particularly regarding transport of invasive material.

Pete Flaherty is the DNR attorney working on this issue. I am attaching an e-mail from him—in particular I would like to point out issue number two in his memo related to fines for violations. You may not need this information, but you may find it useful.



RE: Follow ups for
Sen. Jauch

I am happy to meet with you or speak by phone to discuss the request further. Please let me know what your timeline will be for drafting this bill.

Thank you,

Sarah Barry
Office of State Senator Bob Jauch
118 South, State Capitol
608-266-3510 (office)
608-216-4355 (cell)

*Per Sarah Barry -
OK to talk directly
w/ Pete Flaherty at DNR*

Analysis

Section 1 adds an enumeration of general powers and duties to the invasive species law, s. 23.22, Wis. Stats., comparable to the enumerations of powers and duties found in other regulatory programs. It authorizes the department to hold hearings and compel the attendance of witnesses and the production of evidence; waive compliance with any requirement under s. 23.22, Wis. Stats., or shorten the time periods under this section to the extent necessary to prevent an emergency condition threatening public health, safety or welfare or the environment; secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise; advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government and other interested persons or groups. It also includes a requirement that DATCP and DNR enter into an Memorandum of Understanding regarding their respective roles and responsibilities in dealing with invasive species that are both plant pests and forest pests, and it requires other agencies of the state to cooperate with the department in the conduct of matters under s. 23.22, Wis. Stats., in which the interests of the respective agencies overlap.

Section 2 broadens the department's invasive species inspection authority to cover all invasive species rather than just aquatic invasive species. It also specifies the department's authority to seize and control invasive species. The inspection authority closely resembles DATCP's current authority in s. 94.01(4), Stats., for entry, inspection, seizure and control of plant pests.

Section 2 also revises the reporting periods and submittal dates set by the invasive species law (s. 23.22 (6) (b), Stats.) for the department to submit biennial and interim reports to the Legislature regarding the administration and progress of the Invasive Species Program, to coincide with the fiscal year. [The department has also recently requested that these revisions to the reporting periods and submittal dates be included in a Law Revision Committee remedial bill.]

Section 3 provides counties and municipalities with specific authority to regulate invasive species and for enforcement, but to prevent inconsistent or conflicting regulation from jurisdiction to jurisdiction, this provisions declares that the control of invasive species is a matter of statewide concern and requires that ordinances adopted by counties and municipalities be in reasonable accord with chapter 23 and invasive species rules established by the department under section 23.22, Stats. If the department determines that a local regulation is not in reasonable accord, after notice and opportunity for public hearing, it may issue an order declaring the local regulation void.

Sections 4 and 6 repeal ss. 23.225 and 23.245, respectively. The repealed statutes unintentionally overlap or conflict with prior law, or will implicitly limit the department's

general invasive species authority under s. 23.22, Stats., to promulgate rules to identify, classify and control invasive species. Both statutes require rulemaking by the department in order to become applicable, and no such rules have been proposed.

Section 5 specifies that DNR and DATCP are to administer and disperse funds that may become available under the federal Noxious Weed Control and Eradication Act of 2004, Public Law 108-412, for grants and agreements with organizations for noxious weed management. The agencies are required to work out the details via a memorandum of understanding.

Section 7 revises s. 26.30, Stats., to allow the Department to also use silvicultural methods to control forest pests, including invasive species. In order to manage forest pests on the forest lands of the state, current law gives the Department the authority to do “all things necessary” except practice silvicultural control. Cutting trees is generally considered to be a form of silvicultural control. The accepted method of controlling the spread of certain insects or diseases, both invasive and native, could include practices such as cutting or removing infected trees and possibly adjacent trees that may or may not appear to be healthy. An example of forest pests that include the cutting or removal of trees as a common management prescription include invasive species like the Emerald Ash Borer and native species like Jack Pine Budworm. The harvesting of trees is intended to reduce the population of the damaging agent in order to decrease population, thereby slowing the spread and minimizing the immediate impact.

Section 8 expands current law by broadening the ban on launching a boat, boat trailer or equipment with aquatic plants attached (or with zebra mussels attached, in the case of the St. Croix River) to make it apply to all navigable waters, consistent with the statute’s treatment of attached aquatic plants. It also adds seaplanes, vehicles, and other equipment or gear of any type to the list of items such as boats, trailers and boating equipment that are regulated. It removes the subjective “reason to believe” standard for personal responsibility on the part of the operator. Section 8 also adds provisions to also make it illegal for a person to take off in a seaplane or to transport any vehicle, boat, boat trailer, equipment or gear on a highway if aquatic plants or aquatic animals are attached, or to do so in violation of an order from a law enforcement officer who has reason to believe that aquatic plants or aquatic animals are attached.

Section 9 creates specific civil forfeitures for violations of s. 30.715 and for repeat violations. Currently, the general ch. 30, Stats., penalties apply and provide for a forfeiture of not more than \$50 for the first offense and not more than \$100 upon conviction of the same offense a second or subsequent time within one year. Section 9 sets a specific penalty for violation of s. 30.715 of a forfeiture of not more than \$500 for the first offense and not more than \$2,000 for a conviction of the same offense a second or subsequent time within 3 years.

Section 10 allows the department, through rulemaking, to add specific weeds such as invasive plant species to the definition of “noxious weeds” that applies statewide, for statewide consistency. Under current law, landowners are required to destroy “noxious weeds”, and local governments can enforce this requirement and destroy the weeds if the owner neglects to do so.

Costs can be taxed against the land. “Noxious weeds” are defined under current law to mean only Canada thistle, leafy spurge and field bindweed (creeping Jenny), plus any other weed the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

Section 11 exempts separately-discarded invasive plants from the current yard waste disposal ban (s. 287.07 (2), Stats.) and allows them to be landfilled instead of requiring composting with other yard wastes. Composting invasive plants with other yard wastes would spread the invasive plants when the compost is used in the community.

Section 12 amends the uniform traffic citation statute to expressly allow the uniform traffic citation or the conservation citation under s. 23.54 to be used for violations of s. 30.715, relating to the transport of aquatic plants and aquatic animals attached to seaplanes, vehicles, boats, boat trailers, equipment and gear, and to the placement of seaplanes, vehicles, boats, boat trailers, equipment and gear in navigable waters with aquatic plants or aquatic animals attached. This change makes it easier for law enforcement officers who are not Conservation Wardens to enforce s. 30.715, since they normally carry only the uniform traffic citation form. Violations of s. 30.715 will then be listed in the Uniform Traffic Bond Schedule and the Conservation Law Bond Schedule so all officers enforcing laws on highways will be aware of this violation and have the ability to use either a traffic citation or a DNR citation to enforce it.

Section 13 creates non-statutory language that allows the department to use emergency rule-like procedures for invasive species rule adoption under s. 23.22, Wis. Stats., and allows those rules to remain in effect until repealed or modified by the department. It facilitates fast regulatory response to future threats by allowing the procedures to be used to identify and regulate new invasive species. Under current law, the State’s permanent rulemaking process takes the department 12 to 18 months or more to complete. While rules can be adopted quickly under current emergency rulemaking authority, emergency rules expire after only 150 days (although up to two, 60-day extensions may be authorized by the Joint Committee for the Review of Administrative Rules) and cannot be re-promulgated as emergency rules a second time based on the same finding of emergency.

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

- 1 ✓ **SECTION 1.** 23.22 (2t) of the statutes is created to read:
- 2 **23.22 (2t) DEPARTMENT POWERS.** (a) The department may hold hearings relating
- 3 to any aspect of the administration of this section and, in connection with those hearings, compel
- 4 the attendance of witnesses and the production of evidence.

1 (b) The department may waive compliance with any requirement under this section or
2 shorten the time periods under this section to the extent necessary to prevent an emergency
3 condition threatening public health, safety or welfare or the environment.

4 (c) The department may secure necessary scientific, technical, administrative and
5 operational services, including laboratory facilities, by contract or otherwise.

6 (d) The department may advise, consult, contract and cooperate with other agencies of
7 the state, local governments, industries, other states, interstate or interlocal agencies, the federal
8 government and other interested persons or groups.

9 (e) The department of agriculture, trade and consumer protection and the department
10 shall establish a memorandum of understanding that provides the manner of sharing expenses
11 and responsibilities for surveys, monitoring and management of invasive species that are plant
12 pests and forest pests.

13 (f) The other agencies of the state shall cooperate with the department in the conduct of
14 matters under this section in which the interests of the respective agencies overlap. The
15 cooperating agencies may provide by agreement for the manner of sharing expenses and
16 responsibilities under this section.

17 ✓ **SECTION 2.** 23.22 (5) and (6) (b) and (c) of the statutes are amended to read:

18 23.22 (5) INSPECTIONS, RIGHT OF ENTRY AND CONTROL. (a) As part of the
19 statewide management plan, the department shall create a watercraft inspection program under
20 which the department shall conduct periodic inspections of boats, boating equipment, and boat
21 trailers entering and leaving navigable waters and shall educate boaters about the threat of
22 invasive species that are aquatic species. The department shall encourage the use of volunteers
23 or may use department employees for these inspections.

24 (b) For the purpose of enforcing this section, a warden or a representative of the
25 department, upon presentation of his or her credentials, is authorized to:

26 1. At all reasonable times, enter any premises, building or structure where an invasive
27 species is stored, processed or held, where records or reports relating to invasive species are kept,
28 where vehicles, boats, equipment or materials are located or where activities related to invasive

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law
23.09(3)(a)

1 species are conducted and to enter any vehicle, equipment or boat used to transport or hold
2 invasive species.

3 2. Inspect invasive species stored by or in the possession of any person, records or
4 reports relating to invasive species, and premises, buildings, structures, vehicles, boats,
5 equipment and materials related to invasive species.

6 3. Take reasonable diagnostic samples for biological examination.

7 4. Seize and destroy any invasive species possessed, moved, shipped or transported in
8 violation of any statute, rule, quarantine notice, permit or order.

9 (c) No person may prohibit entry, prohibit an inspection to be conducted or fail to
10 produce all requested records as authorized under this subsection.

11 (b) The department shall submit the biennial report under par. (a) before ~~July 1~~
12 October 1 of each even-numbered year. The first biennial report shall be submitted no later than
13 ~~July 1, 2004~~ October 1, 2004. Each report shall cover the 24-month period ending on the ~~March~~
14 ~~31~~ June 30 that immediately precedes the date of the report.

15 (c) In addition to the report required under par. (a), the department shall submit an
16 interim performance report to the legislature under s. 13.172 (2), and to the governor and the
17 council, on the progress that has been made on the control of invasive species. The department
18 shall submit this interim performance report before ~~July 1~~ October 1 of each odd-numbered year.
19 The first interim performance report shall be submitted no later than ~~July 1, 2005~~ October 1,
20 2005. Each interim performance report shall cover the 12-month period ending on the ~~March 31~~
21 June 30 that immediately precedes the date of the interim performance report.

22 **SECTION 3.** 23.22 (9) of the statutes is created to read:

23 23.22 (9) LOCAL PROGRAMS. (a) The legislature finds that the control of invasive
24 species is a matter of statewide concern. Ordinances enacted by cities, villages, towns or
25 counties to regulate and manage invasive species within their jurisdictions shall be in reasonable
26 accord with this chapter and rules established by the department under this section.

27 (b) If the department determines that an ordinance, regulation, resolution or other
28 restriction enacted or adopted by a local governmental unit exceeds the authority granted to local
29 governmental units under par. (a), the department may issue a notice to the local governmental

1 unit of the department's intent to issue an order under this paragraph. The department shall hold
2 an informal hearing on the matter if a hearing is requested by the local governmental unit within
3 30 days after it receives the notice. The informal hearing is not a contested case under ch. 227.
4 Following the hearing or following the failure of the local governmental unit to request a hearing
5 within 30 days after it receives the notice, the department may issue an order declaring the
6 ordinance, regulation, resolution or other restriction void.

7 ✓ **SECTION 4.** 23.225 of the statutes is repealed.

8 ✓ **SECTION 5.** 23.2355 of the statutes is created to read:

9 **23.2355 Weed management funds.** The department and the department of agriculture,
10 trade and consumer protection shall administer and award funds made available to the state under
11 the federal Noxious Weed Control and Eradication Act of 2004, 7 USC 7781, for grants for the
12 control or eradication of noxious weeds and agreements to provide financial and technical
13 assistance for the control or eradication of noxious weeds. The department and the department
14 of agriculture, trade and consumer protection shall develop and enter into a memorandum of
15 understanding regarding each agency's duties and responsibilities under this section.

16 ✓ **SECTION 6.** 23.245 of the statutes is repealed.

17 ✓ **SECTION 7.** 26.30 (2) of the statutes is amended to read:

18 **26.30 (2)** The department is vested with authority and jurisdiction in all matters relating
19 to the prevention, detection and control of forest pests on the forest lands of the state, and to do
20 all things necessary in the exercise of such authority and jurisdiction, ~~except that this shall not be~~
21 ~~construed to grant any powers or authority to the department for the silvicultural control of forest~~
22 ~~pests on any land.~~ This section shall apply only to the detection and control of forest pests on
23 forest lands and does not affect the authority of the department of agriculture, trade and
24 consumer protection under chs. 93 and 94. The action of the department under sub. (4) shall be
25 coordinated with the department of agriculture, trade and consumer protection in accordance
26 with s. 20.901. The secretaries of natural resources and agriculture, trade and consumer
27 protection shall execute annually a memorandum of agreement to enable the coordination of pest
28 control work of their departments.

29 **SECTION 8.** 30.715 of the statutes is amended to read:

1 **30.715 (Title) Placement of boats, trailers, and equipment, gear and seaplanes in**
2 **navigable waters; Transportation on a highway.** (1) In this section:

3 ✓(a) "Aquatic animal" means any vertebrate or invertebrate species that lives or grows in
4 water during any life stage, and includes the eggs, larvae or young of those species.

5 ✓(b) "Aquatic plant" means a submergent, emergent, or floating-leaf plant or any part
6 thereof. "Aquatic plant" does not mean wild rice if it is harvested during the open season
7 established by the department for harvesting wild rice.

8 ✓(c) "Highway" has the meaning given it in s. 340.01 (22), but for purposes of this
9 section "highway" does not include waterways or public boat access sites and associated parking
10 areas.

11 ✓(d) "Local governmental unit" means a political subdivision of this state, a special
12 purpose district in this state, an agency or corporation of a political subdivision or special
13 purpose district, or a combination or a subunit of any of the foregoing.

14 ✓(b) (e) "Public boat access site" means a site that provides access to a navigable water
15 for boats and that is open to the general public for free or for a charge or that is open only to
16 certain groups of persons for a charge.

17 ✓(2) ~~No~~ Except as provided in sub. (5), no person may place or use a vehicle, boat, boat
18 trailer, or boating equipment or gear of any type or place a vehicle, boat, boat trailer, equipment
19 or gear of any type in a navigable water, or land a seaplane in a navigable water, if the person has
20 reason to believe that the seaplane, boat, boat trailer, or boating equipment or gear has any
21 aquatic plants plant or aquatic animal attached.

22 ✓(3) ~~No person may place or use a boat or boating equipment or place a boat trailer in the~~
23 ~~Lower St. Croix River if the person has reason to believe that the boat, boat trailer or boating~~
24 ~~equipment has zebra mussels attached.~~ Except as provided in sub. (5), no person may take off
25 with a seaplane, or transport a vehicle, boat, boat trailer, equipment or gear of any type on a
26 highway if the seaplane, vehicle, boat, boat trailer, equipment or gear has any aquatic plant or
27 aquatic animal attached.

28 ✓(4) A law enforcement officer may order a person to do any of the following:

*look at
4135*

1 ✓ (a) Remove aquatic plants or aquatic animals from a seaplane, vehicle boat, boat trailer,
2 or boating equipment or gear before placing it in a navigable water, taking off with the seaplane
3 or transporting the vehicle, boat, boat trailer, equipment or gear on a highway.

4 ✓ (b) Remove or not place a seaplane, vehicle boat, boat trailer, or boating equipment, or
5 gear of any type in a navigable water if the law enforcement officer has reason to believe that the
6 seaplane, vehicle, boat, boat trailer, or boating equipment or gear has any aquatic plants plant or
7 aquatic animal attached.

8 ✓ (c) Remove zebra mussels from a boat, boat trailer or boating equipment before placing
9 it in the Lower St. Croix River Not take off with a seaplane or transport a vehicle, boat, boat
10 trailer, equipment, or gear of any type on a highway if the law enforcement officer has reason to
11 believe that the seaplane, boat, boat trailer, gear or equipment has any aquatic plant or animal
12 attached.

13 ✓ (d) Remove or not place a boat, boat trailer or boating equipment in a navigable water if
14 the law enforcement officer has reason to believe that the boat, boat trailer or boating equipment
15 has zebra mussels attached.

16 ✓ (5) Subsections (2) to (4) do not apply to a person who is exempt under s. 23.24 (4) from
17 the permit requirement of s. 23.24 (3) or who does any of the following:

18 ✓ (a) Transports aquatic plants or aquatic animals as authorized by a permit, license or
19 approval issued by the department or by department rule.

20 ✓ (b) Transports commercial aquatic plant harvesting equipment, or aquatic plant
21 harvesting equipment owned or operated by a local governmental unit, to a suitable location,
22 away from any water body, for purposes of cleaning the equipment of any remaining aquatic
23 plants or aquatic animals.

24 ✓ (c) Transports aquatic plants for purposes of constructing a waterfowl hunting blind or
25 an observation blind, if the aquatic plants are emergent, cut above the waterline, and contain no
26 invasive species.

27 ✓ (d) Transports duckweed that is incidentally attached to a seaplane, vehicle, boat, boat
28 trailer, equipment, or gear of any type.

Remove plants before placing in water or transporting from
Remove or not place vehicle in water if plants attached
Not take off with seaplane
Not transport on highway

1 (e) Transports any aquatic plant or aquatic animal that became attached while the person
2 was using the seaplane, vehicle, boat, boat trailer, equipment or gear in that navigable water or a
3 connected body of water and the person does not transport the seaplane, vehicle, boat, boat
4 trailer, equipment or gear on a highway or place it in a different body of water with the aquatic
5 plant or aquatic animal attached.

6 ~~(5)~~ (6) (a) The department shall prepare a notice that contains a summary of the
7 provisions under this section and shall make copies of the notice available to owners required to
8 post the notice under par. (b).

9 (b) Each owner of a public boat access site shall post and maintain the notice described
10 in par. (a).

11 ~~(6)~~ (7) No person may refuse to obey the order of a law enforcement officer who is
12 acting under sub. (4).

13 **SECTION 9.** 30.80 (5m) of the statutes is created to read:

14 30.80 **(5m)** Any person violating s. 30.715 (2), (3), (4) or (7) shall forfeit not more than
15 \$500 for the first offense and shall forfeit not more than \$2,000 upon conviction of the same
16 offense a 2nd or subsequent time within 3 years.

17 **SECTION 10.** 66.0407 (1) (b) of the statutes is amended to read:

18 66.0407 **(1)** (b) "Noxious weed" means Canada thistle, leafy spurge and field bindweed
19 (creeping Jenny), any weed defined by the department of natural resources by rule as a noxious
20 weed and any other weed the governing body of any municipality or the county board of any
21 county by ordinance or resolution declares to be noxious within its respective boundaries.

22 **SECTION 11.** 287.07 (7) ^(cm) (i) of the statutes is created to read:

23 287.07 **(7)** ^(cm) (i) The prohibition in sub. (2) does not apply to the landfill disposal of plants
24 that are classified as invasive species under s. 23.22 or their seeds, if the invasive plants or seeds
25 are collected separately from other yard waste for the purpose of eradication or control.

26 **SECTION 12.** 345.11 (1rm) is created to read:

27 345.11 **(1rm)** The uniform traffic citation or the citation form under s. 23.54 may be
28 used by an officer of a law enforcement agency of a municipality or county or a traffic officer
29 employed under s. 110.07 for violations of s. 30.715 or ordinances in conformity with that

1 section. When the uniform traffic citation is used, the report of conviction shall be forwarded to
2 the department. When the citation form under s. 23.54 is used, the procedure in ss. 23.50 to
3 23.85 applies.

4 **SECTION 13. Nonstatutory provision.** The department of natural resources may use
5 the procedure under section 227.24 of the statutes to promulgate rules authorized or required
6 under s. 23.22 (2) (b) 6. Notwithstanding section 227.24 (1) (c) and (2) of the statutes,
7 emergency rules promulgated under this subsection shall remain in effect until the date on which
8 permanent rules take effect or until repealed, repealed and recreated or amended by the
9 department of natural resources, whichever occurs first. Notwithstanding section 227.24 (1) (a)
10 and (3) of the statutes, the department is not required to provide evidence that promulgating a
11 rule under this subsection as an emergency rule is necessary for the preservation of public peace,
12 health, safety, or welfare and is not required to provide a finding of emergency for a rule
13 promulgated under this subsection.

14 - END -

Kite, Robin

From: Flaherty, Peter D - DNR
Sent: Friday, December 19, 2008 5:52 PM
To: Barry, Sarah
Cc: Heinen, Paul H - DNR; Van Haren, Thomas - DNR
Subject: RE: Follow ups for Sen. Jauch
Attachments: bayfieldcoordinance.pdf; polkcoordinance.pdf; burnettcoordinance.pdf; Washburn Co Transport Ordinance August 2008.doc; AIS Ordinance Oneida.pdf

Hi Sarah,

1. We were able to track down ordinances adopted by Bayfield, Burnette, Oneida, Polk and Washburn counties regulating the highway transport of vehicles, boats, trailers, etc., with aquatic plants, animals or "invasive species" attached or inside. Copies are attached. No two are identical. Vilas County might also have a similar ordinance but I don't have a copy of it. I'll forward any others that we find. In the absence of a good state law, we have encouraged counties to adopt these types of ordinances.

2. As for violations that would be comparable to s. 30.715 with our proposed amendments, the draft bill sets a maximum civil forfeiture of \$500 for the first offense and \$2000 for repeat violations. The current maximum forfeitures are only \$50 for the first offense and \$100 for the 2nd.

If a citation were issued in response to a violation, the uniform bond schedule calls for the penalty for any violation not listed in the schedule to be 50% of the maximum, plus court costs and surcharges. So, the \$500 maximum forfeiture in our proposal would result in a \$250 forfeiture plus court costs and surcharges for a total of \$438 until the new offenses are specifically listed in the schedule. For offenses that are specifically listed in the schedule, the forfeiture will be set by the State Judicial Conference.

Each year the State Judicial Conference must review and may revise and update the bond schedule. It would be expected to add these new violations to the schedule. The Judicial Conference normally relies on what DNR recommends to their Bond Committee for forfeiture amounts.

If the bill is passed before the Fall of 2009, we could have the new violations listed in the 2010 bond schedule. The 2009 bond schedule has already been approved and the current penalties provided for a violations of the current s. 30.715 are as follows:

Section Surcharges	Violation Description Total	Forfeiture	Costs &		
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Section Surcharges	Violation Description Total	Forfeiture	Costs &		
30.715(2)	Place or use boat or boating equipment or place boat trailer in navigable water if the person has reason to believe the boat, boat trailer, or boating equipment has any aquatic plants attached (W-30)(0-\$249)	25.00	6.50	123.00	\$154.50
30.715(3)	Place or use boat or boating equipment or place boat trailer in Lower St. Croix River if person has reason to believe that the boat, boat trailer or boating equipment has zebra mussels attached (W-29)(0-\$249)	25.00	6.50	123.00	\$154.50
30.715(5)(b)	Fail to post and maintain notice provided by department at public access sites (M-69)(0-\$249)	10.00	2.60	123.00	\$135.60
30.715(6)	Refuse to obey the order of a law enforcement officer acting under sub.(4)to remove or not place boat/trailer in water <i>1st offense</i> within 1 yr. (W-26)(0-\$249)	50.00	13.00	123.00	\$186.00
	Refuse to obey the order of a law enforcement officer acting				

30.715(6)	under sub.(4)to remove or not place boat/trailer in water (W-26)(0-\$249) <i>Second offense w/in 1 yr</i>	100.00	26.00	123.00	\$249.00
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In part because the maximum forfeitures for violation of s. 30.715 are currently are so low, these amounts are generally already set at the 50% level except for the refuse to obey a law enforcement officer's order, which is set at the current maximums for 1st and 2nd offense.

Other violations for comparison (dealing with transportation issues, aquatic plants, etc.):

Section	Violation Description	Forfeiture	Costs & Surcharges	Total	
23.24(3)(a)1	Unlawfully introduce nonnative aquatic plants into waters of state - <i>1st offense</i> (W-27) (0-\$375)	200.00	52.00	123.00	\$375.00
23.24(3)(a)1	Unlawfully introduce nonnative aquatic plants into waters of state - <i>2nd offense</i> within 5 yrs. (W-27) (700-\$2643 and/or 6-9months)	CRIME		Bail:	\$500.00
23.24(3)(a)2	Unlawfully manually remove aquatic plants from navigable waters - <i>1st offense</i> (W-27) (0-\$375)	100.00	26.00	123.00	\$249.00
23.24(3)(a)2	Unlawfully manually remove aquatic plants from navigable waters - <i>2nd offense</i> within 5 yrs. (W-27) (700-\$2643 and/or 6-9months)	CRIME		Bail:	\$500.00
23.24(3)(a)3	Unlawfully control aquatic plants in waters of this state by use of chemicals - <i>1st offense</i> (W-27) (0-\$375)	150.00	39.00	123.00	\$312.00
23.24(3)(a)3	Unlawfully control aquatic plants in waters of this state by use of chemicals - <i>2nd offense</i> within 5 yrs. (W-27) (700-\$2643 and/or 6-9 months)	CRIME		Bail:	\$500.00
23.24(3)(a)4	Unlawfully control aquatic plants in navigable waters by introducing biological agents, by using a process that involves dewatering, desiccation, burning, or freezing, or by using mechanical means - <i>1st offense</i> (W-27)(0-\$375)	150.00	39.00	123.00	\$312.00
23.24(3)(a)4	Unlawfully control aquatic plants in navigable waters by introducing biological agents, by using a process that involves dewatering, desiccation, burning, or freezing, or by using mechanical means - <i>2nd offense</i> within 5 yrs. (W-27) (700-\$2643 and/or 6-9 months)	CRIME		Bail:	\$500.00
23.24(5)	Unlawfully distribute an invasive aquatic plant (w-27)(0-\$249)	80.00	20.80	123.00	\$223.80
NR CHAPTER 109 - INVASIVE AQUATIC PLANTS					
	Intentionally introduce Eurasian water milfoil, curly				

NR 109.08 (2)	leaf pond weed, or purple loosestrife into waters of state (W-31)(0-\$375)	200.00	52.00	123.00	\$375.00
NR 109.08 (3)	Intentionally cut aquatic plants in public/navigable waters w/o removing cut vegetation from the body of water (W-32)(0-\$375)	100.00	26.00	123.00	\$249.00
NR 109.08(4)(a)	Place equipment used in aquatic plant management in navigable water if the person has reason to believe that the equipment has any aquatic plants or zebra mussels attached (W-33)(0-\$375)	100.00	26.00	123.00	\$249.00

30.13	Wharves & Piers obstructing navigable waters (W-17)(\$100-\$12,723)	500.00	130.00	123.00	\$753.00
30.15	Obstruct navigable water (W-6)(10-\$753 per day)	500.00	130.00	123.00	\$753.00
30.681(1)(b) 1	Operate motorboat with alcohol concentration at or above 0.08.% but less than 0.1% first offense (B10) (150- \$300)	250.00	0.00	0.00	\$250.00
30.681(1)(b) 1	Operate motorboat with alcohol concentration at or above 0.1 (B-10) (150-\$501)(2 nd or greater within 5 years is a <i>crime</i>)	250.00	65.00	123.00	\$438.00
30.681(1)(b) 1m	Operate motorboat with detectable amount of controlled substance in blood – <i>Is offense</i> (B-61)(150-\$501)	250.00	65.00	123.00	\$438.00
30.681(1)(b)2	Operate commercial motorboat with blood alcohol at .04% or more (B10) (150-\$501) first offense (2nd w/in 5 yrs= <i>crime</i>)	250.00	65.00	123.00	\$438.00
30.684(5)	Refuse to take test intoxicated motorboat operation (B-36)(150-\$501) (2nd or greater offense within 5 yrs = <i>crime</i>)	250.00	65.00	123.00	\$438.00

29.735(1)	Import non-native fish for stocking w/o a DNR permit (F-29)(0-\$2138)	500.00	130.00	123.00	375	5.00	\$1,133
29.736(2)	Illegally stock fish (F-29)(0-\$2138)	500.00	130.00	123.00	375	5.00	\$1,133

29.611	Wild Ginseng violations involving 1 lb or less <i>1st offense</i> (0-\$1133)	100.00	26.00	123.00	75.00	5.00	\$329.00
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	2nd offense within 3 yrs (0-2138)						
29.611	Wild Ginseng violations involving 2 to 5 lbs. <i>1st offense</i> (0-\$1133) 2nd offense within 3 yrs (0-2138)	200.00	52.00	123.00	150	5.00	\$530.00
29.611	Wild Ginseng violations involving over 5 lbs. <i>1st offense</i> (0-\$1133) 2nd offense within 3 yrs (0-2138)	300.00	78.00	123.00	225.	5.00	\$731.00
29.357(1)	Transport game birds or animals during closed season (A-21)(H-33) (0-\$2138)	60.00	15.60	123.00	45.00	5.00	\$248.60
29.503(4)(e)1.	Transport fish in vehicle that is not marked to identify it contains fish(C-40) (0-\$2138)	80.00	20.80	123.00	60.00	5.00	\$288.80
29.083(2)(b)	Knowingly fail to obey law enforcement officer's order (F-46)(M-58) (0-\$2138)	200.00	52.00	123.00	150.00	5.00	\$530.00
167.31(2)(b)	Place, possess or transport an uncased firearm, bow or crossbow in or on a vehicle (H-44)(A-1)(S-8)(S-9)(0-\$324)	40.00	10.40	123.00	30.00		\$203.40
167.31(2)(b)	Place, possess or transport a loaded firearm in or on vehicle (H-43)(S-8)(0-\$324)	60.00	15.60	123.00	45.00		\$243.60
169.06	Unlawfully introduce, stock, release or import to introduce, stock, release wild animals (R-4)(100-\$1128)	200.00	52.00	123.00	150.00		\$525.00
287.81(2)(b)	Permits solid waste to be thrown from a vehicle (M-6)(\$10-\$753) - <i>Under 10 gallons volume of solid waste</i>		50.00	13.00	123.00		\$186.00
287.81(2)(b)	Permits solid waste to be thrown from a vehicle (M-6)(\$10-\$753) - <i>10 gallons to 30 gallons volume of solid waste</i>		100.00	26.00	123.00		\$249.00
287.81(2)(b)	Permits solid waste to be thrown from a vehicle (M-6)(\$10-\$753) - <i>Over 30 gallons volume of solid waste</i>		200.00	52.00	123.00		\$375.00
NR 10.105(1)	Transport deer or bear not accompanied by person who tagged animal (A-13) (H-17)(0-\$2138)	60.00	15.60	123.00	45.00	5.00	\$248.60

NR 10.105(4)	Transported unauthorized carcass of a Deer outside of the CWD Management zone or adjacent DMU. (I-32) (0-\$2138)	40.00	10.40	123.00	30.00	5.00	\$208.40
NR 10.105(5)	Fail to exhibit registration or other proof that a deer or elk carcass harvested out of state was harvested in a CWD area or a non-CWD area. (I-33) (0-\$2138)	40.00	10.40	123.00	30.00	5.00	\$208.40
NR 10.105(6)	Transported unauthorized carcass of a Deer into this state from another state or area where CWD has been verified. (I-33)(0-\$2138)	100.00	26.00	123.00	75.00	5.00	\$329.00
NR 10.106(2)(a)-(f)	Transport deer out of unit of kill or adjoining unit before registering it (H-21)(0-\$2138)	50.00	13.00	123.00	37.50	5.00	\$228.50
NR 10.12(7)	Transport migratory bird w/o head or fully feathered wing attached (D-38)(0-\$2138)	60.00	15.60	123.00	45.00	5.00	\$248.60
NR 10.145(4)	Possess or transport untagged bobcat, fisher, or otter (T-02) (0-\$329)	100.00	26.00	123.00	75.00	5.00	\$329.00
NR 16.23	Violations of wild animal stocking rule provisions (R43) (0-\$530)	100.00	26.00	123.00	75.00	5.00	\$329.00
NR 19.05(1)	Import or release fish without a permit (M-12)(0-\$2138)	500.00	130.00	123.00	375.00	5.00	\$1,133.00
NR 19.05(3)	Transport live fish away from waters or shores of restricted waters (F84)(0-\$2138)	100.00	26.00	123.00	75.00	5.00	\$329.00
NR 19.055(1)	Fail to drain water from boat, trailer or equipment before transporting away from water or shore of restricted water (M-73) (0-329)	50.00	13.00	123.00	37.50	5.00	\$228.50
NR 20.10(6) or NR 20.07(3)	Transport sturgeon not exposed or in manner that they can be manipulated (F-50)(0-2138)	60.00	15.60	123.00	45.00	5.00	\$248.60

State Park Violations

NR 45.04(1)(f)	Transport, relocate, stock or release any plant or animal without written approval (P-95)(0-\$249)	50.00	13.00	123.00			\$186.00
NR 45.04(1)(g)	Possess firewood on DNR lands that originated from more than 50 miles away or from out of state (X-34)(0-\$249)	50.00	13.00	123.00			\$186.00

NR 45.04(3)(d)	Litter or deposit debris on state property (P-13)(0-\$249)	50.00	13.00	123.00	\$186.00
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Please let me know if you need more information.

Thanks

Peter D. Flaherty, Attorney
Bureau of Legal Services
Wisconsin Department of Natural Resources
PO Box 7921

Madison, WI 53707-7921

Phone: (608) 266-8254

Fax: (608) 266-6983

E-mail: Peter.Flaherty@wisconsin.gov

From: Barry, Sarah [mailto:Sarah.Barry@legis.wisconsin.gov]

Sent: Thursday, December 18, 2008 8:14 AM

To: Heinen, Paul H - DNR; Flaherty, Peter D - DNR

Subject: RE: Follow ups for Sen. Jauch

This sounds good. I will communicate with Robin Kite (drafting attorney) about getting an initial draft of the bill in process.

Thank you,

Sarah Barry

Office of State Senator Bob Jauch

118 South, State Capitol

608-266-3510 (office)

608-216-4355 (cell)

From: Heinen, Paul H - DNR [mailto:Paul.Heinen@Wisconsin.gov]

Sent: Wednesday, December 17, 2008 4:45 PM

To: Barry, Sarah; Flaherty, Peter D - DNR

Subject: Follow ups for Sen. Jauch

Pete and Sarah,

Just to be sure we are on the same page...we will provide you Sarah with info on the current invasives ordinances and get her comparable fine info so Bob can decide on whether he is comfortable with the fines we propose and if he is, have talking points about why he chose these fine amounts.

Cool with you Sarah?

 Paul Heinen

Wisconsin Department of Natural Resources

(☎) phone: (608) 266-2120

(✉) e-mail: Paul.Heinen@wi.gov



SOON

Rm run
PI
LRB-1401/ce
RNK:.....
Lbjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN
1/16

D-Note

LPS - Please check spelling.

SAV
xrefV

gen.

1 AN ACT ...; relating to: regulating the transportation of aquatic plants and
 2 aquatic animals, the administration of federal funds for the control and
 3 eradication of noxious weeds, the regulation of forest pests on forest lands, the
 4 placement of seaplanes, watercraft, gear, equipment, and boat trailers in
 5 navigable waters with aquatic plants or animals attached, the regulation of
 6 noxious weeds by municipalities, the disposal of invasive species, providing an
 7 exemption from rule-making procedures, and requiring the exercise of
 8 rule-making authority.

Analysis by the Legislative Reference Bureau

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

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

9 SECTION 1. 23.22 (2t) of the statutes is created to read:

1 **23.22 (2t) DEPARTMENT POWERS.** (a) The department may hold hearings
 2 relating to any aspect of the administration of this section and, in connection with
 3 those hearings, compel the attendance of witnesses and the production of evidence.

 ***NOTE: I think that this language is too broad. It allows DNR to hold hearings relating to any aspect of the administration of s. 23.22. But s. 23.22 includes provisions on matters other than compliance with invasive species regulation such as provisions on the duties of the invasive species council, on the requirements of DNR to submit a report to the legislature, and on other matters not related to compliance. I think that the authority to hold hearings in this provision should specifically relate to compliance with invasive species rules and other compliance related provisions such as the newly created inspection requirements.

4 (b) The department may waive compliance with any requirement under this
 5 section or shorten the time periods under this section to the extent necessary to
 6 prevent an emergency condition threatening public health, safety, or welfare or the
 7 environment.

8 (c) The department may secure necessary scientific, technical, administrative,
 9 and operational services, including laboratory facilities, by contract or otherwise.

10 (d) The department may advise and may consult, contract, and cooperate with,
 11 other agencies of the state, local governments, industries, other states, interstate or
 12 interlocal agencies, the federal government, and other interested persons or groups.

 ***NOTE: I did not include the requested language that requires the other state agencies to cooperate with DNR because that requirement exists in current law under s. 23.09 (3) (a), stats.

13 ^X
SECTION 2. 23.22 (5) of the statutes is renumbered 23.22 (5) (a).

14 ^X
SECTION 3. 23.22 (5) (b) of the statutes is created to read:

15 **23.22 (5) (b)** For the purpose of administering the watercraft inspection
 16 program under this section, a warden or a representative of the department, upon
 17 presentation of his or her credentials, may do any of the following at any reasonable
 18 time:

1 1. Enter any premises, building, or structure where an invasive species is
2 stored, processed, or held, where records or reports relating to invasive species are
3 kept, where vehicles, boats, equipment, or materials are located, or where activities
4 related to invasive species are conducted and enter any vehicle, equipment, or boat
5 used to transport or hold invasive species.

6 2. Inspect invasive species stored or possessed by any person.

7 3. Inspect records or reports relating to invasive species.

8 4. Take reasonable diagnostic samples for biological examination.

9 5. Seize and destroy any invasive species possessed or transported in violation
10 of this section, s. 23.235, s. 23.24, or any rule promulgated or notice, permit, or order
11 issued under this section, s. 23.235, or s. 23.24.

> ****NOTE: DNR's authority to take the actions described in subs. 1 through 5. may
> go beyond the scope of the department's authority to "conduct periodic inspections". It
may be necessary to broaden DNR's inspection authority under sub. (5) so that these
actions fall within the scope of that authority. That is, in addition to requiring "periodic
inspection" should this provision give DNR authority to conduct inspections if DNR has
reason to believe that a person is not complying with the DNR rules?

12 SECTION 4. 23.22 (5) (c) of the statutes is created to read:

13 23.22 (5) (c) No person may do any of the following:

14 1. Prohibit the department from gaining access to, or conducting an inspection
15 of, any place the department is authorized to inspect under this subsection.

16 2. Fail to provide records to the department that are required to be produced
17 under this subsection.

18 SECTION 5. 23.22 (6) (b) of the statutes is amended to read:

19 23.22 (6) (b) The department shall submit the biennial report under par. (a)
20 before ~~July~~ October 1 of each even-numbered year. ~~The first biennial report shall~~

1 ~~be submitted no later than July 1, 2004.~~ Each report shall cover the 24-month period
2 ending on the ~~March 31~~ June 30 that immediately precedes the date of the report.

3 History: 2001 a. 109 ss. 72t, 72xd; 2003 a. 33; 2005 a. 25, 160; 2007 a. 20.

SECTION 6. 23.22 (6) (c) of the statutes is amended to read:

4 23.22 (6) (c) In addition to the report required under par. (a), the department
5 shall submit an interim performance report to the legislature under s. 13.172 (2), and
6 to the governor and the council, on the progress that has been made on the control
7 of invasive species. The department shall submit this interim performance report
8 before ~~July~~ October 1 of each odd-numbered year. ~~The first interim performance~~
9 ~~report shall be submitted no later than July 1, 2005.~~ Each interim performance
10 report shall cover the 12-month period ending on the ~~March 31~~ June 30 that
11 immediately precedes the date of the interim performance report.

12 History: 2001 a. 109 ss. 72t, 72xd; 2003 a. 33; 2005 a. 25, 160; 2007 a. 20.

SECTION 7. 23.22 (7m) of the statutes is created to read:

13 23.22 (7m) ORDINANCES. A city, town, county, or village may adopt an ordinance
14 for the management and control of invasive species if the ordinance is not contrary
15 or inconsistent with this section.

> ****NOTE: The language in this provision is a simplified version of the language
provided in the draft. It does not, for example, include a hearings procedure for
determining whether an ordinance conflicts with state law. If you want to include the
hearing procedure, which is somewhat unusual for determining the validity of a local
ordinance, please let me know and we can discuss this issue.

X
16 **SECTION 8.** 23.225 of the statutes is repealed.

X
17 **SECTION 9.** 23.2355 of the statutes is created to read:

18 **23.2355 Weed management grants.** The department, in consultation with
19 the department of agriculture, trade and consumer protection, shall promulgate
20 rules that authorize the department, in consultation with the department of
21 agriculture, trade and consumer protection, to provide funds received by the federal

1 government under 7 USC 7782 to eligible recipients for the control or eradication of
2 noxious weeds. The rules shall authorize the department and the department of
3 agriculture, trade and consumer protection to use the funds received from the federal
4 government to provide technical assistance and to make grants to eligible recipients
5 to control or eradicate noxious weeds.

****NOTE: The language furnished for this draft contained a cross-reference to 7
USC 7781. I think the correct reference is 7 USC 7782. Please confirm the accuracy of
this cross-reference with Pete Flaherty at DNR.

6 **SECTION 10.** 23.245 of the statutes is repealed.

7 **SECTION 11.** 26.30 (2) of the statutes is amended to read:

8 **26.30 (2) POWERS.** The department is vested with authority and jurisdiction in
9 all matters relating to the prevention, detection and control of forest pests on the
10 forest lands of the state, and to do all things necessary in the exercise of such
11 authority and jurisdiction, ~~except that this shall not be construed to grant any~~
12 ~~powers or authority to the department for the silvicultural control of forest pests on~~
13 ~~any land.~~ This section shall apply only to the detection and control of forest pests on
14 forest lands and does not affect the authority of the department of agriculture, trade
15 and consumer protection under chs. 93 and 94. The action of the department under
16 sub. (4) shall be coordinated with the department of agriculture, trade and consumer
17 protection in accordance with s. 20.901. The secretaries of natural resources and
18 agriculture, trade and consumer protection shall execute annually a memorandum
19 of agreement to enable the coordination of pest control work of their departments.

History: 1977 c. 29 s. 1650m (1); 1979 c. 32 s. 92 (9); 1979 c. 110 s. 60 (11); 1983 a. 189; 1985 a. 13; 1991 a. 316; 2003 a. 33, 57.

20 **SECTION 12.** 30.715 (title) of the statutes is repealed and recreated to read:

21 **30.715 (title) Placement and transportation of aquatic plants and**
22 **animals in navigable waters.**

insert
5-19

1 X
SECTION 13. 30.715 (1) (a) of the statutes is renumbered 30.715 (1) (ag) and
2 amended to read:

3 30.715 (1) (ag) "Aquatic plant" means a submergent, emergent, or floating-leaf
4 plant or any part thereof. "Aquatic plant" does not mean wild rice if it is harvested
5 during the open season established by the department for harvesting wild rice.

6 History: 2001 a. 16 ss. 1307 to 1317.

6 X
SECTION 14. 30.715 (1) (ad) of the statutes is created to read:

7 30.715 (1) (ad) "Aquatic animal" means any vertebrate or invertebrate species
8 that lives or grows in water during any life stage and includes the eggs, larvae, or
9 young of those species.

10 X
SECTION 15. 30.715 (1) (am) of the statutes is created to read:

11 30.715 (1) (am) "Highway" has the meaning given in s. 340.01 (22) except that
12 it does not include public boat access sites or parking areas for public boat access
13 sites.

****NOTE: I did not specify here that the definition of a "highway" does not include
a waterway, as requested, because the definition in s. 340.01 (22) does not include
waterways.

14 X
SECTION 16. 30.715 (1) (ar) of the statutes is created to read:

15 30.715 (1) (ar) "Local governmental unit" means a political subdivision of this
16 state, a special purpose district in this state, an agency or corporation of a political
17 subdivision or special purpose district, or a combination or subunit of any of the
18 foregoing.

19 X
SECTION 17. 30.715 (2) of the statutes is renumbered 30.715 (2) (a) and
20 amended to read:

21 30.715 (2) (a) No person may place or use ~~a boat or boating watercraft, or~~
22 watercraft equipment ^{plain space} ~~to place a boat trailer or gear,~~ in a navigable water if the
_{plain}

1 person has reason to believe that the ~~boat, boat trailer, or boating~~ watercraft, or
2 watercraft equipment or gear, has any aquatic plants or aquatic animals attached.

History: 2001 a. 16 ss. 1307 to 1317.

> ****NOTE: I have used the term "watercraft" throughout s. 30.715 in this draft because that term is broadly defined in s. 30.01 (7), stats. I am assuming that the intention of this draft is to give broad application to the prohibitions created in the draft as it applies to invasive species on boats. If you would prefer to narrow the scope to boats rather than watercraft, please let me know and I will redraft accordingly.

3 **SECTION 18.** 30.715 (2) (b) of the statutes is created to read:

4 30.715 (2) (b) No person may place or use a boat trailer or seaplane in a
5 navigable water if the person has reason to believe that the boat trailer or seaplane
6 has any aquatic plants or aquatic animals attached.

7 **SECTION 19.** 30.715 (3) of the statutes is repealed.

8 **SECTION 20.** 30.715 (3m) of the statutes is created to read:

9 30.715 (3m) Except as provided in sub. (4m), no person may take off with a
10 seaplane, or transport watercraft, watercraft equipment or gear, or a boat trailer on
11 a highway with aquatic plants or aquatic animals attached.

12 **SECTION 21.** 30.715 (4) (a) of the statutes is amended to read:

13 30.715 (4) (a) Remove aquatic plants or aquatic animals from a boat, seaplane,
14 watercraft, watercraft equipment or gear, or a boat trailer, or boating equipment
15 before placing it in a navigable water or transporting it on a highway.

History: 2001 a. 16 ss. 1307 to 1317.

16 **SECTION 22.** 30.715 (4) (am) of the statutes is created to read:

17 30.715 (4) (am) Remove aquatic plants or aquatic animals from a seaplane
18 before taking off with the seaplane.

19 **SECTION 23.** 30.715 (4) (b) of the statutes is amended to read:

20 30.715 (4) (b) Remove from, or not place in, a navigable water, a boat, seaplane,
21 watercraft, watercraft equipment or gear, or a boat trailer, or boating equipment in

1 ~~a navigable water~~ if the law enforcement officer has reason to believe that the boat,
2 ~~seaplane, watercraft, watercraft equipment or gear, or boat trailer, or boating~~
3 ~~equipment~~ has aquatic plants or aquatic animals attached.

History: 2001 a. 16 ss. 1307 to 1317.

4 **SECTION 24.** 30.715 (4) (c) of the statutes is repealed.

5 **SECTION 25.** 30.715 (4) (cm) of the statutes is created to read:

6 30.715 (4) (cm) Except as provided in sub. (4m), not take off with a seaplane,
7 or transport watercraft, watercraft equipment or gear, or a boat trailer on a highway,
8 if the law enforcement officer has reason to believe that the seaplane, watercraft,
9 watercraft equipment or gear, or boat trailer has aquatic plants or aquatic animals
10 attached.

11 **SECTION 26.** 30.715 (4) (d) of the statutes is repealed.

12 **SECTION 27.** 30.715 (4m) of the statutes is created to read:

13 30.715 (4m) Subsections (2) to (4) do not apply to any of the following:

14 (a) A person who is exempt under s. 23.24 (4) from the permit requirement
15 under s. 23.24 (3).

16 (b) A person who transports aquatic aquatic plants or aquatic animals in a
17 manner authorized by an approval issued by the department or by a rule
18 promulgated by the department.

****NOTE: If a person is exempt from subs. (2) to (4) based on a DNR approval or rule, I think that the draft probably needs language authorizing DNR to issue approvals or promulgate rules notwithstanding the requirements of s. 30.715.

19 (c) A person who transports commercial aquatic plant harvesting equipment
20 or aquatic plant harvesting equipment owned or operated by a local governmental
21 unit, to a suitable location away from any body of water, for the purpose of cleaning
22 the equipment to remove aquatic plants or aquatic animals.

****NOTE: Who decides whether a location is "suitable"? Could the draft have a distance requirement instead?

1 (d) A person who transports aquatic plants for the purpose of constructing a
2 waterfowl hunting blind or an observation blind, if the aquatic plants are emergent,
3 cut above the waterline, and contain no invasive species as defined under s. 23.22 (1)

4 (c).

> ****NOTE: Is the cross-reference to s. 23.22 (1) (c) that I have included in this provision correct?

5 (e) A person who transports duckweed that is incidentally attached to a
6 seaplane, watercraft, watercraft equipment or gear, or a boat trailer.

7 (f) A person who uses a seaplane, watercraft, watercraft equipment or gear, or
8 a boat trailer in a navigable water, or a connected body of water, with an aquatic
9 aquatic plant or aquatic animal attached if the aquatic plant or aquatic animal
10 became attached while the person was using the seaplane, watercraft, watercraft
11 equipment or gear, or boat trailer in that navigable water or a connected body of
12 water, and the person does not transport the seaplane, watercraft, watercraft
13 equipment or gear, or boat trailer on a highway or place it in a different body of water
14 with the aquatic plant or aquatic animal attached.

> ****NOTE: I think that it would be advisable to include a definition of a "connected body of water?"

15 SECTION 28. 66.0407 (1) (b) of the statutes is amended to read:

16 66.0407 (1) (b) "Noxious weed" means Canada thistle, leafy spurge and field
17 bindweed (creeping Jenny), any weed designated by the department of natural
18 resources by rule as a noxious weed, and any other weed the governing body of any
19 municipality or the county board of any county by ordinance or resolution declares
20 to be noxious within its respective boundaries.

History: 1975 c. 394 s. 12; 1975 c. 421; Stats. 1975 s. 66.96; 1983 a. 112, 189; 1989 a. 56 s. 258; 1991 a. 39, 316; 1997 a. 287; 1999 a. 150 ss. 617 to 619; Stats. 1999 s. 66.0407.

1 X
SECTION 29. 66.0407 (1) (b) of the statutes is amended to read:

2 66.0407 (1) (b) "Noxious weed" means Canada thistle, leafy spurge and field
3 bindweed (creeping Jenny), any weed designated as a noxious weed by the
4 department of natural resources by rule, and any other weed the governing body of
5 any municipality or the county board of any county by ordinance or resolution
6 declares to be noxious within its respective boundaries.

History: 1975 c. 394 s. 12; 1975 c. 421; Stats. 1975 s. 66.96; 1983 a. 112, 189; 1989 a. 56 s. 258; 1991 a. 39, 316; 1997 a. 287; 1999 a. 150 ss. 617 to 619; Stats. 1999 s. 66.0407.

7 X
SECTION 30. 287.07 (7) (cm) of the statutes is created to read:

8 287.07 (7) (cm) The prohibition in sub. (2) does not apply to the the disposal of
9 plants that are classified by the department as invasive species under s. 23.22 (2) or
10 their seeds, if the plants or seeds are collected separately from other yard waste for
11 the purpose of eradication or control.

****NOTE: I'm not sure what "collected separately" means here. Should the provision exempt plants or seeds that are "disposed of separately" instead?

12 X
SECTION 31. 345.11 (1j) of the statutes is created to read:

13 345.11 (1j) The uniform traffic citation or the citation form under s. 23.54 shall
14 be used for violations of s. 30.715, or ordinances in conformity with s. 30.715, relating
15 to the transportation of aquatic plants and aquatic animals if the violation is
16 committed on a highway. When the uniform traffic citation is used, the report of
17 conviction shall be forwarded to the department. When the citation form under s.
18 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

19 **SECTION 32. Nonstatutory provisions.**

20 (1) Using the procedure under section 227.24 of the statutes, the department
21 of natural resources may promulgate emergency rules required under s. 23.22 (2) (b)
22 6. of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes,
23 emergency rules promulgated under this subsection remain in effect until June 30,

section

1 2012[^] or the date on which the permanent rules promulgated under section 23.33 (2)
2 (b) 6. of the statutes, take effect, whichever is sooner. Notwithstanding section
3 227.24 (1) (a) and (3) of the statutes, the department of natural resources is not
4 required to provide evidence that promulgating a rule under this subsection as an
5 emergency rule is necessary for the preservation of public peace, health, safety, or
6 welfare and is not required to provide a finding of emergency for a rule promulgated
7 under this subsection. *g*

****NOTE: I have included a deadline for the expiration of emergency rules. Without
this deadline, the emergency rules could remain in effect indefinitely if permanent rules
are never promulgated. Is the deadline in this provision acceptable?

8

(END)

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1401/ins
RNK:.....

INSERT 5-19

1 X
SECTION 1. 30.124 (1) (a) of the statutes is amended to read:

2 30.124 (1) (a) Cut aquatic plants, as defined in s. 30.715 (1) (a) (ag), without
3 removing them from the water, for the purpose of improving waterfowl nesting,
4 brood, and migration habitat.

History: 1987 a. 294; 1989 a. 31; 1995 a. 227; 1997 a. 248; 2001 a. 16.

5 SECTION 2. 30.1255 (3) (b) of the statutes is amended to read:

6 30.1255 (3) (b) The department shall submit the first report required under
7 par. (a) before July 1, 1994, and shall submit subsequent reports before July October
8 1 of each even-numbered year thereafter. ~~Beginning with the report due before July~~
9 ~~1, 2004, the department shall submit each report required under par. (a) as part of~~
10 the corresponding biennial report under s. 23.22 (6).

History: 1991 a. 269; 1997 a. 27; 1999 a. 9; 2001 a. 109.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1401^{e PI}dn

RNK:.....

Lbjk

Date

I have prepared this draft in preliminary form because I have included notes in the draft that ask questions or that raise issues that must be resolved before the draft can be redrafted in introducible form. Please review the draft closely, both to address these notes and to ensure that changes I have made to the submitted language are consistent with your intent. Please feel free to contact me if you have any questions about this 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-1401/P1dn
RNK:bjk:rs

January 20, 2009

I have prepared this draft in preliminary form because I have included notes in the draft that ask questions or that raise issues that must be resolved before the draft can be redrafted in introducible form. Please review the draft closely, both to address these notes and to ensure that changes I have made to the submitted language are consistent with your intent. Please feel free to contact me if you have any questions about this draft.

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

Kite, Robin

From: Barry, Sarah
Sent: Friday, January 23, 2009 9:35 AM
To: Kite, Robin
Subject: RE: Call Yesterday

Hi Robin,

Thank you for your kind thoughts.

Please do go ahead and work on the redraft, Bob is supportive of DNR's point of view on this legislation. Why don't we leave the meeting on the calendar for now. We can touch base on Monday and we can make a decision about meeting then. I agree we probably should wait, but I will need to talk to Bob and look at his schedule to determine when we should meet.

I am glad you were able to meet with Pete. Let me know if there are any issues you think Bob should be alerted to before we meet.

Thank you & I will give you a call on Monday.

Sara

From: Kite, Robin
Sent: Fri 1/23/2009 9:19 AM
To: Barry, Sarah
Subject: RE: Call Yesterday

Sarah:

I'm so sorry about your fall! I hope that you are not in too much pain and that you heal quickly.

I called you yesterday because I met with Pete Flaherty to go over the invasive species draft. He suggested a number of changes to the draft and it occurred to me that you might want me to prepare a redraft before we have a meeting. It seems to me that it would be easier to understand the issues if everyone had a copy of a revised draft for the meeting. But, given budget drafting priorities, I probably cannot have a redraft done before next week's meeting. So---

1. Should I begin work on a redraft based on my discussions with Pete Flaherty?
2. If you would like me to do a redraft, do you want to wait until the redraft is done to schedule a meeting?
3. Or would you just prefer to have our meeting as scheduled, and wait for the redraft?

Thanks!

Robin

From: Barry, Sarah
Sent: Friday, January 23, 2009 8:33 AM
To: Kite, Robin
Subject: Call Yesterday

Robin,

I am sorry I have not been able to return your call yet. I actually fell on the ice and dislocated my knee cap on Wed evening while I was walking my dogs. I am going to be out of the office until Monday, but I am planning to do some work from home today. Send me a note if you have questions or concerns about the invasive species transport bill.

I am also available by cell phone--216-4355.

Thank you,

Sarah Barry

*Draft
Instructions
from Pete
Flaherty*

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

*Add back in
the penalty provision
created as 30.80(5m)* ✓

*Add new provision
23.22(3)(c)* ✓

1 **AN ACT to repeal** 23.225, 23.245, 30.715 (3), 30.715 (4) (c) and 30.715 (4) (d); **to**
2 **renumber** 23.22 (5); **to renumber and amend** 30.715 (1) (a) and 30.715 (2);
3 **to amend** 23.22 (6) (b), 23.22 (6) (c), 26.30 (2), 30.124 (1) (a), 30.1255 (3) (b),
4 30.715 (4) (a), 30.715 (4) (b) and 66.0407 (1) (b); **to repeal and recreate** 30.715
5 (title); and **to create** 23.22 (2t), 23.22 (5) (b), 23.22 (5) (c), 23.22 (7m), 23.2355,
6 30.715 (1) (ad), 30.715 (1) (am), 30.715 (1) (ar), 30.715 (2) (b), 30.715 (3m),
7 30.715 (4) (am), 30.715 (4) (cm), 30.715 (4m), 287.07 (7) (cm) and 345.11 (1j) of
8 the statutes; **relating to:** regulating the transportation of aquatic plants and
9 aquatic animals, the administration of federal funds for the control and
10 eradication of noxious weeds, the regulation of forest pests on forest lands, the
11 placement of seaplanes, watercraft, gear, equipment, and boat trailers in
12 navigable waters with aquatic plants or animals attached, the regulation of
13 noxious weeds by municipalities, the disposal of invasive species, providing an

1 exemption from rule-making procedures, and requiring the exercise of
2 rule-making authority.

Analysis by the Legislative Reference Bureau

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

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

3 **SECTION 1.** 23.22 (2t) of the statutes is created to read:

4 23.22 (2t) DEPARTMENT POWERS. (a) The department may hold hearings
5 relating to any aspect of the administration of this section and, in connection with
6 those hearings, compel the attendance of witnesses and the production of evidence.

****NOTE: I think that this language is too broad. It allows DNR to hold hearings relating to any aspect of the administration of s. 23.22. But s. 23.22 includes provisions on matters other than compliance with invasive species regulation such as provisions on the duties of the invasive species council, on the requirements of DNR to submit a report to the legislature, and on other matters not related to compliance. I think that the authority to hold hearings in this provision should specifically relate to compliance with invasive species rules and other compliance related provisions such as the newly created inspection requirements.

Per Pete - intends this provision to be broad

7 (b) The department may waive compliance with any requirement under this
8 section or shorten the time periods under this section to the extent necessary to
9 prevent an emergency condition threatening public health, safety, or welfare or the
10 environment.

11 (c) The department may secure necessary scientific, technical, administrative,
12 and operational services, including laboratory facilities, by contract or otherwise.

13 (d) The department may advise and may consult, contract, and cooperate with,
14 other agencies of the state, local governments, industries, other states, interstate or
15 interlocal agencies, the federal government, and other interested persons or groups.

insert 2-15 →

***NOTE: I did not include the requested language that requires the other state agencies to cooperate with DNR because that requirement exists in current law under s. 23.09 (3) (a), stats.

wants this to be reciprocal other agencies must cooperate w/ DNR

1 SECTION 2. 23.22 (5) of the statutes is renumbered 23.22 (5) (a).

2 SECTION 3. 23.22 (5) (b) of the statutes is created to read:

3 23.22 (5) (b) For the purpose of administering the watercraft inspection
4 program under this section, a warden or a representative of the department, upon
5 presentation of his or her credentials, may do any of the following at any reasonable
6 time:

change to identification? the person may not be "credentialed"
at any reasonable time

7 1. Enter any premises, building, or structure where an invasive species is
8 stored, processed, or held, where records or reports relating to invasive species are
9 kept, where vehicles, boats, equipment, or materials are located, or where activities
10 related to invasive species are conducted and enter any vehicle, equipment, or boat
11 used to transport or hold invasive species.

12 2. Inspect invasive species stored or possessed by any person.

13 3. Inspect records or reports relating to invasive species.

14 4. Take reasonable diagnostic samples for biological examination.

15 5. Seize and destroy any invasive species possessed or transported in violation
16 of this section or s. 23.235 or 23.24, or any rule promulgated or notice, permit, or order
17 issued under this section or s. 23.235 or 23.24.

***NOTE: DNR's authority to take the actions described in subds. 1. through 5. may go beyond the scope of the department's authority to "conduct periodic inspections." It may be necessary to broaden DNR's inspection authority under sub. (5) so that these actions fall within the scope of that authority. That is, in addition to requiring "periodic inspection" should this provision give DNR authority to conduct inspections if DNR has reason to believe that a person is not complying with the DNR rules?

quarantine? may need new x-ref. to ch. 26 26.30(7)? "zone of infestation"

This authority relates to all of 23.22 so instead create a sub(5a)

18 SECTION 4. 23.22 (5) (c) of the statutes is created to read:

19 23.22 (5) (c) No person may do any of the following:

1 1. Prohibit the department from gaining access to, or conducting an inspection
2 of, any place the department is authorized to inspect under this subsection.

3 2. Fail to provide records to the department that are required to be produced
4 under this subsection.

5 **SECTION 5.** 23.22 (6) (b) of the statutes is amended to read:

6 23.22 (6) (b) The department shall submit the biennial report under par. (a)
7 before ~~July~~ October 1 of each even-numbered year. ~~The first biennial report shall~~
8 ~~be submitted no later than July 1, 2004.~~ Each report shall cover the 24-month period
9 ending on the ~~March 31~~ June 30 that immediately precedes the date of the report.

10 **SECTION 6.** 23.22 (6) (c) of the statutes is amended to read:

11 23.22 (6) (c) In addition to the report required under par. (a), the department
12 shall submit an interim performance report to the legislature under s. 13.172 (2), and
13 to the governor and the council, on the progress that has been made on the control
14 of invasive species. The department shall submit this interim performance report
15 before ~~July~~ October 1 of each odd-numbered year. ~~The first interim performance~~
16 ~~report shall be submitted no later than July 1, 2005.~~ Each interim performance
17 report shall cover the 12-month period ending on the ~~March 31~~ June 30 that
18 immediately precedes the date of the interim performance report.

19 **SECTION 7.** 23.22 (7m) of the statutes is created to read:

20 23.22 (7m) ORDINANCES. ^(a) A city, town, county, or village may adopt an ordinance
21 for the management and control of invasive species if the ordinance is not contrary
22 or inconsistent with this section.

***NOTE: The language in this provision is a simplified version of the language provided in the draft. It does not, for example, include a hearings procedure for determining whether an ordinance conflicts with state law. If you want to include the hearing procedure, which is somewhat unusual for determining the validity of a local ordinance, please let me know and we can discuss this issue.

✓
model
after current
provision
re. hunting
streams
see original
draft
(in ch. 30
currently)

1 **SECTION 8.** 23.225 of the statutes is repealed.

2 **SECTION 9.** 23.2355 of the statutes is created to read:

3 **23.2355 Weed management grants.** The department, in consultation with
4 the department of agriculture, trade and consumer protection, shall promulgate
5 rules that authorize the department, in consultation with the department of
6 agriculture, trade and consumer protection, to provide funds received by the federal
7 government under 7 USC 7782 to eligible recipients for the control or eradication of
8 noxious weeds. The rules shall authorize the department and the department of
9 agriculture, trade and consumer protection to use the funds received from the federal
10 government to provide technical assistance and to make grants to eligible recipients
11 to control or eradicate noxious weeds.

****NOTE: The language furnished for this draft contained a cross-reference to 7
USC 7781. I think the correct reference is 7 USC 7782. Please confirm the accuracy of
this cross-reference with Pete Flaherty at DNR.

12 **SECTION 10.** 23.245 of the statutes is repealed.

13 **SECTION 11.** 26.30 (2) of the statutes is amended to read:

14 26.30 (2) ~~POWERS.~~ The department is vested with authority and jurisdiction in
15 all matters relating to the prevention, detection and control of forest pests on the
16 forest lands of the state, and to do all things necessary in the exercise of such
17 authority and jurisdiction, ~~except that this shall not be construed to grant any~~
18 ~~powers or authority to the department for the silvicultural control of forest pests on~~
19 ~~any land.~~ This section shall apply only to the detection and control of forest pests on
20 forest lands and does not affect the authority of the department of agriculture, trade
21 and consumer protection under chs. 93 and 94. The action of the department under
22 sub. (4) shall be coordinated with the department of agriculture, trade and consumer
23 protection in accordance with s. 20.901. The secretaries of natural resources and

1 agriculture, trade and consumer protection shall execute annually a memorandum
2 of agreement to enable the coordination of pest control work of their departments.

3 **SECTION 12.** 30.124 (1) (a) of the statutes is amended to read:

4 30.124 (1) (a) Cut aquatic plants, as defined in s. 30.715 (1) (a) (ag), without
5 removing them from the water, for the purpose of improving waterfowl nesting,
6 brood, and migration habitat.

7 **SECTION 13.** 30.1255 (3) (b) of the statutes is amended to read:

8 30.1255 (3) (b) The department shall submit the first report required under
9 par. (a) before July 1, 1994, and shall submit subsequent reports before July October
10 1 of each even-numbered year thereafter. ~~Beginning with the report due before July~~
11 ~~1, 2004, the department shall submit each report required under par. (a) as part of~~
12 the corresponding biennial report under s. 23.22 (6).

13 **SECTION 14.** 30.715 (title) of the statutes is repealed and recreated to read:

14 **30.715** (title) Placement and transportation of aquatic plants and
15 animals ^{and placement} in navigable waters.

16 **SECTION 15.** 30.715 (1) (a) of the statutes is renumbered 30.715 (1) (ag) and
17 amended to read:

18 30.715 (1) (ag) "Aquatic plant" means a submergent, emergent, or floating-leaf
19 plant or any part thereof. "Aquatic plant" does not mean wild rice if it is harvested
20 during the open season established by the department for harvesting wild rice.

21 **SECTION 16.** 30.715 (1) (ad) of the statutes is created to read:

22 30.715 (1) (ad) "Aquatic animal" means any vertebrate or invertebrate species
23 that lives or grows in water during any life stage and includes the eggs, larvae, or
24 young of those species.

25 **SECTION 17.** 30.715 (1) (am) of the statutes is created to read:

1 30.715 (1) (am) "Highway" has the meaning given in s. 340.01 (22), except that
2 it does not include public boat access sites or parking areas for public boat access
3 sites.

****NOTE: I did not specify here that the definition of a "highway" does not include
a waterway, as requested, because the definition in s. 340.01 (22) does not include
waterways.

4 **SECTION 18.** 30.715 (1) (ar) of the statutes is created to read:

5 30.715 (1) (ar) "Local governmental unit" means a political subdivision of this
6 state, a special purpose district in this state, an agency or corporation of a political
7 subdivision or special purpose district, or a combination or subunit of any of the
8 foregoing.

*use def. in L
346.01 (74)*

9 **SECTION 19.** 30.715 (2) of the statutes is renumbered 30.715 (2) (a) and
10 amended to read:

11 30.715 (2) (a) No person may place or use a ~~boat or boating~~ watercraft, or
12 watercraft equipment or ~~place a boat trailer gear,~~ in a navigable water if the person
13 ~~has reason to believe that~~ the boat, boat trailer, or boating watercraft, or watercraft
14 equipment or gear, has any aquatic plants or aquatic animals attached.

*add vehicle
back in
throughout
30.715(a)*

****NOTE: I have used the term "watercraft" throughout s. 30.715 in this draft
because that term is broadly defined in s. 30.01 (7), stats. I am assuming that the
intention of this draft is to give broad application to the prohibitions created in the draft
as it applies to invasive species on boats. If you would prefer to narrow the scope to boats
rather than watercraft, please let me know and I will redraft accordingly.

15 **SECTION 20.** 30.715 (2) (b) of the statutes is created to read:

16 30.715 (2) (b) No person may place or use a boat trailer or seaplane in a
17 navigable water if ~~the person has reason to believe that~~ the boat trailer or seaplane
18 has any aquatic plants or aquatic animals attached.

19 **SECTION 21.** 30.715 (3) of the statutes is repealed.

20 **SECTION 22.** 30.715 (3m) of the statutes is created to read:

throughout

*(vehicle, seaplanes, watercraft, watercraft trailers, equipment, (gear) of any type)
create new def.?*

1 30.715 **(3m)** Except as provided in sub. (4m), no person may take off with a
2 seaplane, or transport watercraft, watercraft equipment or gear, or a boat trailer on
3 a highway with aquatic plants or aquatic animals attached.

4 **SECTION 23.** 30.715 (4) (a) of the statutes is amended to read:

5 30.715 **(4)** (a) Remove aquatic plants or aquatic animals from a boat, seaplane,
6 watercraft, watercraft equipment or gear, or a boat trailer, or boating equipment
7 before placing it in a navigable water or transporting it on a highway.

8 **SECTION 24.** 30.715 (4) (am) of the statutes is created to read:

9 30.715 **(4)** (am) Remove aquatic plants or aquatic animals from a seaplane
10 before taking off with the seaplane.

11 **SECTION 25.** 30.715 (4) (b) of the statutes is amended to read:

12 30.715 **(4)** (b) Remove from, or not place in, a navigable water, a boat, seaplane,
13 watercraft, watercraft equipment or gear, or a boat trailer, or boating equipment in
14 a navigable water if the law enforcement officer has reason to believe that the boat,
15 seaplane, watercraft, watercraft equipment or gear, or boat trailer, or boating
16 equipment has aquatic plants or aquatic animals attached.

17 **SECTION 26.** 30.715 (4) (c) of the statutes is repealed.

18 **SECTION 27.** 30.715 (4) (cm) of the statutes is created to read:

19 30.715 **(4)** (cm) Except as provided in sub. (4m), not take off with a seaplane,
20 or transport watercraft, watercraft equipment or gear, or a boat trailer on a highway,
21 if the law enforcement officer has reason to believe that the seaplane, watercraft,
22 watercraft equipment or gear, or boat trailer has aquatic plants or aquatic animals
23 attached.

24 **SECTION 28.** 30.715 (4) (d) of the statutes is repealed.

25 **SECTION 29.** 30.715 (4m) of the statutes is created to read:

1 30.715 (4m) Subsections (2) to (4) do not apply to any of the following:

2 (a) A person who is exempt under s. 23.24 (4) from the permit requirement
3 under s. 23.24 (3).

4 (b) A person who transports aquatic plants or aquatic animals in a manner
5 authorized by an approval issued by the department or by a rule promulgated by the
6 department.

 ****NOTE: If a person is exempt from subs. (2) to (4) based on a DNR approval or
rule, I think that the draft probably needs language authorizing DNR to issue approvals
or promulgate rules notwithstanding the requirements of s. 30.715.

couldn't list them all

7 (c) A person who transports commercial aquatic plant harvesting equipment
8 or aquatic plant harvesting equipment owned or operated by a local governmental
9 unit, to a suitable location away from any body of water, for the purpose of cleaning
10 the equipment to remove aquatic plants or aquatic animals.

 ****NOTE: Who decides whether a location is "suitable"? Could the draft have a
distance requirement instead?

11 (d) A person who transports aquatic plants for the purpose of constructing a
12 waterfowl hunting blind or an observation blind, if the aquatic plants are emergent,
13 cut above the waterline, and contain no invasive species as defined under s. 23.22 (1)
14 (c).

 ****NOTE: Is the cross-reference to s. 23.22 (1) (c) that I included in this provision
correct?

OK ✓

15 (e) A person who transports duckweed that is incidentally attached to a
16 seaplane, watercraft, watercraft equipment or gear, or a boat trailer.

> same list here

17 (f) A person who uses a seaplane, watercraft, watercraft equipment or gear, or
18 a boat trailer in a navigable water, or a connected body of water, with an aquatic plant
19 or aquatic animal attached if the aquatic plant or aquatic animal became attached
20 while the person was using the seaplane, watercraft, watercraft equipment or gear,
21 or boat trailer in that navigable water or a connected body of water, and the person

1 does not transport the seaplane, watercraft, watercraft equipment or gear, or boat
2 trailer on a highway or place it in a different body of water with the aquatic plant or
3 aquatic animal attached.

****NOTE: I think that it would be advisable to include a definition of a "connected body of water."

4 **SECTION 30.** 66.0407 (1) (b) of the statutes is amended to read:

5 66.0407 (1) (b) "Noxious weed" means Canada thistle, leafy spurge and field
6 bindweed (creeping Jenny), any weed designated as a noxious weed by the
7 department of natural resources by rule, and any other weed the governing body of
8 any municipality or the county board of any county by ordinance or resolution
9 declares to be noxious within its respective boundaries.

10 **SECTION 31.** 287.07 (7) (cm) of the statutes is created to read:

11 287.07 (7) (cm) The prohibition in sub. (2) does not apply to the the disposal of
12 plants that are classified by the department as invasive species under s. 23.22 (2) or
13 their seeds, if the plants or seeds are collected separately from other yard waste for
14 the purpose of eradication or control.

shouldn't be commingled & collected with other yard waste

****NOTE: I'm not sure what "collected separately" means here. Should the provision exempt plants or seeds that are "disposed of separately" instead?

15 **SECTION 32.** 345.11 (1j) of the statutes is created to read:

16 345.11 (1j) The uniform traffic citation or the citation form under s. 23.54 shall
17 *may* be used for violations of s. 30.715, or ordinances in conformity with s. 30.715, *relating*
18 *like littering* ~~to the transportation of aquatic plants and aquatic animals if the violation is~~
19 ~~committed on a highway.~~ When the uniform traffic citation is used, the report of
20 conviction shall be forwarded to the department. When the citation form under s.
21 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

22 **SECTION 33. Nonstatutory provisions.**

1 (1) Using the procedure under section 227.24 of the statutes, the department
2 of natural resources may promulgate emergency rules required under section 23.22
3 (2) (b) 6. of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes,
4 emergency rules promulgated under this subsection remain in effect until June 30,
5 2012, or the date on which the permanent rules promulgated under section 23.33 (2)
6 (b) 6. of the statutes, take effect, whichever is sooner. Notwithstanding section
7 227.24 (1) (a) and (3) of the statutes, the department of natural resources is not
8 required to provide evidence that promulgating a rule under this subsection as an
9 emergency rule is necessary for the preservation of public peace, health, safety, or
10 welfare and is not required to provide a finding of emergency for a rule promulgated
11 under this subsection.

****NOTE: I have included a deadline for the expiration of emergency rules. Without
this deadline, the emergency rules could remain in effect indefinitely if permanent rules
are never promulgated. Is the deadline in this provision acceptable?

12

(END)

*See new
sec. 2*

Analysis

Section 1 adds an enumeration of general powers and duties to the invasive species law, s. 23.22, Stats., comparable to the enumerations of powers and duties found in other regulatory programs. It authorizes the department to hold hearings and compel the attendance of witnesses and the production of evidence; waive compliance with any requirement under s. 23.22, Stats., or shorten the time periods under this section to the extent necessary to prevent an emergency condition threatening public health, safety or welfare or the environment; secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise; advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government and other interested persons or groups. It also includes a requirement that DATCP and DNR enter into an Memorandum of Understanding regarding their respective roles and responsibilities in dealing with invasive species that are both plant pests and forest pests, and it requires other agencies of the state to cooperate with the department in the conduct of matters under s. 23.22, Stats., in which the interests of the respective agencies overlap.

Section 2 corrects an apparent oversight. Section 23.22 (2) (c), Stats., was recently amended by Section 661 of 2007 Wisconsin Act 20 to increase the percentage of costs eligible for cost sharing awards to control invasive species from 50% to 75%. However, a corresponding change was not made to s. 23.22 (3) (c), Stats. Section 23.22 (3) (c), Stats., is amended so that the cross-reference to the percentage of costs eligible for cost-sharing grants under sub. (2) (c), Stats., is correctly stated as 75% instead of 50%.

Section 3 broadens the department's invasive species inspection authority to cover all invasive species rather than just aquatic invasive species. It also specifies the department's authority to seize and control invasive species. The inspection authority closely resembles DATCP's current authority in s. 94.01(4), Stats., for entry, inspection, seizure and control of plant pests.

Section 3 also revises the reporting periods and submittal dates set by the invasive species law (s. 23.22 (6) (b), Stats.) for the department to submit biennial and interim reports to the Legislature regarding the administration and progress of the Invasive Species Program, to coincide with the fiscal year. [The department has also recently requested that these revisions to the reporting periods and submittal dates be included in a Law Revision Committee remedial bill.]

Section 4 provides counties and municipalities with specific authority to regulate invasive species and for enforcement, but to prevent inconsistent or conflicting regulation from jurisdiction to jurisdiction, this provisions declares that the control of invasive species is a matter of statewide concern and requires that ordinances adopted by counties and municipalities be in

1 23.22 (2t) DEPARTMENT POWERS. (a) The department may hold hearings relating
2 to any aspect of the administration of this section and, in connection with those hearings, compel
3 the attendance of witnesses and the production of evidence.

4 (b) The department may waive compliance with any requirement under this section or
5 shorten the time periods under this section to the extent necessary to prevent an emergency
6 condition threatening public health, safety or welfare or the environment.

7 (c) The department may secure necessary scientific, technical, administrative and
8 operational services, including laboratory facilities, by contract or otherwise.

9 (d) The department may advise, consult, contract and cooperate with other agencies of
10 the state, local governments, industries, other states, interstate or interlocal agencies, the federal
11 government and other interested persons or groups.

12 (e) The department of agriculture, trade and consumer protection and the department
13 shall establish a memorandum of understanding that provides the manner of sharing expenses
14 and responsibilities for surveys, monitoring and management of invasive species that are plant
15 pests and forest pests.

16 (f) The other agencies of the state shall cooperate with the department in the conduct of
17 matters under this section in which the interests of the respective agencies overlap. The
18 cooperating agencies may provide by agreement for the manner of sharing expenses and
19 responsibilities under this section.

20 **SECTION 2.** 23.22 (3) (c) of the statutes is amended to read:

21 23.22 (3) (c) The council shall make recommendations to the department on the
22 establishment of a procedure for awarding cost-sharing grants under sub. (2) (c) to public and
23 private entities for up to ~~50%~~ 75% of the costs of eligible projects to control invasive species.
24 The recommendations shall contain criteria for determining eligibility for these grants and for
25 determining which applicants should be awarded the grants.

26 **SECTION 3.** 23.22 (5) and (6) (b) and (c) of the statutes are amended to read:

27 23.22 (5) INSPECTIONS, RIGHT OF ENTRY AND CONTROL. (a) As part of the
28 statewide management plan, the department shall create a watercraft inspection program under
29 which the department shall conduct periodic inspections of boats, boating equipment, and boat