



L stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

In 1/27

SAV
X-refv

Inserts

regen.

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 vehicleless 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:

Insert
2-2

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

4 23.22 (2t) DEPARTMENT POWERS, ^{and cooperation} (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.

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.

***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.

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

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

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

1. Enter any premises, building, or structure where an invasive species is stored, processed, or held, where records or reports relating to invasive species are kept, where vehicles, boats, equipment, or materials are located, or where activities related to invasive species are conducted and enter any vehicle, equipment, or boat used to transport or hold invasive species.
2. Inspect invasive species stored or possessed by any person.
3. Inspect records or reports relating to invasive species.
4. Take reasonable diagnostic samples for biological examination.
5. Seize and destroy any invasive species possessed or transported in violation of this section or s. 23.235 or 23.24, or any rule promulgated or notice, permit, or order 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?

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

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

insert
3-1

insert
3-18

at any reasonable time

(5m) (5) (a) Compliance investigations

identification

boats or

or 30.715

not 30.715

4 (b)

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) (b)} ~~A city, town, county, or village may adopt~~ ^{local governmental unit enact} an ordinance
21 ^{or adopt a resolution} for the management and control of invasive species if the ordinance ^{is not contrary}
22 ^{or resolution} or inconsistent with this section.

insert
4-22

***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.

NO (a) In this subsection, "local governmental unit" means a city, ~~town, county, or village~~ village, town, or county.

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 in navigable waters.**
and placement B

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:

Insert
6-24

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.

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~~ ^{stet} 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 ^{vehicle,} watercraft, or watercraft
14 equipment or gear, has any aquatic plants or aquatic animals attached.

****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.

Insert
7-18

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

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

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

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

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

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

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

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

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

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

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

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

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

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

insert 8-3

insert 8-7

insert 8-16

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.

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?

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

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
vehicle

1 does not transport the ^{vehicle} seaplane, watercraft, ^{or} ~~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.

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

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

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

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

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

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

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

17 345.11 (1j) The uniform traffic citation or the citation form under s. 23.54 shall
 18 be used for violations of s. 30.715, or ordinances in conformity with s. 30.715, relating
 19 to the transportation of aquatic plants and aquatic animals if the violation is
 20 committed on a highway. When the uniform traffic citation is used, the report of
 21 conviction shall be forwarded to the department. When the citation form under s.
 22 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

SECTION 33. Nonstatutory provisions.

insert 10-3

insert 10-9

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)

D-note

INSERT 2-2

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

2 23.22 (2) (bg) Using the procedure under s. 227.24, the department may
3 promulgate an emergency rule to identify or classify an invasive species under par.
4 (b) 6. Notwithstanding s. 227.24 (1) (c) and (2), an emergency rule promulgated
5 under this paragraph remains in effect until whichever of the following occurs first:

6 1. The first day of the 25th month beginning after the effective date of the
7 emergency rule.

8 2. The effective date of the repeal of the emergency rule.

9 3. The date on which the permanent rule identifying or classifying the invasive
10 species, promulgated under par. (b) 6., takes effect.

INSERT 3-1

11 (e) Every state agency, as defined in s. 20.001 (1) shall cooperate with the
12 department in the administration of this section where the interests of the
13 department and the respective state agency overlaps. The cooperating state
14 agencies may provide by agreement for the manner of sharing expenses and
15 responsibilities under this section.

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

17 23.22 (3) (c) The council shall make recommendations to the department on the
18 establishment of a procedure for awarding cost-sharing grants under sub. (2) (c) to
19 public and private entities for up to ~~50%~~ 75 percent of the costs of eligible projects
20 to control invasive species. The recommendations shall contain criteria for

1 determining eligibility for these grants and for determining which applicants should
2 be awarded the grants.

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

INSERT 3-18

****NOTE: I added a cross reference to s. 30.715 here. Is that O.K.? Also, this provision may require additional language if the intention is to extend DNR's authority as it applies to the control of forest pests under s. 26.30.

INSERT 4-22

under para (b)

is contrary or inconsistent with this section

3 (b) If the department determines that an ordinance, regulation, resolution, or
4 other restriction enacted or adopted by a local governmental unit exceeds the
5 authority granted to local governmental units under par. (a), the department may
6 issue a notice to the local governmental unit of the department's intent to issue an
7 order under this paragraph. The department shall hold an informal hearing on the
8 matter if a hearing is requested by the local governmental unit within 30 days after
9 it receives the notice. The informal hearing is not a contested case under ch. 227.
10 Following the hearing or following the failure of the local governmental unit to
11 request a hearing within 30 days after it receives the notice, the department may
12 issue an order declaring the ordinance, regulation, resolution or other restriction
13 void.

History: 1997 a. 170; 1999 a. 32 s. 42; Stats. 1997 s. 29.038; 2001 a. 16; 2003 a. 33.

INSERT 7-18

declaring the ordinance or resolution void

14 **SECTION 3.** 30.715 (1) (c) of the statutes is created to read:
15 30.715 (1) (c) "Vehicle" has the meaning given in s. 340.01 (74).
16 **SECTION 4.** 30.715 (1) (d) of the statutes is created to read:
17 30.715 (1) (d) Notwithstanding s. 30.01 (7), "watercraft" includes boat trailers
18 and any equipment or gear related to any device used and designed for navigation

"watercraft" has the meaning given in and

on water

X

1 SECTION 5. 30.715 (2) of the statutes is renumbered 30.715 (2) (a) and amended
2 to read:

3 30.715 (2) (a) No person may place or use a ~~boat or boating equipment~~ or place
4 a ~~boat trailer~~ vehicle, seaplane, or watercraft in a navigable water if the person has
5 reason to believe that the ~~boat, boat trailer, or boating equipment~~ vehicle, seaplane,
6 or watercraft has any aquatic plants or aquatic animals attached. This paragraph
7 does not require a person to remove aquatic plants or aquatic animals from a vehicle,
8 seaplane, or watercraft during the period of time when the vehicle, seaplane, or
9 watercraft is being used in the same navigable body of water in which the aquatic
10 plants or aquatic animals became attached or in a water body connected to that
11 navigable body of water.

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

X

12 SECTION 6. 30.715 (2) (b) of the statutes is created to read:

13 30.715 (2) (b) Except as provided in sub. (4m), no person may take off with a
14 seaplane, or transport a vehicle or watercraft on a highway with aquatic plants or
15 aquatic animals attached. ~~boat, boat trailer, or boating equipment~~

INSERT 8-7

X

16 SECTION 7. 30.715 (4) (a) of the statutes is amended to read:

17 30.715 (4) (a) Remove aquatic plants or aquatic animals from a ~~boat, boat~~
18 ~~trailer, or boating equipment~~ vehicle, seaplane, or watercraft before placing it in a
19 navigable water.

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

INSERT 8-16

X

20 SECTION 8. 30.715 (4) (b) of the statutes is amended to read:

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

1 if the law enforcement officer has reason to believe that the ~~boat, boat trailer, or~~
2 ~~boating equipment vehicle, seaplane, or watercraft~~ has aquatic plants or aquatic
3 animals attached. *end insert 8-16*

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

Insert 10-3

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

5 30.80 (5m) Any person violating any provision of s. 30.715 (2) or (6) shall forfeit
6 not more than \$500 for the first offense and shall forfeit not more than \$2,000 upon
7 conviction of the same offense a 2nd or subsequent time within 3 years. *AA*

INSERT 10-9

>

****NOTE: I have deleted the reference to "creeping jenny" to conform this provision to current drafting style, which generally prohibits the use of parentheses, and also because the deletion of this term does not make a substantive change to this provision.

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

LRB-1401/P2dn

RNK:.....

Lbjk

Dak

This redraft reflects changes incorporated after discussions with Pete Flaherty from DNR. Please have Pete review this draft to ensure that it accurately reflects the changes requested. Please also note that the draft contains some embedded notes that will require your attention.

Please feel free to contact me if you have any questions with regard to this draft.

Robin N. Kite
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1401/P2dn
RNK:bjk:jf

January 29, 2009

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Stays

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In
2/5

D-Note

Inserts

SA-

regen. cat.

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2 **renumber and amend** 30.715 (1) (a) and 30.715 (2); **to amend** 23.22 (3) (c),
3 23.22 (6) (b), 23.22 (6) (c), 30.124 (1) (a), 30.1255 (3) (b), 30.715 (4) (a), 30.715
4 (4) (b) and 66.0407 (1) (b); **to repeal and recreate** 30.715 (title); and **to create**
5 23.22 (2) (bg), 23.22 (2t), 23.22 (5m), 23.22 (7m), 23.2355, 30.715 (1) (ad), 30.715
6 (1) (am), 30.715 (1) (ar), 30.715 (1) (c), 30.715 (1) (d), 30.715 (2) (b), 30.715 (4)
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other objects

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

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

4 23.22 (2) (bg) Using the procedure under s. 227.24, the department may
5 promulgate an emergency rule to identify ~~or~~ classify ^{↑ or control} an invasive species under par.

Insert
2-5

6 (b) 6. Notwithstanding s. 227.24 (1) (c) and (2), an emergency rule promulgated
7 under this paragraph remains in effect until whichever of the following occurs first:

8 1. The first day of the 25th month beginning after the effective date of the
9 emergency rule.

10 2. The effective date of the repeal of the emergency rule.

11 3. The date on which the permanent rule identifying ~~or~~ classifying ^{↑ or controlling} the invasive
12 species, promulgated under par. (b) 6., takes effect.

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

14 23.22 (2t) DEPARTMENT POWERS AND COOPERATION. (a) The department may hold
15 hearings relating to any aspect of the administration of this section and, in
16 connection with those hearings, compel the attendance of witnesses and the
17 production of evidence.

18 (b) The department may waive compliance with any requirement under this
19 section or shorten the time periods under this section to the extent necessary to

x2
for purposes of this section

1 prevent an emergency condition threatening public health, safety, or welfare or the
2 environment.

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

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

8 (e) Every state agency, ~~as defined in s. 20.001 (1)~~ shall cooperate with the
9 department in the administration of this section where the interests of the
10 department and the respective state agency overlaps. The cooperating state
11 agencies may provide by agreement for the manner of sharing expenses and
12 responsibilities under this section.

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

14 23.22 (3) (c) The council shall make recommendations to the department on the
15 establishment of a procedure for awarding cost-sharing grants under sub. (2) (c) to
16 public and private entities for up to ~~50%~~ 75 percent of the costs of eligible projects
17 to control invasive species. The recommendations shall contain criteria for
18 determining eligibility for these grants and for determining which applicants should
19 be awarded the grants.

20 **SECTION 4.** 23.22 (5m) of the statutes is created to read:

21 23.22 (5m) COMPLIANCE INVESTIGATION. (a) For the purpose of administering
22 this section, a warden or a representative of the department, upon presentation of
23 his or her identification, may do any of the following:

24 1. Enter, at any reasonable time, any premises, building, or structure where
25 an invasive species is stored, processed, or held, where records or reports relating to

1 invasive species are kept, where vehicles, boats, equipment, or materials are located,
 2 or where activities related to invasive species are conducted and enter any vehicle,
 3 boat, or equipment used to transport or hold invasive species.

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

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

6 4. Take reasonable diagnostic samples for biological examination.

7 5. Seize and destroy any invasive species possessed or transported in violation
 8 of this section or s. 23.235, 23.24, or 30.715 or any rule promulgated or permit or order
 9 issued under this section or s. 23.235, 23.24, or 30.715.

> ******NOTE:** I added a cross reference to s. 30.715 here. Is that O.K.? Also, this provision may require additional language if the intention is to extend DNR's authority as it applies to the control of forest pests under s. 26.30.

10 (b) No person may do any of the following:

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

13 2. Fail to promptly provide records to the department that the person is required to be produced
 14 under this subsection.

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

16 23.22 (6) (b) The department shall submit the biennial report under par. (a)
 17 before July October 1 of each even-numbered year. ~~The first biennial report shall~~
 18 ~~be submitted no later than July 1, 2004.~~ Each report shall cover the 24-month period
 19 ending on the ~~March 31~~ June 30 that immediately precedes the date of the report.

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

21 23.22 (6) (c) In addition to the report required under par. (a), the department
 22 shall submit an interim performance report to the legislature under s. 13.172 (2), and
 23 to the governor and the council, on the progress that has been made on the control

1 of invasive species. The department shall submit this interim performance report
2 before ~~July~~ October 1 of each odd-numbered year. ~~The first interim performance~~
3 ~~report shall be submitted no later than July 1, 2005.~~ Each interim performance
4 report shall cover the 12-month period ending on the ~~March 31~~ June 30 that
5 immediately precedes the date of the interim performance report.

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

7 **23.22 (7m) ORDINANCES.** (a) In this subsection, "local governmental unit"
8 means a city, village, town, or county.

9 (b) A local governmental unit may enact an ordinance or adopt a resolution for
10 the management and control of invasive species if the ordinance or resolution is not
11 contrary or inconsistent with this section.

12 (c) If the department determines that an ordinance or resolution enacted or
13 adopted by a local governmental unit under par. (b) is contrary or inconsistent with
14 this section, the department may issue a notice to the local governmental unit of the
15 department's intent to issue an order declaring the ordinance or resolution void. The
16 department shall hold an informal hearing on the matter if a hearing is requested
17 by the local governmental unit within 30 days after it receives the notice. The
18 informal hearing is not a contested case under ch. 227. Following the hearing or
19 following the failure of the local governmental unit to request a hearing within 30
20 days after it receives the notice, the department may issue an order declaring the
21 ordinance, regulation, resolution or other restriction void.

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

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

24 **23.2355 Weed management grants.** The department, in consultation with
25 the department of agriculture, trade and consumer protection, shall promulgate

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

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

9 **SECTION 11.** 30.124 (1) (a) of the statutes is amended to read:

10 30.124 (1) (a) Cut aquatic plants, as defined in s. 30.715 (1) (a) (ag), without
11 removing them from the water, for the purpose of improving waterfowl nesting,
12 brood, and migration habitat.

13 **SECTION 12.** 30.1255 (3) (b) of the statutes is amended to read:

14 30.1255 (3) (b) The department shall submit the first report required under
15 par. (a) before July 1, 1994, and shall submit subsequent reports before July October
16 1 of each even-numbered year thereafter. Beginning with the report due before July
17 1, 2004, the department shall submit each report required under par. (a) as part of
18 the corresponding biennial report under s. 23.22 (6).

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

20 **30.715 (title) Transportation of aquatic plants and animals and**
21 **placement in navigable waters.**

22 **SECTION 14.** 30.715 (1) (a) of the statutes is renumbered 30.715 (1) (ag) and
23 amended to read:

LPS - Please
change component.

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

4 SECTION 15. 30.715 (1) (ad) of the statutes is created to read:

5 30.715 (1) (ad) "Aquatic animal" means any vertebrate or invertebrate species
6 animal that lives or grows in water during any life stage and includes the eggs, larvae, or
7 young of those species. that animals

8 SECTION 16. 30.715 (1) (am) of the statutes is created to read:

9 30.715 (1) (am) "Highway" has the meaning given in s. 340.01 (22), except that
10 it does not include public boat access sites or parking areas for public boat access
11 sites.

12 SECTION 17. 30.715 (1) (ar) of the statutes is created to read:

13 30.715 (1) (ar) "Local governmental unit" means a political subdivision of this
14 state, a special purpose district in this state, an agency or corporation of a political
15 subdivision or special purpose district, or a combination or subunit of any of the
16 foregoing.

17 SECTION 18. 30.715 (1) (c) of the statutes is created to read:

18 30.715 (1) (c) "Vehicle" has the meaning given in s. 340.01 (74).

19 SECTION 19. 30.715 (1) (d) of the statutes is created to read:

20 30.715 (1) (d) "Watercraft" has the meaning given in s. 30.01 (7) and includes
21 boat trailers and any equipment or gear related to any device used and designed for
22 navigation on water.

23 SECTION 20. 30.715 (2) of the statutes is renumbered 30.715 (2) (a) and
24 amended to read:

1 30.715 (2) (a) No person may place or use a ~~boat or boating equipment~~ or place
2 a ~~boat trailer vehicle, seaplane, or watercraft~~ in a navigable water if the person has
3 ~~reason to believe that the boat, boat trailer, or boating equipment~~ vehicle, seaplane,
4 or watercraft ^{it} has any aquatic plants or aquatic animals attached. This paragraph
5 does not require a person to remove aquatic plants or aquatic animals from a vehicle,
6 seaplane, ^{other} ~~or watercraft~~ ^{or other object} during the period of time when the vehicle, seaplane, or
7 ~~watercraft~~ ^{or object} is being used in the same navigable body of water in which the aquatic
8 plants or aquatic animals became attached ~~or in a water body connected to that~~
9 ~~navigable body of water.~~

10 SECTION 21. 30.715 (2) (b) of the statutes is created to read:

11 30.715 (2) (b) Except as provided in sub. (4m), no person may take off with a
12 seaplane, or transport a vehicle ^{or} ~~or~~ ^{or other object of any kind} ~~watercraft~~ on a highway with aquatic plants or
13 aquatic animals attached.

14 SECTION 22. 30.715 (3) of the statutes is repealed.

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

16 30.715 (4) (a) Remove aquatic plants or aquatic animals from a boat, boat
17 ~~trailer, or boating equipment~~ vehicle, seaplane, or watercraft ^{insert 8-2} before placing it in a
18 navigable water.

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

20 30.715 (4) (am) Remove aquatic plants or aquatic animals from a seaplane
21 before taking off with the seaplane.

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

23 30.715 (4) (b) Remove from, or not place in, a navigable water, a boat, boat
24 ~~trailer, or boating equipment in a navigable water~~ vehicle, seaplane, or watercraft
25 ^{insert 8-2} if the law enforcement officer has reason to believe that ~~the boat, boat trailer, or~~

1 boating equipment ~~vehicle, seaplane, or watercraft~~ ^{it} has aquatic plants or aquatic
2 animals attached.

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

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

5 30.715 (4) (cm) Except as provided in sub. (4m), not take off with a seaplane,
6 or transport a vehicle, watercraft, or ~~equipment~~ ^{other object of any kind} on a highway, if the law enforcement
7 officer has reason to believe that ~~the seaplane, vehicle, watercraft, or equipment~~ ^{it} has
8 aquatic plants or aquatic animals attached.

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

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

11 30.715 (4m) Subsections (2) to (4) do not apply to any of the following:

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

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

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

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

24 (c).

(e) A person who transports duckweed that is incidentally attached to a vehicle,
seaplane, watercraft, or ~~equipment~~ or other object

SECTION 30. 30.80 (5m) of the statutes is created to read:

30.80 (5m) Any person violating any provision of s. 30.715 (2) or (6) shall forfeit not more than \$500 for the first offense and shall forfeit not more than \$2,000 upon conviction of the same offense a 2nd or subsequent time within 3 years.

SECTION 31. 66.0407 (1) (b) of the statutes is amended to read:

66.0407 (1) (b) "Noxious weed" means Canada thistle, leafy ~~scourge~~ ^{strike} ~~and field~~ ^{spurge} bindweed (~~creeping Jenny~~), any weed designated as a noxious weed by the department of natural resources by rule, and 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.

***NOTE: I have deleted the reference to "creeping Jenny" to conform this provision to current drafting style, which generally prohibits the use of parentheses, and also because the deletion of this term does not make a substantive change to this provision.

SECTION 32. 287.07 (7) (cm) of the statutes is created to read:

287.07 (7) (cm) The prohibition in sub. (2) does not apply to the disposal of plants that are classified by the department as invasive species under s. 23.22 (2) or their seeds, if the plants or seeds are not commingled with other yard waste.

SECTION 33. 345.11 (1j) of the statutes is created to read:

345.11 (1j) The uniform traffic citation or the citation form under s. 23.54 may be used for violations of s. 30.715 or ordinances in conformity with s. 30.715. When the uniform traffic citation is used, the report of conviction shall be forwarded to the department. When the citation form under s. 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

(END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1401/P3ins.
RNK:.....

INSERT 2-5

1 *No 9/* Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to
2 provide evidence that promulgating a rule under this paragraph as an emergency
3 rule is necessary for the preservation of public peace, health, safety, or welfare and
4 is not required to provide a finding of emergency for a rule promulgated under this
5 paragraph.

INSERT 8-2 — *used more than once*

6 *No 9/* , or other object of any kind

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1401/P3dn

RNK:.....

Lbjk

Date

This redraft incorporates the changes you requested at our recent meeting and generally includes other minor, technical changes that I discussed with Pete Flaherty from DNR. This version of the draft remains in preliminary form.

Please note that in this version of the draft, the emergency rule provision (see s. 23.22 (2) (bg) in the draft) includes an additional exemption to emergency rule-making procedures under which it authorizes DNR to promulgate emergency rules without making a finding of an emergency. The draft also broadens the category of objects that may not be placed in navigable waters or transported on highways with aquatic plants and animals attached. If any of these changes are not consistent with your intent, please let me know and I will redraft, accordingly.

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/P3dn
RNK:bjk:rs

February 5, 2009

This redraft incorporates the changes you requested at our recent meeting and generally includes other minor, technical changes that I discussed with Pete Flaherty from DNR. This version of the draft remains in preliminary form.

Please note that in this version of the draft, the emergency rule provision (see s. 23.22 (2) (bg) in the draft) includes an additional exemption to emergency rule-making procedures under which it authorizes DNR to promulgate emergency rules without making a finding of an emergency. The draft also broadens the category of objects that may not be placed in navigable waters or transported on highways with aquatic plants and animals attached. If any of these changes are not consistent with your intent, please let me know and I will redraft, accordingly.

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

Kite, Robin

From: Barry, Sarah
Sent: Wednesday, February 18, 2009 9:48 AM
To: Kite, Robin; Flaherty, Peter D - DNR
Subject: RE: LRB-1401

Thank you both for all of your help with this bill. Bob is comfortable with the changes below. Please let me know if any other concerns come up as you finalize the draft. As I mentioned yesterday, if it is not ready by next week we will announce to Superior Days attendees that the bill is about to be introduced and we can provide them with some of the details. I really appreciate your re-prioritizing your schedule to get this done quickly.

Thank you,

Sarah Barry

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

From: Kite, Robin
Sent: Wednesday, February 18, 2009 9:45 AM
To: Flaherty, Peter D - DNR
Cc: Barry, Sarah
Subject: LRB-1401

Pete:

I talked with Sarah Barry yesterday about proceeding with a final version of this draft. She would like to have the redraft by next week, if possible. With that in mind and in keeping with our conversation yesterday, I am hoping that we can put the final touches on this draft in the next day or 2. I propose that we put the language currently in s. 30.715 into subchapter I (general provisions) of ch. 30, possibly as s. 30.07. I don't think that the language belongs in s. 30.715 anymore because that statute is in subchapter v of ch. 30 which concerns regulation of boating, and the language in the draft has broader application. Let me know if you concur.

Also, I know that you would like to change the definition of aquatic animal but I cannot locate my notes on the change you requested. Could you give me that change again?

I think that these should be the final changes to the draft. I am working on the analysis now. As soon as I hear from you, I will make these final changes.

Thanks.

Robin

Robin Kite, Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-7291

Kite, Robin

From: Flaherty, Peter D - DNR [Peter.Flaherty@Wisconsin.gov]
Sent: Wednesday, February 18, 2009 3:30 PM
To: Kite, Robin
Subject: RE: LRB-1401

1. Your suggested title is fine, although I think the title in LRB-1401/P3 is OK too.
2. You are correct - my notes do show this change too, so I must have failed to mention it.
3. Before we spoke, I thought about the "No person may place or **use** . . ." wording and whether it should also be changed to "place or **operate**", but I felt that "use" was the better choice, especially given the wording on Page 7 Line 9, where "used" has a better fit, but I suppose consistent terminology has its value. If you want to make the wording uniform, I vote for "operate" in place of "use".

Thanks.

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Wednesday, February 18, 2009 1:10 PM
To: Flaherty, Peter D - DNR
Subject: LRB-1401

Pete:

A few more things:

1. I suggest changing the title to s. 30.07 that I am creating in the draft to: Transportation of aquatic plants and animals; placement of objects in navigable waters. Is this O.K.?
2. With regard to making it clear that vehicles cannot be "operated" on a highway with plants or animals attached, the draft also needs a change on page 7, line 13 in addition to the 2 changes on page 8.. I don't think that you had mentioned this change in our conversation. If you did, please disregard.
3. Current law, and the amended language in the P3 version of the draft in s. 30.715 (2) (a) uses the language: "No person may place or use...". I think we need to be consistent so that either I should change "use" in this provision to "operate" or I should make the changes referred to in item 2 above so that I use the term "use" instead of "operate". In other words, should we say that no person may "use" a vehicle, watercraft etc or no person may "operate" a vehicle, watercraft etc? Please give me a call if you need me to explain this further.

Robin

Robin Kite, Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-7291

Kite, Robin

From: Flaherty, Peter D - DNR [Peter.Flaherty@Wisconsin.gov]
Sent: Thursday, February 19, 2009 12:35 PM
To: Kite, Robin
Cc: Barry, Sarah
Subject: RE: LRB-1401

ok

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Thursday, February 19, 2009 12:09 PM
To: Flaherty, Peter D - DNR
Cc: Barry, Sarah
Subject: RE: LRB-1401

Thanks for your responses. With regard to the definition of "law enforcement officer", my intention is to add it to the newly created s. 30.07 and not to the general definitions in s. 30.01. I do not think I should add it to the general definitions in s. 30.01 because I don't know if that will result in unintended consequences throughout the chapter. Call me if you have any questions.

Robin

From: Flaherty, Peter D - DNR [mailto:Peter.Flaherty@Wisconsin.gov]
Sent: Thursday, February 19, 2009 12:00 PM
To: Kite, Robin
Cc: Barry, Sarah
Subject: RE: LRB-1401

1. OK
2. OK if you add the definition to s. 30.01 and don't delete it from s. 30.50. I see that this term is now used in s. 30.48 in addition to being used throughout subch. V., which is another reason to add it to s. 30.01. But, I think a definition of this term -- even if it is only a cross-reference to s. 30.01 -- should remain in s. 30.50. Or, you could just use a cross-reference definition in new s. 30.07 that refers to the current definition in s. 30.50 (4s) and not worry about defining the term as used in s. 30.48 for now.
3. I think you could delete the phrase "or ordinances in conformity with s. 30.715" on line 17, page 9 of /P3. It tends to add confusion and really isn't needed. Municipalities will still be free to adopt similar ordinances and enforce them using their municipal citation forms, or they can enforce the state law by using either of the state citation forms.
4. I will look it over carefully.
5. Thanks.

From: Kite, Robin [mailto:Robin.Kite@legis.wisconsin.gov]
Sent: Thursday, February 19, 2009 10:21 AM
To: Flaherty, Peter D - DNR
Cc: Barry, Sarah
Subject: LRB-1401

Pete:

As I am finalizing the invasive species draft, I have found a few more things that require changes or that I would like you to consider:

1. I am moving the emergency rules language that is created in SECTION 1. of the /P3 draft. I had

originally created it as a subsection under s. 23.22 which is titled in current law "Department Responsibilities." But the created language is discretionary and not a department "responsibility". Consequently, I am moving it so that it becomes a paragraph under newly created s. 23.22 (2t) (see SECTION 2. of the P/3 draft). The title of sub. (2t) is "Department powers and cooperation". I think that this is a better place for the language given that the emergency rules language gives DNR the power to promulgate emergency rules but does not establish a departmental requirement.

2. I added a definition of "law enforcement officer" to the draft. That definition is in the statutes at s. 30.50 (4s) and only applies to the boating subchapter. Now that we are moving s. 30.715 out of the boating subchapter to become s. 30.07 (Sarah - we are moving the language because it has broader application than just boating), we will need to incorporate that definition into s. 30.07.

3. Please look carefully at the language created as s. 345.11 (1j) in the draft. It refers to "ordinances in conformity with s. 30.715" (renumbered in the next version of the draft to s. 30.07). Is this "conformity" language O.K.?

4. You had asked whether the "local governmental unit" language in the draft clearly covers counties. The term "political subdivision" within that definition is commonly understood to include counties. But to be absolutely clear on this issue, I have redrafted the definition. Please review it to make sure it is O.K.

5. Sarah has authorized me to send you a copy of the next version directly from our office. This should expedite the review process.

Give me a call if you have any questions. As soon as I hear from you, I will finalize the draft.

Robin

Robin Kite, Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-7291



Wanted 2/24
State of Wisconsin
2009 - 2010 LEGISLATURE

Rm nun
1
LRB-1401/P3
RNK:bjk:rs
Lstap

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2009 BILL

In 2/19
Inserts
SAV
x-ref ✓

Regen. cat

1 AN ACT *to repeal* 23.225, 23.245, 30.715 (3), 30.715 (4) (c) and 30.715 (4) (d); *to*
2 *renumber* 30.715 (1) (a); *to renumber and amend* 30.715 (2); *to amend*
3 23.22 (3) (c), 23.22 (6) (b), 23.22 (6) (c), 30.124 (1) (a), 30.1255 (3) (b), 30.715 (4)
4 (a), 30.715 (4) (b) and 66.0407 (1) (b); *to repeal and recreate* 30.715 (title); and
5 *to create* 23.22 (2) (bg), 23.22 (2t), 23.22 (5m), 23.2355, 30.715 (1) (ad), 30.715
6 (1) (am), 30.715 (1) (ar), 30.715 (1) (c), 30.715 (2) (b), 30.715 (4) (am), 30.715 (4)
7 (cm), 30.715 (4m), 30.80 (5m), 287.07 (7) (cm) and 345.11 (1j) of the statutes;
8 **relating to:** regulating the transportation of aquatic plants and aquatic
9 animals, the administration of federal funds for the control and eradication of
10 noxious weeds, the placement of vehicles, seaplanes, watercraft, and other
11 objects in navigable waters with aquatic plants or animals attached, the
12 regulation of noxious weeds by municipalities, the disposal of invasive species,

- 1 providing an exemption from rule-making procedures, ^eand requiring the
- 2 exercise of rule-making authority. ↑ and providing a penalty

Analysis by the Legislative Reference Bureau

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

insert
Analysis

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

- 3
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- 17

~~SECTION 1. 23.22 (2) (bg) of the statutes is created to read:~~

^{NO}~~23.22 (2) (bg)~~ ^(a) Using the procedure under s. 227.24, the department may promulgate an emergency rule to identify, classify, or control an invasive species under ^{g sub(2)}~~par~~ (b) 6. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph. Notwithstanding s. 227.24 (1) (c) and (2), an emergency rule promulgated under this paragraph remains in effect until whichever of the following occurs first:

1. The first day of the 25th month beginning after the effective date of the emergency rule.
2. The effective date of the repeal of the emergency rule.
3. The date on which the permanent rule identifying, classifying, or controlling the invasive species, promulgated under ^{g sub(2)}~~par~~ (b) 6., takes effect.

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

23.22 (2t) DEPARTMENT POWERS AND COOPERATION. ^e~~(a)~~ ^{# (b)} The department may hold hearings relating to any aspect of the administration of this section and, in

1 connection with those hearings, compel the attendance of witnesses and the
2 production of evidence.

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

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

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

14 (e) Every state agency shall cooperate with the department in the
15 administration of this section where the interests of the department and the
16 respective state agency overlap. The cooperating state agencies may provide by
17 agreement for the manner of sharing expenses and responsibilities under this
18 section.

19 SECTION 3. 23.22 (3) (c) of the statutes is amended to read:

20 23.22 (3) (c) The council shall make recommendations to the department on the
21 establishment of a procedure for awarding cost-sharing grants under sub. (2) (c) to
22 public and private entities for up to ~~50%~~ 75 percent of the costs of eligible projects
23 to control invasive species. The recommendations shall contain criteria for
24 determining eligibility for these grants and for determining which applicants should
25 be awarded the grants.

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

23.22 (5m) COMPLIANCE INVESTIGATION. (a) For the purpose of administering and enforcing this section, a warden or a representative of the department, upon presentation of his or her identification, may do any of the following:

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

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

3. Inspect records or reports relating to invasive species.

4. Take reasonable diagnostic samples for biological examination.

5. Seize and destroy any invasive species possessed or transported in violation of this section or s. 23.235, 23.24, or 30.715 or any rule promulgated or permit or order issued under this section or s. 23.235, 23.24, or 30.715.

(b) No person may do any of the following:

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

2. Fail to promptly provide records to the department that the person is required to produce under this subsection.

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

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

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

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

10 **SECTION 7.** 23.225 of the statutes is repealed.

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

12 **23.2355 Weed management grants.** The department, in consultation with
13 the department of agriculture, trade and consumer protection, shall promulgate
14 rules that authorize the department, in consultation with the department of
15 agriculture, trade and consumer protection, to provide funds received from the
16 federal government under 7 USC 7782 to eligible recipients for the control or
17 eradication of noxious weeds. The rules shall authorize the department and the
18 department of agriculture, trade and consumer protection to use the funds received
19 from the federal government to provide technical assistance and to make grants to
20 eligible recipients to control or eradicate noxious weeds.

21 **SECTION 9.** 23.245 of the statutes is repealed.

22 **SECTION 10.** 30.124 (1) (a) of the statutes is amended to read:

23 30.124 (1) (a) Cut aquatic plants, as defined in s. ~~30.715~~ ^{30.07} (1) (a) ~~(a)~~ ^(b) without
24 removing them from the water, for the purpose of improving waterfowl nesting,
25 brood, and migration habitat.

insert
5-21

1 **SECTION 11.** 30.1255 (3) (b) of the statutes is amended to read:

2 30.1255 (3) (b) The department shall submit the first report required under
3 par. (a) before July 1, 1994, and shall submit subsequent reports before July October
4 1 of each even-numbered year thereafter. ~~Beginning with the report due before July~~
5 ~~1, 2004, the department shall submit each report required under par. (a) as part of~~
6 the corresponding biennial report under s. 23.22 (6).

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

8 **30.715 (title) Transportation of aquatic plants and animals and**
9 **placement in navigable waters.**

10 **SECTION 13.** 30.715 (1) (a) of the statutes is renumbered 30.715 (1) (ag).

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

12 30.715 (1) (ad) "Aquatic animal" means any animal that lives or grows in water
13 during any life stage and includes that animal's eggs, larvae, or young.

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

15 30.715 (1) (am) "Highway" has the meaning given in s. 340.01 (22), except that
16 it does not include public boat access sites or parking areas for public boat access
17 sites.

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

19 30.715 (1) (ar) "Local governmental unit" means a political subdivision of this
20 state, a special purpose district in this state, an agency or corporation of a political
21 subdivision or special purpose district, or a combination or subunit of any of the
22 foregoing.

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

24 30.715 (1) (c) "Vehicle" has the meaning given in s. 340.01 (74).

1 **SECTION 18.** 30.715 (2) of the statutes is renumbered 30.715 (2) (a) and
2 amended to read:

3 30.715 (2) (a) No person may place or use a boat or boating equipment or place
4 a boat trailer vehicle, seaplane, watercraft, or other object of any kind in a navigable
5 water if the person has reason to believe that the boat, boat trailer, or boating
6 equipment it has any aquatic plants or aquatic animals attached. This paragraph
7 does not require a person to remove aquatic plants or aquatic animals from a vehicle,
8 seaplane, watercraft, or other object during the period of time when the vehicle,
9 seaplane, watercraft, or other object is being used in the same navigable body of
10 water in which the aquatic plants or aquatic animals became attached.

11 **SECTION 19.** 30.715 (2) (b) of the statutes is created to read:

12 30.715 (2) (b) Except as provided in sub. (4m), no person may take off with a
13 seaplane, or transport a vehicle, watercraft, or other object of any kind on a highway
14 with aquatic plants or aquatic animals attached.

15 **SECTION 20.** 30.715 (3) of the statutes is repealed.

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

17 30.715 (4) (a) Remove aquatic plants or aquatic animals from a boat, boat
18 trailer, or boating equipment vehicle, seaplane, watercraft, or other object of any
19 kind before placing it in a navigable water.

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

21 30.715 (4) (am) Remove aquatic plants or aquatic animals from a seaplane
22 before taking off with the seaplane.

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

24 30.715 (4) (b) Remove from, or not place in, a navigable water, a boat, boat
25 trailer, or boating equipment in a navigable water vehicle, seaplane, watercraft, or

1 other object of any kind if the law enforcement officer has reason to believe that the
2 ~~boat, boat trailer, or boating equipment~~ it has aquatic plants or aquatic animals
3 attached.

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 a vehicle, watercraft, or other object of any kind on a highway, if the law
8 enforcement officer has reason to believe that it has aquatic plants or aquatic
9 animals attached.

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

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

12 30.715 (4m) Subsections (2) to (4) do not apply to any of the following:

13 (a) A person who transports aquatic plants or aquatic animals in a manner
14 authorized by an approval issued by the department or by a rule promulgated by the
15 department.

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

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

23 (c).

24 (d) A person who transports duckweed that is incidentally attached to a vehicle,
25 seaplane, watercraft, or other object.

1 SECTION 28. 30.80 (5m) of the statutes is created to read:

2 30.80 (5m) Any person violating any provision of s. ~~30.715~~ ^{30.07} (2) or (6) shall forfeit
3 not more than \$500 for the first offense and shall forfeit not more than \$2,000 upon
4 conviction of the same offense a 2nd or subsequent time within 3 years.

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

6 66.0407 (1) (b) "Noxious weed" means Canada thistle, leafy ~~scourge and spurge~~ ^{scourge and spurge} ^{no scoring}
7 ~~, field bindweed (creeping Jenny),~~ any weed designated as a noxious weed by the ^{plain text}
8 department of natural resources by rule, and any other weed the governing body of
9 any municipality or the county board of any county by ordinance or resolution
10 declares to be noxious within its respective boundaries.

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

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

15 SECTION 31. 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 may
17 be used for violations of s. ~~30.715~~ ^{30.07} or ordinances in conformity with s. 30.715. When
18 the uniform traffic citation is used, the report of conviction shall be forwarded to the
19 department ^{of natural resources}. When the citation form under s. 23.54 is used, the procedure in ss. 23.50
20 to 23.85 applies.

21

(END)

INSERT ANALYSIS

Under current law, the Department of Natural Resources (DNR) administers various laws to control invasive species. DNR also regulates the placement of certain boats, boat trailers, and equipment (boats) in navigable waters with aquatic plants attached. This draft makes various changes to those laws and imposes new restrictions relating to invasive species, and aquatic plants and animals.

(*)

Subsub → ***Placement of certain objects in navigable waters***

Under current law, no person may place or use a boat in a navigable water if the person has reason to believe that it has any aquatic plants attached. Current law also prohibits the placement or use of a boat in the Lower St. Croix River if the person has reason to believe that the boat has zebra mussels attached. This bill expands these restrictions by prohibiting the placement or operation of any vehicle, seaplane, watercraft, or other object of any kind in a navigable water if the object has any aquatic plants or aquatic animals attached. Under the bill, this prohibition applies regardless of whether the person had reason to believe that such plants or animals are attached. The bill specifies that the prohibition does not require a person to remove attached aquatic plants or animals during the period of time when the object is being used in the same navigable body of water in which the aquatic plants or animals became attached.

Current law authorizes a law enforcement officer to order a person to remove aquatic plants from a boat before placing the boat in a navigable water and to remove a boat from, or to not place a boat in, a navigable water if the law enforcement officer has reason to believe that the boat has aquatic plants attached. This bill broadens this authority to allow a law enforcement officer to order removal of aquatic animals in addition to aquatic plants and to order their removal from any vehicle, seaplane, watercraft, or other object of any kind before placing it in a navigable water. Under this expanded authority a law enforcement officer may also order removal of any object from a navigable water.

Subsub → ***Transportation of vehicles, watercraft, seaplanes, and other objects.***

Current law prohibits any person, with certain exceptions, from transporting a boat on a highway if it has an invasive species attached to the boat. This bill expands this prohibition. Under this bill, no person may transport or operate a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached. The bill also prohibits a person from taking off with a seaplane with such plants or animals attached. The bill also authorizes, with certain exceptions, a law enforcement officer to order a person not to take off with a seaplane or transport or operate a vehicle, watercraft, or other object on a highway if the law enforcement officer has reason to believe that it has aquatic plants or aquatic animals attached. Under the bill, the transportation restrictions do not apply to certain persons, including a person who transports commercial aquatic plant

not to

>

harvesting equipment for the purpose of cleaning the equipment to remove aquatic plants or aquatic animals or to a person who transports duckweed that is incidentally attached to the object being transported.

Subsub → ***Invasive species compliance investigation and department authority***

Under current law, DNR administers a statewide program to control invasive species. That program requires DNR to promulgate rules including rules establishing a watercraft inspection program. Under the watercraft inspection program, DNR conducts periodic inspections of boats entering and leaving navigable waters. This bill authorizes DNR, for the purpose of administering the statewide invasive species program, to also conduct compliance investigations. The bill authorizes a DNR warden or other DNR representative to enter premises where invasive species are stored, where records relating to invasive species are kept, where vehicles, boats, equipment, or materials are located, or where activities related to invasive species are conducted. It also authorizes DNR to inspect invasive species stored or possessed by any person, inspect records or reports relating to invasive species, take diagnostic samples, and seize and destroy certain invasive species.

and enforcing

This bill also establishes DNR's authority to hold hearings relating to any aspect of the administration of the statewide invasive species program. It also authorizes DNR to waive compliance with certain requirements of the program or shorten time periods under the program to the extent necessary to prevent an emergency condition threatening public health, safety, or welfare or the environment. The bill requires every state agency to cooperate with DNR in the administration of the statewide invasive species program where the interests of DNR and the respective state agency overlaps.

Subsub → ***Rules***

Under current law, DNR is required to promulgate rules to identify, classify, and control invasive species for the purposes of the statewide invasive species program. This bill authorizes DNR to promulgate an emergency rule to identify, classify, or control an invasive species without providing evidence of an emergency. Under the bill, a rule promulgated in this manner remains in effect until the earlier of 2 years after the rule's effective date, the repeal of the rule, or the date on which a corresponding permanent rule takes effect.

two

Subsub → ***Other provisions***

Under current law, any person who owns land is required to destroy noxious weeds on that land. Noxious weeds are defined to include certain weeds such as Canada thistle, leafy spurge, and any other weed that a municipality or county by ordinance or resolution declares to be noxious within its respective borders. This bill

expands the definition of a noxious weed to include any weed that DNR designates as a noxious weed by rule.

Under current law, with limited exceptions, no person may dispose of yard waste in a solid waste disposal facility. This bill provides that the prohibition does not apply to the disposal of plants that are classified by DNR as invasive species or seeds of those plants, if the plants or seeds are not commingled with other yard waste.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 5-21

SECTION 1. 30.07 of the statutes is created to read:

30.07 Transportation of aquatic plants and animals; placement of objects in navigable waters. (1) In this section:

(a) "Aquatic animal" means any animal that lives or grows only in water during any life state and includes that animal's eggs, larvae, or young.

(b) "Aquatic plant" means a submergent, emergent, floating-leaf, or free-floating plant or any part thereof. "Aquatic plant" does not mean wild rice.

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

(d) "Local governmental unit" means a city, village, town, or county, a special purpose district in this state, an agency or corporation of a city, village, town, county, or special purpose district, or a combination or subunit of any of the foregoing.

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

(f) "Vehicle" has the meaning given in s. 340.01 (74).

(d) "Law enforcement officer" has the meaning given in 3030.50(4s)0

1 **(2)** (a) No person may place or operate a vehicle, seaplane, watercraft, or other
2 object of any kind in a navigable water if it has any aquatic plants or aquatic animals
3 attached. This paragraph does not require a person to remove aquatic plants or
4 aquatic animals from a vehicle, seaplane, watercraft, or other object during the
5 period of time when the vehicle, seaplane, watercraft, or other object is being
6 operated in the same navigable body of water in which the aquatic plants or aquatic
7 animals became attached.

8 (b) No person may take off with a seaplane, or transport or operate a vehicle,
9 watercraft, or other object of any kind on a highway with aquatic plants or aquatic
10 animals attached.

11 **(3)** A law enforcement officer who has reason to believe that a person is in
12 violation of sub. (2) may order the person to do any of the following:

13 (a) Remove aquatic plants or aquatic animals from a vehicle, seaplane,
14 watercraft, or other object of any kind before placing it in a navigable water.

15 (b) Remove aquatic plants or aquatic animals from a seaplane before taking off
16 with the seaplane.

17 (c) Remove from, or not place in, a navigable water, a vehicle, seaplane,
18 watercraft, or other object of any kind.

19 (d) Not take off with a seaplane, or transport or operate a vehicle, watercraft,
20 or other object of any kind on a highway.

21 **(4)** Subsection (2) does not apply to any of the following:

22 (a) A person who transports aquatic plants or aquatic animals in a manner
23 authorized by an approval issued by the department or by a rule promulgated by the
24 department.

1 (b) A person who transports or operates commercial aquatic plant harvesting
2 equipment if all of the following apply:

3 1. The equipment is owned or operated by a local governmental unit.

4 2. The person transports or operates the equipment for the purpose of cleaning
5 the equipment to remove aquatic plants or aquatic animals.

6 3. The person transports the equipment to, or operates the equipment at, a
7 suitable location away from any body of water.

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

12 (d) A person who transports duckweed that is incidentally attached to a vehicle,
13 seaplane, watercraft, or other object. *of any kind*

14 ~~SECTION 2.~~ 30.715 (title) and (1) to (4) of the statutes are repealed.

15 ~~SECTION 3.~~ 30.715 (5) of the statutes is renumbered 30.07 (5).

16 ~~SECTION 4.~~ 30.715 (6) of the statutes is renumbered 30.07 (6) and amended to

17 read:

18 30.07 (6) No person may refuse to obey the order of a law enforcement officer
19 who is acting under sub. ~~(4)~~ (3).

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

Parisi, Lori

From: Barry, Sarah
Sent: Monday, February 23, 2009 9:17 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-1401/1 Topic: Invasive species regulation

Please Jacket LRB 09-1401/1 for the SENATE.