

2009 DRAFTING REQUEST

Bill

Received: **01/26/2010**

Received By: **mglass**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Jay Wadd**

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

Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - boats snomos ATVs**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Use of vehicles on beds of navigable waters to control invasive species

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>
/?				_____			State
/1	mglass 02/10/2010	nmatzke 02/12/2010	phenry 02/12/2010	_____	sbasford 02/12/2010		State
/2	mglass 03/03/2010	nmatzke 03/05/2010	rschluet 03/05/2010	_____	cduerst 03/05/2010	mbarman 03/08/2010	

FE Sent For: "/2" @ intro. 3/11/10

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/?							State
/1	mglass 02/10/2010	nmatzke 02/12/2010	phenry 02/12/2010		sbasford 02/12/2010		

*1/2 nwn
3/5*

3510

[Signature]

<END>

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May Contact: *DNR*

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1?	mglass	1 nwn 2/11	<i>[Handwritten initials]</i> 1/11 pd	<i>[Handwritten initials]</i> 2/11 js/md			
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FE Sent For:

<END>

Gibson-Glass, Mary

From: Wadd, Jay
Sent: Tuesday, January 26, 2010 12:41 PM
To: Gibson-Glass, Mary
Subject: Drafting Request: Senate Alternative to AB 521
Importance: High
Attachments: AB-521.pdf; AB 521 alternative pf (2).doc

Hi, Mary.

Senator Hansen would like to draft a senate version of Assembly Bill 521 which incorporates the changes that are included in the attachment to this message.

In addition to the changes suggested in the attachment, we would like to see that in the section "Permit in lieu of exemption" that the DNR not be able to charge for the issuance of a general permit in those cases where they are directing people to obtain one under this bill.

Also, I know you're likely busy, but this is a rush priority for Sen. Hansen.

Please let me know if you have any questions.

Thanks,

Jay

From: Heinen, Paul H - DNR [mailto:Paul.Heinen@Wisconsin.gov]
Sent: Monday, December 14, 2009 1:46 PM
To: Wadd, Jay
Subject: FW: AB 521 alternative pf.doc
Importance: High

H - DNR
ember 14, 2009 1:45 PM
GIS
521 alternative pf.doc
1

I finally got all the staff and the attorneys together and we met and discussed all the law vs. rule vs. "just let 'em mow" ramifications and we concluded that would be fine if this language was introduced. We can't do this by rule because we have no statutory authority to allow motor vehicles in lakebeds so this is the language we need to allow them for the purpose of cutting invasives only.

Paul

2009 AB 521 alternative

drafted
by Atty (DNR)
Peter Flaherty

SECTION 1. [no change]

SECTION 2. 30.29 (1) (a) of the statutes is created to read:
30.29 (1) (a) "Control" has the meaning given in s. 23.22 (1) (a).

SECTION 3. 30.29 (1) (b) of the statutes is created to read:
30.29 (1) (b) "Invasive species" means plants identified as invasive species by department rule adopted under s. 23.22 (2) (b) 6.

SECTION 4. 30.29 (1) (c) of the statutes is created to read:
30.29(1)(c) "Native" means indigenous to this state.

SECTION 5. 30.29 (1) (d) of the statutes is created to read:
30.29 (1) (d) "Outlying waters" has the meaning given in s. 29.001 (63).

SECTION 6. 30.29 (3) (i) of the statutes is created to read:
30.29 (3) (i) *Controlling invasive species in outlying waters.* Except as provided by sub. (4), a person operating a motor vehicle while engaged in activities to control invasive species in outlying waters, if all of the following apply:

1. The use of the motor vehicle is for the purpose of controlling invasive species by mowing or applying herbicide in compliance with any permit required by department rule adopted under s. 23.24 or 281.17 or with an invasive species control plan or project approved by the department under s. 23.22.
2. The motor vehicle is operated on the exposed bed of an outlying water only when the exposed bed is dry.
3. The use occurs between August 1 and March 15 of the subsequent year.
4. The control activities do not unnecessarily interfere with or destroy native plant species.

NR
S107
1108
acrop
Feb 9

SECTION 7. 30.29 (4) is renumbered 30.29 (5).

SECTION 8. 30.29 (4) of the statutes is created to read:
30.29 (4) **Permit in lieu of exemption.** (a) The department may direct any person operating a motor vehicle under sub. (3) (i) to cease the operation and apply for a general or individual permit issued under this subchapter or request a contract under this subchapter if, following investigation, it has reason to believe that site-specific conditions require restrictions on the activity to prevent environmental pollution as defined in s. 299.01 (4), or to prevent significant harm or injury to any of the following:

1. Public rights or interests in navigable water.
2. A threatened or endangered species or its habitat.
3. Historic property subject to s. 44.40 (1).
4. A person's riparian rights.

(b) Any person operating a motor vehicle under sub. (3) (i) shall immediately cease the operation if directed to do so under par. (a) until the person receives a general or individual permit issued under this subchapter or the operation is authorized under a contract entered into under this subchapter.

whooping
cranes

individual
[permit]

Gibson-Glass, Mary

From: Malaise, Gordon
Sent: Monday, February 01, 2010 12:13 PM
To: Gibson-Glass, Mary
Subject: RE: Drafting Request/ describing historic properties

Mary:

The cross reference to s. 44.40 (1) works, but a more descriptive reference would read:

"Historic property, as defined in s. 44.31 (3), that is a listed property, as defined in s. 44.31 (4), that is on the inventory, as defined in s. 44.31 (12), or that is on the list of locally designated historic places under s. 44.45."

See e.g., s. 66.111 (4) (a) and 120.12 (21) (a).

Gordon

From: Gibson-Glass, Mary
Sent: Monday, February 01, 2010 11:51 AM
To: Malaise, Gordon
Subject: FW: Drafting Request/ describing historic properties
Importance: High

Gordon,

In the Word attachment, in the subbested lanague for 30.2(4) (a) 3., could you look at the suggested language and if you don't think it works, please give me some language. The scope of this bill would apply to "historic properties" that are in or near Lake Michigan or Lake Superior.

Thanks,

Mary

From: Wadd, Jay
Sent: Tuesday, January 26, 2010 12:41 PM
To: Gibson-Glass, Mary
Subject: Drafting Request: Senate Alternative to AB 521
Importance: High

Hi, Mary.

Senator Hansen would like to draft a senate version of Assembly Bill 521 which incorporates the changes that are included in the attachment to this message.

In addition to the changes suggested in the attachment, we would like to see that in the section "Permit in lieu of exemption" that the DNR not be able to charge for the issuance of a general permit in those cases where they are directing people to obtain one under this bill.

Also, I know you're likely busy, but this is a rush priority for Sen. Hansen.

Please let me know if you have any questions.

2/2/2010

Thanks,

Jay

From: Heinen, Paul H - DNR [mailto:Paul.Heinen@Wisconsin.gov]
Sent: Monday, December 14, 2009 1:46 PM
To: Wadd, Jay
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Paul



State of Wisconsin
2009 - 2010 LEGISLATURE

RMR
LRB-4195 1
MGG: f:....
nwn

En

D-Note

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SAV
X-ref ✓

these lakes (outlying waters)

authorizing

exposed

Gen.

1 AN ACT ...; relating to: the operation of motor vehicles on the beds of outlying
2 waters and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the operation of a motor vehicle, including an all-terrain vehicle, is prohibited in or on a navigable body of water or on the exposed bed of a body of water. Exemption to this prohibition include operating a motor vehicle on a frozen body of water, while crossing a stream, or in conjunction with an agricultural activity.

This bill creates an additional exemption which authorizes the operation of a motor vehicle on the exposed beds Lake Superior and Lake Michigan, and other waters that are part or connect to the lakes, in order to destroy or prevent the spread of invasive species if the operation of the motor vehicle is in compliance with certain requirements. These requirements include that the operation of the motor vehicle be limited to mowing or the application of herbicides, that the mowing or herbicide application must be in compliance with a aquatic plant management permit issued by the Department of Natural Resources (DNR) or as part of a project for which a grant has been provided by DNR, that the motor vehicle be operated only on the exposed bed when it is dry and only between the period beginning with August 1st and ending on the following March 15th.

The bill provides that even if the operation of the motor vehicle complies with these requirements, DNR may order that it be stopped in order to prevent environmental pollution or in order to prevent significant injury to an endangered or threatened species, to the public rights or interests in navigable waters, to the rights of a riparian landowner, or to a historic property that is designated as such by law (injury, environmental or community interests).

to e ↗

an and

outlying waters

In order to resume operating the motor vehicle the person seeking to operate the motor vehicle must be authorized under a general permit issued by DNR or receive an individual permit from DNR. The bill requires DNR to promulgate as a rule a general permit that allows the operation of motor vehicles for the purpose of mowing in, or applying herbicide to, any area that contains the invasive species phragmites australis and that is located in Lake Michigan and authorizes DNR to issue other similar general permits. The bill requires DNR to issue an individual permit if the motor vehicle operation is not covered by a general permit if DNR determines that the vehicle may be operated in a manner that it will not cause injury to environmental or community interests. The bill exempts a person from paying the application fees that apply to seeking authorization under other general permits or to receiving other individual permits under the laws governing activities in navigable waters.

1

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

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

1 SECTION 1. 30.28 (3) of the statutes is renumbered 30.28 (3) (a).

2 SECTION 2. 30.28 (3) (b) of the statutes is created to read:

3 30.28 (3) (b) No fee may be charged for seeking authorization under a general
4 permit under s. 30.29 (3m) (d) or for applying for an individual permit under s. 30.
5 29 (3m) (e).

6 SECTION 3. 30.29 (1) of the statutes is renumbered 30.29 (1) (intro.) and
7 amended to read:

8 30.29 (1) ~~DEFINITION~~ DEFINITIONS. In this section, "motor:

9 (d) "Motor vehicle" includes an all-terrain vehicle, as defined in s. 340.01 (2g).

History: 1981 c. 189; 1987 a. 374; 1991 a. 39; 2007 a. 118; 2009 a. 28.

10 SECTION 4. 30.29 (1) (a) of the statutes is created to read:

11 30.29 (1) (a) "Control" has the meaning given in s. 23.22 (1) (a).

299.01

12 SECTION 5. 30.29 (1) (b) of the statutes is created to read:

291.01

13 30.29 (1) (b) "Environmental pollution" has the meaning given in s. 20901 (4).

14 SECTION 6. 30.29 (1) (c) of the statutes is created to read:

1 30.29 (1) (c) "Invasive species" means a plant that is identified as an invasive
2 species by department rule under s. 23.22 (2) (b) (6) 6.

3 SECTION 7. 30.29 (1) (e) of the statutes is created to read:

4 30.29 (1) (e) "Outlying waters" has the meaning given in s. 29.001 (63).

5 SECTION 8. 30.29 (3) (title) of the statutes is repealed and recreated to read:

6 30.29 (3) (title) EXEMPTIONS.

7 SECTION 9. 30.29 (3) (i) of the statutes is created to read:

8 30.29 (3) (i) *Controlling invasive species.* A person operating a motor vehicle
9 in compliance with sub. (3m) (a). *Except as provided in par. (c) 1 e*

10 SECTION 10. 30.29 (3m) of the statutes is created to read:

11 30.29 (3m) CONTROLLING INVASIVE SPECIES IN OUTLYING WATERS EXEMPTION. (a)

12 *Requirements for exemption.* A person may operate a motor vehicle in outlying
13 waters for the purpose of controlling invasive species if the operation meets all of the
14 following requirements:

15 1. The operation of the motor vehicle is for the purpose of mowing or applying
16 a herbicide in compliance with a permit issued by the department under s. 23.24 or
17 281.17 (2), in compliance with the statewide management plan implemented under
18 s. 23.22, or as required for a project for which a grant is awarded by the department
19 under s. 23.22.

20 2. The operation of the motor vehicle occurs only on the exposed bed of the
21 outlying water and only when the exposed bed is dry.

22 3. The operation of the motor vehicle occurs between the period beginning on
23 August 1 of a given year and ending on March 15 of the immediately following year.

24 4. The mowing or application of the herbicide interfere *with* destroy native species
25 only to the degree that is necessary to control the invasive species. *or*

Ins
3-25
→

1 (b) *Issuance of general permits.* 1. The department shall issue a general permit
 2 as a rule promulgated under ch. 227 that authorizes the operation of a motor vehicle
 3 in compliance with requirements under par. (a) for the purpose of mowing in, or
 4 applying herbicide to, any area of ~~phragmites australis~~ ^{that contains and} that is located in outlying
 5 waters.

6 2. The department may issue by rule general permits ~~that specify additional~~
 7 ~~areas of exposed beds of outlying waters of other~~ ^{to control other} types of invasive species for which
 8 the operation of motor vehicles on exposed beds are permitted.

9 (c) *Ceasing operation of motor vehicles.* The department may order that a
 10 person operating a motor vehicle under the exemption under sub. (3) (i) to
 11 immediately cease operating the motor vehicle and seek authorization under a
 12 general permit issued under par. (b) or apply for an individual permit under par. (e)
 13 if the department has conducted an investigation and visited the site where the
 14 motor vehicle is being operated and the department has determined that conditions
 15 specific to the site require restrictions on the operation of the motor vehicle in order
 16 to prevent any of the following:

- 17 1. Prevent environmental pollution.
- 18 2. Prevent significant ~~injury~~ ^{injury} to the public rights or interests in navigable
 19 waters.
- 20 3. Prevent significant ~~injury~~ ^{injury} to the riparian rights any riparian owner.
- 21 4. Prevent significant injury to any species listed as endangered or threatened
 22 under s. 29.604 (3).
- 23 5. Prevent significant injury to a historic property, as defined in s. 44.31 (3),
 24 ~~that is~~ ^{that is} a listed property, as defined in s. 44.31 (4), that is on the inventory, as defined

stet

1 in s. 44.31 (12), or that is on the list of locally designated historic places under s.
2 44.45.

3 (d) *Authorization under general permits.* 1. After receiving an order issued
4 under par. (c), a person wishing to resume the operation of a motor vehicle which may
5 be authorized by a general permit issued under par. (b) shall apply to the
6 department, with written notification of the person's wish to resume the operation
7 of the motor vehicle, not less than 30 days before resuming the motor vehicle
8 operation that may be authorized by the general permit. The notification shall
9 provide information describing how the motor vehicle will be operated in order to
10 allow the department to determine whether such operation is authorized by the
11 general permit. The department may make a request for additional information one
12 time during the 30-day period. If the department makes a request for additional
13 information, the 30-day period is tolled from the date the person applying for
14 authorization to proceed receives the request until the date on which the department
15 receives the information.

16 2. If within 30 days after a notification under subd. 1. is submitted to the
17 department the department does not require any additional information about the
18 operation of the motor vehicle that is subject to the notification and does not inform
19 the applicant that an individual permit will be required, the operation of the motor
20 vehicle will be considered to be authorized by the general permit and the applicant
21 may resume operating the motor vehicle without further notice, hearing, permit
22 approval if the operation of the motor vehicle is carried out in compliance with all of
23 the conditions of the general permit and with the requirements under par. (a).

24 3. Section 30.206 does not apply to general permits issued under this
25 subsection or to written notifications under subd. 1.

as a result of the procedure under par. (d) 2. the

1 (e) Individual permits. 1. If department informs a person under par. (d) 2. that
2 operation of the motor vehicle is not authorized under a general permit, a person
3 may apply for an individual permit to resume of the motor vehicle in compliance with
4 the requirements under par. (a). If the department determines that it is possible to
5 operate the motor vehicle on the bed in a manner that will not cause environmental
6 pollution or significant injury to the rights, interests, species, or property specified in
7 par. (c) 2. to 5., the department shall issue an individual permit authorizing the
8 operation of the motor vehicle in that manner.

9 2. Section 30.208 applies to an application for an individual permit under subd.
10 1.

SECTION 11. 30.298 (3) of the statutes is amended to read:

30.298 (3) Any person who violates a general permit under s. 30.206 shall
forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit not
less than \$50 nor more than \$500 upon conviction of the same offense a 2nd or
subsequent time

History: 1987 a. 374; 2003 a. 118.

(END)

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4195/lins
MGG:.....

Ins 3-25

1 (b) *Issuance of general permits.* 1. The department shall issue a general permit
2 as a rule promulgated under ch. 227 that authorizes the operation of motor vehicles
3 for the purpose of controlling *Phragmites australis* in outlying waters.✓

4 2. In addition to the general permit under subd. 1., the department may issue
5 by rule general permits authorizing the operation of motor vehicles to control other
6 types of invasive species in outlying waters.✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-41957¹dn

MGG:f:....

nwn

Date

apparently does not charge a fee for these permits and it is questionable whether DNR would have the authority to do so.

DNR has ~~the authority to~~ promulgated rules to issue permits for the transportation, possession, introduction of invasive species. However, DNR

and

1. Please review this draft very carefully. Pursuant to my conversation with Jay, I have created new permit provisions for just the operation of a motor vehicle on the exposed bed of an outlying waters, instead of requiring a person to get one of the existing individual permits or to seek authorization under one of the existing general permits since I did not think any of the existing permitted activities (placing structures and deposits, building bridges, withdrawing water from navigable waters, enlargement of waterways, changing of stream courses) really "fit". The only one that did seem relevant was the contracts for removal of material that, although they are contracts, are treated like permitted activities. See s. 30.20.

In creating these new provisions as to general and individual permits, I chose which provisions under ss. 30.206 and 30.208 that I thought worked with the concept. Please review the draft and ss. 30.206 and 30.208 to see how they interrelate.

Please note that the provisions in this draft contain deadlines for determinations by DNR. You may wish to change these time frames. Also note that under current law general permits must be promulgated by rules, and I included that requirement in this draft. See 30.206 (1) (a) in current law and s. 30.29 (3m) (b). Promulgation of rules takes time. You may wish to exempt the general permit in this draft from the rule-making process, although I think that would be unusual. Or you may wish to require that DNR promulgate the mandatory general permit under s. 30.29 (3m) (b) 1. as an emergency rule.

2. I did not include the procedure that allows a person to get DNR to determine whether an activity is exempt before starting the activity since this concept was not included in the drafting instructions I received. This is found in current law in provisions dealing with permits for placing structures and deposits (s. 30.12 (2r)), construction of bridges (s. 30.123 (6r)), and removal of material from beds of navigable waters (s. 30.20 (1r)). Let me know if you wish to include this procedure.

3. As to the fee issue, aquatic plant management permit fees will still apply. They are promulgated by rule. See 23.24 (3) (c). Also (3m)

4. Note that the mandatory general permit under s. 30.29 (1) (b) 1. applies to all outlying waters. If that is not your intent, you need to look at the definition of "outlying waters" in s. 29.001 (63) and tell me which waters you would like listed.

INSERT
D-N

5

6

7. ⁶¹5. Do you want a delayed effective date for all or part of this bill? ✓

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU
INSERT D-N

LRB-4195/linsdn
MGG:.....

(3m)
3. Note that the language in this draft relating to inspections varies somewhat from the drafting instructions. The drafting instructions do not require an on-site visit under s. 30.29 (em) (c) (intro.), but I included this requirement because it exists in current statutes for other permits. See ss. 30.12 (2m) (intro.), 30.123 (6m) (intro.) and 30.20 (1m) (intro.)

4. The language under s. 30.29 (3m) 2. and 3., which is based on the drafting instructions, varies somewhat with the corresponding language under current law. The greatest difference is that s. 30.29 (3m) (c) 2. has the limiting phrase "in navigable waters." In reviewing these provisions, you should compare s. 30.29 (3m) (c) 2. and 3. with ss. 30.12 (2m) (a) and (c), 30.123 (6m) (a) and (c), and 30.20 (1m) (a) and (c).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4195/1dn
MGG:nwn:ph

February 12, 2010

1. Please review this draft very carefully. Pursuant to my conversation with Jay, I have created new permit provisions for just the operation of a motor vehicle on the exposed bed of an outlying water, instead of requiring a person to get one of the existing individual permits or to seek authorization under one of the existing general permits since I did not think any of the existing permitted activities (placing structures and deposits, building bridges, withdrawing water from navigable waters, enlargement of waterways, changing of stream courses) really "fit". The only one that did seem relevant was the contracts for removal of material that, although they are contracts, are treated like permitted activities. See s. 30.20.

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2. I did not include the procedure that allows a person to get DNR to determine whether an activity is exempt before starting the activity since this concept was not included in the drafting instructions I received. This is found in current law in provisions dealing with permits for placing structures and deposits (s. 30.12 (2r)), construction of bridges (s. 30.123 (6r)), and removal of material from beds of navigable waters (s. 30.20 (1r)). Let me know if you wish to include this procedure.

3. Note that the language in this draft relating to inspections varies somewhat from the drafting instructions. The drafting instructions do not require an on-site visit under s. 30.29 (3m) (c) (intro.), but I included this requirement because it exists in current statutes for other permits. See ss. 30.12 (2m) (intro.), 30.123 (6m) (intro.), and 30.20 (1m) (intro.).

4. The language under s. 30.29 (3m) 2. and 3., which is based on the drafting instructions, varies somewhat with the corresponding language under current law. The greatest difference is that s. 30.29 (3m) (c) 2. has the limiting phrase "in navigable waters." In reviewing these provisions, you should compare s. 30.29 (3m) (c) 2. and 3. with ss. 30.12 (2m) (a) and (c), 30.123 (6m) (a) and (c), and 30.20 (1m) (a) and (c).
5. As to the fee issue, aquatic plant management permit fees will still apply. They are promulgated by rule. See s. 23.24 (3) (c). Also, DNR has promulgated rules to issue permits for the transportation, possession, and introduction of invasive species. However, DNR apparently does not charge a fee for these permits and it is questionable whether DNR would have the authority to do so.
6. Note that the mandatory general permit under s. 30.29 (3m) (b) 1. applies to all outlying waters. If that is not your intent, you need to look at the definition of "outlying waters" in s. 29.001 (63) and tell me which waters you would like listed.
7. Do you want a delayed effective date for all or part of this bill?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

For 12

concern is too much p/work and takes too long to get DNR's OK

eliminate all permitting

OK to mow or apply herbicide if

bed exposed

best dates

amt necessary

no injury to public
rights

(no)

no new pollution / ^{dis} too broad → CO

no end species

limit it to Phragmites

→ already cannot root up / injure
etc endangered species



Eni

2009 BILL

D-Note

SA ✓

Regen.

1 AN ACT to renumber 30.28 (3); to renumber and amend 30.29 (1); to repeal
 2 and recreate 30.29 (3) (title); and to create 30.28 (3) (b), 30.29 (1) (a), 30.29
 3 (1) (b), 30.29 (1) (c), 30.29 (1) (e), 30.29 (3) (i) and 30.29 (3m) of the statutes;
 4 relating to: the operation of motor vehicles on the exposed beds of outlying
 5 waters ~~and granting rule-making authority.~~ ^{to control *Phragmites australis*} [Ⓡ] *Phragmites australis*

Analysis by the Legislative Reference Bureau

Under current law, the operation of a motor vehicle, including an all-terrain vehicle, is prohibited in or on a navigable body of water or on the exposed bed of a body of water. Exemptions to this prohibition include operating a motor vehicle on a frozen body of water, while crossing a stream, or in conjunction with an agricultural activity.

This bill creates ^{the} an additional exemption authorizing the operation of a motor vehicle on the exposed beds of Lake Superior and Lake Michigan, and other waters that are part of or connect to these lakes (outlying waters), in order to destroy or prevent the spread of invasive species, if the operation of the motor vehicle is in compliance with certain requirements. These requirements include that the operation of the motor vehicle be limited to mowing or the application of herbicides, ~~that the mowing or herbicide application must be in compliance with an aquatic plant management permit issued by the Department of Natural Resources (DNR) or as part of a project for which a grant has been provided by DNR, and~~ ^{and} that the motor vehicle be operated only on the exposed bed when it is dry and only between the period beginning on August 1st and ending on the following March 15th.

Phragmites australis

BILL

The bill provides that even if the operation of the motor vehicle complies with these requirements, DNR may order that it be stopped in order to prevent environmental pollution or in order to prevent significant injury to an endangered or threatened species, to the public rights or interests in navigable waters, to the rights of a riparian landowner, or to a historic property that is designated as such by law (injury to environmental or community interests).

In order to resume operating the motor vehicle, the person seeking to operate the motor vehicle must be authorized under a general permit issued by DNR or receive an individual permit from DNR. The bill requires DNR to promulgate as a rule a general permit that allows the operation of motor vehicles for the purpose of mowing in, or applying herbicide to, any area that contains the invasive species *Phragmites australis* and that is located in outlying waters and authorizes DNR to issue other similar general permits. The bill requires DNR to issue an individual permit if the motor vehicle operation is not covered by a general permit if DNR determines that the vehicle may be operated in a manner that it will not cause injury to environmental or community interests. The bill exempts a person from paying the application fees that apply to seeking authorization under other general permits or to receiving other individual permits under the laws governing activities in navigable waters.

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

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

SECTION 1. 30.28 (3) of the statutes is renumbered 30.28 (3) (a).

SECTION 2. 30.28 (3) (b) of the statutes is created to read:

30.28 (3) (b) No fee may be charged for seeking authorization under a general permit under s. 30.29 (3m) (d) or for applying for an individual permit under s. 30.29 (3m) (e).

SECTION 3. 30.29 (1) of the statutes is renumbered 30.29 (1) (intro.) and amended to read:

30.29 (1) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, "~~motor~~;

~~(b)~~ (d) "Motor vehicle" includes an all-terrain vehicle, as defined in s. 340.01 (2g).[✓]

SECTION 4. 30.29 (1) (a) of the statutes is created to read:

30.29 (1) (a) "Control" has the meaning given in s. 23.22 (1) (a).[✓]

BILL

SECTION 5. 30.29 (1) (b) of the statutes is created to read:

30.29 (1) (b) "Environmental pollution" has the meaning given in s. 299.01 (4).

~~SECTION 6. 30.29 (1) (c) of the statutes is created to read:~~

~~30.29 (1) (c) "Invasive species" means a plant that is identified as an invasive species by department rule under s. 23.22 (2) (b) 6.~~

SECTION 7. 30.29 (1) ^(c) (e) of the statutes is created to read:

30.29 (1) ^(c) (e) "Outlying waters" has the meaning given in s. 29.001 (63).

SECTION 8. 30.29 (3) (title) of the statutes is repealed and recreated to read:

30.29 (3) (title) EXEMPTIONS.

SECTION 9. 30.29 (3) (i) of the statutes is created to read:

30.29 (3) (i) ^{Phragmites} Controlling ~~invasive species~~. A person operating a motor vehicle in compliance with sub. (3m). *Phragmites australis*

SECTION 10. 30.29 (3m) of the statutes is created to read:

30.29 (3m) ^{PHRAGMITES} CONTROLLING ~~INVASIVE SPECIES~~ IN OUTLYING WATERS. ~~EXEMPTION~~. (a) Requirements for exemption. ~~Except as provided in part (b)~~ a person may operate a motor vehicle in outlying waters ~~for the purpose of controlling invasive species~~ if the operation meets all of the following requirements: ✓

1. The operation of the motor vehicle is for the purpose of mowing or applying a herbicide ^{for the purpose of controlling Phragmites australis.} in compliance with a permit issued by the department under s. 23.24 or 281.17 (2), in compliance with the statewide management plan implemented under s. 23.22, or as required for a project for which a grant is awarded by the department under s. 23.22.

2. The operation of the motor vehicle occurs only on the exposed bed of the outlying water and only when the exposed bed is dry.

BILL

1 3. The operation of the motor vehicle occurs between the period beginning on
2 August 1 of a given year and ending on March 15 of the following year.

3 4. The mowing or application of the herbicide interferes with or destroys native
4 species only to the degree that is necessary to control the ~~invasive species~~ ^{Phragmites australis}

5 **(b) Issuance of general permits.** 1. The department shall issue a general permit
6 as a rule promulgated under ch. 227 that authorizes the operation of motor vehicles
7 for the purpose of controlling Phragmites australis in outlying waters.

8 2. In addition to the general permit under subd. 1., the department may issue
9 by rule general permits authorizing the operation of motor vehicles to control other
10 types of invasive species in outlying waters.

11 **(c) Ceasing operation of motor vehicles.** The department may order a person
12 operating a motor vehicle under the exemption under sub. (3) (i) to immediately cease
13 operating the motor vehicle and seek authorization under a general permit issued
14 under par. (b) or apply for an individual permit under par. (e) if the department has
15 conducted an investigation and visited the site where the motor vehicle is being
16 operated and the department has determined that conditions specific to the site
17 require restrictions on the operation of the motor vehicle in order to prevent any of
18 the following:

- 19 1. ~~Prevent environmental pollution.~~
- 20 2. ~~Prevent significant injury to the public rights or interests in navigable~~
21 waters.
- 22 3. ~~Prevent significant injury to the riparian rights~~ ^{of} ~~any riparian owner.~~
- 23 4. ~~Prevent significant injury to any species listed as endangered or threatened~~
24 ~~under s. 29.604 (3).~~

Controlled Phragmites

BILL

1 5. Prevent significant injury to a property that is a historic property, as defined
2 in s. 44.31 (3), that is a listed property, as defined in s. 44.31 (4), that is on the
3 inventory, as defined in s. 44.31 (12), or that is on the list of locally designated historic
4 places under s. 44.45.

5 (d) *Authorization under general permits.* 1. After receiving an order issued
6 under par. (c), a person wishing to resume the operation of a motor vehicle which may
7 be authorized by a general permit issued under par. (b) shall apply to the
8 department, with written notification of the person's wish to resume the operation
9 of the motor vehicle, not less than 30 days before resuming the motor vehicle
10 operation that may be authorized by the general permit. The notification shall
11 provide information describing how the motor vehicle will be operated in order to
12 allow the department to determine whether such operation is authorized by the
13 general permit. The department may make a request for additional information one
14 time during the 30-day period. If the department makes a request for additional
15 information, the 30-day period is tolled from the date the person applying for
16 authorization to proceed receives the request until the date on which the department
17 receives the information.

18 2. If within 30 days after a notification under subd. 1. is submitted to the
19 department the department does not require any additional information about the
20 operation of the motor vehicle that is subject to the notification and does not inform
21 the applicant that an individual permit will be required, the operation of the motor
22 vehicle will be considered to be authorized by the general permit and the applicant
23 may resume operating the motor vehicle without further notice, hearing, permit, or
24 approval if the operation of the motor vehicle is carried out in compliance with all of
25 the conditions of the general permit and with the requirements under par. (a).

BILL

1 3. Section 30.206 does not apply to general permits issued under this
2 subsection or to written notifications under subd. 1.

3 (e) *Individual permits.* 1. If, as a result of the procedure under par. (d) 2., the
4 operation of the motor vehicle is not authorized under a general permit, a person may
5 apply for an individual permit to resume operation of the motor vehicle in compliance
6 with the requirements under par. (a). If the department determines that it is possible
7 to operate the motor vehicle on the exposed bed in a manner that will not cause
8 environmental pollution or significant injury to the rights, interests, species, or
9 property specified in par. (c) 2. to 5., the department shall issue an individual permit
10 authorizing the operation of the motor vehicle in that manner.

11 2. Section 30.208 applies to an application for an individual permit under subd.

12 1.

13 (END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4195/0dn^{e2}
MGG:nwn:ph

Date

Attention: Jay

In reviewing the list of possible requirements to be imposed on the use of a motor vehicle on a bed of a navigable water, I omitted three requirements that we discussed including. I did not include any requirement regarding "environmental pollution" because the definition is so broad in s. 299.01 (4). The definition states that injury to plant life is "environmental pollution". The control of Phragmites would not be able to meet this requirement. I did not include the requirement regarding endangered and threatened species because it is already illegal to root up, sever or injure these species. See s. 29.604 (4) (c) 2. Finally, I did not include the requirement regarding injury to the public's rights in navigable waters since there is no such requirement when a motor vehicle is operating on the bed for an agricultural use, which I thought was a similar scenario to the use of a motor vehicle for the control of Phragmites. See. s. 30.29 (3) (b).

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

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

LRB-4195/2dn
MGG:nwn:rs

March 5, 2010

Attention: Jay

In reviewing the list of possible requirements to be imposed on the use of a motor vehicle on a bed of a navigable water, I omitted three requirements that we discussed including. I did not include any requirement regarding "environmental pollution" because the definition is so broad in s. 299.01 (4). The definition states that injury to plant life is "environmental pollution." The control of *Phragmites* would not be able to meet this requirement. I did not include the requirement regarding endangered and threatened species because it is already illegal to root up, sever, or injure these species. See s. 29.604 (4) (c) 2. Finally, I did not include the requirement regarding injury to the public's rights in navigable waters since there is no such requirement when a motor vehicle is operating on the bed for an agricultural use, which I thought was a similar scenario to the use of a motor vehicle for the control of *Phragmites*. See s. 30.29 (3) (b).

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

Barman, Mike

From: Gibson-Glass, Mary
Sent: Monday, March 08, 2010 11:29 AM
To: Barman, Mike
Subject: FW: 09-4195

Please take care of this.

Thanks,

Mary

From: Wadd, Jay
Sent: Monday, March 08, 2010 11:28 AM
To: Gibson-Glass, Mary
Subject: RE: 09-4195

Mary,

I can't remember if I asked for it to be jacketed, but if not, would you please have it jacketed for the Senate?

Thanks,

jay

From: Gibson-Glass, Mary
Sent: Monday, March 08, 2010 8:21 AM
To: Wadd, Jay
Subject: 09-4195

Per your request.

Mary Gibson-Glass
Senior Legislative Attorney
Legislative Reference Bureau
608 267 3215

<< File: 09-4195/2 >> << File: 09-4195/2dn >>