

1983 Assembly Bill 9

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1983 Wisconsin Act 100

AN ACT to amend 30.50 (1); to repeal and recreate 30.126 (5) (f); and to create 30.126 and 30.775 of the statutes, relating to regulation of fishing rafts, granting rule-making authority and providing penalties.

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

SECTION 1. Legislative findings. (1) **WOLF RIVER.** The legislature recognizes the historical use of fishing rafts on the Wolf river and its tributaries from the Shawano dam downstream to Lake Poygan. The legislature finds that fishing rafts on these waters have been used traditionally during the spring spawning runs. The legislature further finds that in recent years the number and condition of the fishing rafts and conflicts with other users have resulted in many problems on the Wolf river and have created the need for regulation of fishing rafts.

(2) **MISSISSIPPI RIVER.** The legislature recognizes the historical use and importance of the 3 existing commercially operated fishing rafts on the Mississippi river within the boundaries of this state. The legislature finds that the existing fishing rafts and new fishing rafts on the Mississippi river do not and probably would not result in the type of user conflicts presently found on the Wolf river.

(3) **OTHER WATERS.** The legislature finds that fishing rafts have rarely been used on navigable waters other than the Wolf river and the Mississippi river.

SECTION 2. 30.126 of the statutes is created to read:

30.126 Regulation of fishing rafts. (1) **DEFINITIONS.** As used in this section:

(a) "Fishing raft" means any raft, float or structure, including a raft or float with a superstructure and including a structure located or extending below or beyond the ordinary highwater mark of a water, which is designed to be used or is normally used for fishing, which is not normally used as a means of transportation on water and which is normally retained in place by means of a permanent or semipermanent attachment to the shore or to the bed of the waterway. "Fishing raft" does not include a boathouse or fixed houseboat regulated under s. 30.121 nor a wharf or pier regulated under s. 30.13.

(b) "Flotation device" means any device used to provide flotation for a fishing raft, including each individual barrel or styrofoam coffin.

(c) "Wolf river municipality" means any city, village or town which adjoins or includes any part of the Wolf river or its stream tributaries from the Shawano dam downstream to Lake Poygan.

(2) PROHIBITION OF FISHING RAFTS. Except as provided under subs. (3) and (4), no person may construct or place a fishing raft on any navigable water.

(3) EXCEPTION FOR FISHING RAFTS ON THE MISSISSIPPI RIVER. A person may maintain any fishing raft located below and in close proximity to a lock or dam on the Mississippi river if the fishing raft is constructed or in place prior to the effective date of this section (1983). A person may construct, place and maintain a fishing raft below and in proximity to a lock or dam on the Mississippi river if a permit is obtained for the fishing raft under s. 30.12.

(4) EXCEPTION FOR FISHING RAFTS ON THE WOLF RIVER. A person may construct, place and maintain a fishing raft on authorized portions of the Wolf river if the person complies with the restrictions under sub. (5). Authorized portions of the Wolf river consist of any part of the Wolf river or its stream tributaries from the Shawano dam downstream to Lake Poygan.

(5) RESTRICTIONS ON FISHING RAFTS ON THE WOLF RIVER. (a) *May not obstruct navigation or interfere with public rights.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river in a manner which materially obstructs navigation or which materially interferes with public rights in the navigable waters.

(b) *May not be located in channel.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river in the channel of the waterway.

(c) *May not block more than 25% of the waterway.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river if the raft alone or in combination with any other fishing rafts previously constructed and placed on the waterway results in the obstruction of more than 25% of the width of the waterway.

(d) *May not be located within 10 feet of another fishing raft.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river within 10 feet of any other fishing raft previously constructed and placed on the waterway.

(e) *May not affect riparian rights without permission of riparian owner.* No person who is not the riparian owner may construct, place or maintain a fishing raft which is attached or adjacent to property of a riparian owner or which otherwise affects the rights of a riparian owner unless the person receives the written permission of the riparian owner.

(f) *May not be used during certain times of the year.* No person may construct or place a fishing raft on authorized portions of the Wolf river prior to March 1 of any year. Any person who constructs or places a fishing raft on authorized portions of the Wolf river on or after the effective date of this section (1983), shall remove or cause the removal of the fishing raft from the waterway on or before October 31 of each year.

(g) *May not have improper flotation devices.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river unless each flotation device used on the fishing raft is clean and uncontaminated, properly attached to the fishing raft and properly maintained in conformity with minimum standards established by the department by rule. The department shall establish minimum standards for the condition, attachment and maintenance of flotation devices used on fishing rafts.

(h) *May not have improper toilets.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river if the fishing raft is equipped with a toilet which permits toilet waste to be disposed of in the waterway. A toilet on a fishing raft shall comply with rules of the department of industry, labor and human relations as if the toilet were on a boat.

(i) *May not be abandoned.* No person who constructs or places a fishing raft on authorized portions of the Wolf river may abandon the fishing raft.

(j) *May not be improperly maintained.* No person who constructs or places a fishing raft on authorized portions of the Wolf river may fail to maintain the fishing raft in conformity with minimum standards established by the department by rule. After consulting with Wolf river municipalities, the department shall establish by rule minimum standards for the maintenance of fishing rafts to ensure proper repair, to promote maintenance in an aesthetically pleasing manner and to reduce the possibility that debris or litter from the fishing raft will be deposited in the waterway.

(k) *May not be used unless registered.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river unless the fishing raft is registered under the uniform registration system and unless the registration number is displayed on the raft and on each flotation device in 3-inch block letters.

(6) REGISTRATION OF FISHING RAFTS ON THE WOLF RIVER. (a) *Department to establish a uniform registration system.* The department shall establish by rule general standards for a uniform registration system for fishing rafts, on authorized portions of the Wolf river, which includes all the following:

1. A uniform numbering system for fishing rafts and flotation devices used on fishing rafts.
2. Provisions for the annual registration of all fishing rafts.
3. Provisions for the payment of an annual registration fee of \$5 for each fishing raft.

(b) *Municipal adoption, administration and enforcement of uniform registration system.*

1. A Wolf river municipality shall adopt by ordinance and administer and enforce a uniform registration system for fishing rafts consistent with the general standards established by the department.
2. A Wolf river municipality which adopts, administers and enforces a uniform registration system for fishing rafts and which adopts and enforces restrictions on fishing rafts may retain all registration fees to administer and enforce the uniform registration system and the restrictions.

3. A Wolf river municipality which adopts a uniform registration system for fishing rafts shall transmit a complete list of all registered fishing rafts and their owners to the department on or before April 1 of each year.

(c) *Failure of municipality to adopt, administer or enforce the uniform registration system.* If a Wolf river municipality fails to adopt by ordinance a uniform registration system for fishing rafts within 120 days after the effective date of rules promulgated by the department under par. (a), or fails to adequately administer or enforce the uniform registration system for fishing rafts, the department, after providing notice and conducting a hearing on the matter, may adopt or administer and enforce the uniform registration system for fishing rafts in that municipality. If the department adopts, administers or enforces the uniform registration system for fishing rafts in a Wolf river municipality, the department may retain all registration fees for fishing rafts registered in that municipality.

(d) *Conflicts.* Any conflict in jurisdiction arising from the enactment of ordinances for the registration of fishing rafts on authorized portions of the Wolf river by 2 or more Wolf river municipalities shall be resolved under s. 66.32.

(7) MUNICIPAL REGULATION OF FISHING RAFTS ON THE WOLF RIVER. (a) *Municipal adoption and enforcement of restrictions on fishing rafts.* A Wolf river municipality shall adopt by ordinance and enforce restrictions on fishing rafts at least as restrictive as those under sub. (5).

(b) *Failure of a municipality to adopt and enforce restrictions on fishing rafts.* If a Wolf river municipality fails to adopt by ordinance restrictions on fishing rafts within 120 days after the effective date of rules promulgated by the department under subs. (5) (g) and (j) and (6) (a), or fails to adequately enforce the restrictions on fishing rafts, the department, after providing notice and conducting a hearing on the matter, may enforce restrictions on fishing rafts. If the department enforces restrictions on fishing rafts in a Wolf river municipality, the department may retain all registration fees for fishing rafts registered in that municipality.

(c) *Conflicts.* Any conflict in jurisdiction arising from the enactment of ordinances restricting fishing rafts on authorized portions of the Wolf river by 2 or more Wolf river municipalities shall be resolved under s. 66.32.

(8) REMOVAL OF FISHING RAFTS. (a) *Municipality may order removal.* A Wolf river municipality may order a person who is violating restrictions under sub. (5) or restrictions on fishing rafts adopted by ordinance to comply with the restrictions or to remove the fishing raft from authorized portions of the Wolf river.

(b) *Municipality may cause removal.* 1. If a person fails to comply with an order issued under par. (a) or if a Wolf river municipality is unable to issue an order under par. (a) because the fishing raft is not registered and the municipality cannot determine who constructed, placed or maintained the fishing raft on authorized portions of the Wolf river, the municipality may remove the fishing raft and dispose of it.

2. The owner or person responsible for the fishing raft shall reimburse a Wolf river municipality for all costs associated with the removal and disposal of the fishing raft under this paragraph.

(c) *Department authority to order removal.* 1. The department may order a person who is violating sub. (2) to remove the fishing raft from the navigable waters.

2. The department shall report any violation of sub. (5) to the Wolf river municipality where the violation occurred.

3. If the Wolf river municipality does not act under par. (b) 1 within 90 days after the department reports the violation, the department may order the person who is violating restrictions under sub. (5) to comply with the restrictions or to remove the fishing raft from authorized portions of the Wolf river.

(d) *Department authority to cause removal.* 1. If a person does not comply with an order issued under par. (c) 1 or if the department is unable to issue an order under par. (c) 1 because the department cannot determine who constructed, placed or maintained the fishing raft on the navigable waters, the department may remove the fishing raft and dispose of it.

2. If a person does not comply with an order issued under par. (c) 3, the department may remove the fishing raft and dispose of it.

3. If the department is unable to issue an order under par. (c) 3 because the fishing raft is not registered and the department cannot determine who constructed, placed or maintained the fishing raft on authorized portions of the Wolf river and if the Wolf river municipality does not act under par. (b) 1 within 120 days after the department reports the violation, the department may remove the fishing raft and dispose of it.

4. The owner or person responsible for the fishing raft shall reimburse the department for all costs associated with the removal and disposal of the fishing raft under this paragraph.

(9) ENFORCEMENT. (a) *Department and district attorney's authority to enforce.* The department or the district attorney for the county where the violation occurred may enforce this section, any rule promulgated under this section or any order issued by the department under this section. Before the department may enforce standards and rules promulgated under sub. (5) (j) with respect to a specific fishing raft and before the de-

partment may issue an order based on these standards or rules with respect to a specific fishing raft, the department shall notify and consult with the Wolf river municipality where the fishing raft is located.

(b) *Municipality's authority to enforce.* A Wolf river municipality may enforce any ordinance adopted or order issued by the municipality under this section.

(10) PENALTIES. (a) *Violation of statute, rule or department order.* A person who violates this section, any rule promulgated under this section or any order issued by the department under this section shall forfeit not less than \$10 nor more than \$250 for each offense. Each day of violation constitutes a separate offense.

(b) *Violation of municipal ordinance or order.* A person who violates any ordinance adopted or order issued by the municipality under this section is subject to the penalty established by ordinance. A Wolf river municipality may not establish this penalty at a level which is less severe than the penalty established under par. (a).

SECTION 3. 30.126 (5) (f) of the statutes, as created by 1983 Wisconsin Act (this act), is repealed and recreated to read:

30.126 (5) (f) *May not be used during certain times of the year.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf river prior to March 1 of any year. Any person who constructs, places or maintains a fishing raft on authorized portions of the Wolf river shall remove or cause the removal of the fishing raft from the waterway on or before October 31 of each year.

SECTION 4. 30.50 (1) of the statutes is amended to read:

30.50 (1) "Boat" or "vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. This term does not include a fishing raft, as defined under s. 30.126 (1) (a).

SECTION 5. 30.775 of the statutes is created to read:

30.775 Municipal regulation of fishing rafts on the Wolf river. A Wolf river municipality, as defined under s. 30.126 (1) (c), may regulate fishing rafts on authorized portions of the Wolf river under s. 30.126.

SECTION 6. **Effective dates.** (1) **GENERAL EFFECTIVE DATE.** Except as provided under subsections (2) and (3), this act takes effect on the day after publication.

(2) **EFFECTIVE DATE FOR REVISION OF RESTRICTION ON USE DURING CERTAIN TIMES OF THE YEAR.** The repeal and recreation of section 30.126 (5) (f) of the statutes by this act takes effect on March 1, 1985.

(3) **EFFECTIVE DATE FOR RESTRICTIONS INVOLVING RULE MAKING, REGISTRATION PROVISIONS, MUNICIPAL REGULATION AUTHORITY AND REMOVAL AUTHORITY.** (a) The creation of sections 30.126 (5) (g), (j) and (k) and (6) to (8) and 30.775 of the statutes by this act takes effect on March 1, 1985.

(b) Notwithstanding paragraph (a), the department of natural resources may promulgate rules under section 30.126 (5) (g) and (j) and (6) (a) of the statutes, as created by this act, as if that section were in effect on the day after publication if those rules do not take effect before March 1, 1985.

(c) Notwithstanding paragraph (a), a municipality may adopt ordinances under section 30.126 (6) and (7) of the statutes, as created by this act, as if that section were in effect on the day after publication if those ordinances do not take effect before March 1, 1985.
