



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 500

**Assembly Amendments
1, 2, 3, and 4**

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Current law, in ch. 30, Stats., contains provisions regarding the regulations applicable to navigable waters as well as the regulations applicable to boating. The Joint Legislative Council established a Special Committee on Navigable Waters Recodification which reviewed these statutes and recommended the bill draft which is now Assembly Bill 500. The Special Committee held 14 meetings in Madison commencing on September 21, 2000 and ending January 8, 2002. The legislation was first introduced in the 2003 Legislative Session, but did not pass the Legislature. The bill was reintroduced in the 2005 Legislative Session as Assembly Bill 500.

Assembly Bill 500 reorganizes the statutes that provide for permits or approvals for navigable waters regulations so that these statutes are in a consistent format, use consistent terminology, and have consistent decision-making standards where appropriate. The bill creates several new provisions that require the Department of Natural Resources (DNR) to make available publicly certain information regarding determinations of navigability and requires DNR to promulgate rules that describe the standards and procedures for making navigability determinations. Assembly Bill 500 has been redrafted since it was previously introduced in the Legislature to reflect changes made by 2003 Wisconsin Act 118. Assembly Bill 500 also makes a number of changes in state and local boating regulations. Assembly Bill 500 contains an extensive prefatory note and section notes that describe the bill in detail.

Assembly Amendment 1 corrects several errors made in the drafting of Assembly Bill 500. The errors consist mainly of incorrect statutory numbering and incorrectly deleted words.

Assembly Amendment 2 deletes all items in Assembly Bill 500 that create new provisions regarding the determination of navigability, including a statutory codification of the test established by the Wisconsin Supreme Court for determining whether a stream is navigable, authority for DNR to predict navigability based on measurements or calculations, authority for DNR to use historic records of navigation to determine navigability, a requirement for DNR to make publicly available maps and data that show prior determinations of navigability, a requirement for DNR to promulgate rules for standards used to determine whether a body of water is a lake or stream, the methods used by DNR to determine

whether a lake or stream is navigable, and a requirement for DNR to promulgate rules defining the public interest and public rights and the rights of riparian owners in navigable waters.

Assembly Amendment 3 makes the following modifications to the bill related to the regulation of navigable waters:

- The amendment deletes the provision of the bill authorizing DNR rule-making for ch. 30, Stats. DNR continues to have general rule-making authority in s. 227.11 (2), which allows each agency to promulgate rules interpreting any statute that it enforces or administers, so long as the rule is necessary for the purposes of this statute and does not exceed the bounds of correct interpretation.
- The current statute allows placement of a pier that extends no further than the point where the water is three feet deep or the point of adequate depth for mooring a boat, whichever is closer to the shoreline. The amendment modifies the statute to make it consistent with the “Pier Planner.” Under the amendment, a pier may extend to the furthest from the shoreline of three measurements: where the water is three feet deep, to the point where there is adequate depth for mooring a boat if required by the draft of the boat using the pier, or one boat length.
- The amendment deletes an obsolete provision in current statutes that requires DNR to proceed with an action to enforce a statute related to deposits in waters upon the filing of a complaint. Because the deadline for a complaint was in 1978, the provision regarding an enforcement action is deleted.
- The current statute [s. 30.15 (1) (b), Stats.] prohibits the placement in navigable waters or in any tributary thereof any substance that may float into and obstruct any such waters or impede their free navigation. Assembly Bill 500 inadvertently deletes the reference to “any tributary thereof.” The amendment restores the current statutory language on placing substances in a tributary, but retains the clarification that placement of substances into a tributary is prohibited if it may obstruct navigable waters, rather than any waters.
- Assembly Bill 500 creates a new mediation procedure that may be requested by persons involved in a permit application. Part of the mediation procedure is a requirement to hold in abeyance a public hearing or an administrative hearing. The amendment deletes the provision that holds in abeyance the public hearing, so that the DNR may proceed with the public hearing even though mediation has been requested.
- The amendment deletes a provision relating to imposing permit conditions, because this issue was addressed in a substantially similar matter by 2003 Wisconsin Act 118.
- The bill adds to the seller’s disclosure form for residential real estate transactions a statement by the seller regarding whether the property is located in a drainage district or that a legally binding obligation may require the owner to contribute to the cost of draining the property. The amendment deletes this provision of the bill.

Assembly Amendment 4 makes modifications to Assembly Bill 500 relating to boating and corrects errors in the bill related to boating statutes, including correction of a cross-reference to federal

law, clarification of what is meant by a boat's electrical system, restoration of current law that mitigates legal responsibility of boaters for collisions with objects or persons not legally in the water or not exercising due care, clarification that DNR is not required to undertake boat patrols on behalf of local governmental units, and a requirement that local regulations of water usage in connection with construction projects may not entirely prohibit navigation.

Legislative History

Assembly Amendments 1 to 4 were offered by the Assembly Committee on Natural Resources on January 18, 2006. Assembly Amendments 1, 3, and 4 were recommended for adoption by the Assembly Committee on Natural Resources on January 26, 2006, each on a vote of Ayes, 15; Noes, 0, and Assembly Amendment 2 was recommended for adoption by the Assembly Committee on Natural Resources on a vote of Ayes, 12; Noes, 3. The committee recommended passage of the bill, as amended, by a vote of Ayes, 15; Noes, 0.

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