

1999 DRAFTING REQUEST

Bill

Received: **02/04/1999**

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Goetsch (608) 266-2540**

By/Representing: **Kent Vernon**

This file may be shown to any legislator: NO

Drafter: **rkite**

May Contact:

Alt. Drafters: **gibsom**

Subject: **Nat. Res. - nav. waters**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Navigability under ch. 88

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>
/?	gibsom 02/04/1999			_____			State
/1	rkite 12/21/1999	chanaman 01/05/2000	jfrantze 01/06/2000	_____	lrb_docadmin 0 1/06/2000	lrb_docadmin 0 1/26/2000	State

FE Sent For:

<END>

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1/?	gibsom	cmh 1/30	Jo 1/6	Jo 1/6 <u>1/6</u>			

FE Sent For:

1

<END>

Gibson-Glass, Mary

From: Vernon, Kent
Sent: Tuesday, February 02, 1999 11:54 AM
To: Gibson-Glass, Mary
Subject: Navigability standards

Mary,

To follow up our phone conversation of a few minutes ago, here's what my notes say concerning Rep. Goetsch's drafting request:

Amend drainage laws (ch. 88) to prohibit DNR from unilaterally modifying navigability standards or declaring a drainage ditch navigable without agreement by drainage district board; retroactive to **1988? 89?**

Feel free to call if you need more information.

Thanks,

Kent

want to
you may get Goetsch's permission
to talk to Mark Patwonsky, who
rewrote this chapter several
years ago

10

11

12

Called Kent to get more info re:
the underlying problem - he was
unfamiliar w/ the issue -
he will have Goetsch call me

Also gave me permission to talk to
Mark Patrosky

12-10-99

Called Goetsch again to see if they still
want bill
they want ~~the~~ the language that was
included in ~~the~~ the budget bill
to apply to all drainage districts +
not just Rock Creek

Note to file MGB conversation w/ Jim Matson of DATCP
a "drainage board" is always a "county drainage board"
can have

- > 1 district in a county
- > entire county land does not need to be in
one of these districts
- > can operate a district that is in more than
one county



State of Wisconsin
1999 - 2000 LEGISLATURE

1 RmR
LRB-2122/PA
RNK.....
and M66
cm 14

soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1999 BILL

drainage laws of that municipality and to exempt from state drainage law.

a drainage board, as part of county government,

INS REL

Under this bill

1 AN ACT ...; relating to drainage of lands

in certain instances

Analysis by the Legislative Reference Bureau

Under current law, drainage boards operate drainage districts, which drain property owned by two or more persons. The department of agriculture, trade and consumer protection (DATCP) assists drainage boards and oversees their activities and promulgates rules that apply to drainage boards. The department of natural resources (DNR) regulates construction in navigable waters, including construction relating to the drainage of land. Generally, DNR determines navigability, except that current law provides that if a drainage district drain is located in the Duck Creek Drainage District, it is not considered navigable unless a U.S. geological survey map or other scientific evidence shows that the drain was a navigable stream before it became a drainage district drain. This draft proposes the same navigability standards for all drainage district drains operated by boards.

Current law provides that a person wishing to deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line must obtain a permit from DNR unless the legislature otherwise authorizes the structure or deposit. Current law provides an exception to this prohibition for the Duck Creek Drainage District under which the drainage board for that district may place a structure or deposit in a drain if DATCP, after consulting with DNR, specifically approves the structure or deposit or if the structure or deposit is required by DATCP in order to conform the drain to specifications approved by DATCP in consultation with DNR. This bill extends this exception to all drainage districts operated by drainage boards.

Current law also provides that, with certain exceptions, a person wishing to remove material from the bed of a lake or stream must obtain a permit from DNR.

apply to

A city, village or town may assume jurisdiction of a drainage district from a drainage board. However, once a drainage district is under municipal jurisdiction it is subject to the

A diaduct

one or more

Requirement

no 7

Under one of the exceptions, the drainage board for the Duck Creek Drainage District may remove material from a drain that the board operates if the removal is required by DATCP in order to conform the drain to specifications imposed by DATCP in consultation with DNR. This bill extends this exception to all drainage districts *operated by drainage boards*

Current law requires DNR to confer with the drainage commissioners in each drainage district, except the Duck Creek Drainage District, on the formation of policies for the operation and maintenance of dams. This bill eliminates this requirement for all drainage districts *operated by drainage boards*

Current law also requires that the drainage board for the Duck Creek Drainage District operate, repair and maintain dams and other structures in compliance with the statutes regulating the drainage of lands and any rules promulgated by DATCP under those statutes. Current law provides that if ~~a~~ *the* drainage board fails to perform its duties, DNR may do so in the interest of drainage and conservation. This bill extends the application of these provisions to all drainage boards.

In addition to the current law requirements for obtaining permits to place a structure or deposit in navigable waters or to remove material from the bed of a lake or stream, current law requires that a drainage board obtain a separate permit from DNR to acquire and remove any dam or obstruction or to clean out, wide *J* deepen or straighten any navigable stream. Under current law, only the Duck Cree3 Drainage District is exempt from this permitting requirement. This bill eliminates the permitting requirement for all drainage districts *operated by drainage boards*

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.** 30.01 (1nm) of the statutes, as created [✓] by 1999 Wisconsin Act 9, is
2 repealed.

3 **SECTION 2.** 30.10 (4) (d) of the statutes, as created by [✓] 1999 Wisconsin Act 9, is
4 amended to read:

5 30.10 (4) (d) A drainage district drain ~~located in the Duck Creek Drainage~~
6 ~~District and operated by the board for that district~~ operated by a ~~drainage~~ drainage
7 board under ch. 88 is not navigable unless it is shown, by means of a U.S. geological
8 survey map or other similarly reliable scientific evidence, that the drain was a
9 navigable stream before it became a drainage district drain.

1 **SECTION 3.** 30.12 (4m) (title) of the statutes, as created by 1999 Wisconsin Act
2 9, is amended to read:

3 30.12 (4m) (title) ~~DUCK-CREEK DRAINAGE DISTRICT~~ DISTRICT STRUCTURES AND
4 DEPOSITS.

History: 1999 a. 9.

5 **SECTION 4.** 30.12 (4m) (intro.) of the statutes, as created by 1999 Wisconsin Act
6 9, is amended to read:

7 30.12 (4m) (intro.) Subsection (1) does not apply to a structure or deposit that
8 the a ~~county~~ drainage board for the ~~Duck Creek Drainage District~~ places in a drain
9 that the board operates in the ~~Duck Creek Drainage District~~ within a drainage
10 district under ch. 88 if either of the following applies:

History: 1999 a. 9.

11 **SECTION 5.** 30.20 (1) (d) of the statutes, as created by 1999 Wisconsin Act 9, is
12 amended to read:

13 30.20 (1) (d) The A ~~county~~ drainage board for the ~~Duck Creek Drainage District~~
14 may without a permit under sub. (2) (c) remove material from a drain that the ~~county~~
15 drainage board operates in the ~~Duck Creek Drainage District~~ (in) a drainage district
16 under ch. 88 if the removal is required, under rules promulgated by the department
17 of agriculture, trade and consumer protection, in order to conform the drain to
18 specifications imposed by the department of agriculture, trade and consumer
19 protection after consulting with the department of natural resources.

History: 1999 a. 9.

20 **SECTION 6.** 31.02 (7) of the statutes, as amended by 1999 Wisconsin Act 9, is
21 repealed.

22 **SECTION 7.** 31.02 (7m) of the statutes, as created by 1999 Wisconsin Act 9, is
23 amended to read:

1 31.02 (7m) The ~~A county~~ drainage board for the ~~Duck Creek Drainage District~~
 2 shall operate, repair and maintain dams, dikes and other structures in district
 3 drains that the board operates in the ~~Duck Creek Drainage District~~ ^a drainage
 4 ~~district~~ in compliance with ch. 88 and any rules promulgated by the department of

5 agriculture, trade and consumer protection under ch. 88. If a ~~county~~ ^{strike} drainage board
 6 fails to perform its duties under this subsection, the department of natural resources
 7 may exercise its authority under ~~sub. (6), (8) and (9)~~. ^{strike ", (8) and (9)"}

see
 LRB
 60902

Subs: sub.

Subs. (8) and (9) must be repealed.

History: 1999 a. 9.

8 **SECTION 8.** 88.01 (8m) of the statutes, as created by 1999 Wisconsin Act 9, is
 9 repealed.

10 **SECTION 9.** 88.31 (title) of the statutes is amended to read:

11 88.31 (title) ~~Special procedure in~~ **affecting Drainage work in**
 12 **navigable waters.**

History: 1993 a. 456.

13 **SECTION 10.** 88.31 (1) to (7) of the statutes are repealed.

14 **SECTION 11.** 88.31 (7m) of the statutes, as created by 1999 Wisconsin Act 9, is
 15 repealed.

INSECT
 4-15

16 **SECTION 12.** 88.35 (5m) of the statutes, as affected by 1999 Wisconsin Act 9, is
 17 repealed.

18 **SECTION 13.** 88.35 (6) (intro.) of the statutes is amended to read:

19 88.35 (6) (intro.) Upon the completion of its duties under subs. (1) to ~~(5m)~~ (5),
 20 the board shall prepare a written report, including a copy of any maps, plans or
 21 profiles that it has prepared. The assessment of benefits and awards of damages
 22 shall be set forth in substantially the following form:

History: 1979 c. 110; 1989 a. 31; 1993 a. 456.

23 **SECTION 14.** 88.62 (3) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
 24 is amended to read:

Section # RP; 31.02 (8) and (9)

was
 phase
 fix
 component

SECTION #. RP; 88.62(3)(b)

as created
by 1999
Wisconsin
Act 9

1 88.62 (3) If drainage work is undertaken in navigable waters, the drainage
2 board shall obtain a permit under e. 30.20 or 88.31 or ch. 31, as directed by the
3 department of natural resources, except as provided in par. (b) any permit that is
4 required under ch. 30 or 31. *as directed by the department of natural resources*

History: 1999 a. 9.

5 SECTION 15. 88.72 (3) of the statutes, as affected by 1999 Wisconsin Act 9, is
6 amended to read:

7 88.72 (3) At the hearing on the petition, any interested person may appear and
8 contest its sufficiency and the necessity for the work. If the drainage board finds that
9 the petition has the proper number of signers and that to afford an adequate outlet
10 it is necessary to remove dams or other obstructions from waters and streams which
11 may be navigable, or to straighten, clean out, deepen or widen any waters or streams
12 either within or beyond the limits of the district, the board shall obtain any permit
13 that is required under ~~this chapter~~ or ch. 30 or 31. *as directed by the*

History: 1999 a. 9.

14 SECTION 16. 88.72 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
15 amended to read:

16 88.72 (4) Within 30 days after the department of natural resources has issued
17 all of the permits as required under ~~this chapter and~~ chs. 30 and 31, the board shall
18 proceed to estimate the cost of the work, including the expenses of the proceeding
19 together with the damages that will result from the work, and shall, within a
20 reasonable time, award damages to all lands damaged by the work and assess the
21 cost of the work against the lands in the district in proportion to the assessment of
22 benefits then in force.

History: 1999 a. 9.

(INSERT REL)

certain permits issued by the department of natural resources that apply to work conducted on ditches, pipelines and other drainage equipment located in drainage districts operated by drainage boards

(END OF INSERT)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2122/lins
RNK.....

INSERT 4-15

SECTION 1. 88.31 (8) (intro.) of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

88.31 (8) (intro.) Subject to other restrictions imposed by this chapter, a drainage board which has obtained all of the permits as required under ~~this chapter~~ and ch. 30 may:

History: 1993 8.456.

(END OF
INSERT)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2554/1ins
PJK:cmh:jf

INSERT 2-A

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

(END OF INSERT 2-A)

INSERT 2-B

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of administration and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

(END OF INSERT 2-B)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 01/06/2000

To: Representative Goetsch

Relating to LRB drafting number: LRB-2122


Topic

Navigability under ch. 88

Subject(s)

Nat. Res. - nav. waters

1. **JACKET** the draft for introduction



in the **Senate** _____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robin N. Kite, Legislative Attorney
Telephone: (608) 266-729 1