

**1999 DRAFTING REQUEST**

**Bill**

Received: **01/06/1999**

Received By: **rkite**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Council - LRC**

By/Representing: **Gordon Anderson**

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

Drafter: **rkite**

May Contact: **DNR**

Alt. Drafters: **traderc**

Subject: **Nat. Res. - miscellaneous**

Extra Copies:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Definition and technical changes in chapter 29

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**Instructions:**

See Attached

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**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>
/P1	rkite 02/19/1999 traderc 02/19/1999	wjackson 02/19/1999	martykr 02/22/1999	_____	lrb_docadmin 02/22/1999		
/1	rkite 01/05/2000	wjackson 01/05/2000	kfollet 01/06/2000	_____	lrb_docadmin 01/06/2000	lrb_docadmin 01/06/2000	

FE Sent For:

*Not Needed*

<END>

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*Please jacket for senate*

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/P1	rkite 02/19/99	wjackson 02/19/99	martykr 02/22/99	_____	lrb_docadmin 02/22/99		
	traderc 02/19/99	<i>1/15/99</i>	<i>Kjf 1/16</i>	<i>Kjft if 1/16</i>			

FE Sent For:

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definition and technical changes in chapter 29

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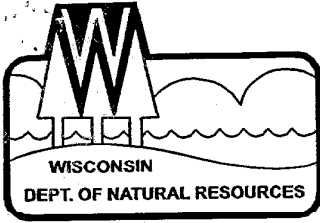
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1?	rkite	pl wlj 2/19	Km <sup>2</sup> /19	HH 2 Km/22			

FE Sent For:

<END>

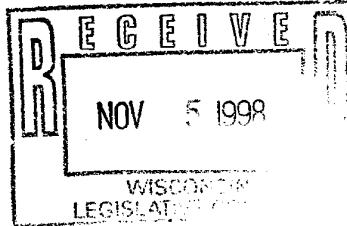
*please  
submit to  
requester  
RNF*



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

Box 7921  
101 South Webster Street  
Madison, Wisconsin 53707-7921  
TELEPHONE 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897



*CSA*

November 2, 1998

Mr. David J. Stute, Director  
Legislative Council  
Suite 401  
One East Mifflin Street  
P.O. Box 2536  
Madison, WI 53701-2536

*Dave*

Dear Mr. Stute:

Thank you for your letter requesting the Department to submit remedial legislative proposals for consideration by the Law Revision Committee.

The Department of Natural Resources has several suggestions for remedial proposals:

*29.327*

- 1. The current definition of "blind" in s. 29.27(1)(a) is: "Blind" means a permanent structure used in hunting waterfowl which is not removed at the end of hunting hours each day.

*✓ MGS/RNK*

The Department requests that the word "permanent" be deleted. It adds nothing to the definition, as the proper meaning of "blind" in s. 29.27, Stats., is a structure which is not removed at the end of hunting hours each day. The addition of the word "permanent" does nothing to fulfill the purpose of the legislation.

- 2. DNR also requests that the definition of the word "waterfowl" be modified. At present, it seems to mirror the definition of "aquatic birds", which is a subset of the definition of "game birds" in s. 29.09(7), Stats. However, the fact that a bird is an aquatic bird does not mean that it is waterfowl. DNR also recommends the deletion of the reference to "wild swan", because we do not have a wild swan season, and are unlikely to at any time in the near future.

*✓ MGS/RNK*

*See H (Tad)*

*DO NOT draft*

- 3. In s. 285.01(42), Stats., there is an extraneous quotation mark following the second appearance of the word "compound" which should be deleted.

*NET*



Quality Natural Resources Management  
Through Excellent Customer Service



do  
LR met  
draft

4. In various chapters the term "record keeping" appears in either that form or as "record-keeping". A consistent form of the term would be preferable. NR 400-499 of the Wisconsin Administrative Code uses "recordkeeping".

RCT

5. Move the section presently appearing as s. 292.51 to chapter 299. This section, which provides for cooperative remedial actions, originally appeared as s. 144.968 and was of general applicability. When the Legislative Council spearheaded the renumbering of chapter 144, this section ended up in chapter 292, which may suggest its use is limited to remedial actions of the type otherwise addressed by chapter 292. In discussing this issue with the Legislative Council, it was agreed that pursuing remedial legislation was the best course of action to make clear that cooperative remedial actions are broadly available.

RCT

Mot  
RNF

6. Change to s. 29.54 (2), Stats., supporting documentation from Mike Lutz, DNR Legal Services, is attached. \*

(This may have already been drafted - See M66-)

Thank you for your work in considering these proposals. If you have any questions, please contact Elizabeth Kluesner from my staff at: 264-6266.

Sincerely,

*George*  
George E. Meyer  
Secretary

cc. Paul Heinen - AD/5

## CORRESPONDENCE/MEMORANDUM

DATE: October 14, 1998  
TO: Elizabeth Kluesner - AD/5  
FROM: Michael A. Lutz - LS/5 *ML*  
SUBJECT: Remedial Legislation s. 29.54(2), Stats.

My request for remedial legislation involves s. 29.54(2), Stats., which states as follows:

No person shall take, remove, sell, or transport from the public waters of this state to any place beyond the borders of the state, any duck potato, wild celery, or any other plant or plant product except wild rice native in said waters and commonly known to furnish food for game birds.

Some confusion exists regarding the proper interpretation of the phrase, "to any place beyond the borders of this State." Is there a violation only if the plants are removed from the State or does the reference to remove them from the borders of the State refer only to the term, "transport?" The Department has interpreted this provision to mean that there are a number of separate and distinct violations found in s. 29.54(2), Stats. In other words, it is a violation to take, remove, or sell these plants or to transport these plants beyond the borders of the State.

First, it is a rule of statutory construction "that qualifying or limiting words or clauses in a statute are to be referred to the next preceding antecedent, unless the context of the evident meaning of the enactment requires a different construction." Jorgenson v. Superior, 111 Wis. 561 (1901). Application of the rule here results in the conclusion that the words, "to any place beyond the borders of the State," relate only to the immediately preceding prohibition on transport from the public waters of this State.

Second, it is also a rule of statutory construction, "that a law should be so construed that no word or clause shall be rendered surplusage." Mulvaney v. Tri State Truck and Auto Body, Inc., 70 Wis. 2d 760 (1975). If the phrase, "to any place beyond the borders of the State", was deemed to relate to the prohibitions on taking, removing, and selling, there would have been no need to also reference "transporting", as removing from the State and transporting from the State would be synonymous. Similarly, there would have been no need to reference "taking", if the only violation was removing the plant from the State.

Third, while the punctuation of a statute is not entitled to a great deal of weight in determining legislative intent, the Supreme Court has, on occasion, looked at the punctuation of a statute in determining to which of the preceding matters a modifying clause relates. See e.g. Service Investment Co. v. Dorst, 232 Wis. 574 (1939). Here, the insertion of a comma after the word, "sell", and the omission of any comma after the first use of the word, "State", is clearly indicative of the intent that the phrase, "to any place beyond the borders of the State", should modify only the prohibition relating to transportation.

Other principles of statutory construction are also applicable. Among the rules of construction is the requirement that a statute be construed to effectuate legislative intent and the statute's purpose. While it is difficult to determine the legislative intent of this particular provision, due to its enactment in 1917 with the original conservation code and no subsequent amendments, it does appear that the intent was to protect certain types of aquatic vegetation in the State of Wisconsin as part of a comprehensive system of management of the State's resources. It would serve little purpose to protect them only from transport outside of the State of Wisconsin but to allow unlimited taking, removal, and sale if the items remain within the State. Similarly, the rule that ridiculous results are to be avoided would not be served if the only violation occurred when the plants were transported beyond the borders of the State. Officers would be powerless to regulate taking, removal, and sale until the items actually left the State. Enforcement would be difficult, if not impossible.

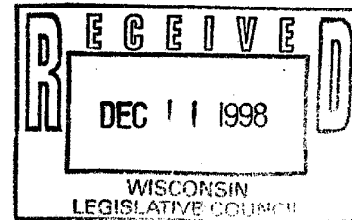
Based on all of the above, it is my recommendation that s. 29.54(2), Stats., be modified to confirm that it consists of separate violations for taking, removing, and selling in addition to a separate and distinct violation for transporting. Deletion of the phrase, "to any place beyond the borders of this State", would accomplish this purpose.

cc: Jim Kurtz - LS/5  
Jim Christenson - LS/5  
Jeff Bode - FH/2  
Tom Harelson - LE/5  
Larry Kniese - NER

EKlues

## CORRESPONDENCE/MEMORANDUM

DATE: December 9, 1998  
TO: Gordon Anderson - Legislative Council  
FROM: Michael A. Lutz - LS/5 *ML*  
SUBJECT: Remedial Legislation Proposal for Waterfowl



In a recent telephone conversation, you requested that I provide the actual language sought by my remedial legislation proposal, dated August 14, 1998, as submitted to Elizabeth Kluesner (copy attached). My suggested change for s. 29.27(1), Stats. (to be renumbered 29.327(1), Stats., as of January 1, 1999), is as follows:

- (1) In this section:
- (a) "Blind" means a ~~permanent~~ structure used in hunting waterfowl which is not removed at the end of hunting hours each day.
  - (b) "Waterfowl" means wild geese, brant, wild ducks, ~~rails~~, coots, and gallinules, ~~jacksnipe, woodcock, plovers, sandpipers and wild swan.~~

If you have any further questions, feel free to contact me.

Attachment

Anderson



DATE: October 14, 1998  
TO: Elizabeth Klucsner - AD/5  
FROM: Michael A. Lutz - LS/5 *ML*  
SUBJECT: Remedial Legislation Proposal

My request for remedial legislation involves the regulation of waterfowl blinds as found in s. 29.27, Stats. At present, the definition of "blind" in s. 29.27(1)(a), reads as follows:

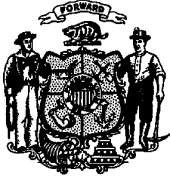
"Blind" means a permanent structure used in hunting waterfowl which is not removed at the end of hunting hours each day.

We request that the word "permanent" be deleted. It adds nothing to the definition, as the proper meaning of "blind", in s. 29.27, Stats., is a structure which is not removed at the end of hunting hours each day. The addition of the word "permanent" does nothing to fulfill the purpose of the legislation. To the contrary, it makes enforcement of the waterfowl blind regulations more difficult, as the owner of a blind which is not removed on a daily basis, can claim that the regulations of s. 29.27(3), Stats., are not applicable because the blind is not permanent. This adds an unnecessary element of proof for Enforcement officers. However, the key here is that the reference to "permanent" is simply not necessary.

Department Enforcement staff have also requested that the definition of the word "waterfowl" be modified. At present, it seems to mirror the definition of "aquatic birds", which is a subset of the definition of "game birds" in s. 29.09(7), Stats. However, the fact that a bird is an aquatic bird does not mean that it is waterfowl. The dictionary definition of "waterfowl" in Webster's Third New International Dictionary is that they are swimming game birds as distinguished from upland game birds and shore birds. Rails, jacksnipe, woodcock, plovers and sandpipers are shore birds, and do not properly fall within the definition of "waterfowl." Their inclusion in the definition "waterfowl" in s. 29.27, Stats., causes problems in that there is a season for woodcock, which starts well in advance of the season for wild ducks. This allows duck hunters to put out their blind seven days in advance of the Woodcock season, although woodcock are not hunted from a blind. I would also recommend the deletion of the reference to "wild swan", because we do not have a wild swan season, and are unlikely to at any time in the foreseeable future.

cc: Tom Harelson - LE/5  
Jim Kurtz - LS/5  
Jim Christenson - LS/5  
Tim Andryk - LS/5  
Gary Homuth - LE/5

Klucsner



State of Wisconsin  
1999 - 2000 LEGISLATURE

500N

LRB-1614/P1  
RNK&RCT.../...  
Wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

This should be bold

Gen Cat

1 AN ACT **relating to:** certain definitions that apply to the laws concerning wild  
2 animals and plants, restrictions on the taking of certain plants from the waters  
3 of this state and cooperative remedial action (suggested as remedial legislation  
4 by the department of natural resources).

**Analysis by the Legislative Reference Bureau**

Under current law, the department of natural resources (DNR) regulates the use of blinds that are used in hunting waterfowl on state-owned property. The types of waterfowl blinds that DNR regulates are those that are used in hunting wild geese, brant, ducks, rails, coots and gallinules, snipe, woodcock, plovers, sandpipers and swan. This bill provides that the provisions regulating waterfowl blinds only apply to waterfowl blinds that are used in hunting geese, ducks, brant, coots and gallinules.

Current law prohibits a person, with certain exceptions, from taking, removing, selling or transporting any plant or plant product from the waters of this state to any place outside of this state. This bill provides that the prohibition applies to any person who takes or removes a plant or plant product from the waters of this state, or who sells or transports a plant or plant product that was taken or removed from the waters of this state, regardless of where the plant or plant product is ultimately taken, removed, sold or transported.

Wlj

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

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of natural resources 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.

1           **SECTION 1.** 13.625 (8m) of the statutes is amended to read:

2           13.625 (8m) Subsection (3) does not apply to the solicitation of anything of  
3           pecuniary value to pay the costs of remedying environmental contamination, as  
4           defined in s. ~~292.51~~ 299.17 (1), by an agency official of the department of natural  
5           resources.

History: 1977 c. 278, 418; 1979 c. 32; 1987 a. 27; 1989 a. 338; 1991 a. 39, 269; 1995 a. 27 ss. 35, 36, 9116 (5); 1995 a. 227.

6           **SECTION 2.** 20.370 (4) (au) of the statutes is amended to read:

7           20.370 (4) (au) *Cooperative remedial action; contributions.* From the  
8           environmental fund, all moneys received under s. ~~292.51~~ 299.17 (2) for cooperative  
9           remedial action to conduct the cooperative remedial action for which received.

History: 1971 c. 40, 95; 1971 c. 125 ss. 101 to 121, 522 (1); 1971 c. 211, 215, 277, 330, 336; 1973 c. 12 s. 37; 1973 c. 90, 100; 1973 c. 243 s. 82; 1973 c. 296, 298, 301, 318, 333, 336; 1975 c. 8, 39, 51, 91, 198; 1975 c. 224 ss. 7d, 7f, 7m, 17 to 19p; 1977 c. 29 ss. 181 to 234, 1657 (34); 1977 c. 274, 370, 374, 376, 377; 1977 c. 418 ss. 95 to 110, 929 (37); 1977 c. 421, 432; 1977 c. 447 ss. 42 to 44, 210; 1979 c. 34 ss. 199 to 322, 2102 (39) (a); 1979 c. 221; 1979 c. 361 s. 113; 1981 c. 1, 20, 86, 95, 131, 294, 330; 1981 c. 374 ss. 6, 7, 148, 150; 1983 a. 27 ss. 216m to 269, 2202 (23); 1983 a. 75, 181, 243, 397; 1983 a. 410 ss. 5m to 11, 2202 (38); 1983 a. 413; 1983 a. 416 ss. 1, 19; 1983 a. 426; 1983 a. 16, 22; 1985 a. 29 ss. 282d to 356, 3202 (26) (a), (39) (a), (c), (dm), (i); 1985 a. 46, 60, 65, 120, 202, 296; 1987 a. 27, 98, 110, 290, 295, 298, 305; 1987 a. 312 s. 17; 1987 a. 384, 397, 399, 403, 418; 1989 a. 31, 128, 284, 288, 326; 1989 a. 335 ss. 22nn to 30g, 89; 1989 a. 336, 350, 359, 366; 1991 a. 32; 1991 a. 39 ss. 326b to 394, 594c; 1991 a. 254, 269, 300, 309, 315; 1993 a. 16, 75, 166, 213, 343, 349, 415, 421, 453, 464; 1993 a. 490 ss. 18, 271; 1995 a. 27, 201, 225, 227, 296, 378, 459; 1997 a. 27, 35; 1997 a. 237 ss. 33 to 38d, 727g; 1997 a. 248.

10           **SECTION 3.** 25.46 (10j) of the statutes is amended to read:

11           25.46 (10j) All moneys received under s. ~~292.51~~ 299.17 (2) for cooperative  
12           remedial action.

History: 1983 a. 410; 1985 a. 29; 1987 a. 27; 1989 a. 31, 335; 1991 a. 39, 112, 269, 309; 1993 a. 16, 261, 453, 458; 1995 a. 27, 227; 1997 a. 27.

13           **SECTION 4.** 29.327 (1) (a) of the statutes is amended to read:

14           29.327 (1) (a) "Blind" means a permanent structure used in hunting waterfowl  
15           ~~which~~ <sup>that</sup> is not removed at the end of hunting hours each day.

History: 1977 c. 443; 1997 a. 248 ss. 441, 442; Stats. 1997 s. 29.327; 1997 a. 249 s. 56; s. 13.93 (2) (c).



Robin,

Attached is the remedial legislation for the DNR. Please insert the SECTION notes as I've indicated. This may be jacketed as a Senate bill and sent over to me when ready.

Please give me a call if you have any questions.

Thanks,

Laura Rose  
Leg. Council  
266-9791

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# **Law Revision Committee**

**Remedial Legislation Proposals  
Meeting of September 7, 1999**

**Department of Natural Resources**

- LRB-1614/P1



State of Wisconsin  
1999 - 2000 LEGISLATURE

RMR

1

LRB-1614/

RNK&RCT:wlj:km

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1999 BILL

WFO: Inserts are slightly out of order.

information required for certain blinds used in hunting waterfowl

Reger

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AN ACT ~~to renumber~~ 292.51; and ~~to amend~~ 13.625 (8m), 20.370 (4) (au), 25.46 (10j), 29.327 (1) (a), 29.327 (1) (b) and 29.741 (2) of the statutes; **relating to:** certain definitions that apply to the laws concerning wild animals and plants, ~~restrictions on the taking of certain plants from the waters of this state and~~ cooperative remedial action (suggested as remedial legislation by the department of natural resources).

**Analysis by the Legislative Reference Bureau**

Under current law, the department of natural resources (DNR) regulates the use of blinds that are used in hunting waterfowl on state-owned property. The types of waterfowl blinds that DNR regulates are those that are used in hunting wild geese, brant, ducks, rails, coots and gallinules, snipe, woodcock, plovers, sandpipers and swan. This bill provides that the provisions regulating waterfowl blinds only apply to waterfowl blinds that are used in hunting geese, ducks, brant, coots and gallinules.

Current law prohibits a person, with certain exceptions, from taking, removing, selling or transporting any plant or plant product from the waters of this state to any place outside of this state. This bill provides that the prohibition applies to any person who takes or removes a plant or plant product from the waters of this state, or who sells or transports a plant or plant product that was taken or removed from the waters of this state, regardless of where the plant or plant product is ultimately taken, removed, sold or transported.

Current law requires blinds on state-owned property and used for hunting to bear the name of the owner. This bill requires that the blind also bear the owner's address.

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

---

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of natural resources 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.

1           **SECTION 1.** 13.625 (8m) of the statutes is amended to read:

2           13.625 (8m) Subsection (3) does not apply to the solicitation of anything of  
3           pecuniary value to pay the costs of remedying environmental contamination, as  
4           defined in s. ~~292.51~~ 299.17 (1), by an agency official of the department of natural  
5           resources.

6           **SECTION 2.** 20.370 (4) (au) of the statutes is amended to read:

7           20.370 (4) (au) *Cooperative remedial action; contributions.* From the  
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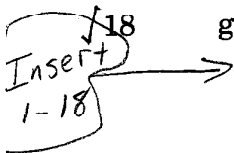
13          **SECTION 4.** 29.327 (1) (a) of the statutes is amended to read:

14          29.327 (1) (a) "Blind" means a ~~permanent~~ structure used in hunting waterfowl  
15          which ~~that~~ is not removed at the end of hunting hours each day.

16          **SECTION 5.** 29.327 (1) (b) of the statutes is amended to read:

17          29.327 (1) (b) "Waterfowl" means wild geese, brant, wild ducks, ~~rails, coots, and~~  
18          gallinules, snipe, woodcock, plovers, sandpipers and wild swan.

Insert  
1-18





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~~SECTION 6. 29.741 (2) of the statutes is amended to read:~~

~~29.741 (2) No person shall may take, or remove, sell, or transport from the public waters of this state to any place beyond the borders of the state, any duck potato, wild celery, or any other plant or plant product except from the public waters of this state, or sell or transport these plants or plant products if taken from the public waters of this state. This subsection does not apply to persons who take, remove, sell or transport wild rice that is native in said to the public waters of this state and that is commonly known to furnish food for game birds.~~

Insert  
A  
Insert 3-9

SECTION 7. 292.51 of the statutes is renumbered 299.17.

(END)

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1614/linsA  
RNK.....

*Insert A*

SECTION <sup>#</sup>~~A~~. 29.327 (2) (a) of the statutes is amended to read:

29.327 (2) (a) A blind situated on state-owned property and used in hunting waterfowl must bear the name and address of the owner affixed permanently to the blind in lettering one-inch square or larger.

History: 1977 c. 443; 1997 a. 248 ss. 441, 442; Stats. 1997 s. 29.327; 1997 a. 249 s. 36; s. 13.93 (2) (c).

*Insert B (to insert A)*

# Inserts

SECTION notes to LRB 16/4/PT

that

Insert on page 2, after line 18:

Insert 1-18

<sup>CS</sup> <sup>CS</sup> NOTE: ~~SECTIONS 4 and 5~~ of the bill delete<sup>s</sup> the reference to the word "permanent" from the definition of "blind", since, according to the department of natural resources, a blind is by nature a temporary structure. In addition, references to certain species of shore birds ~~that~~ are not waterfowl are deleted, since the use of waterfowl blinds for shore birds is inappropriate, according to the department of natural resources.

<sup>CS</sup> in SECTION 5,

(Drafter: in addition, modify the draft to also amend s. 29.327(2)(a) to provide that the blind situated on state-owned property and used in hunting waterfowl must bear the address, in addition to the name, of the owner. Then, insert the following note:

Insert B

<sup>CS</sup> <sup>CS</sup> NOTE: SECTION 6 of the bill amends the statutes relating to identification information placed on waterfowl blinds to include the owner's address, as well as the owner's name.

(Then, finally, delete current SECTION 6 of the draft.)

Insert on page 3, after line 9:

Insert 3-9

<sup>CS</sup> <sup>CS</sup> NOTE: SECTIONS 1, 2, 3 and 7 of the bill renumber a provision and correct cross-references relating to cooperative actions to remedy environmental contamination and restore the environment from ch. 292 to ch. 299, stats. <sup>change</sup> The department of natural resources states that the reason for this change is to eliminate any inference that this cooperative remedial action is authorized only for the types of situations mentioned in ch. 292, rather than being authorized generally for situations under the jurisdiction of the department of natural resources.

to that provision