

**1999 DRAFTING REQUEST**

**Bill**

Received: 01/05/2000

Received By: **rkite**

Wanted: **Soon**

Identical to LRB:

For: **Brian Burke (608) 266-8535**

By/Representing: **Barry Ashenfelter**

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

Drafter: **gibsom**

May Contact: **Mark Patronsky**

Alt. Drafters:

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

Extra Copies: **RCT**

**Pre Topic:**

No specific pre topic given

**Topic:**

Repeal of cranberry laws

**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>
/1	gibsom 01/06/2000	chanaman 01/07/2000	martykr 01/07/2000	_____	lrb_docadmin 01/07/2000		S&L
/2	gibsom 01/20/2000	chanaman 01/20/2000	martykr 01/21/2000	_____	lrb_docadmin 01/21/2000	lrb_docadminS&L 01/21/2000	

FE Sent For:

*G 01-25-00*

<END>

*Burke's office  
called 1/21/2000  
to jacket "1/2" version.*

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/1	gibsom 01/06/2000	chanaman 01/07/2000	martykr 01/07/2000	_____	lrb_docadmin 01/07/2000		S&L

FE Sent For:

*am 11/2*  
*1/20*

*km 1/20*

*ch km 1/21*  
**<END>**

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By/Representing: Barry Ashenfelter

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1?	gibson	cmh 1	km/a	<del>cmh</del> km/a			
FE Sent For:		1/7					

<END>

**LEGISLATIVE REFERENCE BUREAU**

Legal Section, 5<sup>th</sup> Floor, 100 N. Hamilton St.  
 (608) 266-3561

**BILL REQUEST FORM**

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.  
 Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: 12-29-99	Legislator or agency requesting this draft: SEN. BRIAN BURKE
Name/phone number of person submitting request: BARRY ASHONFELTER 6-8535	
Persons to contact for questions about this draft (names and phone numbers please): OR MARK PATRONSKY	
Describe the problem, including any helpful examples. How do you want to solve the problem? WE WOULD LIKE TO ELIMINATE THE SPECIAL TREATMENT OF CRANBERRY GROWERS UNDER CURRENT ENVIRONMENTAL STATUTES, SUCH AS S.94.26-32, STATS.	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you?  YES  NO

If yes, anyone who asks?  YES  NO

Any legislator?  YES  NO  ONLY the following persons:

Do you consider this urgent?  YES  NO If yes, please indicate why:

SEN. BURKE WOULD LIKE TO INTRODUCE BILL 2ND WEEK OF JANUARY, 2000.

Is this request of higher priority than other pending request(s) you have made?

YES  NO If yes, please sign your name here:



State of Wisconsin  
1999 - 2000 LEGISLATURE

RMR

LRB-4144/1

MGG:.....

cmH

Mon 11/10/2000

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

D-NOTE

gen  
cat

1 AN ACT ...; relating to: dams, ditches and drains used in the cultivation of  
2 cranberries.

*Analysis by the Legislative Reference Bureau*

Under current law, the construction and maintenance of dams, ditches and drains that are used in the cultivation of cranberries are exempt from all of the permitting and other regulatory requirements administered by the department of natural resources (DNR) that cover dams and other structures and activities that affect navigable waters. This bill repeals this exemption.

Also, current law requires that counties, towns, cities, villages, railroad companies and the department of transportation (DOT) provide ditches, culverts and similar facilities along highway and railroad grades so that surface water from low-lying areas continues its natural flow. Current law exempts from this requirement highway and railroad grades used to hold water for cranberry cultivation or conservation management. This bill repeals this exemption as it applies to cranberry cultivation.

For further information see the *state and local* 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:*

3 SECTION 1. 31.34 of the statutes is amended to read:

1           **31.34 Flow of water regulated.** Each person, firm or corporation  
2 maintaining a dam on any navigable stream shall pass at all times at least 25% of  
3 the natural low flow of water of such stream, except as otherwise provided by law.  
4 This section, however, shall not apply to a plant or dam where the water is discharged  
5 directly into a lake, mill pond, or storage pond ~~or cranberry marsh~~, nor shall it apply  
6 to cases where in the opinion of the department such minimum discharge is not  
7 necessary for the protection of fish life. Any person, firm or corporation violating this  
8 section shall be fined not less than \$50 nor more than \$1,000.

9           **SECTION 2.** 31.35<sup>X</sup> of the statutes is repealed

10           **SECTION 3.** 31.36<sup>X</sup> (14) of the statutes is repealed.

11           **SECTION 4.** 88.87 (2) (a) of the statutes is amended to read:

12           88.87 (2) (a) Whenever any county, town, city, village, railroad company or the  
13 department of transportation has heretofore constructed and now maintains or  
14 hereafter constructs and maintains any highway or railroad grade in or across any  
15 marsh, lowland, natural depression, natural watercourse, natural or man-made  
16 channel or drainage course, it shall not impede the general flow of surface water or  
17 stream water in any unreasonable manner so as to cause either an unnecessary  
18 accumulation of waters flooding or water-soaking uplands or an unreasonable  
19 accumulation and discharge of surface waters flooding or water-soaking lowlands.  
20 All such highways and railroad grades shall be constructed with adequate ditches,  
21 culverts, and other facilities as may be feasible, consonant with sound engineering  
22 practices, to the end of maintaining as far as practicable the original flow lines of  
23 drainage. This paragraph does not apply to highways or railroad grades used to hold  
24 and retain water for ~~cranberry~~<sup>✓</sup> or conservation management purposes.





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

1  
LRB-4144/rdn  
MGG:.....

cm H

DATE

✓  
Please review the treatment of s. 88.87 (2) (a). I am not sure whether this provision should be amended. ↗ ↖

I created a delayed effective date so that cranberry growers may obtain the necessary permits from DNR before the bill goes into effect.

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

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

LRB-4144/1dn  
MGG:cmh:km

January 7, 2000

Please review the treatment of s. 88.87 (2) (a). I am not sure whether this provision should be amended.

I created a delayed effective date so that cranberry growers may obtain the necessary permits from DNR before the bill goes into effect.

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

## **Gibson-Glass, Mary**

---

**From:** Ashenfelter, Barry  
**Sent:** Thursday, January 13, 2000 11:53 AM  
**To:** Gibson-Glass, Mary  
**Subject:** Request for Redraft of LRB 4144/1

Hi Mary,

After consulting with DNR (i.e. Jim Kurtz, 6-3695) and Bill O'Connor (255-3000), Sen. Burke requests that the following changes be made to LRB 4144/1 (re: cranberry operations):

1. Delete sections 4, 5, 8, 9, 10, 11 and 12.
2. In section 7, instead of deleting sec. 94.27, Stats., we would like to amend the current sec. 94.27 as follows: delete "under s. 94.26" and replace that clause with "for the cultivation of cranberries".

The goal of these changes is to remove modifications of the drainage district statutes and to eliminate repeals of various procedural statutes relating to liability claims involving cranberries.

Please feel free to contact Kurtz or O'Connor directly if you have technical questions.

Thank you.  
Barry Ashenfelter (6-8535)  
Sen. Burke's Office

Today  
by  
or file  
10 am

LMR

# 1999 BILL

repeal  
act

1 AN ACT to repeal 31.35, 31.36 (14), 94.26, 94.27, 94.28, 94.29, 94.30, 94.31 and  
 2 94.32; and to amend 31.34, 88.87 (2) (a) and 88.93 of the statutes; relating to:  
 3 dams, ditches and drains used in the cultivation of cranberries.

### *Analysis by the Legislative Reference Bureau*

Under current law, the construction and maintenance of dams, ditches and drains that are used in the cultivation of cranberries are exempt from all of the permitting and other regulatory requirements administered by the department of natural resources that cover dams and other structures and activities that affect navigable waters. This bill repeals this exemption.

Also, current law requires that counties, towns, cities, villages, railroad companies and the department of transportation provide ditches, culverts and similar facilities along highway and railroad grades so that surface water from low-lying areas continues its natural flow. Current law exempts from this requirement highway and railroad grades used to hold water for cranberry cultivation or conservation management. This bill repeals this exemption as it applies to cranberry cultivation.

For further information see the *state and local* 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:*

## BILL

## SECTION 1

1 SECTION 1. 31.34 of the statutes is amended to read:

2 **31.34 Flow of water regulated.** Each person, firm or corporation  
3 maintaining a dam on any navigable stream shall pass at all times at least 25% of  
4 the natural low flow of water of such stream, except as otherwise provided by law.  
5 This section, however, shall not apply to a plant or dam where the water is discharged  
6 directly into a lake, mill pond, or storage pond ~~or cranberry marsh~~, nor shall it apply  
7 to cases where in the opinion of the department such minimum discharge is not  
8 necessary for the protection of fish life. Any person, firm or corporation violating this  
9 section shall be fined not less than \$50 nor more than \$1,000.

10 SECTION 2. 31.35 of the statutes is repealed

11 SECTION 3. 31.36 (14) of the statutes is repealed. ✓

12 ~~SECTION 4. 88.87 (2) (a) of the statutes is amended to read:~~

13 ~~88.87 (2) (a) Whenever any county, town, city, village, railroad company or the~~  
14 ~~department of transportation has heretofore constructed and now maintains or~~  
15 ~~hereafter constructs and maintains any highway or railroad grade in or across any~~  
16 ~~marsh, lowland, natural depression, natural watercourse, natural or man-made~~  
17 ~~channel or drainage course, it shall not impede the general flow of surface water or~~  
18 ~~stream water in any unreasonable manner so as to cause either an unnecessary~~  
19 ~~accumulation of waters flooding or water-soaking uplands or an unreasonable~~  
20 ~~accumulation and discharge of surface waters flooding or water-soaking lowlands.~~  
21 ~~All such highways and railroad grades shall be constructed with adequate ditches,~~  
22 ~~culverts, and other facilities as may be feasible, consonant with sound engineering~~  
23 ~~practices, to the end of maintaining as far as practicable the original flow lines of~~  
24 ~~drainage. This paragraph does not apply to highways or railroad grades used to hold~~  
25 ~~and retain water for cranberry or conservation management purposes.~~

**BILL**

1 SECTION 5. 88.93 of the statutes is amended to read:

2 ~~88.93 Right to take water from drainage ditch. Any owner of lands which~~  
3 ~~are located in or which adjoin a drainage district and which border on a drainage~~  
4 ~~ditch may take water from such ditch for use in flooding lands for cranberry culture~~  
5 ~~or for irrigation, if such water is taken from the ditch in such a manner as not to~~  
6 ~~injure the ditch and the taking thereof does not materially defeat the purposes of~~  
7 ~~such drainage and, in case the water is to be used for irrigation, the permit required~~  
8 ~~under s. 30.18 (2) (a) 2. has been obtained.~~

9 SECTION 6. 94.26 of the statutes is repealed.

10 SECTION 7. 94.27 of the statutes is repealed.

11 SECTION 8. 94.28 of the statutes is repealed.

12 SECTION 9. 94.29 of the statutes is repealed.

13 SECTION 10. 94.30 of the statutes is repealed.

14 SECTION 11. 94.31 of the statutes is repealed.

15 SECTION 12. 94.32 of the statutes is repealed.

16 SECTION 13. Effective date.

17 (1) This act takes effect on first day of the 13th month beginning after  
18 publication.

19 (END)

stays

INS 3-10

(B)

3-1

Section #. 94.27 of the statutes is amended to read:

cranberry cultivation

~~ss. 94.27~~

**94.27 Liability for damages.** Any person who builds or maintains any dam or constructs or keeps open any ditch or drain ~~under s. 94.26~~ for the cultivation of cranberries is liable to persons whose lands are overflowed or otherwise injured by the dam, ditch or drain for the full sum of damages sustained, which shall be ascertained under s. 94.28 and recovered under ss. 94.28 to 94.30.

History: 1993 a. 492; 1997 a. 253.



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4144/2ins  
MGG:cmh:km

INSERT 3-10 PAGE 2

**SECTION 1.** 94.31 of the statutes is amended to read:

**94.31 Service of notice.** In all cases arising under ss. ~~94.26~~ 94.27 to 94.30 when it shall be necessary to serve any notice upon any person who may be out of the state or whose whereabouts shall not be known to the person desiring to serve the same, such notice may be served upon any agent or employe of such person who may be found within this state, and such service shall have the same effect as if it was made upon the party interested.

(END OF  
INSERT)



**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: 01/21/2000

To: Senator Burke

Relating to LRB drafting number: LRB-4144

**Topic**

Repeal of cranberry laws

**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.

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