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608-267-6797



State Senator Kevin Shibilski

FAX
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10: Mary 6,200-Clase Fax: 4-8522
From: Toold Holschbach
1 ollo Maria
Mossago: Hella Mary.
Per my phone message, here is backgrow on the issue/legislation we would
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like drafted.
The first paragraph on page 2 (my numbering explains the situation.
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extiains for silvenion



02

PAGE



608-267-6797



January 4, 2000

Senator Kevin Shibilski Attn: Aaron Nuutinen Room 10 South S State Capitol Madison, WI

Dear Senator Shibilski,

Per conversations between our staff, and your conversation with my constituent Mr. David Ladd of Dodgeville Wisconsin, find attached pertinent information including;

- ✓ A two page facsimile containing comments and suggested language revisions related to this issue, generated by Terry Schley Nato of the Environmental Defense Fund.
- ✓ A Legislative Council Staff Memorandum authored by Mark Patronski and Dated December 6th, 1999 discussing the current "Limitations on Appointments to the Natural Resources Board".

It is my understanding that you would be willing to request a draft of these proposed changes. Representative Freese is willing to do an Assembly Companion.

As time is of the essence if we expect that this proposal be considered during the spring session, please let me or my staff know what we can do to facilitate drafting, introduction and a timely hearing in Senator Clausing's committee.

Thank you for your assistance on this important matter.

With kindest regards

Dale W. Schultz 17th Senate District ATE

928 720 7974

2)

At present, Wisconsin izw blanketly prohibits all persons who derive a significant portion of their income, either directly or indirectly, from permit holders or applicants for permits from serving on the natural resources board. This overreaching provision has precluded many well-qualified people from serving on the natural resources board. It has precluded individuals with distinguished records of public service who are employed by companies that fully comply with state and federal law by obtaining and adhering to air and/or water permits. Blanketly forbidding these individuals from serving on the board deprives the citizens the opportunity to have many very knowledgeable individuals from serving on the board. The citizens the opportunity to have many very knowledgeable individuals from serving on the board. The statute should be amended to prevent conflicts of interest while allowing well-qualified people to serve on the natural resources board.

We have developed two options for accomplishing this result. One would require permit holders and people who derive income from permits to disclose their financial interests and to recuse themselves from deliberating and voting on issues that impact their financial interests. The second option would accomplish the same, but would also require all potential and current members of the board to disclose their financial interests and to recuse themselves from deliberations and votes that may directly or indirectly impact their interests and to recuse themselves from deliberations and votes that may directly or indirectly impact their financial interests. It may also be a good idea to create an independent, bi-partism advisory committee to review the financial disclosure statements and the transcripts of board meetings to ensure that members are complying with the disclosure and recusal provisions.

FAX # bo8- 267- 6797

SeNATOR DALE SCHUITZ
FAX # 608-267-0375

Jury Schley Nato from the

EN ROMENTAL Defense Fund

put this together for our

thoughts

As you know I am excited about have hadd being appointed to the beard and believe send be a good Board meaber for all of the public **イロソー25 -**79

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15.34 Department of Natural Resources: Creation. There is created a department of natural resources under the direction and supervision of the natural resources board. The board shall consist of 7 members appointed for staggered 6-year terms. At least 3 members of the board shall be from the territory north, and at least 3 members of the board shall be from the territory south, of a line running east and west through the south limits of the City of Stevens Point. A person may not be appointed to the natural resources board, or remain a member thereof, who is a permit holder or who receives, or has during the previous 2 years received, a significant portion of his or her income directly or indirectly from permit holders or applicants for permits issued by the department unless the person discloses to the ethics board his or her permit holder status and/or income from permit holders or permit applicants, and the person recuses himself or herself from deliberation and voting on issues that may impact the permit, the person's income from the permit holder, the company of that particular industry. For purposes of this section, "permit holders" or "applicants for permits" shall not include agencies, departments or subdivisions of this state.

15.34 Department of Natural Resources; Crestion. There is crested a department of natural resources under the direction and supervision of the natural resources board. The board shall consist of 7 members appointed for staggered 6-year terms. At least 3 members of the board shall be from the territory north, and at least 3 members of the board shall be from the tearlitory south, of a line running east and west throught the south limits of the City of Stevens Point. No person may be appointed to the natural resources board, or remain a member thereof, unless he or she makes a full disclosure of all his or her financial interests to the ethics board and recuses himself the self from deliberation and voting on issues that may directly or indirectly impact his or her financial interests or the financial interests of the entities from which the person must disclose to the chica board all permits he or she holds or receives while serving on the board and he or she must recuse hitself or herself from deliberation and voting on issues that may impact the parmit, the person's income from the permit holder, the company or that particular industry. For purposes of this section, "permit holders" or "applicants for permits" shall not include agencies, departments or subdivisions of this state.





Wisconsin Legislative Council Staff Memorandum

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304 Fax: (608) 266-3830 Email: leg.council@legis.state.wi.us

DATE:

December 6, 1999

TO:

SENATOR DALE SCHULTZ

FROM:

Mark C. Patronsky, Senior Staff Attorney

SUBJECT:

Limitation on Appointments to the Natural Resources Board

This memorandum is in response to your request for a brief summary of the portion of s. 15.34. Stats., that precludes certain individuals from serving on the Natural Resources Board. The relevant language of the statute is shown below in italics:

> 15.34 Department of natural resources; creation. There is created a department of natural resources under the direction and supervision of the natural resources board. The board shall consist of 7 members appointed for staggered 6-year terms. At least 3 members of the board shall be from the territory north, and at least 3 members of the board shall be from the territory south, of a line running east and west through the south limits of the city of Stevens Point. No person may be appointed to the natural resources board, or remain a member thereof, who is a permit holder or who receives, or has during the previous 2 years received, a significant portion of his or her income directly or indirectly from permit holders or applicants for permits issued by the department. For purposes of this section, "permit holders" or "applicants for permits" shall not include agencies, departments or subdivisions of this state.

The Legislature added the italicized language to the statute as part of Ch. 74, Laws of 1973. Chapter 74 created the state's point source water pollution regulatory program that is now found in ch. 283, Stats. The Ferral Water Pollution Control Act requires the U.S. Environmental Protection Agency (EPA) to issue point source water pollution discharge permits and allows states to apply to the EPA for delegation of the regulatory authority. The Federal Water Pollution Control Act imposes a substantial number of requirements that must be adopted by a state in order for EPA to approve delegation to the state. Among the requirements of the Federal Water Pollution Control Act that must be adopted as part of a state program is the following:



[A] requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. [33 U.S.C. s. 1314 (i) (D).]

Chapter 74, Laws of 1973, added the italicized language to s. 15.34, Stats., in response to the federal requirement. You should note that the provision of s. 15.34, Stats., that relates to a person "who is a permit holder" is not required by federal law.

A similar, but less restrictive federal limitation is imposed by the Clean Air Act, codified as 42 U.S.C. s. 7428 (a) (1). The Clean Air Act only requires that less than a majority of the members of the Natural Resolutes Board may derive a significant portion of their income from permit holders.

One consequence of using the word "permit" in the statute is that the majority of environmental programs (air pollution, mining and point source wastewater discharges) require a "permit." A solid or hazardous waste disposal facility requires a "license." Jim Kurtz, Director of the DNR Bureau of Legal Services, has taken the position, when advising the Governor regarding appointments to the Natural Resources Board, that the term "license" was used in 1978 to describe the approval for solid and hazardous waste disposal facilities, in order to be consistent with the definition of "license" in the Administrative Procedure Act, ch. 227, Stats., which was adopted in 1976. He believes that there is no substantive difference between "license" and "permit" in this instance, and that a person holding a landfill license would therefore be precluded from service on the Natural Resources Board.

Another consequence of using the word "permit" in this statute is that the Department of Natural Resources (DNR) issues a substantial number of permits other than those required in the environmental programs listed in the previous paragraph. Some of these permits relate to income-producing activities, such as a marina operator who must obtain permits under ch. 30, Stats., to construct and operate the marina. Other permits are issued by the DNR that involve the protection of property, such as permits for riprap under s. 30.12, Stats., where the primary purpose is not the production of income. Also, some activities under ch. 29, Stats., such as the deer hunting party permit, are called permits but should more properly be called licenses. Mr. Kurtz advises that permits for activities to protect property or for activities that are not primarily for a business purpose, do not disqualify an individual from appointment to the Natural Resources Board.

Of course, appointments to the Natural Resources Board require Senate confirmation, and the Senate can thus make the final determination on the scope of this statute.

If I can provide further information on this subject, please feel free to contact me.

MCP:tlu:wu;ksm

STATE OF WISCONSIN – **LEGISLATIVE REFERENCE BUREAU** – **LEGAL SECTION** (608–266–3561)

1-7-2000
Called Shibilaki's oppice & talked to Told
Asked Todd which often the want drasted.
Called Shibilaki's oppice & talked to Told Asked Todd which option they want drafted. He said they are still deciding a will call we saily next week
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State Senator Kevin Shibilski

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	Todd Holschbach	
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WLCS: 0233/1

01/12/2000

DNR Board

MCP:wu;tlu

	·
1	AN ACT to amend 15.34; and to create 15.34 (2) (d) and (e) of the statutes; relating
2	to: the qualifications for membership on the natural resources board.
	The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
3	SECTION 1. 15.34 of the statutes is amended to read:
	15 34 Department of natural resources; creation. (1) There is created a department
4	of natural resources under the direction and supervision of the natural resources board.
5 6	of natural resources under the consist of 7 members appointed for staggered (2) (a) The <u>natural resources</u> board shall consist of 7 members appointed for staggered
7	6-year terms.
8	(b) At least 3 members of the <u>natural resources</u> board shall be from the territory north,
9	and at least 3 members of the board shall be from the territory south, of a line running east and
10	the south limits of the city of Stevens Point.
	(a) No person may be appointed to the natural resources board, or remain a member
11	thereof, who is a permit holder or of the board who receives, or has during the previous 2 years
12	received, a significant portion of his or her income directly or indirectly from permit holders
13	received, a significant portion of the second ment under ch. 283.
14	or applicants for permits issued by the department under ch. 283.
15	(f) For purposes of this section, "permit or license holders" or "applicants for permits
16	or licenses" shall not include agencies, departments or subdivisions of this state.
17	SECTION 2. 15.34 (2) (d) and (e) of the statutes are created to read:
18	15 34 (2) (d) A person may not be appointed to the natural resources board if, after the
19	appointment, a majority of natural resources board members would derive a significant

portion of their income from permit holders under ch. 285.

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01/12/2000

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WLCS: 0233/1

(e) If a member of the natural resources board is the holder of a permit or license under chs. 280 to 299 or receives, or has during the previous 2 years received, a significant portion of his or her income directly or indirectly from permit or license holders or applicants for permits or licenses issued by the department under chs. 280 to 299, that member may not engage in a discussion at a board meeting or participate in board decisions on any matter that substantially relates to the permit or license.

(END)



FAX

State Senator Kevin Shibilski

Date:	Total Pages:
To:	Becky Tradevell Fax: 48522
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	a draft w/ recent changes
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DNR Board

WLCS: 0233/2

MCP:wu;tlu

01/21/2000

1	AN ACT to amend 15.34; and to create 15.34 (2) (d) and (e) of the statutes; relating
2	to: the qualifications for membership on the natural resources board.
	The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
3	SECTION 1. 15.34 of the statutes is amended to read:
4	15.34 Department of natural resources; creation. (1) There is created a department
5	of natural resources under the direction and supervision of the natural resources board.
6	(2) (a) The natural resources board shall consist of 7 members appointed for staggered
7	6-year terms.
8	(b) At least 3 members of the <u>natural resources</u> board shall be from the territory north,
9	and at least 3 members of the board shall be from the territory south, of a line running east and
10	west through the south limits of the city of Stevens Point.
11	(c) No person may be appointed to the natural resources board, or remain a member
12	thereof, who is a permit holder or of the board who receives, or has during the previous 2 years
13 ·	received, a significant portion of his or her income directly or indirectly from permit holders
14	or applicants for permits issued by the department under ch. 283, except that this paragraph
15	does not apply to a permit under s. 283.33.
16	(f) For purposes of this section, "permit or license holders" or "applicants for permits
17	or licenses" shall not include agencies, departments or subdivisions of this state.
18	SECTION 2. 15.34 (2) (d) and (e) of the statutes are created to read:

01/21/2000

-2-

WLCS: 0233/2

chs. 280 to 299 or receives, or has during the previous 2 years received, a significant portion of his or her income directly or indirectly from permit or license holders or applicants for permits or licenses issued by the department under chs. 280 to 299, that member may not engage in a discussion at a board meeting or participate in board decisions on any matter that substantially relates to the permit or license.

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(END)



State of Misconsin 1999 - 2000 LEGISLATURE

SOON (in toedting 1/25)

LRB-4173/1 RCT/...hmh

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Mote and natural resources bound member conflicts of interest

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AN ACT to amend 15.34; and to create 15.34 (2) (d) and (e) of the statutes;

relating to: the qualifications for membership on the natural resources board

attached -

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Analysis by the Legislative Reference Bureau

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

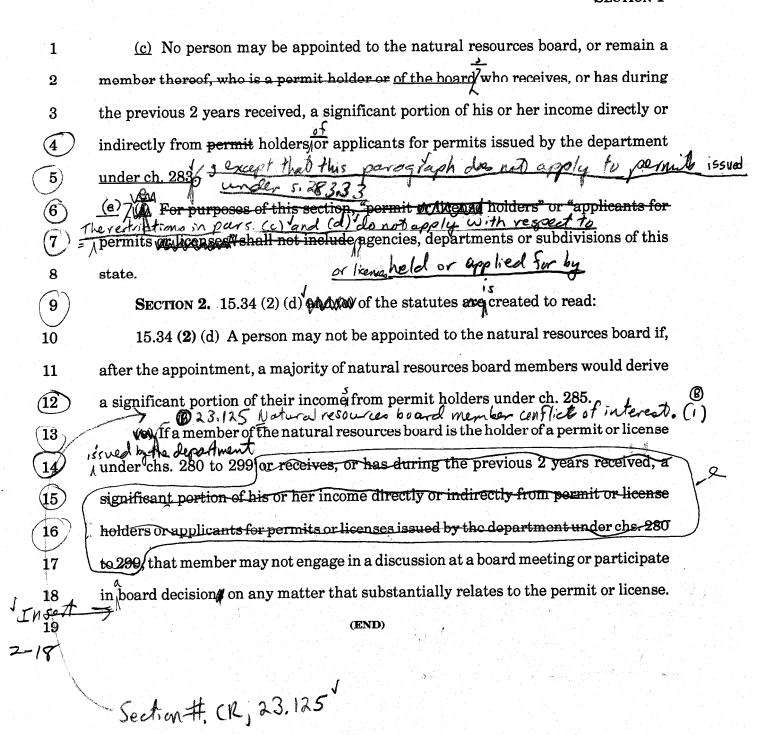
SECTION 1. 15.34 of the statutes is amended to read:

15.34 Department of natural resources; creation. (1) There is created a department of natural resources under the direction and supervision of the natural resources board.

(2) (a) The <u>natural resources</u> board shall consist of 7 members appointed for staggered 6-year terms.

(b) At least 3 members of the <u>natural resources</u> board shall be from the territory north, and at least 3 members of the board shall be from the territory south, of a line running east and west through the south limits of the city of Stevens Point.

-2-



1999-2000 DRAFTING INSERT FROM THE LEGISLATIVE REFERENCE BUREAU

Analysis

Current state law prohibits a person from being a member of the natural resource board if the person holds a permit issued by the department of natural resources (DNR) or receives, or has during the previous two years received, a significant portion of his or her income directly or indirectly from holders of or applicants for permits issued by DNR. The law does not define "permit".

The Federal Water Pollution Control Act (FWPCA) requires the issuance of water pollution discharge permits by the environmental protection agency (EPA) or by states to which EPA has delegated permit granting authority. The FWPCA imposes requirements on a state in order to obtain that delegation. One of those requirements is that no board or body that approves permit applications may include a member who receives, or has during the previous two years received, a significant portion of his or her income directly or indirectly from holders of or applicants for water pollution discharge permits. The Federal Clean Air Act requires each state to submit a state implementation plan. A state implementation plan must provide that fewer than a majority of members of any board or body that approves air pollution permits may derive any significant portion of their incomes from persons who are subject to air pollution permits.

This bill modifies the law concerning membership on the natural resources board. Under this bill, a person is prohibited from being a member of the natural resources board if the person receives, or has during the previous two years received, a significant portion of his or her income directly or indirectly from holders of or applicants for water pollution discharge permits issued by DNR, other than storm water permits. The bill prohibits a person from being appointed to the natural resources board if, after the appointment, a majority of board members would derive a significant portion of their incomes from holders of air pollution permits. The bill also specifies that if a member of the natural resources board holds a permit or license issued by DNR under environmental laws or receives, or during the previous two years received, a significant portion of his or her income directly or indirectly from a holder of or applicant for a permit or license issued by DNR under environmental laws, the board member may not engage in a discussion at a board meeting or participate in board decisions on any matter that substantially relates to the permit or license.

INSert 2-18
If (2) If a member of the natural resources board
receives, or has during the previous 2 years received,
a significant portion of his or her income directly
or indirectly from a holder of or applicant for
a permit or license issued by the department under
chs. 280 to 299, that member may not engage in
a discussion at a board meeting or participate in
a board decision on any matter that substantially
relates to the permit or license, except that this
restriction does not apply with respect to a permit
or license held or applied for by an agency, department
or subdivision of this states
end of inset

Mote This is the draft relating to membership on the his or her income "is not definedo r to contirm a nominee, con determine for a cosephy case basis portion of income is a majority of the memb deriving a significant air pollution permits bec the limitation only applies at the time that member is appointed to that consistent with your intent Please feel tree to centrato me with any

DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

LRB-4173/1dn RCT:wlj:hmh

January 26, 2000

This is the draft relating to membership on the natural resources board. As drafted, a majority of the members of the board could end up deriving a significant portion of their incomes from air pollution permits because the limitation only applies at the time that a member is appointed. Is that consistent with your intent?

As under current law, "significant portion of his or her income" is not defined. This prevents the law from being clear. When deciding whether to confirm a nominee, the senate can determine how much a "significant portion" of income is on a case—by—case basis, I suppose. However, it would be difficult to tell when someone must leave the board because of receiving income from permit holders.

Please feel free to contact me with any questions or redraft instructions.

Rebecca C. Tradewell Managing Attorney Phone: (608) 266–7290

E-mail: Becky.Tradewell@legis.state.wi.us

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.

To: Senator Shibilski Date: 01/26/2000 Relating to LRB drafting number: LRB-4173 Topic Requirements for appointment to the Natural resources board Subject(s) Nat. Res. - miscellaneous 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.

> Rebecca C. Tradewell, Managing Attorney Telephone: (608) 266-7290