

1999 DRAFTING REQUEST

Bill

Received: 11/30/98

Received By: gibsom

Wanted: Soon

Identical to LRB:

For: Administration-Budget 67973

By/Representing: Grinde

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

Alt. Drafters:

Subject: Nat. Res. - wet/shore/flood

Extra Copies:

Topic:

DOA:.....Grinde - Business expansion on small wetlands

Instructions:

Same as LRB 97a2677

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 12/1/98	chanaman 12/1/98	martykr 12/2/98	_____	lrb_docadmin 12/2/98		S&L
/2	gibsom 01/22/99	chanaman 01/25/99	martykr 01/25/99	_____	lrb_docadmin 01/25/99		S&L

FE Sent For:

<END>

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FE Sent For:

cmH
1/22
12
K/25
H/25
K/25
<END>

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1?	gibsom	1 12/1 jlg	km 12/2	km 12/2			

FE Sent For:

<END>

CORRESPONDENCE MEMORANDUM

**STATE OF WISCONSIN
Department of Administration**

Date: November 18, 1998
To: Steve Miller
Chief, Legislative Reference Bureau
From: Kirsten Grinde *KMG*
Policy and Budget Analyst, State Budget Office
Subject: FY 1999-2001 Budget Statutory Language Proposal

The following is an additional statutory language proposal for the FY1999-2001 biennial budget. I have indicated my priority ranking and attached a copy of the proposed change.

The intent of this request is to statutorily exempt a particular site from Department of Natural Resources' review of shoreland or floodplain ordinance changes and to state that the particular site is in compliance with water quality standards. This item was drafted as LRBa2677/1 during the April 1998 special session.

If you have any questions, please contact me at 266-7973.

<u>Issue</u>	<u>Status</u>	<u>Analyst</u>	<u>Priority</u>
Water Quality Standard Compliance	Proposal attached	Kirsten	High

cc: Dave Schmiedicke



State of Wisconsin
1999 - 2000 LEGISLATURE

Soon D-Note

RMR

LRB-1065/31

MGG.....

amy
&
jlg

DOA:.....Grinde - Business expansion on small wetlands

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1

don't forget
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

NATURAL RESOURCES

OTHER NATURAL RESOURCES

Under current law, the department of natural resources (DNR) has promulgated rules that establish water quality standards for wetlands. Under current law, activities that are carried out by the department of transportation (DOT) that are in connection with highway and bridge construction and maintenance are exempt from these rules if the activities comply with certain interdepartmental procedures established by DNR and DOT for minimizing the adverse environmental impact of the activities.

This bill creates an exemption from these wetland water quality standards for an activity that meets specific criteria. These criteria include that the wetland area that will be affected be less than 15 acres, that the site of the activity be in a city in Trempealeau County and that the city adopt a resolution stating that the exemption is necessary to protect jobs in the city.

The bill also prohibits DNR from reviewing and disapproving an amendment to a city or county shoreland or floodplain zoning ordinance if the amendment affects this exempt activity. Under current law, DNR may enact a shoreland or floodplain zoning ordinance that supersedes city's or county's shoreland or floodplain zoning ordinance if the city or county ordinance fails to meet certain standards established by DNR.

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:

1 SECTION 1. 59.692 (6m) of the statutes is created to read:

2 59.692 (6m) For an amendment to an ordinance enacted under this section that
3 affects an activity that meets all of the requirements under s. 281.165 (1) to (5), the
4 department may not proceed under sub. (6) or (7) (b) or (c), or otherwise review the
5 amendment, to determine whether the ordinance, as amended, fails to meet the
6 shoreland zoning standards.

7 SECTION 2. 62.231 (6m) of the statutes is created to read:

8 62.231 (6m) CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an
9 ordinance enacted under this section that affects an activity that meets all of the
10 requirements under s. 281.165 (1) to (5), the department of natural resources may
11 not proceed under sub. (6), or otherwise review the amendment, to determine
12 whether the ordinance, as amended, fails to meet reasonable minimum standards.

13 SECTION 3. 87.30 (1) (d) of the statutes is created to read:

14 87.30 (1) (d) For an amendment to a floodplain zoning ordinance that affects
15 an activity that meets all of the requirements under s. 281.165 (1) to (5), the
16 department of natural resources may not proceed under par. (a), or otherwise review
17 the amendment, to determine whether the ordinance, as amended, is insufficient.

18 (END)

← INS 2-17

1 **62.231 (6m) LIMITATION.** Notwithstanding sub. (6), the department may not
2 review a change in a shoreland zoning ordinance related to an activity described in
3 s. 281. 165 (1) to (4) and the department may not determine that the ordinance fails
4 to meet reasonable minimum standards because of that change.

5 **SECTION 1f.** 87.30 (1) (d) of the statutes is created to read:

6 87.30 (1) (d) Notwithstanding par. (a), the department may not review a change
7 in a floodplain zoning ordinance related to an activity described in s. 281.165 (1) to
8 (5) and the department may not determine that the ordinance is insufficient because
9 of that change.

10 **SECTION 1f.** 281.165 of the statutes is created to read: *INS 2-17*

11 **281.165 Compliance with water quality standards for wetlands.** An
12 activity is considered to comply with the water quality standards that are applicable
13 to wetlands and that are promulgated as rules under s. 281.15 if all of the following
14 apply to the activity: *meets all of the following requirements*

15 (1) The wetland area that will be affected by the activity is less than 15 acres
16 in size.

17 (2) The site of the activity is zoned for industrial use and is in the vicinity of
18 a manufacturing facility.

19 (3) The site of the activity is within the corporate limits of a city on January
20 1, 1998.

21 (4) The governing body of the city adopts a resolution stating that the
22 exemption under this section is necessary to protect jobs that exist in the city on the
23 date of the adoption of the resolution and is necessary to promote job creation.

24 (5) The site of the activity is located in Trempealeau County.

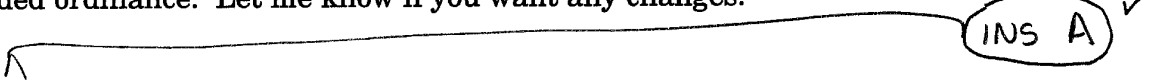
(END OF INSERT)

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

LRB-1065/fin¹
MGG.....
cmj
+
jlg

Attention: Kirsten Grinde

1. I did not limit the scope of ss. 59.692 (6m) ✓, 62.231 (6m) ✓ or 87.30 (1) (d) ✓ as we discussed over the phone because I think the preferred way to do that would be just to establish a specific exemption for the activity under s. 281.165 ✓ or authorize the city or and county to create the exemption. However, that would change the substance of last session's amendment. Therefore, in this draft, if a county or city decides to amend an ordinance and that change affects the activity, DNR may not review or "veto" the amended ordinance. Let me know if you want any changes.

2. 

Mary Gibson-Glass
Senior Legislative Attorney
267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb2899/1dn

MGG:jlg:lp

Thursday, April 23, 1998

INSA

If only one site meets the requirements for the exemption, it is possible that a Wisconsin court would find this legislation to be a "private or local bill" which, under article IV, section 18, of the Wisconsin Constitution, must be enacted as single-subject legislation. If so, this legislation cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject. In light of this, the committee may wish to consider introduction of this legislation as a separate bill.

~~Mary Gibson Glass~~
~~Senior Staff Counsel~~
267-3215

you

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

LRB-1065/1dn
MGG:cmh:km

December 2, 1998

Attention: Kirsten Grinde

1. I did not limit the scope of ss. 59.692 (6m), 62.231 (6m) or 87.30 (1) (d) as we discussed over the phone because I think the preferred way to do that would be just to establish a specific exemption for the activity under s. 281.165 or authorize the city or and county to create the exemption. However, that would change the substance of last session's amendment. Therefore, in this draft, if a county or city decides to amend an ordinance and that change affects the activity, DNR may not review or "veto" the amended ordinance. Let me know if you want any changes.

2. If only one site meets the requirements for the exemption, it is possible that a Wisconsin court would find this legislation to be a "private or local bill" which, under article IV, section 18, of the Wisconsin Constitution, must be enacted as single-subject legislation. If so this legislation cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject. In light of this, you may wish to consider introduction of this legislation as a separate bill.

Mary Gibson-Glass
Senior Legislative Attorney
267-3215

Gibson-Glass, Mary

From: Grinde, Kirsten [kirsten.grinde@doa.state.wi.us]
Sent: Sunday, December 27, 1998 8:18 PM
To: Gibson-Glass, Mary
Subject: LRB 1065/1

Mary,

Please make the following change to LRB 1065/1:

Modify Section 4 (281.165) to have the activity be considered to comply with public interest and public rights standards under Ch. 30 or any other provision of law, in addition to the compliance already mentioned in the draft.

Let me know if you have any questions.

Thanks,

Kirsten

FROM: BILL GERARD
01-07-99

CC DS
KG

*leave in
may be
affected
as determined
County land*

The first section creates Wis. Stat. § 59.692(6m). Chapter 59 of the statutes concerns counties and this section affects county zoning. In light of the fact that one of the criteria for the new exception to Wis. Stat. § 281.15 to apply is that the property is located within a city, chapter 59 may not be relevant unless it is included for other reasons.

2. On page 2, in lines 4, 10, and 16, [59.692(6m), 62.231(6m), 87.30(1)(d)] "may" should be changed to "shall."

*See
Drafting
Manual*

3. Section 3 of the draft legislation exempts from DNR review under Wis. Stat. § 87.30(1)(a) an amendment to a local floodplain zoning ordinance that affects an exempt activity, as determined by the five specified criteria. This exemption should be expanded to include all of Wis. Stat. § 87.30(1). Under par. (b) modifications to floodplain determinations and ordinances may be adopted only with the written consent of the DNR. Under par. (c), the costs of floodplain determination and enforcement by the state are required to be assessed against the local unit of government. Therefore, on page 2, line 16, "par. (a)" should be changed to "sub.(1)."

4. On page 2, line 20 [281.165], "is" should be changed to "shall be" to remove any ambiguity about the mandatory nature of the language.

5. The third criteria for exempting the activity from water quality certification standards states, "The site of the activity is within the corporate limits of a city on January 1, 1998." The year 1998 should be changed to 1999.

6. On page 3, line 11 [281.165(4)], "and" should be changed to "or."

7. The drafter may wish to modify the LRB analysis to add "or to protect jobs in the city" at the end of the second paragraph, so that there is no ambiguity between the analysis and the bill's language concerning this criteria for the exemption.

*already
there*

Post-it® Fax Note 7671		Date 1/21	# of pages 1
To Marv Gibson-Glass		From Kirsten Grinde	
Co./Dept.		Co.	
Phone # 7-3215		Phone # 6-7973	
Fax # 6-5648		Fax #	



State of Wisconsin
1999 - 2000 LEGISLATURE

LRMR

LRB-1065
MGG:cmh&jlg:km

Seen
P

✓
stage

DOA:.....Grinde - Business expansion on small wetlands

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ^{don't put cat}; relating to: the budget.

Analysis by the Legislative Reference Bureau

*or promote the
creating of jobs*

NATURAL RESOURCES

OTHER NATURAL RESOURCES

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4 department may not proceed under sub. (6) or (7) (b) or (c), or otherwise review the
5 amendment, to determine whether the ordinance, as amended, fails to meet the
6 shoreland zoning standards.

7 **SECTION 2.** 62.231 (6m) of the statutes is created to read:

8 62.231 (6m) CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an
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14 87.30 (1) (d) For an amendment to a floodplain zoning ordinance that affects
15 an activity that meets all of the requirements under s. 281.165 (1) to (5), the
16 department may not proceed under ^{this subsection ✓} (par. (a)), or otherwise review the amendment, to
17 determine whether the ordinance, as amended, is insufficient.

18 **SECTION 4.** 281.165 of the statutes is created to read:

19 **281.165 Compliance with water quality standards for wetlands.** An
20 activity ^{shall be} is considered to comply with the water quality standards that are applicable

and is INSERTA

1 to wetlands and that are promulgated as rules under s. 281.15 if the activity meets
2 all of the following requirements:

3 (1) The wetland area that will be affected by the activity is less than 15 acres
4 in size.

5 (2) The site of the activity is zoned for industrial use and is in the vicinity of
6 a manufacturing facility.

7 (3) The site of the activity is within the corporate limits of a city on January
8 1, ~~1998~~¹⁹⁹⁹

9 (4) The governing body of the city adopts a resolution stating that the
10 exemption under this section is necessary to protect jobs that exist in the city on the
11 date of the adoption of the resolution ^{or} and is necessary to promote job creation.

12 (5) The site of the activity is located in Trempealeau County.

13 (END)

INSERTA

30.12(4)(a)

(a) Activities affecting waters of the state as defined in s. 281.01 (18) that are carried out under the direction and supervision of the department of transportation in connection with highway and bridge design, location, construction, reconstruction, maintenance and repair are not subject to the prohibitions or permit or approval requirements specified under this section or s. 29.601, 30.11, 30.123, 30.195, 30.20, 59.692, ~~61.351, 62.231~~ or 87.30 or chs. 281 to 285 or 289 to 299, except s. 281.48. However, at the earliest practical time prior to the commencement of these activities, the department of transportation shall notify the department of the location, nature and extent of the proposed work that may affect the waters of the state.

30.202(3)

(3) **Exemption from statutes and rules.** Dredge spoil disposal activities authorized under sub. (2) are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692 or 87.30 or chs. 281 to 285 or 289 to 299, except s. 281.48, or specified in any rule promulgated, order issued or ordinance adopted under those sections or chapters.

30.204(5)

~~(5) Exemption from certain statutes and rules. Activities of the department in conducting the lake acidification experiment are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601 (3), ~~30.01 to 30.03, 30.06 to 30.16, 30.18 to 30.22, 30.50 to 30.99, 59.692, 87.30, 287.81, 299.15 to 299.23, 299.91, 299.95 or 299.97 or chs. 281, 283 or 289 to 292~~, or specified in any rule promulgated, order issued or ordinance adopted under any of those sections or chapters,~~

no 9

Insert

or chs. [✓] 30, [✓] 31, [✓] 281, [✓] 283
~~289~~ to 292 or 299

(END OF INSERT)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1065/2
MGG:cmh&jlg:km

DOA:.....Grinde - Business expansion on small wetlands

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

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6 shoreland zoning standards.

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8 62.231 (6m) CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an
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17 amendment, to determine whether the ordinance, as amended, is insufficient.

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19 **281.165 Compliance with water quality standards for wetlands.** An
20 activity shall be considered to comply with the water quality standards that are
21 applicable to wetlands and that are promulgated as rules under s. 281.15 and is

1 exempt from any prohibition, restriction, requirement, permit, license, approval,
2 authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601 (3)
3 or chs. 30, 31, 281, 283, 289 to 292 or 299 or specified under any rule promulgated,
4 order issued or ordinance adopted under any of those sections or chapters, if the
5 activity meets all of the following requirements:

6 (1) The wetland area that will be affected by the activity is less than 15 acres
7 in size.

8 (2) The site of the activity is zoned for industrial use and is in the vicinity of
9 a manufacturing facility.

10 (3) The site of the activity is within the corporate limits of a city on January
11 1, 1999.

12 (4) The governing body of the city adopts a resolution stating that the
13 exemption under this section is necessary to protect jobs that exist in the city on the
14 date of the adoption of the resolution or is necessary to promote job creation.

15 (5) The site of the activity is located in Trempealeau County.

16 (END)