

2001 Jr2 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB1)

Received: 03/11/2002

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau 68086

By/Representing: Schug

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

Addl. Drafters:

Subject: Environment - water quality
Nat. Res. - wet/shore/flood
Munis - zoning
Counties - zoning

Extra Copies:

Submit via email: NO

Pre Topic:

LFB:.....Schug - -,

Topic:

Ban on suits by department of natural resources against zoning ordinances

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 03/12/2002 shoveme 03/12/2002	hhagen 03/12/2002	kfollet 03/12/2002	_____	lrb_docadmin 03/13/2002		
/2	shoveme 03/13/2002	hhagen 03/13/2002	pgreensl 03/13/2002	_____	lrb_docadmin 03/13/2002		

FE Sent For:

<END>

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	shoveme 03/12/2002	12 hmk 3/13/02	13/13 P8	3/13 Sot			

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<END>

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/1	gibsom	11 hmk 3/12	5/1 3/12	scbf 3/12			

FE Sent For:

<END>

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

LRBb2406/1dn
MGG:.....

Preliminary

Attention: David Schug

1. This amendment, as it relates to restricting the state from bringing actions to protect the navigable waters in this state, may well be in violation of the public trust doctrine under Article IX, section 1 of the state's constitution. The state is invested by the state's constitution with the duty to act as trustee to protect the public's interest to use the state's navigable waters.

2. I have only included floodplain and shoreland zoning ordinances under ss. 59.692, 61.354, and 62.234 because I think these are the ones that foster the most conflict between persons seeking zoning variances and DNR. Other possibilities to be included in this list of cross-references include:

- a. Boat shelter ordinances under s. 30.12 (3) (c),
- b. Wolf river ordinances under s. 30.126.
- c. Ordinances regulating wharves, piers, and swimming rafts under s. 30.13 (2).
- d. Lower St. Croix River ordinances under s. 30.27.
- e. Construction site erosion control and storm water management zoning ordinances under ss. 59.693, 60.627, 61.354, and 62.234.
- f. Floodplain zoning ordinances under s. 87.30

*only wants
Shoreland zoning
in
chs
57, 61 and
62*

Please let me know if you want any changes.

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

Gibson-Glass, Mary

From: Schug, David
Sent: Tuesday, March 12, 2002 4:19 PM
To: Gibson-Glass, Mary
Subject: RE: LRB 01b2406, ban on DNR suits

Mary, Stay with s. chapters 59, 61 and 62  plain and shoreland zoning ordinances only, as I believe you have already done.

David

-----Original Message-----

From: Gibson-Glass, Mary
Sent: Tuesday, March 12, 2002 10:32 AM
To: Schug, David
Subject: LRB 01b2406, ban on DNR suits

<< File: 01b2406/1dn >> David: Act 153 from last session added paragraph (2) (c) to s. 30.27 due to zoning controversies along the river.

Mary

Budget Amendments 2002

Legislator:

Albers

those where DNR established minimum standards

Statement of Intent:

The DNR sues local units of government for issuing area variances when it believes the variance does not comply with statutory requirements, as interpreted by the Wisconsin Supreme Court. These standards are believed by many individuals at the state and local level to be unreasonable. Lawsuits by the DNR place an undue burden on property owners and result in owners and local units of government expending a great deal of money legal expenses to the fight the DNR.

Standards

Legislator 1:

Legislator 2:

Legislator 3:

Staff contact:

Agency:

Scott Harold Southworth

Natural Resources

Amendment:

Pass or fail:

On:

Withdrawn:

Package:

Summary:

Eliminate \$136,400 GPR and 1.0 GPR attorney position in DNR and prohibit the DNR from suing a political subdivision for providing an area variance if the governmental unit grants a variance and the county board where the political subdivision lies approves the variance by at least a 2/3 vote of the elected members of the board.

Fiscal Impact:

\$136,400 GPR

Elimination of 1.0 GPR attorney position (DNR)

Put language back in

Staff Analyst:

(b)(a)

→ DAS

Request:

232

Understands DNR not DOS, not DNR atty do this

Working Group Recommendation: Include only the provision to delete \$136,400 GPR and 1.0 GPR attorney position in DNR beginning in 2002-03.

[Fiscal Effect: -136,400 GPR and -1.0 GPR position]

Do whole thing



State of Wisconsin
2001 - 2002 LEGISLATURE

January 2002 Special Session

LRBb2406/1
MGG&MES: *hmb*

LFB:.....Schug – Ban on suits by department of natural resources against zoning ordinances

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page ²⁸ ~~3~~ line ⁸ ~~7~~ after that line insert:

3 SECTION ~~23~~ ^{73m} 23.495 of the statutes is created to read:

4 **23.495 Restrictions on seeking review.** (1) In this section:

5 (a) "Area variance" means a variance granted by a board of adjustment under
6 s. 59.694 (7) (c) or a board of appeals under s. 62.23 (7) (e) 7. that relates to those
7 provisions of a zoning ordinance which govern area, setbacks, frontage, height, bulk,
8 or density.

9 (b) "Members-elect" has the meaning given in s. 59.001 (2m).

10 (c) "Municipality" means a city, village, or town.

1 (d) "Political subdivision" means a municipality or county.

2 (2) Beginning on the effective date of this subsection [revisor inserts date],
3 the state may not initiate a civil action or intervene in a civil action to challenge the
4 granting of an area variance from an ordinance in effect under s. 59.692, 61.351, or
5 62.231, or an ordinance in effect under s. 60.61 or 60.62 that relates to shoreland
6 zoning if the area variance has been approved by a two-thirds vote of the
7 members-elect of the political subdivision and, in the case of a municipality, has also
8 been approved by a two-thirds vote of the members-elect of the county board of the
9 county in which the municipality is located or predominantly located."

10 ^{409 16}
2. Page ~~3~~ line ~~3~~ after that line insert:

11 ³⁷¹
"ATTORNEY POSITION DECREASE. In the schedule under section 20.005 (3) of
12 the statutes for the appropriation to the department of natural resources under
13 section 20.370 (8) (ma) of the statutes, as affected by the acts of 2001, the dollar
14 amount is decreased by \$136,400 for fiscal year 2002-03 to decrease the authorized
15 FTE positions for the department of natural resources by 1.0 GPR attorney
16 positions."

17 (END)

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

LRBb2406/1dn
MGC: *[Signature]*

Date

Attention: David Schug

1. This amendment, as it relates to restricting the state from bringing actions to protect the navigable waters in this state, may well be in violation of the public trust doctrine under Article IX, section 1 of the state's constitution. The state is invested by the state's constitution with the duty to act as trustee to protect the public's interest to use the state's navigable waters.

2. The reference to town ordinances under ss. 60.61 and 60.62 is necessary due to the language in s. 59.692 (2) (b).

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

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

LRBb2406/1dn
MGG:hmh:kjf

March 12, 2002

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



State of Wisconsin
2001 - 2002 LEGISLATURE
January 2002 Special Session

LRBb2406/z
MGG&MES:hmh:kif

SEP
RMR

LFB:.....Schug --, Ban on suits by department of natural resources against zoning ordinances

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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2 1. Page 28, line 8: after that line insert:

3 "SECTION 73m. 23.495 of the statutes is created to read:

4 23.495 Restrictions on seeking review. (1) In this section:

5 (a) "Area variance" means a variance granted by a board of adjustment under
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9 (b) "Members-elect" has the meaning given in s. 59.001 (2m).

10 (c) "Municipality" means a city, village, or town.

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5 62.231, or an ordinance in effect under s. 60.61 or 60.62 that relates to shoreland
6 zoning if the area variance has been approved by a two-thirds vote of the
7 members-elect of the political subdivision and, in the case of a municipality, has also
8 been approved by a two-thirds vote of the members-elect of the county board of the
9 county in which the ~~municipality~~ ^{land that is subject to the area variance} is located or predominantly located."

10 **2.** Page 409, line 16: after that line insert:

11 "(37h) ATTORNEY POSITION DECREASE. In the schedule under section 20.005 (3)
12 of the statutes for the appropriation to the department of natural resources under
13 section 20.370 (8) (ma) of the statutes, as affected by the acts of 2001, the dollar
14 amount is decreased by \$136,400 for fiscal year 2002-03 to decrease the authorized
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16 positions."

17 (END)



State of Wisconsin
2001 - 2002 LEGISLATURE
January 2002 Special Session

LRBb2406/2
MGG&MES:hmh:pg

LFB:.....Schug --, Ban on suits by department of natural resources against zoning ordinances

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