

2003 DRAFTING REQUEST

Senate Amendment (SA-SB61)

Received: **03/05/2004**

Received By: **btradewe**

Wanted: **Soon**

Identical to LRB:

For: **Neal Kedzie (608) 266-2635**

By/Representing: **Dan**

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kedzie@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Provide a cap on forfeitures rather than immunity in the environmental improvement program and other changes

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 | btradewe 03/06/2004 | kfollett 03/07/2004 | jfrantze 03/08/2004 | | lemery 03/08/2004 | lemery 03/08/2004 | |

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1/? | btradewe | 1/1 k/3/7 | 3/7 | 3/8 | | | |
| | | 1/WLJ 3/8 | 3/8 | 3/8 | | | |
| FE Sent For: | | | | 3/8 | | | |

END

March 5, 2004

TO: Dan Johnson
Rose Smyrski

FROM: Patrick Henderson

RE: SB 61 - Green Tier Amendment drafting instructions

Below are the drafting instructions that Jeff Schoepke and I discussed with Senator Kedzie on Friday afternoon. Rose, I will give you a call on Monday morning to discuss. You certainly deserved the break after the long marathon session on Thursday night.

If there are any questions about these instructions or the intent please feel free to give Jeff or myself a call.

✓ **Page 28, after line 21**

(d) The notice required under par. (b) includes a written statement by an official of the regulated entity that is responsible for environmental compliance that recognizes that the provision in 299.85 (7)(a) do not apply to violations discovered by the regulated entity before submission of a report under sub. (3).

✓ **Page 33, line 4**

Delete "this state may not bring a civil action to collect forfeitures for the violations" and replace with "the entity may be required to forfeit not more than \$500 per violation"

Page 33, lines 17 - 18

Delete "this state may not bring a civil action to collect forfeitures for the violations" and replace with "the entity may be required to forfeit not more than \$500 per violation".

✓ **Page 33, line 20**

After "forfeiture" add "otherwise available by law"

✓ **Page 34 after line 9**

Add a #6

6. The violation is identified by the regulated entity prior to commencement of a compliance audit.

✓ **Page 37, lines 9 -10**

Delete "in a report submitted" and also delete "sub (3)" and replace with "this section"

✓ **Add a new section as follows (wherever the drafter decides is appropriate. This provision is needed to ensure citation authority for the DNR):**

23.50 **Procedure in forfeiture actions.** (1) [to be inserted at the end].....or any violations properly disclosed and corrected under the provisions of 299.85 (7)(a)2. & 4..

✓ **Add a new section 299.83 (3) (b) 4**

The Department Secretary may waive one or more of the provisions in paragraphs (b)(2) and (b)(3) based on a request from an applicant. The Department shall provide public notice for the request and shall not take an action until the completion of a 30-day comment period. The Secretary shall not waive any such provisions unless he or she finds that such a waiver is not inconsistent with the standards provided at subsection (1)(m) and will not erode public confidence in the integrity of the program.

This provision should sunset December 31, 2007

✓ **Add a new section 299.83 (5) (b) 4**

The Department Secretary may waive one or more of the provisions in paragraphs (b)(2) and (b)(3) based on a request from an applicant. The Department shall provide public notice for the request and shall not take an action until the completion of a 30-day comment period. Such comment period may be simultaneous with the public meeting provisions of sub. (6)(c), (d) and (e). The Secretary shall not waive any such provisions unless he or she finds that such waiver is not inconsistent with the standards provided at subsection (1)(m) and will not erode public confidence in the integrity of the program

This provision should sunset December 31, 2007

Monday noon

SENATE AMENDMENT,
TO 2003 SENATE BILL 61

Note

plus costs, fees, and surcharges imposed under ch. 814, (plain text)

1 At the locations indicated, amend the bill as follows:

2 1. Page 5, line 1: before that line insert:

3 "SECTION 1c. 23.50 (1) of the statutes, as affected by 2003 Wisconsin Act ...
4 (~~2003~~ ^{sembo} AB 421), is amended to read:

5 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
6 court to recover forfeitures, ~~penalty assessments, jail assessments, applicable~~
7 ~~weapons assessments, applicable environmental assessments, applicable wild~~
8 ~~animal protection assessments, applicable natural resources assessments,~~
9 ~~applicable fishing shelter removal assessments, applicable snowmobile registration~~
10 ~~restitution payments and applicable natural resources restitution payments,~~ for
11 violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33,
12 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI
1 of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any administrative

delete
no
strike

↑
plain

2 rules promulgated thereunder, violations specified under s. 285.86, violations of ch.
 3 951 if the animal involved is a captive wild animal, violations of rules of the Kickapoo
 4 reserve management board under s. 41.41 (7) (k) ^{plain comm} violations to which s. 299.85 (7) (a)
 5 2. or 4. applies, or violations of local ordinances enacted by any local authority in
 6 accordance with s. 23.33 (11) (am) or 30.77.”

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 705b, 2102 (39) (f); 1981 c. 390; 1985 a 36; 1987 a. 27; 1987 a. 200 s.
 4; 1989 a. 79, 284, 335, 359; 1991 a. 39, 97; 1993 a. 16, 243, 344, 349, 491; 1995 a. 27, 216, 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56.

7 **2.** Page 5, line 1: substitute “**SECTION 1M**” for “**SECTION 1**”.

8 **3.** Page 10, line 14: after “(d)” insert “, subject to par. (e)”.

9 **4.** Page 10, line 19: after “following” insert “, subject to par. (e)”.

10 **5.** Page 13, line 2: after that line insert:

11 “(e) *Waiver of enforcement record requirements.* Before January 1, 2007, the
 12 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on
 13 the request of an applicant. The department shall provide public notice of the
 14 request and shall provide at least 30 days for public comment on the request. The
 15 secretary may not grant a waiver under this paragraph unless he or she finds that
 16 the waiver is consistent with sub. (1m) and will not erode public confidence in the
 17 integrity of the program.”

18 **6.** Page 14, line 17: after “(d)” insert “, subject to par. (e)”.

19 **7.** Page 14, line 22: after “following” insert “, subject to par. (e)”.

20 **8.** Page 16, line 10: after that line insert:

21 “(e) *Waiver of enforcement record requirements.* Before January 1, 2007, the
 22 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on
 23 the request of an applicant. The department shall provide public notice of the
 1 request and shall provide at least 30 days for public comment on the request. This

2 public comment period may be concurrent with the notice period under sub. (6) (c)
3 to (f). The secretary may not grant a waiver under this paragraph unless he or she
4 finds that the waiver is consistent with sub. (1m) and will not erode public confidence
5 in the integrity of the program.”.

6 **9.** Page 28, line 20: after that line insert:

7 “(bm) The notice under par. (b) includes a statement, signed by an official of the
8 regulated entity who is responsible for environmental compliance, that
9 acknowledges that sub. (7) (a) does not apply to violations discovered by the
10 regulated entity before the beginning of the environmental compliance audit.”.

11 **10.** Page 33, line 1: delete “If” and substitute “Notwithstanding minimum or

12 maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11),
13 29.899 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and
14 (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1),
15 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1),
16 (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m),
17 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51
18 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if”.

19 **11.** Page 33, line 4: delete the material beginning with “this” and ending with

20 “violations” on line 5, and substitute “the regulated entity may not be required to
21 forfeit more than \$500 for each violation”.

22 **12.** Page 33, line 16: delete “If” and substitute “Notwithstanding minimum or

23 maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11),
24 29.899 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and
1 (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1),

2 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1),
3 (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m),
4 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51
5 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if”.

6 **13.** Page 33, line 17: delete the material beginning with “this” and ending with
7 “violations” on line 18 and substitute “the regulated entity may not be required to
8 forfeit more than \$500 for each violation”.

9 **14.** Page 33, line 20: after “forfeiture” insert “not limited in amount under par.
10 (a) 2. or 4.”.

11 **15.** Page 33, line 18: after that line insert:

12 “(am) The department may issue a citation and follow the procedures under ss.
13 23.50 to 23.99 to collect a forfeiture for a violation to which par. (a) 2. or 4. applies.”.

14 **16.** Page 34, line 9: after that line insert:

15 “6. The violation is discovered by the regulated entity before the beginning of
16 the compliance audit.”.

17 **17.** Page 37, line 9: delete the material beginning with “ⁱⁿa report” and ending
18 with “(3)” on line 10, and substitute “under this section”.

19 **18.** Page 37, line 13: after that line insert:

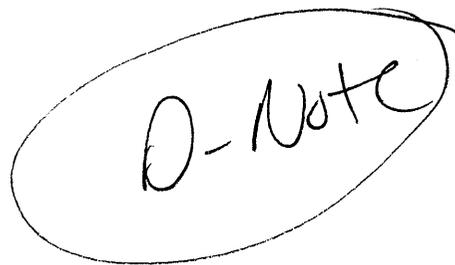
20 “SECTION 3b. 299.95 of the statutes is amended to read:

21 **299.95 Enforcement; duty of department of justice; expenses.** The
22 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
23 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
24 approvals, permits, and water quality certifications of the department, except those
1 promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as

2 provided in ~~s. ss.~~ ss. 285.86 and 299.85 (7) (am).[✓] The circuit court for Dane county or for
3 any other county where a violation occurred in whole or in part has jurisdiction to
4 enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order,
5 license, plan approval, permit, or certification by injunctive and other relief
6 appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285
7 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit
8 or certification prohibits in whole or in part any pollution, a violation is considered
9 a public nuisance. The department of natural resources may enter into agreements
10 with the department of justice to assist with the administration of chs. 281 to 285 and
11 289 to 295 and this chapter. Any funds paid to the department of justice under these
12 agreements shall be credited to the appropriation account under s. 20.455 (1) (k).”

History: 1975 c. 39 s. 734; 1979 c. 34 s. 985g; 1979 c. 221; Stats. 1979 s. 144.98; 1981 c. 374; 1989 a. 284; 1993 a. 243; 1995 a. 27; 1995 a. 227 s. 829; Stats. 1995 s. 299.95; 1995 a. 290 s. 12; 1997 a. 35; 1999 a. 9; 2001 a. 6.

13

(END)A handwritten note "O-Note" is circled in black ink. The text is written in a cursive, handwritten style.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2654/1dn

RCT. 

Date

Dan Johnson:

This is the amendment to SB 61. Please review it carefully.

The instructions indicated that the draft should require a regulated entity to indicate that it recognizes that the provisions limiting the amount of forfeitures for reported violations do not apply to violations discovered by the entity before it submits the audit report. I changed that to say "before the beginning of the environmental compliance audit." X

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Johnson, Dan (Legislature)
Sent: Monday, March 08, 2004 8:57 AM
To: Tradewell, Becky
Subject: RE: SB 61 amendment Drafting Instructions

Go ahead and make the change.

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

From: Tradewell, Becky
Sent: Monday, March 08, 2004 8:51 AM
To: Johnson, Dan (Legislature)
Subject: RE: SB 61 amendment Drafting Instructions

Dan,

The amendment was being typed when I got your message. I have asked them not to submit it until I say to, so please let me know whether or not the change is wanted so that we can complete the amendment.

I am not certain that adding "type of" to the amendment will be sufficiently clear, for example, there could be two completely unrelated violations of the same statute and those could be argued to be of the same type, but I would think that the intent would be to allow two \$500 forfeitures in that case. I think that I understand what is wanted and will work on language to clarify it.

Becky
6-7290

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

From: Johnson, Dan (Legislature)
Sent: Monday, March 08, 2004 8:38 AM
To: Tradewell, Becky
Subject: SB 61 amendment Drafting Instructions
Importance: High

Hi Becky,

Jeff Schoepke from WMC has reviewed the drafting instructions and claims a minor, but significant, addition needs to be made. I am waiting to hear from Governor Doyle's office if they are comfortable with this change so do not do anything until you get a final word from me. But, I felt you should have this information ready to go ahead of time. Jeff's comment is below:

There is an inadvertent error on this document. The second and third changes need to specify "the entity may be required to forfeit not more than \$500 per TYPE OF violation". It is critical to include "type of" so as to avoid for multiple days counting as multiple violations.

Thanks again!

Dan Johnson
State Senator Neal Kedzie
11th Senate District
(608) 266-2635



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa2654/1
RCT:kjf:jf
zjwj

This a.m.

pp 3 & 4
and D-NOTE

SENATE AMENDMENT,
TO 2003 SENATE BILL 61

DNote

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 5, line 1: before that line insert:

3 “SECTION 1c. 23.50 (1) of the statutes, as affected by 2003 Wisconsin Act

4 (Assembly Bill 421), is amended to read:

5 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit

6 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,

7 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),

8 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),

9 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any

10 administrative rules promulgated thereunder, violations specified under s. 285.86,

11 violations of ch. 951 if the animal involved is a captive wild animal, violations of rules

12 of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which

1 s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances enacted by any local
2 authority in accordance with s. 23.33 (11) (am) or 30.77.”.

3 **2.** Page 5, line 1: substitute “**SECTION 1m**” for “**SECTION 1**”.

4 **3.** Page 10, line 14: after “(d)” insert “, subject to par. (e)”.

5 **4.** Page 10, line 19: after “following” insert “, subject to par. (e)”.

6 **5.** Page 13, line 2: after that line insert:

7 “(e) *Waiver of enforcement record requirements.* Before January 1, 2007, the
8 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on
9 the request of an applicant. The department shall provide public notice of the
10 request and shall provide at least 30 days for public comment on the request. The
11 secretary may not grant a waiver under this paragraph unless he or she finds that
12 the waiver is consistent with sub. (1m) and will not erode public confidence in the
13 integrity of the program.”.

14 **6.** Page 14, line 17: after “(d)” insert “, subject to par. (e)”.

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18 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on
19 the request of an applicant. The department shall provide public notice of the
20 request and shall provide at least 30 days for public comment on the request. This
21 public comment period may be concurrent with the notice period under sub. (6) (c)
22 to (f). The secretary may not grant a waiver under this paragraph unless he or she

1 finds that the waiver is consistent with sub. (1m) and will not erode public confidence
2 in the integrity of the program.”.

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4 “(bm) The notice under par. (b) includes a statement, signed by an official of the
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15 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if”.

16 **11.** Page 33, line 4: delete the material beginning with “this” and ending with
17 “violations” on line 5, and substitute “the regulated entity may not be required to
18 forfeit more than \$500 for each violation”.

*irrespective of the number of days
during which the violation continues*

19 **12.** Page 33, line 16: delete “If” and substitute “Notwithstanding minimum or
20 maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11),
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9 **15.** Page 33, line 20: after “forfeiture” insert “not limited in amount under par.
10 (a) 2. or 4.”.

11 **16.** Page 34, line 9: after that line insert:

12 “6. The violation is discovered by the regulated entity before the beginning of
13 the compliance audit.”.

14 **17.** Page 37, line 9: delete the material beginning with “in a report” and
15 ending with “(3)” on line 10, and substitute “under this section”.

16 **18.** Page 37, line 13: after that line insert:

17 “SECTION 3b. 299.95 of the statutes is amended to read:

18 **299.95 Enforcement; duty of department of justice; expenses.** The
19 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
20 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
21 approvals, permits, and water quality certifications of the department, except those
22 promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as
23 provided in ~~s.~~ ss. 285.86 and 299.85 (7) (am). The circuit court for Dane county or for
24 any other county where a violation occurred in whole or in part has jurisdiction to

1 enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order,
2 license, plan approval, permit, or certification by injunctive and other relief
3 appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285
4 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit
5 or certification prohibits in whole or in part any pollution, a violation is considered
6 a public nuisance. The department of natural resources may enter into agreements
7 with the department of justice to assist with the administration of chs. 281 to 285 and
8 289 to 295 and this chapter. Any funds paid to the department of justice under these
9 agreements shall be credited to the appropriation account under s. 20.455 (1) (k).”.

10

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2654/1dn
RCT:kjf:jf

Dan Johnson:

This is the amendment to SB[Ⓢ]_Λ61. Please review it carefully.

The instructions indicated that the draft should require a regulated entity to indicate that it recognizes that the provisions limiting the amount of forfeitures for reported violations do not apply to violations discovered by the entity before it submits the audit report. I changed that to say "before the beginning of the compliance audit."

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2654/1dn
RCT:kjf:jf

March 8, 2004

Dan Johnson:

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