

2005 AB-14
LRB 05-1687/1

Joint Committee for Review of Administrative Rules

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Emergency Rules s. NR 310.17 (4) (a) , ch. NR 326, and s. NR 328.04(3) (c), (4) (e), (5) (c), and 6 (b), s. NR 328.05(4) (f) and (j) and (5) (f), in NR 328.06 (4) (intro.), the phrase “or moderate.”, and s. NR 328.07 (3)

Report to the Legislature

Emergency Rule Section NR 310.17 (4) (a) , ch. NR 326, and s. NR 328.04(3) (c), (4) (e), (5) (c), and 6 (b), s. NR 328.05(4) (f) and (j) and (5) (f), in NR 328.06 (4) (intro.), the phrase “or moderate.”, and s. NR 328.07 (3)

The Joint Committee for Review of Administrative Rules

Produced pursuant to s. 227.26(2)(g), Stats.

Emergency Rules Section NR 310.17 (4) (a), Ch. NR 326 and Sections NR 328.04 (3) (c), (4) (e), (5) (c), and (6) (b), NR 328.05 (4) (f) and (j) and (5) (f), NR 328.06 (4) (intro.), the phrase “or moderate.”, and s. NR 328.07 (3), promulgated by the Department of Natural Resources, (DNR), relate to the placement of riprap, biological shore erosion control structures, seawalls, piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waters and the effective date for the issuance of individual permits for activities in navigable waters.

Description of the Problem

2004 Wisconsin Act 118, which became effective February 6, 2004, is known as the Job Creation Act. Among its goals of regulatory reform are to streamline the Chapter

30 permitting process for various riparian activities. In accordance with Act 118, the DNR drafted an emergency rule package. This package included NR 310.17 (4) (a) which relates to the effective date for the issuance of individual permits for activities in navigable waters, ch. NR 326 which relates to regulation of piers, wharfs, boat shelters, boat hoists, boatlifts, and swim rafts in navigable waterways, and various sections of NR 328 relating to placement of riprap, seawalls and biological erosion controls. The Joint Committee for Review of Administrative Rules (JCRAR) heard from numerous individuals who questioned whether the DNR had gone beyond the legislature's intent and the statutory authority of Act 118 by making the permitting process more onerous and confusing. In response to this public outcry, JCRAR held a public hearing in Minocqua on June 24, 2004. Over five hundred people spoke and/or registered against these rules.

Arguments in Favor of Suspension

- *The legislative intent and language of Act 118 streamlined the Chapter 30 permitting process and made it more understandable. Emergency rule ch. NR 326 makes it harder to get a permit by requiring twenty different criteria, removes exemptions from existing piers and those whose ownership have been transferred. The rule is confusing and goes beyond its statutory authority.*
- *Emergency Rule s. NR 310.17 (4) (a) delays the effective date of a permit by 30 days after it has been issued, which causes an unnecessary and unreasonable burden on businesses which is contrary to the legislative intent of Act 118.*
- *Although Act 118 created exemptions and general permits for riprap and seawalls in limited instances, sections of Emergency Rule ch. NR 328 created prohibitions on riprap and seawall, clearly exceeding its statutory authority.*

Arguments Against Suspension

- *These emergency rules preserve and protect Wisconsin's fish and wildlife habitat. If suspended, Wisconsin's tourism industry could be placed in jeopardy.*
- *The emergency rules are in effect for a very short time period. More time is needed to see how they will work. The permanent rule process may be a better time to seek modifications.*

Action by Joint Committee for Review of Administrative Rules

On June 24, 2004 the Joint Committee for Review of Administrative Rules held a public hearing and executive session on Emergency Rules NR 310, NR 326 and NR 328. The committee passed a motion on a 6 to 3 vote, pursuant to ss. 227.19 (4) (d) 3. and 6. and 227.26 (2) (d), Stats., to suspend the following emergency rule provisions: Section NR 310.17 (4) (a), Ch. NR 326 and Sections NR 328.04 (3) (c), (4) (e), (5) (c), and (6) (b), NR 328.05 (4) (f) and (j) and (5) (f), NR 328.06 (4) (intro.), the phrase "or moderate.", and s. NR 328.07 (3). This action prohibits the DNR from promulgating rules relating to the placement of riprap, biological shore erosion control structures, seawalls, piers, wharves, boat shelters, boat hoists, boat lifts and swim rafts in navigable waters under certain circumstances and the effective date for the issuance of individual permits for activities in navigable waters.

On July 21, 2004, JCRAR voted 9 to 1 to introduce LRB 4611 and LRB 4626, which makes the effect of the suspension statutory.