

2007 DRAFTING REQUEST

Bill

Received: **01/12/2007**

Received By: **mglass**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 67329**

By/Representing: **Griffin**

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

Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Griffin, BB0323 -

Topic:

Enforcement procedures and penalties relating to invasive species

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>
/?				_____			S&L Crime
/1	mglass 01/19/2007	jdyer 01/22/2007	jfrantze 01/22/2007	_____			S&L Crime
/2	mglass 01/26/2007	kfollett 01/26/2007	jfrantze 01/26/2007	_____	cduerst 01/26/2007		S&L Crime
/3	mglass	lkunkel	nmatzke	_____	cduerst		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/30/2007	01/30/2007	01/30/2007	_____	01/30/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

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Received: 01/12/2007

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/?				_____			S&L Crime
/1	mglass 01/19/2007	jdyer 01/22/2007	jfrantze 01/22/2007	_____			S&L Crime
/2	mglass 01/26/2007	kfollett 01/26/2007	jfrantze 01/26/2007	_____	cduerst 01/26/2007		
		13/mk 1/30	nwn 1/30	nwn/PJ 1/30			

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/?	mglass	1/22 jld	2/22	2/22			
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1/22 jld
1/22 kjf
1/22
2/22
2/22
2/22

FE Sent For:

<END>

2/22
2/22

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Enforcement procedures and penalties relating to invasive species
- Tracking Code: BB0323
- SBO team: Environmental and Commercial Resources
- SBO analyst: Jenna Griffin
 - Phone: 608-266-7329
 - Email: jenna.griffirin@doa.state.wi.us
- Agency acronym: DNR
- Agency number: 370
- Priority (Low, Medium, High): Medium

Current law (s. 23.22, Wis. Stats.) requires the Department to establish a statewide management program to control invasive species in this state. Under that directive, the Department will promulgate rules that identify, classify and regulate invasive species. For violations of the rules, the Department may only issue citations, which are prosecuted through the county district attorney. The maximum penalty is the general civil forfeiture of \$100 for unspecified violations of ch. 23, Wis. Stats. *see 23.09(7) &*

This proposal would allow the department to assign specific penalties for violations of rules adopted under the invasive species law, and would increase the maximum forfeiture for a violation from \$100 to \$200. It would also establish higher penalties for repeat violators, allow for cost recovery, and authorize courts to grant injunctive relief against violators. The proposal also allows the department to refer violations to the Attorney General for civil enforcement in Circuit Court as an alternative to issuing a citation. *general provision*

[Eric Ebersberger]

72769

[285.86]

copy of



State of Wisconsin
2007 - 2008 LEGISLATURE

RMR
LRB-1510/1
MGG:....
jld

Mon
A.M

DOA:.....Griffin, BB0323 - Enforcement procedures and penalties relating to invasive species

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

never submitted

don't gen

1 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) administers a program to control invasive species in this state. Under current law, specific penalties apply to violations of statutory provisions relating to controlling or introducing certain invasive species, but not to others. Those covered by these penalties include multiflora rose and invasive aquatic plants such as Eurasian water milfoil and purple loosestrife. For other species, there are no specific penalties, and therefore, a maximum forfeiture of \$100 applies.

For those species for which there is no statutory penalty, this bill authorizes DNR to promulgate penalties by rule. These penalties may include a forfeiture, not to exceed \$200, and fines or terms of imprisonment for repeat violations. The bill also authorize DNR or the Department of Justice, at the request of DNR, to file suits for injunctions or monetary damages.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

CRIME

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

Gibson-Glass, Mary

From: Grinde, Kirsten - DOA
Sent: Thursday, January 25, 2007 5:38 PM
To: Gibson-Glass, Mary
Subject: DNR invasives language
Attachments: Invasives Enforcement_2007-09.doc

Mary,

Attached is language from Pete Flaherty at DNR regarding the invasive species penalties and enforcement request. DNR's proposal is based in part on the penalty language under s. 285.87, which addresses violations of rules, permits and special orders as well as the statutes. The attached language provides for limits and direction as to what actions DNR may take.

The added comments in the language are from Eric Ebersberger, who is pointing to existing statutory language from which Pete drew.

If you have further questions on this draft, please feel free to call myself (6-1040) or Pete Flaherty (6-8254).

Thanks for all your help.

Kirsten

SECTION 3 of the draft establishes specific penalties for violations of rules adopted under the invasive species law, and increases the maximum forfeiture for a violation from \$100 to \$200. It also establishes penalties for repeat violators, allows for cost recovery, and injunctive relief against violators. The draft allows the department to refer violations to the Attorney General for enforcement in Circuit Court as an alternative to issuing a citation.

SECTION 3 23.22 (2g), (2m) and (2t) of the statutes are created to read:

23.22 **(2g)** PENALTIES (a) Except as provided in par. (b) or (c), any person who violates this section, any rule adopted under sub. (2) (b) 6., or any permit issued under those rules shall forfeit not more than \$200.

(b) A person who violates this section, any rule adopted under sub. (2) (b) 6., or any permit issued under those rules and who, within 5 years before the arrest for the current conviction, was previously convicted of a violation of this section, any rule adopted under sub. (2) (b) 6., or any permit issued under those rules, shall forfeit not less than \$700 nor more than \$2,000 or shall be imprisoned for not less than 6 months nor more than 9 months or both.

See
23.24(6)
(a)

(c) A person who intentionally violates this section, any rule adopted under sub. (2) (b) 6., or any permit issued under those rules shall be fined not less than \$1,000 nor more than \$5,000 or shall be imprisoned for not less than 6 months nor more than 9 months, or both.

See
(6)(b)

(d) In addition to all other civil or criminal penalties prescribed under this section, the court may assess as an additional penalty a portion or all of the costs of the investigation, including monitoring, which led to the establishment of the violation. The court may award the department of justice [or district attorney] the reasonable and necessary expenses of the prosecution, including attorney fees. [The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1)(gh).] *see 281.91(gh) - 283.91(5)*

Cost
summary

(e) The court may order a person convicted of violating this section, any rule adopted under sub. (2) (b) 6., or any permit issued under those rules to abate any nuisance caused by the violation, restore any natural resource damaged by the violation, or take

other appropriate action to eliminate or minimize any environmental damage caused by the violation.

(2m) ENFORCEMENT (a) If the department finds a violation of this section, any rule adopted under sub. (2) (b) 6., or any permit issued under those rules for which a person is subject to a forfeiture under sub (2g) the department may do one or more of the following:

1. issue a citation and, if the department does issue a citation, the procedures in ss. 23.50 to 23.99 apply,

2. revoke the permit after notice and opportunity for hearing, or

3. refer the matter to the department of justice for enforcement under par. (b).

(b) The department of justice shall initiate the legal action requested by the department under par. (a) 3. In any action commenced by it under this subsection, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department's views on final disposition. The department of justice shall not enter into a final disposition different than that previously discussed without first informing the department.

283.89(2)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1510/1

MGG:jld:jf

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D-N

gf

DOA:.....Griffin, BB0323 - Enforcement procedures and penalties relating to invasive species

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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

Analysis by the Legislative Reference Bureau

NATURAL RESOURCES

OTHER NATURAL RESOURCES

Under current law, DNR administers a program to control invasive species in this state. Under current law, specific penalties apply to violations of statutory provisions relating to controlling or introducing certain invasive species, but not to others. Those covered by these penalties include multiflora rose and invasive aquatic plants such as Eurasian water milfoil and purple loosestrife. For other species, there are no specific penalties and, therefore, a maximum forfeiture of \$100 applies.

For those species for which there is no statutory penalty, this bill authorizes DNR to promulgate penalties by rule. These penalties may include a forfeiture, not to exceed \$200, and fines or terms of imprisonment for repeat violations. The bill also authorizes DNR or DOJ, at the request of DNR, to file suits for injunctions or monetary damages.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

INSERT ANALYSIS

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:

INS
ANL

SECTION 1. 23.22 (1) (cm) of the statutes is created to read:

23.22 (1) (cm) "Rule violation" means a violation of a rule relating to the control of invasive species that is promulgated under sub. (2) (b) 6. to which ss. 23.235 (5) and 23.24 (6) do not apply.

SECTION 2. 23.22 (2) (b) 6. of the statutes is amended to read:

23.22 (2) (b) 6. Promulgate rules to identify, classify, and control invasive species for purposes of the program. In promulgating these rules, the department shall consider the recommendations of the council under sub. (3) (a).

SECTION 3. 23.22 (8) of the statutes is created to read:

23.22 (8) ENFORCEMENT. (a) The department shall promulgate rules that establish penalties for rule violations. Any forfeiture established under this paragraph may not exceed \$200. Any fine or term of imprisonment established under this paragraph may only apply to a rule violation that occurs after the defendant has been found by a court to have committed a rule violation on a prior occasion.

(b) The department of natural resources, or the department of justice at the request of the department of natural resources, may initiate an action seeking injunctive relief or monetary damages, or both, against any person committing a rule violation.

— INSERT 2-20

(END)

O-Note

Insert analysis

This bill creates penalties for those species for which there is no statutory penalty under current law. These penalties include a forfeiture, not to exceed \$200, and fines and terms of imprisonment for intentional violations and for repeat violations. The bill also authorizes the court to order additional remedies such as requiring the violator to restore any natural resources damaged by the violation or to pay for investigation costs and attorney fees.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Insert 2-20

SECTION 1. 20.455 (1) (gh) of the statutes is amended to read:

20.455 (1) (gh) Investigation and prosecution. Moneys received under ss. 23.22 ~~20.49~~ ^{(9)(d)} 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., and 299.97 (2), for the expenses of investigation and prosecution of violations, including attorney fees.

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33, 139, 309, 326; 2005 a. 25 ss. 356c to 363r, 415m to 415w, 416g, 416h; 2005 a. 60, 254, 433.

SECTION 2. 23.22 (2) (b) 6. of the statutes is amended to read:

23.22 (2) (b) 6. Promulgate rules to identify, classify, and control invasive species for purposes of the program. In promulgating these rules, the department shall consider the recommendations of the council under sub. (3) (a). As part of these rules, the department may establish procedures and requirements for issuing permits to control invasive species.

History: 2001 a. 109 ss. 72t, 72xd; 2003 a. 33; 2005 a. 25, 160.

SECTION 3. 23.22 (8) of the statutes is created to read:

1 23.22 (8) PENALTIES. (a) Except as provided in pars. (b) and (c), any person who
2 violates a rule promulgated under sub. (2) (b) 6., or any permit issued under those
3 rules, shall forfeit not more than \$200.

4 (b) Any person who intentionally violates any rule promulgated under sub. (2)
5 (b) 6. or any permit issued under those rules shall be fined not less than \$1,000 or
6 more than \$5,000, or shall be imprisoned for not less than 6 months or more than 9
7 months or both.

8 (c) A person who violates a rule promulgated under sub. (2) (b) 6. or any permit
9 issued under those rules and who, within 5 years before the arrest of the current
10 conviction, was previously convicted of a violation of a rule promulgated under sub.
11 (2) (b) 6. or any permit issued under those rules shall be fined not less than \$700 or
12 more than \$2,000 or shall be imprisoned for not less than 6 months or more than 9
13 months or both.

14 (d) The court may order a person who is convicted under par. (a), (b), or (c) to
15 abate any nuisance caused by the violation, restore any natural resource damaged
16 by the violation, or take other appropriate action to eliminate or minimize any
17 environmental damage caused by the violation.

18 **SECTION 4.** 23.22 (9) of the statutes is created to read:

19 23.22 (9) ENFORCEMENT. (a) If the department of natural resources finds that
20 any person is violating a rule promulgated under sub. (2) (b) 6. or a permit issued
21 under those rules for which the person is subject to a forfeiture under sub. (8) (a), the
22 department of natural resources may do one or more of the following:

- 23 1. Issue a citation pursuant to s. 23.50 to 23.99.
- 24 2. Refer the matter to the department of justice for enforcement under par. (c).

1 3. Revoke a permit issued under the rules promulgated under sub. (2) (b) 6.,
2 after notice and opportunity for hearing.

3 (c) The department of justice shall initiate an enforcement action requested by
4 the department under par. (a) 2. The enforcement action may include a request for
5 injunctive relief. In any action initiated by it under this paragraph, the department
6 of justice shall, prior to stipulation, consent order, judgment, or other final disposition
7 of the case, consult with the department of natural resources for the purpose of
8 determining the department's views on final disposition. The department of justice
9 shall not enter into a final disposition different than that previously discussed
10 without first informing the department of natural resources.

11 (d) In an action initiated pursuant to a citation or initiated under par. (c), the
12 court may award, as an additional penalty, an amount equal to all or a portion of
13 the costs of investigation, including any monitoring, incurred by the department of
14 natural resources or the department of justice, which led to the establishment of the
15 violation. The court may also award the department of justice the reasonable and
16 necessary expenses of the prosecution, including attorney fees. The department of
17 justice shall deposit in the state treasury for deposit into the general fund all moneys
18 that the court awards to the department of justice under this paragraph. These
19 moneys shall be credited to the appropriation account under s. 20.455 (1) (gh).

20 **SECTION 5.** 23.24 (6) (b) of the statutes is amended to read:

21 23.24 (6) (b) A person who violates sub. (3) and who, within 5 years before the
22 arrest of the current conviction, was previously convicted of a violation of sub. (3)
23 shall forfeit be fined not less than \$700 nor more than \$2,000 or shall be imprisoned
24 for not less than 6 months nor more than 9 months or both.

Check
spacing

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

LRB-1510/2dn

MGG: kjf

Date

Please review this draft to make sure it achieves your intent. This draft is complicated and should be reviewed by someone familiar with how the enforcement procedures under ss. 283.89 and 283.91 are implemented by DNR and DOJ.

Note that DOJ may only start enforcement actions for violations subject to the forfeiture. OK?

✓

I have changed the forfeiture in 23.24 (6) (b) to a fine because imprisonment may also be imposed. I think this may have been an oversight when ~~ss. 23.24~~ s. 23.24 was initially enacted. This is the only place under current law where a forfeiture and imprisonment are linked. Accordingly, I also made the monetary penalty in s. 23.22 (8) (c) (created in this draft) a fine.

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

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

LRB-1510/2dn
MGG:kjf:jf

January 26, 2007

Please review this draft to make sure it achieves your intent. This draft is complicated and should be reviewed by someone familiar with how the enforcement procedures under ss. 283.89 and 283.91 are implemented by DNR and DOJ.

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

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DOA:.....Griffin, BB0323 - Enforcement procedures and penalties relating to invasive species

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Do NOT Em

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

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3 (9) (d), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 292.99 (2),
4 293.87 (4) (b), 295.19 (3) (b) 2., and 299.97 (2), for the expenses of investigation and
5 prosecution of violations, including attorney fees.

6 **SECTION 2.** 23.22 (2) (b) 6. of the statutes is amended to read:

7 23.22 (2) (b) 6. Promulgate rules to identify, classify, and control invasive
8 species for purposes of the program. In promulgating these rules, the department
9 shall consider the recommendations of the council under sub. (3) (a). As part of these
10 rules, the department may establish procedures and requirements for issuing
11 permits to control invasive species.

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13 23.22 (8) **PENALTIES.** (a) Except as provided in pars. (b) and (c), any person who
14 violates a rule promulgated under sub. (2) (b) 6., or any permit issued under those
15 rules, shall forfeit not more than \$200.

16 (b) Any person who intentionally violates any rule promulgated under sub. (2)
17 (b) 6. or any permit issued under those rules shall be fined not less than \$1,000 nor
18 more than \$5,000, or shall be imprisoned for not less than 6 months nor more than
19 9 months or both.

20 (c) A person who violates a rule promulgated under sub. (2) (b) 6. or any permit
21 issued under those rules and who, within 5 years before the arrest of the current

291.97(3) ^

INSERT 2-5

1 conviction, was previously convicted of a violation of a rule promulgated under sub.
2 (2) (b) 6. or any permit issued under those rules shall be fined not less than \$700 nor
3 more than \$2,000 or shall be imprisoned for not less than 6 months nor more than
4 9 months or both.

5 (d) The court may order a person who is convicted under par. (a), (b), or (c) to
6 abate any nuisance caused by the violation, restore any natural resource damaged
7 by the violation, or take other appropriate action to eliminate or minimize any
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12 under those rules for which the person is subject to a forfeiture under sub. (8) (a), the
13 department of natural resources may do one or more of the following:

- 14 1. Issue a citation pursuant to s. 23.50 to 23.99.
- 15 2. Refer the matter to the department of justice for enforcement under par. ^(b) ~~(c)~~.
- 16 3. Revoke a permit issued under the rules promulgated under sub. (2) (b) 6.,
17 after notice and opportunity for hearing.

18 ^(b) ~~(c)~~ The department of justice shall initiate an enforcement action requested by
19 the department under par. (a) 2. The enforcement action may include a request for
20 injunctive relief. In any action initiated by it under this paragraph, the department
21 of justice shall, prior to stipulation, consent order, judgment, or other final
22 disposition of the case, consult with the department of natural resources for the
23 purpose of determining the department's views on final disposition. The department
24 of justice shall not enter into a final disposition different than that previously
25 discussed without first informing the department of natural resources.

1 ^(c) ~~(d)~~ In an action initiated pursuant to a citation or initiated under par. ^(b) ~~(e)~~, the
2 court may award, as an additional penalty, an amount equal to all or a portion of the
3 costs of investigation, including any monitoring, incurred by the department of
4 natural resources or the department of justice, which led to the establishment of the
5 violation. The court may also award the department of justice the reasonable and
6 necessary expenses of the prosecution, including attorney fees. The department of
7 justice shall deposit in the state treasury for deposit into the general fund all moneys
8 that the court awards to the department of justice under this paragraph. These
9 moneys shall be credited to the appropriation account under s. 20.455 (1) (gh).

10 **SECTION 5.** 23.24 (6) (b) of the statutes is amended to read:

11 23.24 (6) (b) A person who violates sub. (3) and who, within 5 years before the
12 arrest of the current conviction, was previously convicted of a violation of sub. (3)
13 shall ~~forfeit~~ be fined not less than \$700 nor more than \$2,000 or shall be imprisoned
14 for not less than 6 months nor more than 9 months or both.

15 (END)

dn

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1510/3ins
MGG:kjf:jf

INSERT 2-5

****NOTE: This is reconciled s. 20.455 (1) (gh). This SECTION has been affected by drafts with the following LRB numbers: -0353/1 and -1510/2.

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

LRB-1510/3dn

MGG:.....

Imk

(date)

✓ This draft reconciles LRB-0353/1 and LRB-1510/1. Both of these drafts should continue to appear in the compiled bill. ✓

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

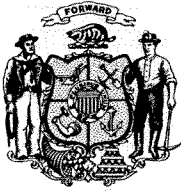
**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1510/3dn
MGG:lmk:nwn

January 30, 2007

This draft reconciles LRB-0353/1 and LRB-1510/2. Both of these drafts should continue to appear in the compiled bill.

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



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1510/3
MGG:kjf:nwn

DOA:.....Griffin, BB0323 - Enforcement procedures and penalties relating
to invasive species

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

NATURAL RESOURCES

OTHER NATURAL RESOURCES

Under current law, DNR administers a program to control invasive species in this state. Under current law, specific penalties apply to violations of statutory provisions relating to controlling or introducing certain invasive species, but not to others. Those covered by these penalties include multiflora rose and invasive aquatic plants such as Eurasian water milfoil and purple loosestrife. For other species, there are no specific penalties and, therefore, a maximum forfeiture of \$100 applies.

This bill creates penalties for those species for which there is no statutory penalty under current law. These penalties include a forfeiture, not to exceed \$200, and fines and terms of imprisonment for intentional violations and for repeat violations. The bill also authorizes the court to order additional remedies such as requiring the violator to restore any natural resources damaged by the violation or to pay for investigation costs and attorney fees.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 20.455 (1) (gh) of the statutes is amended to read:

2 20.455 (1) (gh) *Investigation and prosecution.* Moneys received under ss. 23.22
3 (9) (c), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 291.97 (3),
4 292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., and 299.97 (2), for the expenses of
5 investigation and prosecution of violations, including attorney fees.

 ***NOTE: This is reconciled s. 20.455 (1) (gh). This SECTION has been affected by
drafts with the following LRB numbers: -0353/1 and -1510/2.

6 **SECTION 2.** 23.22 (2) (b) 6. of the statutes is amended to read:

7 23.22 (2) (b) 6. Promulgate rules to identify, classify, and control invasive
8 species for purposes of the program. In promulgating these rules, the department
9 shall consider the recommendations of the council under sub. (3) (a). As part of these
10 rules, the department may establish procedures and requirements for issuing
11 permits to control invasive species.

12 **SECTION 3.** 23.22 (8) of the statutes is created to read:

13 23.22 (8) PENALTIES. (a) Except as provided in pars. (b) and (c), any person who
14 violates a rule promulgated under sub. (2) (b) 6., or any permit issued under those
15 rules, shall forfeit not more than \$200.

16 (b) Any person who intentionally violates any rule promulgated under sub. (2)
17 (b) 6. or any permit issued under those rules shall be fined not less than \$1,000 nor
18 more than \$5,000, or shall be imprisoned for not less than 6 months nor more than
19 9 months or both.

1 (c) A person who violates a rule promulgated under sub. (2) (b) 6. or any permit
2 issued under those rules and who, within 5 years before the arrest of the current
3 conviction, was previously convicted of a violation of a rule promulgated under sub.
4 (2) (b) 6. or any permit issued under those rules shall be fined not less than \$700 nor
5 more than \$2,000 or shall be imprisoned for not less than 6 months nor more than
6 9 months or both.

7 (d) The court may order a person who is convicted under par. (a), (b), or (c) to
8 abate any nuisance caused by the violation, restore any natural resource damaged
9 by the violation, or take other appropriate action to eliminate or minimize any
10 environmental damage caused by the violation.

11 **SECTION 4.** 23.22 (9) of the statutes is created to read:

12 23.22 (9) ENFORCEMENT. (a) If the department of natural resources finds that
13 any person is violating a rule promulgated under sub. (2) (b) 6. or a permit issued
14 under those rules for which the person is subject to a forfeiture under sub. (8) (a), the
15 department of natural resources may do one or more of the following:

- 16 1. Issue a citation pursuant to s. 23.50 to 23.99.
- 17 2. Refer the matter to the department of justice for enforcement under par. (b).
- 18 3. Revoke a permit issued under the rules promulgated under sub. (2) (b) 6.,
19 after notice and opportunity for hearing.

20 (b) The department of justice shall initiate an enforcement action requested by
21 the department under par. (a) 2. The enforcement action may include a request for
22 injunctive relief. In any action initiated by it under this paragraph, the department
23 of justice shall, prior to stipulation, consent order, judgment, or other final
24 disposition of the case, consult with the department of natural resources for the
25 purpose of determining the department's views on final disposition. The department

1 of justice shall not enter into a final disposition different than that previously
2 discussed without first informing the department of natural resources.

3 (c) In an action initiated pursuant to a citation or initiated under par. (b), the
4 court may award, as an additional penalty, an amount equal to all or a portion of the
5 costs of investigation, including any monitoring, incurred by the department of
6 natural resources or the department of justice, which led to the establishment of the
7 violation. The court may also award the department of justice the reasonable and
8 necessary expenses of the prosecution, including attorney fees. The department of
9 justice shall deposit in the state treasury for deposit into the general fund all moneys
10 that the court awards to the department of justice under this paragraph. These
11 moneys shall be credited to the appropriation account under s. 20.455 (1) (gh).

12 **SECTION 5.** 23.24 (6) (b) of the statutes is amended to read:

13 23.24 (6) (b) A person who violates sub. (3) and who, within 5 years before the
14 arrest of the current conviction, was previously convicted of a violation of sub. (3)
15 shall ~~forfeit~~ be fined not less than \$700 nor more than \$2,000 or shall be imprisoned
16 for not less than 6 months nor more than 9 months or both.

17 (END)