



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 05/09/2008 (Per: RCT)



☞ Appendix B ... Part 10 of 18

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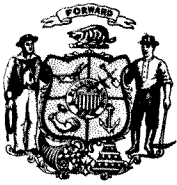
☞ The 2007 drafting file for LRBA1729

has been copied/added to the drafting file for

**2007 LRB-4367**

(Ap8 SB-1)

☞ The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 05/09/2008 (Per: RCT)

### **☞ Compile Draft – Appendix I**

- A ☞ The 2007 drafting file for LRBa1595
- B ☞ The 2007 drafting file for LRBa1694
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- O ☞ The 2007 drafting file for LRBa1708
- P ☞ The 2007 drafting file for LRBa1709
- Q ☞ The 2007 drafting file for LRBa1727

2007 LRBa1702 has been copied/added to the drafting file for

**LRB a1729** Superamendment used to create

LRB-4360 ( ) & LRB-4367 (Ap8 SB-1)

**2007 DRAFTING REQUEST**

**Assembly Amendment (AA-SB523)**

Received: 04/08/2008

Received By: btradewe

Wanted: **Soon**

Identical to LRB:

For: **Scott Gunderson (608) 266-3363**

By/Representing:

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - water quality**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gunderson@legis.wisconsin.gov**

Carbon copy (CC:) to: **John.Stolzenberg@legis.wisconsin.gov**  
**Mark.Patronsky@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Create appeals process

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**Instructions:**

See Attached

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**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>
/P1	btradewe 04/09/2008	lkunkel 04/09/2008	nmatzke 04/09/2008	_____	sbasford 04/09/2008		

FE Sent For:

<END>

**2007 DRAFTING REQUEST**

**Assembly Amendment (AA-SB523)**

Received: **04/08/2008** Received By: **btradewe**  
Wanted: **Soon** Identical to LRB:  
For: **Scott Gunderson (608) 266-3363** By/Representing:  
This file may be shown to any legislator: **NO** Drafter: **btradewe**  
May Contact: Addl. Drafters:  
Subject: **Environment - water quality** Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gunderson@legis.wisconsin.gov**  
Carbon copy (CC:) to: **John.Stolzenberg@legis.wisconsin.gov**  
**Mark.Patrosky@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Create appeals process

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**Instructions:**

See Attached

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**Drafting History:**

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/P1	btradewe	/plink 4/9	nwn 4/9	nwn/jf 4/9			

FE Sent For:

<END>

**9. Appeals Process Created**

**Section 281.35 (b) (f) is amended to read:**

(f) Notice; right to hearing. The department shall notify the person to whom the approval has been issued and any other person who has in writing requested notice of the receipt of a request to modify an approval or of the department's intent to modify or revoke an approval. The person to whom the approval is issued is entitled to a contested case hearing under ch. 227 before a revocation or modification takes effect. Any other person who may be adversely affected by a proposed modification is entitled to a contested case hearing under ch. 227 ~~before a modification takes effect.~~

**Section 281.93 is CREATED as follows:**

**281.93 Hearings on certain water use actions. (1) Permit holder; permit applicant; order recipient.** Any permit, part of a permit, approval, condition or requirement in a permit, order, decision or determination by the department under ss.281.344, 281.346 or 281.35 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing challenging the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified or withdrawn.

**(1m) Effect of a challenge.** If a permit holder or applicant seeks a hearing challenging part of a permit or approval, or a condition or requirement in a permit or approval, under sub. (1), the remainder of the permit shall become effective and the permit holder or applicant may, at its discretion, begin the activity for which the application was submitted or for which the permit was issued.

**(2) Other persons.** Except as provided in s. 281.344 (4e) (g) and s. 281.346 (4e) (g), any person who is not entitled to seek a hearing under sub. (1) (intro.) and who meets the requirements of s. 227.42 (1) or who submitted comments in the public comment process under ss. 281.344, 281.346 or 281.35 may seek review under sub. (1) of any permit, part of a permit, order, decision or determination by the department under ss. 281.344, 281.346 or 281.35.

**(3) Mining hearing.** Subsections (1) and (2) do not apply if a hearing on the matter is conducted as a part of a hearing under s. 293.43.

based on s. 285.81



State of Wisconsin  
2007 - 2008 LEGISLATURE

Today

LRBa1702/P1

RCT:A:....  
mk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY AMENDMENT,  
TO 2007 SENATE BILL 523

1 At the locations indicated, amend the bill, as shown by senate substitute  
2 amendment 1, as follows: ✓

3 1. Page 140, line 5: after that line insert:

4 "SECTION 23m. 281.35 (6) (f) of the statutes is amended to read:

5 281.35 (6) (f) *Notice; right to hearing.* The department shall notify the person  
6 to whom the approval has been issued and any other person who has in writing  
7 requested notice of the receipt of a request to modify an approval or of the  
8 department's intent to modify or revoke an approval. The person to whom the  
9 approval is issued is entitled to a contested case hearing under ch. 227 before a  
10 revocation or modification takes effect. Any other person who may be adversely  
11 affected by a proposed modification is entitled to a contested case hearing under ch.

12 ~~227 before a modification takes effect.~~ ✓

Based on s. 285.81

2. Page 142, line 4: after that line insert:

"SECTION 32m. 281.93 of the statutes is created to read:

285.81 Hearings on certain air pollution actions. (1) PERMIT HOLDER,

APPLICANT, ORDER RECIPIENT. Any permit, part of a permit, condition or

requirement in a permit, order, decision or determination by the department under

~~ss. 285.39, 285.60 to 285.69 or 285.75~~ shall become effective unless the permit holder

or applicant or the order recipient seeks a hearing challenging the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted, and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified, or withdrawn.

(1m) EFFECT OF A CHALLENGE. (a) Subject to par. (b), if a permit holder or applicant seeks a hearing challenging part of a permit or a condition or requirement in a permit under sub. (1), the remainder of the permit shall become effective and the permit holder or applicant may, at its discretion, begin the activity for which the application was submitted or for which the permit was issued.

Water use (CS) or approval

(CS) or approval

or approval

or approval

or approval

or approval

or approval

or approval

or approval

or approval

or approval

Except as provided in ss. 281.344(4e)(g) and 281.346(4e)(g)!

1 (b) An emission limitation contained in a construction permit becomes effective  
2 despite a challenge under par. (a), unless the permit holder or applicant challenging  
3 the emission limitation obtains a stay of the emission limitation from the hearing  
4 examiner or court considering the challenge.

5 (2) OTHER PERSONS. Any person who is not entitled to seek a hearing under sub.

6 (1) (intro.) and who meets the requirements of s. 227.42 (1) or who submitted

7 comments in the public comment process under s. 285.62 (4) or (5) <sup>281.344, 281.346, or</sup> may seek review <sup>281.35</sup>

8 under sub. (1) of any permit, <sup>or approval</sup> part of a permit, <sup>or approval</sup> order, decision or determination by the

9 department under ~~ss. 285.39, 285.60 to 285.69 or 285.75~~ <sup>281.344, 281.346, or 281.35</sup>

10 (3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the  
11 matter is conducted as a part of a hearing under s. 293.43. <sup>V/O</sup>

12 (4) REVIEW OF DEPARTMENT DETERMINATIONS. An air pollution control permit,  
13 part of an air pollution control permit or determination by the department under ss.  
14 285.39, 285.60 to 285.69 or 285.75 is not subject to review in any civil or criminal  
15 enforcement action for a violation of this chapter. This subsection does not restrict  
16 the ability of a person to challenge an administrative rule as provided in s. 227.40  
17 (2)."

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302; 1995 a. 227 s. 502; Stats. 1995 s. 285.81; 2003 a. 118; 2005 a. 28.

(END)

\*\*\* NOTE: The reference in sub. (2) to s. 281.346(4e)(g) is contingent on that provision being created in another amendment. <sup>contingent</sup> IF that does not happen, the reference must be deleted.





State of Wisconsin  
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Date Transfer Requested: 05/09/2008 (Per: RCT)

**Compile Draft - Appendix I**

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| I = The 2002 drafting file for LRBa1702 |   |

2002 LRBa1702 has been copied/added to the drafting file for

**LRB a1729** Superamendment used to create

LRB-4360 ( ) & LRB-4367 (Ap8 SB-1)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBa1702/P1  
RCT:lmk:nwn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY AMENDMENT ,  
TO 2007 SENATE BILL 523

1           At the locations indicated, amend the bill, as shown by senate substitute  
2 amendment 1, as follows:

3           **1.** Page 140, line 5: after that line insert:

4           “**SECTION 23m.** 281.35 (6) (f) of the statutes is amended to read:

5           281.35 (6) (f) *Notice; right to hearing.* The department shall notify the person  
6 to whom the approval has been issued and any other person who has in writing  
7 requested notice of the receipt of a request to modify an approval or of the  
8 department’s intent to modify or revoke an approval. The person to whom the  
9 approval is issued is entitled to a contested case hearing under ch. 227 before a  
10 revocation or modification takes effect. Any other person who may be adversely  
11 affected by a proposed modification is entitled to a contested case hearing under ch.  
12 227 before a modification takes effect.”

1           **2.** Page 142, line 4: after that line insert:

2           “**SECTION 32m.** 281.93 of the statutes is created to read:

3           **281.93 Hearings on certain water use actions. (1) PERMIT OR APPROVAL**  
4           **HOLDER OR APPLICANT; ORDER RECIPIENT.** Any permit or approval, part of a permit or  
5           approval, condition or requirement in a permit or approval, order, decision or  
6           determination by the department under s. 281.344, 281.346, or 281.35 shall become  
7           effective unless the permit or approval holder or applicant or the order recipient  
8           seeks a hearing challenging the action in the following manner:

9           (a) *Petition.* The person seeking a hearing shall file a petition with the  
10           department within 30 days after the date of the action sought to be reviewed. The  
11           petition shall set forth specifically the issue sought to be reviewed, the interest of the  
12           petitioner, the reasons why a hearing is warranted, and the relief desired. Upon  
13           receipt of the petition, the department shall hold a hearing after at least 10 days'  
14           notice.

15           (b) *Hearing.* The hearing shall be a contested case under ch. 227. At the  
16           beginning of the hearing the petitioner shall present evidence in support of the  
17           allegations made in the petition. Following the hearing the department's action may  
18           be affirmed, modified, or withdrawn.

19           **(1m) EFFECT OF A CHALLENGE.** If a permit or approval holder or applicant seeks  
20           a hearing challenging part of a permit or approval or a condition or requirement in  
21           a permit or approval under sub. (1), the remainder of the permit or approval shall  
22           become effective and the permit or approval holder or applicant may, at its discretion,  
23           begin the activity for which the application was submitted or for which the permit  
24           or approval was issued.

1           **(2) OTHER PERSONS.** Except as provided in ss. 281.344 (4e) (g) and 281.346 (4e)  
2           (g), any person who is not entitled to seek a hearing under sub. (1) (intro.) and who  
3           meets the requirements of s. 227.42 (1) or who submitted comments in the public  
4           comment process under s. 281.344, 281.346, or 281.35 may seek review under sub.  
5           (1) of any permit or approval, part of a permit or approval, order, decision, or  
6           determination by the department under s. 281.344, 281.346, or 281.35.

7           **(3) MINING HEARING.** Subsections (1) and (2) do not apply if a hearing on the  
8           matter is conducted as a part of a hearing under s. 293.43.”

      \*\*\*\*NOTE: The reference in sub. (2) to s. 281.346 (4e) (g) is contingent on that  
      provision being created in another amendment. If that does not happen, the reference  
      must be deleted.

9

**(END)**