

2009 DRAFTING REQUEST

Bill

Received: **02/12/2009**

Received By: **btradewe**

Wanted: **Soon**

Identical to LRB:

For: **Louis Molepske Jr (608) 267-9649**

By/Representing: **Lloyd Clark**

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.Molepske@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Ballast water management

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>
/?				_____			State
/1	btradewe 02/20/2009	csicilia 02/23/2009	jfrantze 02/23/2009	_____	mbarman 02/23/2009	sbasford 06/23/2009	

FE Sent For: "1" @ intro. 7/31/09

<END>

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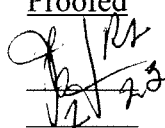
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1?	btradewe	↑ js 2/23 09					

FE Sent For:

<END>

Tradewell, Becky

From: Parisi, Lori
Sent: Thursday, February 12, 2009 11:15 AM
To: Tradewell, Becky
Subject: FW: Bill Draft Request - Rep. Molepske
Importance: High
Attachments: ballast water.ab86.pdf

Hi Becky, Could you take care of this please? Thank you.

From: Clark, Lloyd
Sent: Thursday, February 12, 2009 11:13 AM
To: LRB.Legal
Subject: FW: Bill Draft Request - Rep. Molepske
Importance: High

Date: 2 /12/09

Legislator: Rep. Molepske
Staff Contact: Lloyd Clark 267-9649

Bill Description:

Redraft (with changes) of 2007 AB 86 - relating to ballast water management

This bill would:

Requires a person who operates a vessel that uses a port in this state to obtain a permit from the Department of Natural Resources (DNR) to allow for the discharge from vessels into waters of Wisconsin of any of the following:

- (A) Ballast water.
- (B) Sediment.

"Ballast water" means water and associated solids taken on board a vessel outside Wisconsin to control or maintain trim, draft, stability, or stresses on the vessel, without regard to the manner in which the ballast water is carried.

"Sediment" means any matter settled out of ballast water.

Require oceangoing vessels with no ballast water on board to conduct the same ballast water management as a vessel with ballast water on board.

Within 180 days of this bill being signed into law :

- (1) a vessel may operate in waters of Wisconsin only if ballast water and sediment in the vessel have

02/12/2009

been treated by:

- (A) filtration;
- (B) thermal methods;
- (C) ultraviolet light;
- (D) biocides; or
- (E) other techniques approved by the department;

to destroy or remove all living biological organisms and Aquatic nuisance species ; and

(2) a discharge of any of the following directly or indirectly into the waters of Wisconsin is allowed only if the department has issued a permit under this chapter to allow the discharge:

- (A) Ballast water.
- (B) Sediment.

The department shall determine the requirements for application for, application and renewal costs, and issuance of this permit and the penalty for violations within 90 days of this bill being signed into law. The department shall also determine all rules in regard to ballast water and invasive species management to include, but not limited to establishing the circumstances under which vessels requiring a permit may conduct uptake or discharge of ballast water; require operators of oceangoing vessels to conduct ballast water exchanges at least 200 nautical miles from the nearest point of land at a depth of at least 200 meters. Vessels originating within the United States must conduct exchanges at least 50 nautical miles from the nearest point of land at a depth of 200 meters; requires the DNR to review and revise as necessary, the treatment requirements by January 1, 2011 and then every third year following

The department shall establish a ballast water and sediment inspection program that ensures that aquatic nuisance species do not enter the waters of Wisconsin through the direct or indirect discharge of any of the following:

- (1) Ballast water.
- (2) Sediment.

"Aquatic nuisance species", refers to an aquatic plant or animal species that:

- (1) is not native to waters of Wisconsin; and
- (2) threaten the diversity or abundance of native species or the ecological stability of infected waters or that threaten commercial, agricultural or recreational activities that are dependent upon infested waters .

Some provisions may already exist in current Wisconsin statute.

Keep Confidential

Priority is URGENT - this bill should be given priority over all other bills submitted by Rep. Molepske

LLOYD CLARK

OFFICE OF REPRESENTATIVE LOUIS J. MOLEPSKE, JR.
CHAIR - COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS
608-267-9649
888-534-0071

2007 ASSEMBLY BILL 86

February 22, 2007 – Introduced by Representatives MOLEPSKE, BIES, CULLEN, HAHN, HILGENBERG, HINTZ, KREUSER, POCAN, SHERIDAN, SINICKI, SOLETSKI, TOWNSEND, TURNER, WASSERMAN, ZEPNICK, RICHARDS, VOS, M. WILLIAMS, MASON, STEINBRINK, BLACK, SCHNEIDER, HRAYCHUCK, HEBL and J. OTT, cosponsored by Senators WIRCH, SCHULTZ, HANSEN, ROESSLER, LASSA, PLALE, RISSER and COGGS. Referred to Committee on Natural Resources.

1 AN ACT *to create* 20.370 (4) (aw) and 23.245 of the statutes; **relating to:** ballast
2 water management, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires a person who operates an oceangoing vessel that uses a port in this state to obtain a permit from the Department of Natural Resources (DNR). To obtain a permit, the person must demonstrate to DNR that the vessel is not capable of taking on ballast water or that the vessel is equipped with technology that DNR determines will prevent the introduction of aquatic nuisance species into the Great Lakes. Aquatic nuisance species are plants and animals that are not native and that threaten the diversity or abundance of native species or the ecological stability of infested waters or that threaten commercial, agricultural, or recreational activities that are dependent on infested waters. A person who operates an oceangoing vessel without a permit or operates in violation of a permit is subject to a forfeiture (a civil monetary penalty) of up to \$25,000 for each day of violation.

For further information see the *state* 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:

3 SECTION 1. 20.370 (4) (aw) of the statutes is created to read:

ASSEMBLY BILL 86**SECTION 1**

1 20.370 (4) (aw) *Water resources — ballast water management.* All moneys
2 received under s. 23.245 (2) (d) for ballast water management.

3 **SECTION 2.** 23.245 of the statutes is created to read:

4 **23.245 Ballast water management. (1) DEFINITIONS.** In this section:

5 (a) “Aquatic nuisance species” has the meaning given in s. 30.1255 (1).

6 (b) “Ballast water” means water and associated solids taken on board a vessel
7 to control or maintain the vessel’s trim, draft, or stability, or to control stresses on the
8 vessel.

9 (c) “International Joint Commission” means the commission established by the
10 boundary water agreement of 1909 between the United States and Canada.

11 (d) “Oceangoing vessel” means a vessel that operates on the Great Lakes or the
12 St. Lawrence Waterway after operating in waters of the Atlantic Ocean.

13 (e) “St. Lawrence Waterway” means the St. Lawrence River, the St. Lawrence
14 Riverway, and the Gulf of St. Lawrence.

15 **(2) PERMIT.** (a) Beginning on January 1, 2009, an oceangoing vessel may not
16 use a port in this state unless the person operating the oceangoing vessel has a
17 permit from the department under this section for the oceangoing vessel.

18 (b) The department may issue a permit for an oceangoing vessel only if one of
19 the following applies:

20 1. The person operating the oceangoing vessel demonstrates to the department
21 that the oceangoing vessel is not capable of taking on ballast water.

22 2. The person operating the oceangoing vessel demonstrates to the department
23 that the oceangoing vessel is equipped with environmentally sound technology the
24 use of which will prevent the introduction of aquatic nuisance species into the Great
25 Lakes, as determined by the department.

Tues (2/24) if possible

RCT/.....

ej

2009 BILL

DN Note

Gen Cat

1 AN ACT/...; relating to: discharges of ballast water and related substances into
 2 the waters of the state, aquatic nuisance species, providing an exemption from
 3 emergency rule procedures, granting rule-making authority, and making an
 4 appropriation.

Analysis by the Legislative Reference Bureau

Current law generally prohibits the discharge of pollutants into the waters of this state without a permit from the Department of Natural Resources (DNR). The law authorizes DNR to exempt classes or categories of vessels from the prohibition.

Beginning six months after enactment, this bill prohibits the discharge of ballast water, and sediments that have settled out of ballast water, into the waters of this state from a vessel that takes on ballast water outside of the waters of this state without a permit from DNR. A permit must require ballast water and sediments to be treated to kill or remove aquatic nuisance species and other organisms, to the extent possible. Aquatic nuisance species are nonnative species that threaten native species or the ecological stability of waters or that threaten commercial, agricultural, aquacultural, or recreational activities. The bill requires DNR to promulgate rules specifying fees for the permits and any additional requirements it determines are necessary to ensure that aquatic nuisance species do not enter the waters of this state through discharges.

BILL

For further information see the *state* 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.** 20.370 (4) (ci) of the statutes is created to read:

2 20.370 (4) (ci) *Ballast water management — fees.* From the general fund, all
3 moneys received under s. 281.34 for the ballast water discharge program under s.

4 281.34.

5 **SECTION 2.** 283.11 (2) (a) of the statutes is amended to read:

6 283.11 (2) (a) Except for rules concerning storm water discharges for which
7 permits are issued under s. 283.33 and rules concerning discharges for which
8 permits are issued under s. 283.34, all rules promulgated by the department under
9 this chapter as they relate to point source discharges, effluent limitations, municipal
10 monitoring requirements, standards of performance for new sources, toxic effluent
11 standards or prohibitions and pretreatment standards shall comply with and not
12 exceed the requirements of the federal water pollution control act, 33 USC 1251 to
13 1387, and regulations adopted under that act.

History: 1973 c. 74; 1979 c. 221 ss. 650c, 650e; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 227 s. 859; Stats. 1995 s. 283.11.

14 **SECTION 3.** 283.13 (2) (intro.) of the statutes is amended to read:

15 283.13 (2) **SOURCES OTHER THAN PUBLIC TREATMENT WORKS.** (intro.) The
16 discharge from any point source, other than a publicly owned treatment works or a
17 source ~~of storm water~~ permitted under s. 283.33 or 283.34, shall comply with the
18 following requirements:

History: 1973 c. 74; 1975 c. 206; 1979 c. 34, 221; 1981 c. 282; 1981 c. 314 s. 146; 1981 c. 393; 1987 a. 27; 1989 a. 56; 1993 a. 16; 1995 a. 227 s. 860; Stats. 1995 s. 283.13; 1997 a. 35; 1999 a. 150 s. 672.

19 **SECTION 4.** 283.31 (1) of the statutes is amended to read:

BILL

1 283.31 (1) The discharge of any pollutant into any waters of the state or the
 2 disposal of sludge from a treatment work by any person is unlawful unless such
 3 discharge or disposal is done under a permit issued by the department under this
 4 section or s. 283.33 or 283.34. The department may by rule exempt certain classes
 5 or categories of vessels from this section, but not from s. ~~281~~²⁸³.34. Except as provided
 6 in s. 283.33, the department may require only one permit for a publicly owned
 7 treatment or collection facility or system, regardless of the number of point sources
 8 from such facility or system.

9 ^{LAT}History: 1973 c. 74; 1975 c. 349; 1983 a. 410; 1993 a. 16.; 1995 a. 227 s. 851, 857; Stats. 1995 s. 283.31; 1997 a. 27; 1999 a. 85.

9 **SECTION 5.** 283.34 of the statutes is created to read:

10 **283.34 Ballast water and aquatic nuisance species.** (1) DEFINITIONS. In
 11 this section:

12 (a) “Aquatic nuisance species” means a nonindigenous species that threatens
 13 the diversity or abundance of native species or the ecological stability of infested
 14 waters or that threatens a commercial, agricultural, aquacultural, or recreational
 15 activity dependent on infested waters.

16 (b) “Ballast tank” means a tank or hold that is used for carrying ballast water.

17 (c) “Ballast water” means water and associated solids taken on board a vessel
 18 to control or maintain trim, draft, or stability or to control stresses on the vessel.

19 (d) “Sediment” means any matter that has settled out of ballast water.

20 (2) PERMIT REQUIRED [⊙](a) Beginning on the first day of the 7th month beginning
 21 after the effective date of this subsection ... [LRB inserts date], a person who
 22 operates a vessel that takes on ballast water outside of the waters of the state may
 23 not discharge any of the following without a permit under this section that
 24 authorizes the discharge:

BILL**SECTION 5**

1 1 Ballast water.

2 2. Sediment.

3 3. Water other than ballast water that has been in a ballast tank.

4 (b) Paragraph (a) and the management requirements under par. (3) apply
5 without regard to whether the vessel is considered to have ballast water on board
6 when the vessel enters the waters of the state.

7 (3) PERMIT CONDITIONS. ^(ca) In a permit issued under this section, the department
8 shall require treatment of the substances described in sub. (2) (a) 1. to 3. before
9 discharge to kill or remove aquatic nuisance species and other organisms, to the
10 extent possible, through the use of one of the following:

11 1. Filtration.

12 2. Thermal methods.

13 3. Ultraviolet light.

14 4. Biocides.

15 5. Another technique approved by the department.

16 (b) In a permit issued under this section, the department shall include any
17 applicable requirements in the rules promulgated under sub. (5) (a).

18 (4) INSPECTION PROGRAM. The department shall conduct a program to inspect
19 vessels to ensure that aquatic nuisance species do not enter the waters of this state
20 through discharges of the substances described in sub. (2) (a) 1. to 3.

21 (5) RULES. (a) The department shall promulgate rules that include all of the
22 following:

23 1. Fees for permits under this section.

24 2. Circumstances under which a vessel for which a permit is required under sub. (2) (a) may take on ballast water.

25

BILL

1 3. Any ballast water management requirements, in addition to the
2 requirements under sub. (3) (a), that the department determines are necessary to
3 ensure that aquatic nuisance species do not enter the waters of this state through
4 discharges of the substances described in sub. (2) (a) 1. to 3. ✓

5 4. Any other provisions necessary for the administration of this section.

6 (b) The department shall review the rules promulgated under par. (a) ✓
7 once every 3 years and revise the rules as necessary.

8 **SECTION 6.** 283.37 ✓ (1) of the statutes is amended to read:

9 283.37 (1) The department shall promulgate rules relating to applications for
10 permits under this chapter which shall require at a minimum that every owner or
11 operator of a point source discharging pollutants into the waters of the state shall
12 have on file either a completed permit application on forms provided by the
13 department or a completed permit application under section 13 of the rivers and
14 harbors act of 1899, 33 USC 407 or under the federal water pollution control act, as
15 amended, 33 USC 1251 to 1376. The rules may specify different requirements for
16 permits issued under s. 283.31 and, for permits issued under s. 283.33, and for
17 permits issued under s. 283.34. ✓

18 History: 1973 c. 74; 1979 c. 221 ss. 650d, 650dg, 202 (39); 1993 a. 16, 112, 482; 1995 a. 227 s. 854; Stats. 1995 s. 283.37.

18 **SECTION 7.** 283.53 (1) of the statutes is amended to read:

19 283.53 (1) No permit issued by the department under s. 283.31 ~~or~~, 283.33, or
20 283.34 shall have a term for more than 5 years. ✓

21 History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 39; 1993 a. 16, 482; 1995 a. 227 s. 855; Stats. 1995 s. 283.53.

21 **SECTION 8.** 283.53 (2) (a) (intro.) of the statutes is amended to read:

BILL

SECTION 8

1 283.53 (2) (a) (intro.) Any permit issued by the department under s. 283.31 ~~or~~,
 2 283.33, or 283.34 may, after an opportunity for hearing, be modified, suspended or
 3 revoked, in whole or in part, for cause, including but not limited to:

4 History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 ~~or~~ 57; 1991 a. 39; 1993 a. 16, 482; 1995 a. 227 s. 855; Stats. 1995 s. 283.53.

4 **SECTION 9.** 283.53 (2d) (intro.) of the statutes is amended to read:

5 283.53 (2d) (intro.) The department may, with the consent of the permittee,
 6 modify a permit issued under s. 283.31 ~~or~~, 283.33, or 283.34 without following the
 7 procedures in sub. (2) (b) to (f) in order to do any of the following:

8 History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 ~~or~~ 57; 1991 a. 39; 1993 a. 16, 482; 1995 a. 227 s. 855; Stats. 1995 s. 283.53.

8 **SECTION 10.** 283.53 (2h) of the statutes is amended to read:

9 283.53 (2h) The department may, with the consent of the permittee, revoke a
 10 permit issued under s. 283.31 ~~or~~, 283.33, or 283.34 without following the procedures
 11 in sub. (2) (b) to (f).

12 History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 39; 1993 a. 16, 482; 1995 a. 227 s. 855; Stats. 1995 s. 283.53.

12 **SECTION 11. Nonstatutory provisions.**

13 (1) RULE MAKING.

14 (a) The department of natural resources shall submit in proposed form the
 15 rules required under section 283.34 (5) (a) of the statutes, as created by this act, to
 16 the legislative council staff under section 227.15 (1) of the statutes no later than the
 17 first day of the 9th month beginning after the effective date of this paragraph.

18 (b) Using the procedure under section 227.24 of the statutes, the department
 19 of natural resources shall promulgate the rules required under section 283.34 (5) (a)
 20 of the statutes, as created by this act, no later than the first day of the 4th month
 21 beginning after the effective date of this paragraph. Notwithstanding section 227.24

22 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection
 23 remain in effect until the first day of the 18th month beginning after the effective
 24 date of this paragraph, or the date on which permanent rules take effect, whichever

subsection
 paragraph

BILL

1 is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the
2 department is not required to provide evidence that promulgating a rule under this
3 subsection as an emergency rule is necessary for the preservation of public peace,
4 health, safety, or welfare and is not required to provide a finding of emergency for a
5 rule promulgated under this subsection.

6
7 (END)

paragraph

Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2103/1dn

RCT:/:....

cjs

Lloyd Clark:

This is a draft of the ballast water management proposal. Please review it carefully.

I included restrictions on the discharge of water, other than ballast water, that has been in a ballast tank because water that is used to rinse a tank, for example, will have been exposed to any sediments in the tank but it could be argued that it is not within the definition of ballast water. As we discussed, the draft does not include language about ballast water exchange. Please let me know if you wish to add provisions related to that. The draft also does not require that **all** organisms in discharged water or sediment be killed or removed. ✓

I included emergency rule-making authority because the normal rule-making process takes a fairly long time. It seems unlikely that it could be completed in time to enable the permitting requirement to take effect in six months. ✓

The draft includes an appropriation that allows DNR to expend the fees it collects for ballast water discharge permits. Do you want to authorize any positions for DNR's administration of the program? ✓

Note that under s. 281.53 (1), the permits will have a term of not more than five years. ✓
Because the permit requirement is placed in chapter 283, as part of the current pollution discharge permitting system, the penalties in s. 283.91 (2) and (3) will apply. ✓
Please let me know if you would prefer different penalties. ✓

Please contact me with any questions and any redraft instructions.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2103/1dn
RCT:cjs:jf

February 23, 2009

Lloyd Clark:

This is a draft of the ballast water management proposal. Please review it carefully.

I included restrictions on the discharge of water, other than ballast water, that has been in a ballast tank because water that is used to rinse a tank, for example, will have been exposed to any sediments in the tank but it could be argued that it is not within the definition of ballast water. As we discussed, the draft does not include language about ballast water exchange. Please let me know if you wish to add provisions related to that. The draft also does not require that **all** organisms in discharged water or sediment be killed or removed.

I included emergency rule-making authority because the normal rule-making process takes a fairly long time. It seems unlikely that it could be completed in time to enable the permitting requirement to take effect in six months.

The draft includes an appropriation that allows DNR to expend the fees it collects for ballast water discharge permits. Do you want to authorize any positions for DNR's administration of the program?

Note that under s. 281.53 (1), the permits will have a term of not more than five years. Because the permit requirement is placed in chapter 283, as part of the current pollution discharge permitting system, the penalties in s. 283.91 (2) and (3) will apply. Please let me know if you would prefer different penalties.

Please contact me with any questions and any redraft instructions.

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

Basford, Sarah

From: Van de Bogert, Abigail
Sent: Tuesday, June 23, 2009 1:02 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-2103/1 Topic: Ballast water management

Please Jacket LRB 09-2103/1 for the ASSEMBLY.