

SOON  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0544/P20  
EHS&RNK:eev:jf  
p3  
KMR  
Stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

d-note

In  
4/1

Pub  
4/3  
Jm  
regen

1 AN ACT *to repeal* 15.347 (2) (a); *to renumber and amend* 285.63 (11); *to amend*  
2 15.347 (2) (b), 23.38 (1), 23.38 (2), 23.50 (1), 23.65 (1), 23.65 (3), 29.569 (3) (bm)  
3 2., 30.208 (5) (bm), 30.208 (5) (c) 1., 281.36 (3p) (c) and 281.36 (3p) (d) 1.; and  
4 *to create* 23.38 (1m), 281.36 (14) (e), 281.36 (14) (f), 285.63 (11) (a) 1., 285.63  
5 (11) (a) 2., 285.63 (11) (a) 3., 285.63 (11) (a) 4., 285.63 (11) (a) 5. and 285.63 (11)  
6 (b) of the statutes; **relating to:** a citation procedure applicable to wetland  
7 discharge violations, sturgeon spearing license issuance period, electronic  
8 methods for reporting natural resource and environmental law violations,  
9 publication of class 1 notices, air dispersion modeling requirements, and  
10 membership on the Dry Cleaner Environmental Response Council.

***Analysis by the Legislative Reference Bureau***

Current law requires the Department of Natural Resources (DNR) to maintain a toll-free telephone number for receiving reports of violations of any statute or administrative rule that DNR enforces or administers. This bill provides that DNR may also establish other electronic methods to receive reports of these violations.

Under current law, DNR may recover forfeitures imposed for the violation of certain natural resource and environmental laws using a citation procedure. This

bill makes this citation procedure applicable to violations of laws that regulate the discharge of certain materials into wetlands.

Under current law, 12 is the minimum age for obtaining a sturgeon spearing license. Also under current law, issuance of a sturgeon spearing license is generally prohibited during a period beginning on November 1 and ending on the last day of the open season for the spearing of lake sturgeon. One exception to this prohibition is for a resident who has attained the age of 14 during that period. This bill lowers this age to 12, consistent with the minimum age for obtaining a license.

Current law requires DNR to make specified findings before it issues certain air pollution permits. Under current law DNR is not required to use air dispersion modeling as a basis for making those findings for a minor source unless specifically provided for under the federal Clean Air Act (CAA), rules promulgated by DNR, or a federal or state agreement. A minor source is a facility that emits air contaminants from a fixed location in an amount that is less than an amount specified by DNR by rule.

This bill prohibits DNR from requiring an applicant for certain air pollution permits, including some permits for major sources, to conduct air dispersion modeling unless required by the CAA. The bill also creates an exception to this prohibition for certain American Indian tribes or bands (tribes). The exception applies to tribes that are treated as states by the federal environmental protection agency (EPA) or tribes whose reservations have been designated by EPA as class 1 areas. Federal law gives class 1 areas special protection under the CAA. This bill provides that for these tribes, DNR may require air dispersion modeling if that modeling is authorized under an agreement between the tribe and this state or federal government, authorized under a CAA implementation plan, or authorized under department rules.

*Insert Analysis*

Under current law, the Dry Cleaner Environmental Response Council (council) in DNR is composed of six members. Of those members, one member must represent dry cleaning operations with annual gross receipts of less than \$200,000 and two members must represent dry cleaning operations with annual gross receipts of at least \$200,000. This bill eliminates these gross receipts requirements for representation on the council and provides, instead, that three members of the council must represent dry cleaning operations, regardless of the amount of the operation's annual gross receipts.

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

- 1           **SECTION 1.** 15.347 (2) (a) of the statutes is repealed.
- 2           **SECTION 2.** 15.347 (2) (b) of the statutes is amended to read:
- 3           15.347 (2) (b) ~~Two~~ Three members representing dry cleaning operations with
- 4           annual gross receipts of at least \$200,000.

1           **SECTION 3.** 23.38 (1) of the statutes is amended to read:

2           23.38 (1) The department shall maintain a toll-free telephone number at  
3 ~~department headquarters~~ to receive reports of violations of any statute or  
4 administrative rule that the department enforces or administers. The department  
5 shall relay these reports to the appropriate warden or officer for investigation and  
6 enforcement action. The department shall publicize the toll-free telephone number  
7 as widely as possible in the state.

8           **SECTION 4.** 23.38 (1m) of the statutes is created to read:

9           23.38 (1m) In addition to the toll-free telephone number under sub. (1), the  
10 department may establish additional electronic methods to receive reports of  
11 violations of any statute or administrative rule that the department enforces or  
12 administers.

13           **SECTION 5.** 23.38 (2) of the statutes is amended to read:

14           23.38 (2) The department shall maintain records ~~which~~ that permit the release  
15 of information provided by informants while protecting the identity of the informant.  
16 ~~Any records maintained by the department which received under this section that~~  
17 ~~relate to the identity of informants shall be only for the confidential use of the~~  
18 ~~department in the administration of this section, unless the informant expressly~~  
19 ~~agrees to release the records. Appearance in court as a witness shall not be~~  
20 ~~considered consent by an informant to release confidential records maintained by the~~  
21 ~~department~~ received under this section.

22           **SECTION 6.** 23.50 (1) of the statutes is amended to read:

23           23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit  
24 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,  
25 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.36, 281.48 (2) to

**SECTION 6**

1 (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64  
2 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any  
3 administrative rules promulgated thereunder, violations specified under s. 280.98  
4 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,  
5 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),  
6 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances  
7 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

8 **SECTION 7.** 23.65 (1) of the statutes is amended to read:

9 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,  
10 134.60, 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07,  
11 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or  
12 any administrative rule promulgated pursuant thereto, a violation specified under  
13 s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has  
14 been committed the district attorney may proceed by complaint and summons.

15 **SECTION 8.** 23.65 (3) of the statutes is amended to read:

16 23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,  
17 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he  
18 or she finds there is probable cause to believe that the person charged has committed  
19 a violation of s. 281.36, 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29,  
20 30, 31 or 350 or a violation specified under s. 285.86. The district attorney shall be  
21 informed of the hearing and may attend.

22 **SECTION 9.** 29.569 (3) (bm) 2. of the statutes is amended to read:

23 29.569 (3) (bm) 2. A person who is a resident and who has attained the age of  
24 14 12 during that period.

25 **SECTION 10.** 30.208 (5) (bm) of the statutes is amended to read:

1           30.208 (5) (bm) For the purpose of determining the date on which notice is  
2 provided under this subsection, the date of the notice shall be the date on which the  
3 department first publishes the notice on its Internet Web site, unless the department  
4 delegates to the applicant under par. (c) the requirement to provide notice. If the  
5 department delegates to the applicant the requirement to provide notice, the date of  
6 the notice shall be the date on which the department first publishes the notice on its  
7 Internet Web site ~~or 10 days after the date on which the department receives that~~  
8 it received satisfactory proof of publication of a class 1 notice from the applicant,  
9 ~~whichever is later.~~

10           **SECTION 11.** 30.208 (5) (c) 1. of the statutes is amended to read:

11           30.208 (5) (c) 1. Requiring that the applicant for the permit or contract provide  
12 by publication, mailing, or other distribution one or more of the notices. If the  
13 department requires the applicant to publish a class 1 notice under ch. 985, the  
14 department may require the applicant to submit to the department satisfactory proof  
15 of publication of the class 1 notice.

16           **SECTION 12.** 281.36 (3p) (c) of the statutes is amended to read:

17           281.36 (3p) (c) For the purpose of determining the date on which notice is  
18 provided under this subsection, the date of the notice shall be the date on which the  
19 department first publishes the notice on its Internet Web site, unless the department  
20 delegates to the applicant under par. (d) the requirement to provide notice. If the  
21 department delegates to the applicant the requirement to provide notice, the date of  
22 the notice shall be the date on which the department first publishes the notice on its  
23 Internet Web site ~~or 10 days after the date on which the department receives that~~  
24 it received satisfactory proof of publication of a class 1 notice from the applicant,  
25 ~~whichever is later.~~

*Determines whether a source is covered by*

SECTION 13. 281.36 (3p) (d) 1. of the statutes is amended to read:

281.36 (3p) (d) 1. Requiring that the applicant for the permit provide by publication, mailing, or other distribution one or more of the notices. If the department requires the applicant to publish a class 1 notice under ch. 985, the department may require the applicant to submit to the department satisfactory proof of publication of the class 1 notice.

SECTION 14. 281.36 (14) (e) of the statutes is created to read:

281.36 (14) (e) Each day of a continuing violation is a separate offense.

~~SECTION 15. 281.36 (14) (f) of the statutes is created to read:~~

~~281.36 (14) (f) The procedure in ss. 23.50 to 23.85 applies to actions brought under this subsection.~~

SECTION 16. 285.63 (11) of the statutes is renumbered 285.63 (11) (a) (intro.) and amended to read:

285.63 (11) (a) (intro.) The Except as specifically required under the federal clean air act or as provided in par. (b), the department is may not required require an applicant to use perform air dispersion modeling as a basis for making its findings under sub. (1) for a minor source unless modeling is specifically provided for under the federal clean air act, rules promulgated under this chapter, or a federal or state agreement. before the department does any of the following:

SECTION 17. 285.63 (11) (a) 1. of the statutes is created to read:

285.63 (11) (a) 1. Issues a registration permit issued under s. 285.60 (2g).

SECTION 18. 285.63 (11) (a) 2. of the statutes is created to read:

285.63 (11) (a) 2. Issues a general permit issued under s. 285.60 (3).

SECTION 19. 285.63 (11) (a) 3. of the statutes is created to read:

*Determines whether a source qualifies for*

1 285.63 (11) (a) 3. Issues or renews an operation permit for a minor source under  
2 s. 285.62.

3 **SECTION 20.** 285.63 (11) (a) 4. of the statutes is created to read:

4 285.63 (11) (a) 4. Renews an operation permit for a major source under s.  
5 285.62.

6 **SECTION 21.** 285.63 (11) (a) 5. of the statutes is created to read:

7 285.63 (11) (a) 5. Issues a construction permit for a minor source under s.  
8 285.60 that the ~~department projects~~ <sup>applicant indicates</sup> will emit the pollutants listed in 40 CFR 51.166  
9 (b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR  
10 51.166 (b) (23) (i).

11 **SECTION 22.** 285.63 (11) (b) of the statutes is created to read:

12 285.63 (11) (b) 1. In this paragraph, "tribe" means a federally recognized  
13 American Indian tribe or band.

14 2. If the federal environmental protection agency treats a tribe as a state under  
15 42 USC 7601 (d) or designates as class 1 all or a portion of a tribe's reservation under  
16 42 USC 7474, the department may require ~~the tribe~~ <sup>an applicant</sup> to perform air dispersion  
17 modeling ~~before the department issues a permit specified~~ <sup>en</sup> under par. (a) if air  
18 dispersion modeling is authorized under any of the following:

19 a. An agreement between the tribe and the department or between the tribe  
20 and the federal government, the terms of which implement the tribe's treatment as  
21 a state or designation as a class 1 area.

22 b. An implementation plan under 40 CFR part 49, subpart H.

23 c. Rules promulgated by the department that implement the tribe's treatment  
24 as a state or designation as a class 1 area.

25 (END)

*notwithstanding the prohibition*

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0544/P3ins.  
RNK:.....

**INSERT ANALYSIS**

*no of* under certain circumstances affecting American Indian tribes or bands (tribes).  
The exception applies if a tribe is treated as a state by the federal environmental *\**  
*\** protection agency (EPA) or if a tribe's reservation has been designated by EPA as a  
class 1 area. Federal law gives class 1 areas special protection under the CAA. This  
bill provides that DNR may require an applicant to perform



**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0544/P3ins  
EHS:.....

1           INSERT 6-9

2           **SECTION 1.** 281.36 (14) (f) of the statutes is created to read:

3           281.36 (14) (f) The department may follow the procedures for the issuance of  
4           a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

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

LRB-0544/P3dn

EHS:.....

Leav

date

Dan Johnson:

You passed along a request from DNR to remove s. 281.36 (14) (f) from the draft, which required the enforcement procedure in ch. 23 to apply to violations of wetlands discharge regulations in s. 281.36. It is my understanding that DNR would like to have the option to use the ch. 23 enforcement procedure, but does not want it required in all cases. Therefore, in this draft the language allows DNR to use the ch. 23 process but does not require it. Please let me know if this is not consistent with your intent.

Also, in this draft s. 281.36 (14) (f) refers to the enforcement process in ss. 23.50 to 23.99, instead of ss. 23.50 to 23.85. This includes ss. 23.90 and 23.99, which, respectively, establish the place of a trial and allow violators to be cited as parties to a violation. The enforcement procedure in ss. 23.50 to 23.99 may be used to enforce regulations related to wells (s. 280.98 (1)), septic tanks (s. 281.48 (5s) (a)), and storm water discharge permits (s. 283.89 (2m)), among others. Let me know if you do not want these provisions included in the enforcement procedure available for wetlands discharge violations.

Elisabeth H. Shea  
Legislative Attorney  
Phone: (608) 266-5446  
E-mail: [elisabeth.shea@legis.wisconsin.gov](mailto:elisabeth.shea@legis.wisconsin.gov)

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

LRB-0544/P3dn  
EHS:eev:jm

April 3, 2013

Dan Johnson:

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Elisabeth H. Shea  
Legislative Attorney  
Phone: (608) 266-5446  
E-mail: [elisabeth.shea@legis.wisconsin.gov](mailto:elisabeth.shea@legis.wisconsin.gov)

**Shea, Elisabeth**

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**From:** Johnson, Dan  
**Sent:** Wednesday, April 17, 2013 11:31 AM  
**To:** Shea, Elisabeth  
**Subject:** LRB 0544 revisions

Hi Elisabeth,

After discussing the notification requirement and wetland citation authority with the Department, we have decided to make the following revisions to current law. The intent under the new notification language is to allow the applicant to have the Department publish the class 1 notice for them, but the Department could charge a fee to cover the cost. Thus, Sections 10, 11, 12 and 13 of LRB 0544 would have to be scrapped, and just start over by making revisions to current law.

If you have any questions regarding these revisions, please let me know. Thank you very much!

Dan Johnson  
Chief of Staff  
**Senator Neal Kedzie**  
11<sup>th</sup> Senate District  
608.266.2635

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**NOTIFICATION**

**Amend 30.208(5) as follows:**

✓ **(bm)** For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet Web site. ~~unless the department delegates to the applicant under par. (c) the requirement to provide notice. If the department delegates to the applicant the requirement to provide notice, the date of the notice shall be the date on which the department first publishes the notice on its Internet Web site or 10 days after the date on which the department receives satisfactory proof of publication of a class 1 notice from the applicant, whichever is later.~~

✓ 30.208(5)(c) The department may delegate the department's requirement to provide notice under sub. (3) in the manner specified under par. (a) 1. or 2. or to provide notice under s. 30.209 (1m) by doing any of the following:

1. Requiring that the applicant for the permit or contract provide by publication, mailing, or other distribution one or more of the notices.
2. Requiring that the applicant for the permit or contract pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.
3. The applicant, at its option, may request the department to publish the class 1 notice required under s. 30.208(5)(a)1 for a flat fee. The flat fee will be based upon an average cost to provide such public notice in the official state paper and will be posted on the department Internet Web Site.

**Amend 281.36(3p) as follows:**

✓(c) For the purpose of determining the date on which notice is provided under this subsection, the date of the notice shall be the date on which the department first publishes the notice on its Internet Web site. ~~unless the department delegates to the applicant under par. (d) the requirement to provide notice. If the department delegates to the applicant the requirement to provide notice, the date of the notice shall be the date on which the department first publishes the notice on its Internet Web site or 10 days after the date on which the department receives satisfactory proof of publication of a class 1 notice from the applicant, whichever is later.~~

✓(d) The department may delegate the department's requirement to provide notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of the following:

1. Requiring that the applicant for the permit provide by publication, mailing, or other distribution one or more of the notices.
2. Requiring that the applicant for the permit pay for the publication, mailing, or any other distribution costs of providing one or more of the notices.
3. The applicant, at its option may request the department to publish the class1 notice required under s. 281.36(3p)(a)1 for a flat fee. The flat fee will be based upon an average cost to provide such public notice in the official state paper and will be posted on the department Internet Web Site.

### WETLANDS CITATION AUTHORITY

As to the wetlands citation authority, the Department discussed the matter with the Department of Justice regarding a concern they had of this provision. The DOJ believes the quasi-criminal process does not work well for more complex wetland enforcement cases handled by the agency. Thus, in order to address this problem, please add language to both 23.50(1) and (2) to clarify that citations would proceed under the 23.50-23.85 process used by DAs, but that DOJ would continue to prosecute cases under the broader rules of civil procedure which allow for summary judgments.

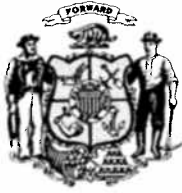
#### **Specific language suggested by DNR and DOJ follows:**

Amend Wis. Stat. § 23.50(1) to state:

Except for actions brought under s. 281.36 by the department of justice utilizing the procedures in chapters 801 through 806, The the procedure in ss. 23.50 to 23.85 applies to all actions in circuit court, to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.36,.....

Amend Wis. Stat. § 23.50(2) to state:

Except for actions brought under s. 281.36 by the department of justice utilizing the procedures in chapters 801 through 806, All actions to recover these forfeitures and costs, fees, and surcharges imposed under ch. 814 are civil actions in the name of the state of Wisconsin, shall be heard in the circuit court for the county where the offense occurred, and shall be recovered under the procedure set forth in ss. 23.50 to 23.85.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0544/P3

EHS&RNK:eev:jm

P4

RMR

D-NOTE

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allows DNR to use

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bill <sup>2</sup> makes this citation procedure applicable to violations of laws that regulate the discharge of certain materials into wetlands.

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INSERT ANALYSIS →

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- 2           **SECTION 2.** 15.347 (2) (b) of the statutes is amended to read:
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- 4           annual gross receipts of at least \$200,000.

1           **SECTION 3.** 23.38 (1) of the statutes is amended to read:

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3 ~~department headquarters~~ to receive reports of violations of any statute or  
4 administrative rule that the department enforces or administers. The department  
5 shall relay these reports to the appropriate warden or officer for investigation and  
6 enforcement action. The department shall publicize the toll-free telephone number  
7 as widely as possible in the state.

8           **SECTION 4.** 23.38 (1m) of the statutes is created to read:

9           23.38 (1m) In addition to the toll-free telephone number under sub. (1), the  
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11 violations of any statute or administrative rule that the department enforces or  
12 administers.

13           **SECTION 5.** 23.38 (2) of the statutes is amended to read:

14           23.38 (2) The department shall maintain records ~~which~~ that permit the release  
15 of information provided by informants while protecting the identity of the informant.  
16 Any records ~~maintained by the department which~~ received under this section that  
17 relate to the identity of informants shall be only for the confidential use of the  
18 department in the administration of this section, unless the informant expressly  
19 agrees to release the records. Appearance in court as a witness shall not be  
20 considered consent by an informant to release confidential records ~~maintained by the~~  
21 ~~department~~ received under this section.

22           **SECTION 6.** 23.50 (1) of the statutes is amended to read:

23           23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit  
24 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,  
25 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.36, 281.48 (2) to



**SECTION 6**

(5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any administrative rules promulgated thereunder, violations specified under s. 280.98 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal, violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

INSERT  
1-9 →

**SECTION 7.** 23.65 (1) of the statutes is amended to read:

23.65 (1) When it appears to the district attorney that a violation of s. 90.21, 134.60, 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or any administrative rule promulgated pursuant thereto, a violation specified under s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has been committed the district attorney may proceed by complaint and summons.

**SECTION 8.** 23.65 (3) of the statutes is amended to read:

23.65 (3) If a district attorney refuses or is unavailable to issue a complaint, a circuit judge, after conducting a hearing, may permit the filing of a complaint if he or she finds there is probable cause to believe that the person charged has committed a violation of s. 281.36, 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29, 30, 31 or 350 or a violation specified under s. 285.86. The district attorney shall be informed of the hearing and may attend.

**SECTION 9.** 29.569 (3) (bm) 2. of the statutes is amended to read:

29.569 (3) (bm) 2. A person who is a resident and who has attained the age of 14 12 during that period.

**SECTION 10.** 30.208 (5) (bm) of the statutes is amended to read:

1           30.208 (5) (bm) For the purpose of determining the date on which notice is  
 2 provided under this subsection, the date of the notice shall be the date on which the  
 3 department first publishes the notice on its Internet Web site, ~~unless the department~~  
 4 ~~delegates to the applicant under par. (c) the requirement to provide notice. If the~~  
 5 ~~department delegates to the applicant the requirement to provide notice, the date of~~  
 6 ~~the notice shall be the date on which the department first publishes the notice on its~~  
 7 ~~Internet Web site or 10 days after the date on which the department receives ~~that~~~~  
 8 ~~it received~~ satisfactory proof of publication of a class 1 notice from the applicant,  
 9 whichever is later.

SECTION 11. 30.208 (5) (c) 1. of the statutes is amended to read:

10           30.208 (5) (c) 1. Requiring that the applicant for the permit or contract provide  
 11 by publication, mailing, or other distribution one or more of the notices. If the  
 12 department requires the applicant to publish a class 1 notice under ch. 985, the  
 13 department may require the applicant to submit to the department satisfactory proof  
 14 of publication of the class 1 notice.

SECTION 12. 281.36 (3p) (c) of the statutes is amended to read:

15  
 16           281.36 (3p) (c) For the purpose of determining the date on which notice is  
 17 provided under this subsection, the date of the notice shall be the date on which the  
 18 department first publishes the notice on its Internet Web site, ~~unless the department~~  
 19 ~~delegates to the applicant under par. (d) the requirement to provide notice. If the~~  
 20 ~~department delegates to the applicant the requirement to provide notice, the date of~~  
 21 ~~the notice shall be the date on which the department first publishes the notice on its~~  
 22 ~~Internet Web site or 10 days after the date on which the department receives ~~that~~~~  
 23 ~~it received~~ satisfactory proof of publication of a class 1 notice from the applicant,  
 24 whichever is later.  
 25

Ins.  
5-15

1           **SECTION 13.** 281.36 (3p) (d) 1. of the statutes is amended to read:

2           281.36 (3p) (d) 1. ~~Requiring that the applicant for the permit provide by~~  
3 ~~publication, mailing, or other distribution one or more of the notices. If the~~  
4 ~~department requires the applicant to publish a class 1 notice under ch. 985, the~~  
5 ~~department may require the applicant to submit to the department satisfactory proof~~  
6 ~~of publication of the class 1 notice.~~

ns.  
-b

7           **SECTION 14.** 281.36 (14) (e) of the statutes is created to read:

8           281.36 (14) (e) Each day of a continuing violation is a separate offense.

9           **SECTION 15.** 281.36 (14) (f) of the statutes is created to read:

10           281.36 (14) (f) The department may follow the procedures for the issuance of  
11 a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

12           **SECTION 16.** 285.63 (11) of the statutes is renumbered 285.63 (11) (a) (intro.)  
13 and amended to read:

14           285.63 (11) (a) (intro.) ~~The Except as specifically required under the federal~~  
15 ~~clean air act or as provided in par. (b), the department is may not required require~~  
16 ~~an applicant to use perform air dispersion modeling as a basis for making its findings~~  
17 ~~under sub. (1) for a minor source unless modeling is specifically provided for under~~  
18 ~~the federal clean air act, rules promulgated under this chapter, or a federal or state~~  
19 ~~agreement. before the department does any of the following:~~

20           **SECTION 17.** 285.63 (11) (a) 1. of the statutes is created to read:

21           285.63 (11) (a) 1. Determines whether a source qualifies for a registration  
22 permit issued under s. 285.60 (2g).

23           **SECTION 18.** 285.63 (11) (a) 2. of the statutes is created to read:

24           285.63 (11) (a) 2. Determines whether a source is covered by a general permit  
25 issued under s. 285.60 (3).

1           **SECTION 19.** 285.63 (11) (a) 3. of the statutes is created to read:

2           285.63 (11) (a) 3. Issues or renews an operation permit for a minor source under  
3 s. 285.62.

4           **SECTION 20.** 285.63 (11) (a) 4. of the statutes is created to read:

5           285.63 (11) (a) 4. Renews an operation permit for a major source under s.  
6 285.62.

7           **SECTION 21.** 285.63 (11) (a) 5. of the statutes is created to read:

8           285.63 (11) (a) 5. Issues a construction permit for a minor source under s.  
9 285.60 that the applicant indicates will emit the pollutants listed in 40 CFR 51.166  
10 (b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR  
11 51.166 (b) (23) (i).

12           **SECTION 22.** 285.63 (11) (b) of the statutes is created to read:

13           285.63 (11) (b) 1. In this paragraph, “tribe” means a federally recognized  
14 American Indian tribe or band.

15           2. If the federal environmental protection agency treats a tribe as a state under  
16 42 USC 7601 (d) or designates as class 1 all or a portion of a tribe’s reservation under  
17 42 USC 7474, the department may require an applicant to perform air dispersion  
18 modeling notwithstanding the prohibition under par. (a) if air dispersion modeling  
19 is authorized under any of the following:

20           a. An agreement between the tribe and the department or between the tribe  
21 and the federal government, the terms of which implement the tribe’s treatment as  
22 a state or designation as a class 1 area.

23           b. An implementation plan under 40 CFR part 49, subpart H.

1 c. Rules promulgated by the department that implement the tribe's treatment

2 as a state or designation as a class 1 area.

(END)

INSERT  
3-3 3 →

d-note

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0544/P4insRK  
RNK:.....

INSERT ANALYSIS

*to the public and  
to various interested  
persons*

Under current law, with certain exceptions, a person may not conduct an activity in or on a navigable water or wetland without a permit or other approval (permit) from DNR. Current law also requires DNR to give certain notices with regard to these permit applications. In some circumstances, the notices must be provided in the form of publication ~~in the official~~ a single insertion of the notice in the official state newspaper (class 1 notice). In certain instances, current law also authorizes DNR to delegate to a permit applicant the requirement to publish a class 1 notice. Under this bill, if DNR delegates to a permit applicant the requirement to publish a class 1 notice, the applicant may, in lieu of publishing the notice, request that DNR publish the notice. The bill requires DNR to charge the applicant a fee in an amount that equals the average cost to DNR for publishing class 1 notices.

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

INSERT 5-15

1            <sup>x</sup>  
2            **SECTION 1.** 30.208 (5) (c) (intro.) of the statutes is renumbered 30.208 (5) (c) 1m.  
3            (intro.).

4            <sup>✓</sup>  
5            **SECTION 2.** 30.208 (5) (c) 2m. of the statutes is created to read:  
6            30.208 (5) (c) 2m. If, under subd. 1m., the department delegates to an applicant  
7            the requirement to provide notice under sub. (3) by publishing a class 1 notice under  
8            ch. 985, the applicant may in lieu of publishing the class 1 notice request that the  
9            department publish the class 1 notice. The department shall charge the applicant  
             a fee for publishing the class 1 notice in an amount that equals the average cost to  
             the department for publishing class 1 notices under ch. 985.

INSERT 6-6

10            <sup>x</sup>  
11            **SECTION 3.** 281.36 (3p) (d) (intro.) of the statutes is renumbered 281.36 (3p) (d)  
             1m. (intro.).

(B)

1  
2  
3  
4  
5  
6  
7

SECTION 4. 281.36 (3p) (d) 2m. of the statutes is created to read:

~~30.208 (5) (c)~~ 281.36 (3p) (d) 2m. If, under subd. 1m., the department delegates to an applicant the requirement to provide notice under sub. (3m) by publishing a class 1 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request that the department publish the class 1 notice. The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing class 1 notices under ch. 985.

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0544/P4ins  
EHS&RNK:eev:jm

1 INSERT 4-8

2 SECTION 1. 23.50 (1) of the statutes is amended to read:

3 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit  
4 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,  
5 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),  
6 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81, and 299.64 (2),  
7 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any  
8 administrative rules promulgated thereunder, violations specified under s. 280.98  
9 (2) or 285.86, <sup>✓</sup>violations of s. 281.36 if the department chooses to proceed under s.  
10 281.36 (14) (f), violations of ch. 951 if the animal involved is a captive wild animal,  
11 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),  
12 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances  
13 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

14 History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 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; 2003 a. 139, 276; 2005 a. 360.

15 INSERT 8-3

16 SECTION 2. 299.95 of the statutes <sup>✓</sup>is amended to read:

17 **299.95 Enforcement; duty of department of justice; expenses.** The  
18 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except  
19 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,  
20 permits, and water quality certifications of the department, except those  
21 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided  
22 in ss. 281.36 (14) (f), 285.86 and 299.85 (7) (am). Except as provided in s. 295.79 (1),  
23 the circuit court for Dane county or for any other county where a violation occurred

as affected by 2013 Wisconsin Act 1



1 in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this  
2 chapter or the rule, special order, license, plan approval, permit, or certification by  
3 injunctive and other relief appropriate for enforcement. For purposes of this  
4 proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special  
5 order, license, plan approval, permit or certification prohibits in whole or in part any  
6 pollution, a violation is considered a public nuisance. The department of natural  
7 resources may enter into agreements with the department of justice to assist with  
8 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid  
9 to the department of justice under these agreements shall be credited to the  
10 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; 2003 a. 276; 2005 a. 347; 2013 a. 1.

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

LRB-0544/P4dn  
EHS&RNK:eev:jm

date

stays

Dan:

I understand from your email that DOJ would like to be able to continue to use the procedures it currently uses to prosecute wetlands discharge violations, and not be tied to using the citation procedure under s. 23.50 to 23.85. This draft clarifies that, if there has been a wetlands discharge violation, DNR has the choice of whether to use the citation procedures under s. 23.50 to 23.85, or to refer enforcement to the DOJ. If DNR refers a case to DOJ, this draft makes no change to the procedures that DOJ may use to enforce wetlands discharge violations.

Elisabeth H. Shea  
Legislative Attorney  
Phone: (608) 266-5446  
E-mail: elisabeth.shea@legis.wisconsin.gov

Rnk

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

LRB-0544/P4dn  
EHS&RNK:eev:ph

Dan:

I understand from your email that DOJ would like to be able to continue to use the procedures it currently uses to prosecute wetlands discharge violations, and not be tied to using the citation procedure under s. 23.50 to 23.85. This draft clarifies that, if there has been a wetlands discharge violation, DNR has the choice of whether to use the citation procedures under s. 23.50 to 23.85, or to refer enforcement to DOJ. If DNR refers a case to DOJ, this draft makes no change to the procedures that DOJ may use to enforce wetlands discharge violations.

Elisabeth H. Shea  
Legislative Attorney  
Phone: (608) 266-5446  
E-mail: [elisabeth.shea@legis.wisconsin.gov](mailto:elisabeth.shea@legis.wisconsin.gov)

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: [robin.kite@legis.wisconsin.gov](mailto:robin.kite@legis.wisconsin.gov)

**Shea, Elisabeth**

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**From:** Johnson, Dan  
**Sent:** Monday, April 29, 2013 4:57 PM  
**To:** Shea, Elisabeth  
**Subject:** LRB 0544 final revision

Hi Elisabeth,

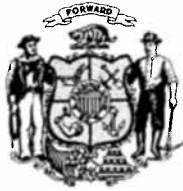
We have one final revision to LRB 0544/P4, and then we would like it drafted as an introducible /1.

- **In Section 12**, please add “under this chapter”, so it reads:
  - The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing class 1 notices under ch. 985 under this chapter.
  
- **In Section 15**, do likewise, so it reads:
  - The department shall charge the applicant a fee for publishing the class 1 notice in an amount that equals the average cost to the department for publishing class 1 notices under ch. 985 under this chapter.

The reason for this revision is because the DNR publishes many, and sometimes lengthy, class 1 notices; thus, it would be difficult to determine an average cost for all of them. But, if we can limit it to the average cost for a chapter 30 notice and a chapter 281 notice, it is much easier for them to determine an average cost for publication.

If you have any questions regarding this change, please let me know. Thank you!

Dan Johnson  
Chief of Staff  
**Senator Neal Kedzie**  
11<sup>th</sup> Senate District  
608.266.2635



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0544/P4

EHS&RNK:eev:ph

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2013 BILL

In  
4/30

pwf  
4/30  
jm

regen ✓

1 AN ACT *to repeal* 15.347 (2) (a); *to renumber* 30.208 (5) (c) (intro.) and 281.36  
2 (3p) (d) (intro.); *to renumber and amend* 285.63 (11); *to amend* 15.347 (2) (b),  
3 23.38 (1), 23.38 (2), 23.50 (1), 23.65 (1), 23.65 (3), 29.569 (3) (bm) 2., 30.208 (5)  
4 (bm), 281.36 (3p) (c) and 299.95; and *to create* 23.38 (1m), 30.208 (5) (c) 2m.,  
5 281.36 (3p) (d) 2m., 281.36 (14) (e), 281.36 (14) (f), 285.63 (11) (a) 1., 285.63 (11)  
6 (a) 2., 285.63 (11) (a) 3., 285.63 (11) (a) 4., 285.63 (11) (a) 5. and 285.63 (11) (b)  
7 of the statutes; **relating to:** a citation procedure applicable to wetland  
8 discharge violations, sturgeon spearing license issuance period, electronic  
9 methods for reporting natural resource and environmental law violations,  
10 publication of class 1 notices, air dispersion modeling requirements, and  
11 membership on the Dry Cleaner Environmental Response Council.

**Analysis by the Legislative Reference Bureau**

Current law requires the Department of Natural Resources (DNR) to maintain a toll-free telephone number for receiving reports of violations of any statute or administrative rule that DNR enforces or administers. This bill provides that DNR may also establish other electronic methods to receive reports of these violations.

Under current law, DNR may recover forfeitures imposed for the violation of certain natural resource and environmental laws using a citation procedure. This bill allows DNR to use this citation procedure to enforce laws that regulate the discharge of certain materials into wetlands.

Under current law, 12 is the minimum age for obtaining a sturgeon spearing license. Also under current law, issuance of a sturgeon spearing license is generally prohibited during a period beginning on November 1 and ending on the last day of the open season for the spearing of lake sturgeon. One exception to this prohibition is for a resident who has attained the age of 14 during that period. This bill lowers this age to 12, consistent with the minimum age for obtaining a license.

Current law requires DNR to make specified findings before it issues certain air pollution permits. Under current law DNR is not required to use air dispersion modeling as a basis for making those findings for a minor source unless specifically provided for under the federal Clean Air Act (CAA), rules promulgated by DNR, or a federal or state agreement. A minor source is a facility that emits air contaminants from a fixed location in an amount that is less than an amount specified by DNR by rule.

This bill prohibits DNR from requiring an applicant for certain air pollution permits, including some permits for major sources, to conduct air dispersion modeling unless required by the CAA. The bill also creates an exception to this prohibition under certain circumstances affecting American Indian tribes or bands (tribes). The exception applies if a tribe is treated as a state by the federal Environmental Protection Agency (EPA) or if a tribe's reservation has been designated by EPA as a class 1 area. Federal law gives class 1 areas special protection under the CAA. This bill provides that DNR may require an applicant to perform air dispersion modeling if that modeling is authorized under an agreement between the tribe and this state or federal government, authorized under a CAA implementation plan, or authorized under department rules.

Under current law, the Dry Cleaner Environmental Response Council (council) in DNR is composed of six members. Of those members, one member must represent dry cleaning operations with annual gross receipts of less than \$200,000 and two members must represent dry cleaning operations with annual gross receipts of at least \$200,000. This bill eliminates these gross receipts requirements for representation on the council and provides, instead, that three members of the council must represent dry cleaning operations, regardless of the amount of the operation's annual gross receipts.

Under current law, with certain exceptions, a person may not conduct an activity in or on a navigable water or wetland without a permit or other approval (permit) from DNR. Current law also requires DNR to give certain notices to the public and to various interested persons with regard to these permit applications. In some circumstances, the notices must be provided in the form of publication by a single insertion of the notice in the official state newspaper (class 1 notice). In certain instances, current law also authorizes DNR to delegate to a permit applicant the requirement to publish a class 1 notice. Under this bill, if DNR delegates to a permit applicant the requirement to publish a class 1 notice, the applicant may, in lieu of

publishing the notice, request that DNR publish the notice. The bill requires DNR to charge the applicant a fee in an amount that equals the average cost to DNR for publishing class 1 notices.

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.** 15.347 (2) (a) of the statutes is repealed.

2           **SECTION 2.** 15.347 (2) (b) of the statutes is amended to read:

3           15.347 (2) (b) ~~Two~~ Three members representing dry cleaning operations with  
4           ~~annual gross receipts of at least \$200,000.~~

5           **SECTION 3.** 23.38 (1) of the statutes is amended to read:

6           23.38 (1) The department shall maintain a toll-free telephone number at  
7           ~~department headquarters~~ to receive reports of violations of any statute or  
8           administrative rule that the department enforces or administers. The department  
9           shall relay these reports to the appropriate warden or officer for investigation and  
10          enforcement action. The department shall publicize the toll-free telephone number  
11          as widely as possible in the state.

12          **SECTION 4.** 23.38 (1m) of the statutes is created to read:

13          23.38 (1m) In addition to the toll-free telephone number under sub. (1), the  
14          department may establish additional electronic methods to receive reports of  
15          violations of any statute or administrative rule that the department enforces or  
16          administers.

17          **SECTION 5.** 23.38 (2) of the statutes is amended to read:

18          23.38 (2) The department shall maintain records ~~which~~ that permit the release  
19          of information provided by informants while protecting the identity of the informant.

1 Any records maintained by the department which received under this section that  
2 relate to the identity of informants shall be only for the confidential use of the  
3 department in the administration of this section, unless the informant expressly  
4 agrees to release the records. Appearance in court as a witness shall not be  
5 considered consent by an informant to release confidential records ~~maintained by the~~  
6 ~~department~~ received under this section.

7 **SECTION 6.** 23.50 (1) of the statutes is amended to read:

8 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit  
9 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,  
10 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),  
11 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81, and 299.64 (2),  
12 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any  
13 administrative rules promulgated thereunder, violations specified under s. 280.98  
14 (2) or 285.86, violations of s. 281.36 if the department chooses to proceed under s.  
15 281.36 (14) (f), violations of ch. 951 if the animal involved is a captive wild animal,  
16 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),  
17 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances  
18 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

19 **SECTION 7.** 23.65 (1) of the statutes is amended to read:

20 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,  
21 134.60, 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07,  
22 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or  
23 any administrative rule promulgated pursuant thereto, a violation specified under  
24 s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has  
25 been committed the district attorney may proceed by complaint and summons.



1           **SECTION 8.** 23.65 (3) of the statutes is amended to read:

2           23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,  
3 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he  
4 or she finds there is probable cause to believe that the person charged has committed  
5 a violation of s. 281.36, 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29,  
6 30, 31 or 350 or a violation specified under s. 285.86. The district attorney shall be  
7 informed of the hearing and may attend.

8           **SECTION 9.** 29.569 (3) (bm) 2. of the statutes is amended to read:

9           29.569 (3) (bm) 2. A person who is a resident and who has attained the age of  
10 14 12 during that period.

11           **SECTION 10.** 30.208 (5) (bm) of the statutes is amended to read:

12           30.208 (5) (bm) For the purpose of determining the date on which notice is  
13 provided under this subsection, the date of the notice shall be the date on which the  
14 department first publishes the notice on its Internet Web site, ~~unless the department~~  
15 ~~delegates to the applicant under par. (c) the requirement to provide notice.~~ If the  
16 ~~department delegates to the applicant the requirement to provide notice, the date of~~  
17 ~~the notice shall be the date on which the department first publishes the notice on its~~ ~~the~~  
18 ~~Internet Web site or 10 days after the date on which the department receives~~ ~~satisfactory proof of publication of a class 1 notice from the applicant, whichever is~~  
19 ~~later.~~ unstruct  
space

20  
21           **SECTION 11.** 30.208 (5) (c) (intro.) of the statutes is renumbered 30.208 (5) (c)  
22 1m. (intro.).

23           **SECTION 12.** 30.208 (5) (c) 2m. of the statutes is created to read:

24           30.208 (5) (c) 2m. If, under subd. 1m., the department delegates to an applicant  
25 the requirement to provide notice under sub. (3) by publishing a class 1 notice under

1 ch. 985, the applicant may in lieu of publishing the class 1 notice request that the  
2 department publish the class 1 notice. The department shall charge the applicant  
3 a fee for publishing the class 1 notice in an amount that equals the average cost to  
4 the department for publishing <sup>under this chapter</sup> class 1 notices under ch. 985.

5 SECTION 13. 281.36 (3p) (c) of the statutes is amended to read:

6 281.36 (3p) (c) For the purpose of determining the date on which notice is  
7 provided under this subsection, the date of the notice shall be the date on which the  
8 department first publishes the notice on its Internet Web site, ~~unless the department~~  
9 ~~delegates to the applicant under par. (d) the requirement to provide notice.~~ If the  
10 department delegates to the applicant the requirement to provide notice, the date of  
11 the notice shall be the date on which the department first publishes <sup>e</sup> the notice on its  
12 Internet Web site or 10 days after the date on which the department receives  
13 satisfactory proof of publication of a class 1 notice from the applicant, whichever is  
14 later.

15 SECTION 14. 281.36 (3p) (d) (intro.) of the statutes is renumbered 281.36 (3p)  
16 (d) 1m. (intro.).

17 SECTION 15. 281.36 (3p) (d) 2m. of the statutes is created to read:

18 281.36 (3p) (d) 2m. If, under subd. 1m., the department delegates to an  
19 applicant the requirement to provide notice under sub. (3m) by publishing a class 1  
20 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request  
21 that the department publish the class 1 notice. The department shall charge the  
22 applicant a fee for publishing the class 1 notice in an amount that equals the average  
23 cost to the department for publishing <sup>under this chapter</sup> class 1 notices under ch. 985.

24 SECTION 16. 281.36 (14) (e) of the statutes is created to read:

25 281.36 (14) (e) Each day of a continuing violation is a separate offense.

1           **SECTION 17.** 281.36 (14) (f) of the statutes is created to read:

2           281.36 (14) (f) The department may follow the procedures for the issuance of  
3 a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

4           **SECTION 18.** 285.63 (11) of the statutes is renumbered 285.63 (11) (a) (intro.)  
5 and amended to read:

6           285.63 (11) (a) (intro.) ~~The Except as specifically required under the federal~~  
7 ~~clean air act or as provided in par. (b), the department is may not required require~~  
8 ~~an applicant to use perform~~ air dispersion modeling as a basis for making its findings  
9 under sub. (1) for a minor source unless modeling is specifically provided for under  
10 the federal clean air act, rules promulgated under this chapter, or a federal or state  
11 agreement. before the department does any of the following:

12           **SECTION 19.** 285.63 (11) (a) 1. of the statutes is created to read:

13           285.63 (11) (a) 1. Determines whether a source qualifies for a registration  
14 permit issued under s. 285.60 (2g).

15           **SECTION 20.** 285.63 (11) (a) 2. of the statutes is created to read:

16           285.63 (11) (a) 2. Determines whether a source is covered by a general permit  
17 issued under s. 285.60 (3).

18           **SECTION 21.** 285.63 (11) (a) 3. of the statutes is created to read:

19           285.63 (11) (a) 3. Issues or renews an operation permit for a minor source under  
20 s. 285.62.

21           **SECTION 22.** 285.63 (11) (a) 4. of the statutes is created to read:

22           285.63 (11) (a) 4. Renews an operation permit for a major source under s.  
23 285.62.

24           **SECTION 23.** 285.63 (11) (a) 5. of the statutes is created to read:

1           285.63 (11) (a) 5. Issues a construction permit for a minor source under s.  
2           285.60 that the applicant indicates will emit the pollutants listed in 40 CFR 51.166  
3           (b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR  
4           51.166 (b) (23) (i).

5           **SECTION 24.** 285.63 (11) (b) of the statutes is created to read:

6           285.63 (11) (b) 1. In this paragraph, “tribe” means a federally recognized  
7           American Indian tribe or band.

8           2. If the federal environmental protection agency treats a tribe as a state under  
9           42 USC 7601 (d) or designates as class 1 all or a portion of a tribe’s reservation under  
10          42 USC 7474, the department may require an applicant to perform air dispersion  
11          modeling notwithstanding the prohibition under par. (a) if air dispersion modeling  
12          is authorized under any of the following:

13          a. An agreement between the tribe and the department or between the tribe  
14          and the federal government, the terms of which implement the tribe’s treatment as  
15          a state or designation as a class 1 area.

16          b. An implementation plan under 40 CFR part 49, subpart H.

17          c. Rules promulgated by the department that implement the tribe’s treatment  
18          as a state or designation as a class 1 area.

19          **SECTION 25.** 299.95 of the statutes, as affected by 2013 Wisconsin Act 1, is  
20          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. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,  
24          permits, and water quality certifications of the department, except those  
25          promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided

1 in ss. 281.36 (14) (f), 285.86 and 299.85 (7) (am). Except as provided in s. 295.79 (1),  
2 the circuit court for Dane county or for any other county where a violation occurred  
3 in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this  
4 chapter or the rule, special order, license, plan approval, permit, or certification by  
5 injunctive and other relief appropriate for enforcement. For purposes of this  
6 proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special  
7 order, license, plan approval, permit or certification prohibits in whole or in part any  
8 pollution, a violation is considered a public nuisance. The department of natural  
9 resources may enter into agreements with the department of justice to assist with  
10 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid  
11 to the department of justice under these agreements shall be credited to the  
12 appropriation account under s. 20.455 (1) (k).

13 (END)

**Rose, Stefanie**

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**From:** Johnson, Dan  
**Sent:** Thursday, May 02, 2013 4:56 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0544/1 Topic: Add uniform citation process cross reference in wetland enforcement; change age regarding sturgeon spearing; confidentiality of information or complaints sent to DNR; remove gross revenue requirement regarding Dry Cleaner

Please Jacket LRB -0544/1 for the SENATE.

## **Kite, Robin**

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**From:** Shea, Elisabeth  
**Sent:** Wednesday, May 08, 2013 8:28 AM  
**To:** Kite, Robin; Gibson-Glass, Mary  
**Subject:** FW: LRB 0544/1 - minor change

One more change to this one – I'm not sure who drafted this section. It has to do with an agreement with an American Indian tribe.

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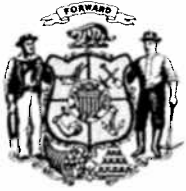
**From:** Johnson, Dan  
**Sent:** Wednesday, May 08, 2013 8:24 AM  
**To:** Shea, Elisabeth  
**Subject:** LRB 0544/1 - minor change

Hi Elisabeth,

Sorry to bother you, but I need one minor revision to LRB 0544/1. Under Section 24, page 8, line 13 – please change “department” to “state”. The reason being is because the 1999 agreement was actually signed by the state rather than the department of natural resources.

I assume you will need the jacket back, so I will send that over to you this morning. Thank you!

Dan Johnson  
**Senator Neal Kedzie**  
11<sup>th</sup> Senate District  
608.266.2635



308  
State of Wisconsin  
2013 - 2014 LEGISLATURE



Ren  
Relo  
2

LRB-0544(1)

EHS&RNK:eev:jm

stays

2013 BILL

Only change  
p. 8

In  
578

regen

1 AN ACT <sup>regen</sup> *to repeal* 15.347 (2) (a); *to renumber* 30.208 (5) (c) (intro.) and 281.36  
2 (3p) (d) (intro.); *to renumber and amend* 285.63 (11); *to amend* 15.347 (2) (b),  
3 23.38 (1), 23.38 (2), 23.50 (1), 23.65 (1), 23.65 (3), 29.569 (3) (bm) 2., 30.208 (5)  
4 (bm), 281.36 (3p) (c) and 299.95; and *to create* 23.38 (1m), 30.208 (5) (c) 2m.,  
5 281.36 (3p) (d) 2m., 281.36 (14) (e), 281.36 (14) (f), 285.63 (11) (a) 1., 285.63 (11)  
6 (a) 2., 285.63 (11) (a) 3., 285.63 (11) (a) 4., 285.63 (11) (a) 5. and 285.63 (11) (b)  
7 of the statutes; **relating to:** a citation procedure applicable to wetland  
8 discharge violations, sturgeon spearing license issuance period, electronic  
9 methods for reporting natural resource and environmental law violations,  
10 publication of class 1 notices, air dispersion modeling requirements, and  
11 membership on the Dry Cleaner Environmental Response Council.

***Analysis by the Legislative Reference Bureau***

Current law requires the Department of Natural Resources (DNR) to maintain a toll-free telephone number for receiving reports of violations of any statute or administrative rule that DNR enforces or administers. This bill provides that DNR may also establish other electronic methods to receive reports of these violations.



**BILL**

Under current law, DNR may recover forfeitures imposed for the violation of certain natural resource and environmental laws using a citation procedure. This bill allows DNR to use this citation procedure to enforce laws that regulate the discharge of certain materials into wetlands.

Under current law, 12 is the minimum age for obtaining a sturgeon spearing license. Also under current law, issuance of a sturgeon spearing license is generally prohibited during a period beginning on November 1 and ending on the last day of the open season for the spearing of lake sturgeon. One exception to this prohibition is for a resident who has attained the age of 14 during that period. This bill lowers this age to 12, consistent with the minimum age for obtaining a license.

Current law requires DNR to make specified findings before it issues certain air pollution permits. Under current law DNR is not required to use air dispersion modeling as a basis for making those findings for a minor source unless specifically provided for under the federal Clean Air Act (CAA), rules promulgated by DNR, or a federal or state agreement. A minor source is a facility that emits air contaminants from a fixed location in an amount that is less than an amount specified by DNR by rule.

This bill prohibits DNR from requiring an applicant for certain air pollution permits, including some permits for major sources, to conduct air dispersion modeling unless required by the CAA. The bill also creates an exception to this prohibition under certain circumstances affecting American Indian tribes or bands (tribes). The exception applies if a tribe is treated as a state by the federal Environmental Protection Agency (EPA) or if a tribe's reservation has been designated by EPA as a class 1 area. Federal law gives class 1 areas special protection under the CAA. This bill provides that DNR may require an applicant to perform air dispersion modeling if that modeling is authorized under an agreement between the tribe and this state or federal government, authorized under a CAA implementation plan, or authorized under department rules.

Under current law, the Dry Cleaner Environmental Response Council (council) in DNR is composed of six members. Of those members, one member must represent dry cleaning operations with annual gross receipts of less than \$200,000 and two members must represent dry cleaning operations with annual gross receipts of at least \$200,000. This bill eliminates these gross receipts requirements for representation on the council and provides, instead, that three members of the council must represent dry cleaning operations, regardless of the amount of the operation's annual gross receipts.

Under current law, with certain exceptions, a person may not conduct an activity in or on a navigable water or wetland without a permit or other approval (permit) from DNR. Current law also requires DNR to give certain notices to the public and to various interested persons with regard to these permit applications. In some circumstances, the notices must be provided in the form of publication by a single insertion of the notice in the official state newspaper (class 1 notice). In certain instances, current law also authorizes DNR to delegate to a permit applicant the requirement to publish a class 1 notice. Under this bill, if DNR delegates to a permit applicant the requirement to publish a class 1 notice, the applicant may, in lieu of

**BILL**

publishing the notice, request that DNR publish the notice. The bill requires DNR to charge the applicant a fee in an amount that equals the average cost to DNR for publishing class 1 notices.

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

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

1           **SECTION 1.** 15.347 (2) (a) of the statutes is repealed.

2           **SECTION 2.** 15.347 (2) (b) of the statutes is amended to read:

3           15.347 (2) (b) ~~Two~~ Three members representing dry cleaning operations with  
4           annual gross receipts of at least \$200,000.

5           **SECTION 3.** 23.38 (1) of the statutes is amended to read:

6           23.38 (1) The department shall maintain a toll-free telephone number at  
7           ~~department headquarters~~ to receive reports of violations of any statute or  
8           administrative rule that the department enforces or administers. The department  
9           shall relay these reports to the appropriate warden or officer for investigation and  
10          enforcement action. The department shall publicize the toll-free telephone number  
11          as widely as possible in the state.

12          **SECTION 4.** 23.38 (1m) of the statutes is created to read:

13          23.38 (1m) In addition to the toll-free telephone number under sub. (1), the  
14          department may establish additional electronic methods to receive reports of  
15          violations of any statute or administrative rule that the department enforces or  
16          administers.

17          **SECTION 5.** 23.38 (2) of the statutes is amended to read:

18          23.38 (2) The department shall maintain records ~~which~~ that permit the release  
19          of information provided by informants while protecting the identity of the informant.

**BILL****SECTION 5**

1 Any records ~~maintained by the department which~~ received under this section that  
2 relate to the identity of informants shall be only for the confidential use of the  
3 department in the administration of this section, unless the informant expressly  
4 agrees to release the records. Appearance in court as a witness shall not be  
5 considered consent by an informant to release confidential records ~~maintained by the~~  
6 department received under this section.

7 **SECTION 6.** 23.50 (1) of the statutes is amended to read:

8 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit  
9 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,  
10 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),  
11 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81, and 299.64 (2),  
12 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any  
13 administrative rules promulgated thereunder, violations specified under s. 280.98  
14 (2) or 285.86, violations of s. 281.36 if the department chooses to proceed under s.  
15 281.36 (14) (f), violations of ch. 951 if the animal involved is a captive wild animal,  
16 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),  
17 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances  
18 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

19 **SECTION 7.** 23.65 (1) of the statutes is amended to read:

20 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,  
21 134.60, 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07,  
22 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or  
23 any administrative rule promulgated pursuant thereto, a violation specified under  
24 s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has  
25 been committed the district attorney may proceed by complaint and summons.

**BILL**

1           **SECTION 8.** 23.65 (3) of the statutes is amended to read:

2           23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,  
3 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he  
4 or she finds there is probable cause to believe that the person charged has committed  
5 a violation of s. 281.36, 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29,  
6 30, 31 or 350 or a violation specified under s. 285.86. The district attorney shall be  
7 informed of the hearing and may attend.

8           **SECTION 9.** 29.569 (3) (bm) 2. of the statutes is amended to read:

9           29.569 (3) (bm) 2. A person who is a resident and who has attained the age of  
10 14 ~~12~~ during that period.

11           **SECTION 10.** 30.208 (5) (bm) of the statutes is amended to read:

12           30.208 (5) (bm) For the purpose of determining the date on which notice is  
13 provided under this subsection, the date of the notice shall be the date on which the  
14 department first publishes the notice on its Internet Web site, ~~unless the department~~  
15 ~~delegates to the applicant under par. (c) the requirement to provide notice. If the~~  
16 ~~department delegates to the applicant the requirement to provide notice, the date of~~  
17 ~~the notice shall be the date on which the department first publishes the notice on its~~  
18 ~~Internet Web site or 10 days after the date on which the department receives~~  
19 ~~satisfactory proof of publication of a class 1 notice from the applicant, whichever is~~  
20 later.

21           **SECTION 11.** 30.208 (5) (c) (intro.) of the statutes is renumbered 30.208 (5) (c)  
22 1m. (intro.).

23           **SECTION 12.** 30.208 (5) (c) 2m. of the statutes is created to read:

24           30.208 (5) (c) 2m. If, under subd. 1m., the department delegates to an applicant  
25 the requirement to provide notice under sub. (3) by publishing a class 1 notice under

**BILL****SECTION 12**

1 ch. 985, the applicant may in lieu of publishing the class 1 notice request that the  
2 department publish the class 1 notice. The department shall charge the applicant  
3 a fee for publishing the class 1 notice in an amount that equals the average cost to  
4 the department for publishing under this chapter class 1 notices under ch. 985.

5 **SECTION 13.** 281.36 (3p) (c) of the statutes is amended to read:

6 281.36 **(3p)** (c) For the purpose of determining the date on which notice is  
7 provided under this subsection, the date of the notice shall be the date on which the  
8 department first publishes the notice on its Internet Web site, ~~unless the department~~  
9 ~~delegates to the applicant under par. (d) the requirement to provide notice. If the~~  
10 ~~department delegates to the applicant the requirement to provide notice, the date of~~  
11 ~~the notice shall be the date on which the department first publishes the notice on its~~  
12 ~~Internet Web site or 10 days after the date on which the department receives~~  
13 ~~satisfactory proof of publication of a class 1 notice from the applicant, whichever is~~  
14 later.

15 **SECTION 14.** 281.36 (3p) (d) (intro.) of the statutes is renumbered 281.36 (3p)  
16 (d) 1m. (intro.).

17 **SECTION 15.** 281.36 (3p) (d) 2m. of the statutes is created to read:

18 281.36 **(3p)** (d) 2m. If, under subd. 1m., the department delegates to an  
19 applicant the requirement to provide notice under sub. (3m) by publishing a class 1  
20 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request  
21 that the department publish the class 1 notice. The department shall charge the  
22 applicant a fee for publishing the class 1 notice in an amount that equals the average  
23 cost to the department for publishing under this chapter class 1 notices under ch.  
24 985.

25 **SECTION 16.** 281.36 (14) (e) of the statutes is created to read:

**BILL**

1           281.36 (14) (e) Each day of a continuing violation is a separate offense.

2           **SECTION 17.** 281.36 (14) (f) of the statutes is created to read:

3           281.36 (14) (f) The department may follow the procedures for the issuance of  
4 a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

5           **SECTION 18.** 285.63 (11) of the statutes is renumbered 285.63 (11) (a) (intro.)  
6 and amended to read:

7           285.63 (11) (a) (intro.) The Except as specifically required under the federal  
8 clean air act or as provided in par. (b), the department is may not required require  
9 an applicant to use perform air dispersion modeling as a basis for making its findings  
10 under sub. (1) for a minor source unless modeling is specifically provided for under  
11 the federal clean air act, rules promulgated under this chapter, or a federal or state  
12 agreement. before the department does any of the following:

13           **SECTION 19.** 285.63 (11) (a) 1. of the statutes is created to read:

14           285.63 (11) (a) 1. Determines whether a source qualifies for a registration  
15 permit issued under s. 285.60 (2g).

16           **SECTION 20.** 285.63 (11) (a) 2. of the statutes is created to read:

17           285.63 (11) (a) 2. Determines whether a source is covered by a general permit  
18 issued under s. 285.60 (3).

19           **SECTION 21.** 285.63 (11) (a) 3. of the statutes is created to read:

20           285.63 (11) (a) 3. Issues or renews an operation permit for a minor source under  
21 s. 285.62.

22           **SECTION 22.** 285.63 (11) (a) 4. of the statutes is created to read:

23           285.63 (11) (a) 4. Renews an operation permit for a major source under s.  
24 285.62.

25           **SECTION 23.** 285.63 (11) (a) 5. of the statutes is created to read:

**BILL**

1           285.63 (11) (a) 5. Issues a construction permit for a minor source under s.  
2           285.60 that the applicant indicates will emit the pollutants listed in 40 CFR 51.166  
3           (b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR  
4           51.166 (b) (23) (i).

5           **SECTION 24.** 285.63 (11) (b) of the statutes is created to read:

6           285.63 (11) (b) 1. In this paragraph, "tribe" means a federally recognized  
7           American Indian tribe or band.

8           2. If the federal environmental protection agency treats a tribe as a state under  
9           42 USC 7601 (d) or designates as class 1 all or a portion of a tribe's reservation under  
10          42 USC 7474, the department may require an applicant to perform air dispersion  
11          modeling notwithstanding the prohibition under par. (a) if air dispersion modeling  
12          is authorized under any of the following:

13          a. An agreement between the tribe and the department or between the tribe  
14          and the federal government, the terms of which implement the tribe's treatment as  
15          a state or designation as a class 1 area.

16          b. An implementation plan under 40 CFR part 49, subpart H.

17          c. Rules promulgated by the department that implement the tribe's treatment  
18          as a state or designation as a class 1 area.

19          **SECTION 25.** 299.95 of the statutes, as affected by 2013 Wisconsin Act 1, is  
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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. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,  
24          permits, and water quality certifications of the department, except those  
25          promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided

**BILL**

1 in ss. 281.36 (14) (f), 285.86 and 299.85 (7) (am). Except as provided in s. 295.79 (1),  
2 the circuit court for Dane county or for any other county where a violation occurred  
3 in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this  
4 chapter or the rule, special order, license, plan approval, permit, or certification by  
5 injunctive and other relief appropriate for enforcement. For purposes of this  
6 proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special  
7 order, license, plan approval, permit or certification prohibits in whole or in part any  
8 pollution, a violation is considered a public nuisance. The department of natural  
9 resources may enter into agreements with the department of justice to assist with  
10 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid  
11 to the department of justice under these agreements shall be credited to the  
12 appropriation account under s. 20.455 (1) (k).

13 (END)