

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1686/P1dn
RCT:cjs:jm

February 11, 2014

This is a preliminary draft of the amendment to SB 547, the instructions for which were provided to me on Friday afternoon and Monday afternoon. It makes numerous changes in the bill and should be reviewed carefully.

The language proposed as Insert H, relating to DNR review of the application for the variance, refers to compliance with the variance criteria and with the requirements under subsection (4). I have drafted this amendment to refer specifically to the only criteria and requirements that I see, which are the following:

1. That DOA's determination about infeasibility applies to the source, that the applicant agrees to comply with the requirements of sub. (6), and that the applicant certifies that it cannot comply with the WQBEL for phosphorus without a major facility upgrade (these are all in sub. (4) (a), on page 9 of the bill).
2. The provisions about how a permittee may apply for a variance, which are in sub. (4) (b), including the time limit in par. (b) 2.

If I am missing something here, please let me know.

I had difficulty in trying to reconcile the language proposed as Insert H with the statement in sub. (4) (a) in the bill the a permittee **is eligible** for the variance if the requirements in that paragraph are satisfied, including that the applicant makes the certification regarding the need for a major facility upgrade, and my understanding that the proposed language was intended to give DNR some authority to deny the variance based on a review of the certification. Please consider this part of the amendment carefully.

Is there a practical problem with applying the 30-day limit for review of an application for a variance that is made in the application for reissuance of a permit? That is, is it workable for DNR to make the decision on the variance before it makes all of the other decisions about the reissued permit? Would DNR necessarily know what the WQBEL would be within 30 days of receiving an application for reissuance? Would there be any federal law issues?

I am unsure exactly what the language proposed as Insert E is intended to mean with respect to identifying watersheds. Please review proposed sub. (8) (b) 2m. with this issue in mind. Also, the language proposed as Insert E requires a plan by March 1 for using payments received in the prior year. Under the bill, permittees make a payment

by March 1 based on discharges in the prior year. Is it correct that a county would hold onto the payments for a year before making a plan to use them?

Please contact me with any questions or redraft instructions.

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