

**2013 DRAFTING REQUEST**

**Senate Amendment (SA-SB547)**

Received: 2/7/2014 Received By: btradewe  
 Wanted: As time permits Same as LRB:  
 For: Robert Cowles (608) 266-0484 By/Representing: Paul Kent  
 May Contact: Drafter: btradewe  
 Subject: Environment - water quality Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Sen.Cowles@legis.wisconsin.gov  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Various changes

**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>
/P1	btradewe 2/11/2014	csicilia 2/11/2014	jmurphy 2/11/2014	_____	lparisi 2/11/2014		
/1	btradewe 2/12/2014		jfrantze 2/12/2014	_____	sbasford 2/12/2014	sbasford 2/12/2014	
/2		csicilia 2/12/2014	rschluet 2/12/2014	_____	mbarman 2/12/2014	mbarman 2/12/2014	

FE Sent For:

<END>

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/P1	btradewe 2/11/2014	csicilia 2/11/2014	jmurphy 2/11/2014	_____	lparisi 2/11/2014		
/1			jfrantze 2/12/2014	_____	sbasford 2/12/2014	sbasford 2/12/2014	

FE Sent For:

1/2 jjs 2/12/14  
14  
<END> 2/12/14

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/P1	btradewe 2/11/2014	csicilia 2/11/2014	jmurphy 2/11/2014	_____	lparisi 2/11/2014		

FE Sent For:

1 jjs 2/11/14

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JF 12

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 Extra Copies:

Submit via email: YES  
 Requester's email: Sen.Cowles@legis.wisconsin.gov  
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Pre Topic:

No specific pre topic given

Topic:

Various changes

Instructions:

See attached

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/P1	btradewe	csicilia 2/10/2014	jfrantze 2/10/2014	_____	_____	_____	_____

FE Sent For: *PI js 2/11/14* *Jmattes 2/11*  
 <END>

2013 DRAFTING REQUEST

Senate Amendment (SA-SB547)

Received: 2/7/2014 Received By: btradewe  
 Wanted: As time permits Same as LRB:  
 For: Amy Loudenbeck (608) 266-9967 By/Representing: Paul Kent  
 May Contact: Drafter: btradewe  
 Subject: Environment - water quality Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Rep.Loudenbeck@legis.wisconsin.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Various changes

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>
/P1	btradewe	pl ajs 2/10 14	Jb	RS 2/10			

FE Sent For:

<END>



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3079/1  
RCT:cjs:rs

2013 SENATE BILL 547

2/7 Markys

February 3, 2014 - Introduced by Senators COWLES, FARROW, PETROWSKI, GROTHMAN and DARLING, cosponsored by Representatives LOUDENBECK, KRUG, STEINEKE, SPIROS, BIES, MARKLEIN, CZAJA, BALLWEG, TAUCHEN, THIESFELDT, LEMAHIEU, WEININGER, KAUFERT and KLENKE. Referred to Committee on Government Operations, Public Works, and Telecommunications.

1 AN ACT *to amend* 283.63 (1) (am) and 283.63 (4); and *to create* 283.13 (7) and  
2 283.16 of the statutes; **relating to:** adaptive management plans for reducing  
3 discharges of phosphorus and total suspended solids to the waters of the state  
4 and a statewide variance to the water quality standard for phosphorus for  
5 certain dischargers.

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

This bill provides for a variance to limits on the amount of phosphorus allowed in discharges to water bodies that contain excessive amounts of phosphorus, if conditions specified in the bill are met. The bill also authorizes the use of adaptive management, explained below, to comply with water quality standards for phosphorus and total suspended solids.

***Water quality standards and effluent limitations***

The federal Clean Water Act allows the federal Environmental Protection Agency (EPA) to delegate responsibilities under the act, including issuing wastewater discharge permits for point sources (factories and sewage treatment plants, for example), to a state if the state's laws comply with requirements in the act. EPA has delegated these responsibilities to this state.

Consistent with the Clean Water Act, current state law requires the Department of Natural Resources (DNR) to promulgate rules setting water quality standards for the waters of the state. The standards include criteria for specific

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pollutants. A criterion may be narrative (describing the characteristics that the water should have) or numeric (specifying the maximum concentration of a pollutant).

Under current federal and state law, wastewater discharge permits include restrictions, called effluent limitations, on the amount of various pollutants that may be discharged. One type of effluent limitation is applicable without regard to the quality of the receiving water body and is based on the level of control achieved using treatment technology that is reasonably available (considering cost, among other things) for limiting the discharge of a pollutant. If this kind of limitation (called a technology based effluent limitation) is not sufficient to ensure that a water quality standard for a pollutant will be met in a particular water body, permits for sources that discharge into the water body must generally contain effluent limitations for the pollutant that are more stringent than the technology based effluent limitation and that are designed to ensure that the water quality standard will be met. This kind of limitation is called a water quality based effluent limitation.

Current law allows DNR to grant a permittee a variance to a water quality based effluent limitation if the permittee demonstrates that complying with the effluent limitation is not feasible for one of several reasons, including that applying the effluent limitation to the source would cause substantial and widespread adverse social and economic impacts in the area where the source is located. The term of a variance may not exceed five years. A variance may be renewed, but only for as long as it remains infeasible for the source to comply with the water quality based effluent limitation. Variances are subject to review and approval by EPA.

***Phosphorus water quality rules***

In 2010, DNR promulgated rules adding a numerical water quality criterion to the water quality standard for phosphorus. Some water bodies in Wisconsin do not comply with the water quality standard for phosphorus. DNR's rules include some options for sources that might have difficulty complying with a water quality based effluent limitation for phosphorus, including extended schedules for achieving compliance.

The options in the phosphorus rule also include a variance to water quality based effluent limitations for stabilization pond and lagoon wastewater treatment systems, which DNR indicates primarily serve small communities and small industries. A permittee with one of these systems must provide information showing that compliance would cause substantial and widespread adverse social and economic impacts in the area where the system is located. If the variance is granted, the permit must include an effluent limitation based on the best past performance of the source with regard to phosphorus discharges and a requirement that the permittee investigate techniques that would enable compliance with a water quality based effluent limitation.

***Statewide variance for phosphorus discharges***

This bill requires the Department of Administration (DOA), in consultation with DNR, to consider the costs of compliance with water quality based effluent limitations for phosphorus by sources that cannot achieve compliance without making major facility upgrades. A major facility upgrade is the addition of new

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treatment equipment and a new treatment process. If DOA determines, after public notice and consideration of public comments, that compliance by these sources is not feasible because it would cause substantial and widespread adverse social and economic impacts on a statewide basis, the bill provides for a variance to a water quality based effluent limitation for phosphorus for a source that was covered by a permit before the phosphorus water quality standard took effect if the permittee certifies that the source cannot comply with the effluent limitation without a major facility upgrade.

Under the bill, if a permittee receives the variance, DNR must include in the the permit interim effluent limitations for phosphorus that are generally lower in each successive permit term and must require the source to achieve compliance with the water quality based effluent limitation by the end of the fourth permit term for which DNR approves the variance (generally within 20 years). DNR must also require the implementation of the permittee's choice of three kinds of measures to reduce the amount of phosphorus entering the waters of the state.

The measures from which a permittee that receives the variance may choose are constructing a project or implementing a plan, approved by DNR, to reduce phosphorus pollution from other sources in the basin in which the source is located in an amount equal to the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill; having another person construct such a project or implement such a plan, also approved by DNR; or making payments to counties in the basin to provide cost sharing for projects that enable agricultural sources of nonpoint phosphorus pollution (runoff) to comply with state standards for reducing runoff or for staff to implement projects that reduce runoff. The payments are initially \$50 times the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill. DNR adjusts the amount per pound based on increases in the consumer price index. A county is not required to accept these payments.

If DOA initially determines that compliance with water quality based effluent limitations for phosphorus by sources that cannot achieve compliance without making major facility upgrades is infeasible, the bill requires DOA, in consultation with DNR, to review the determination every five years. If DOA finds that the determination is no longer accurate, the variance terminates. As part of this review, the bill also requires DOA to determine whether cost-effective technology is available that would allow sources to comply with more stringent interim limitations than those specified in the bill. If so, DNR must include those more stringent interim limitations in permits when they are renewed.

***Adaptive management***

Adaptive management is a method for achieving compliance with a water quality standard in a water body that contains excessive amounts of a pollutant. Under adaptive management, a permittee who is subject to a water quality based effluent limitation implements a plan under which the permittee works with others to reduce the amount of pollution from various point sources and nonpoint sources and uses information from monitoring, modeling, and other sources to adjust the plan as needed. The permittee is subject to less restrictive effluent limitations while

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the adaptive management plan is being implemented and less restrictive pollutant limits may continue to apply if the water quality standard is achieved.

The bill authorizes DNR to allow a permittee to use adaptive management to achieve compliance with the water quality standard for phosphorus or total suspended solids (particles in the water) and, if it does so, to allow the permittee four permit terms to achieve compliance.

For further information see the *state and local* 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.** 283.13 (7) of the statutes is created to read:

2           **283.13 (7) ADAPTIVE MANAGEMENT.** (a) In this subsection, “adaptive  
3 management option” means an approach to achieving compliance with a water  
4 quality standard adopted under s. 281.15 or a total maximum daily load under 33  
5 USC 1313 (d) (1) (C) approved by the federal environmental protection agency under  
6 which a permittee implements a plan to achieve the water quality standard or total  
7 maximum daily load through verifiable reductions in the amount of water pollution  
8 from point sources and nonpoint sources, as defined in s. 281.16 (1) (e), in a basin or  
9 other area specified by the department and uses monitoring data, modeling, and  
10 other appropriate information to adjust the plan if needed to achieve compliance.

11           (b) The department may authorize a permittee to use an adaptive management  
12 option to achieve compliance with the water quality standard for phosphorus or an  
13 approved total maximum daily load for total suspended solids, and if it does so, the  
14 department may specify a date under sub. (5) that provides 4 permit terms for the  
15 permittee to comply with its water quality based effluent limitation for phosphorus  
16 or total suspended solids.

17           **SECTION 2.** 283.16 of the statutes is created to read:

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1           **283.16 Statewide variance for phosphorus.** (1) DEFINITIONS. In this  
2 section:

3           (a) "Basin" means the drainage area identified by an 8-digit hydrologic unit  
4 code, as determined by the U.S. Geological Survey.

5           (b) "Category" means a <sup>publicly owned treatment works or</sup> class or category of point sources specified by the  
6 department under s. 283.13 (1).

7           (d) "Existing source" means a point source that was covered by a permit on  
8 December 1, 2010.

9           (e) "Major facility upgrade" means the addition of new treatment equipment  
10 and a new treatment process, <sup>but does not include the addition of chemical treatment</sup>  
<sup>that optimizes the existing treatment process.</sup>

11           (g) "Nonpoint source" has the meaning given in s. 281.16 (1) (e).

12           (h) "Target value" means ~~the number of pounds of phosphorus that would be~~  
13 ~~discharged from a point source during a year if the average concentration of~~  
14 ~~phosphorus in the effluent discharged by the point source during the year was 0.2~~  
15 ~~milligrams per liter.~~ <sup>Replace with INSERT D</sup>

16           (i) "Water quality based effluent limitation" means an effluent limitation under  
17 s. 283.13 (5), including an effluent limitation based on a total maximum daily load  
18 under 33 USC 1313 (d) (1) (C) approved by the federal environmental protection  
19 agency.

20           **(2) INITIAL DETERMINATION CONCERNING THE WATER QUALITY STANDARD FOR**  
21 **PHOSPHORUS.** (a) The department of administration, in consultation with the  
22 department of natural resources, shall determine whether attaining the water  
23 quality standard for phosphorus, adopted under s. 281.15, through compliance with  
24 water quality based effluent limitations by point sources that cannot achieve  
25 compliance without major facility upgrades is not feasible because it would cause

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1 substantial and widespread adverse social and economic impacts on a statewide  
2 basis. *In making this determination, the department of administration may consider  
statewide classification of point sources.*

3 (b) The department of administration shall include all of the following in its  
4 determination under par. (a) *f* *based on water quality based effluent limitations for phosphorus  
as determined by the department of natural resources.*

5 1. A calculation of the statewide cost of compliance with water quality based  
6 effluent limitations for phosphorus by point sources that cannot achieve compliance  
7 without major facility upgrades.

8 2. A calculation of the statewide per household cost for water pollution control  
9 by publicly owned treatment works that cannot achieve compliance with water  
10 quality based effluent limitations for phosphorus without major facility upgrades,  
11 including the projected costs of compliance with those water quality based effluent  
12 limitations, and a calculation of the percentage of median household income the per  
13 household cost represents.

14 4. A determination of whether the cost of compliance with water quality based  
15 effluent limitations for phosphorus by point sources that cannot achieve compliance  
16 without major facility upgrades would cause substantial adverse social and economic  
17 impacts on a statewide basis.

18 5. A determination of whether the cost of compliance with water quality based  
19 effluent limitations for phosphorus by point sources that cannot achieve compliance  
20 without major facility upgrades would cause widespread adverse social and  
21 economic impacts on a statewide basis.

22 (c) The department of administration shall make a preliminary determination  
23 under par. (a) no later than the 60th day after the effective date of this paragraph ....  
24 [LRB inserts date]. The department of administration shall provide public notice,  
25 through an electronic notification system that it establishes or selects, of its

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1 preliminary determination and shall provide the opportunity for public comment on  
2 the preliminary determination for at least 30 days following the public notice.

3 (d) The department of administration shall consider any public comments in  
4 making its final determination under par. (a) and shall make the final determination  
5 no later than the 30th day after the end of the public comment period.

6 (e) The department of administration shall send a notice that describes its final  
7 determination under par. (a) to the legislative reference bureau for publication in the  
8 administrative register.

*(em) INSERT A*

9 (f) If the department of administration determines under par. (a) that attaining  
10 the water quality standard for phosphorus through compliance with water quality  
11 based effluent limitations by point sources that cannot achieve compliance without  
12 major facility upgrades is not feasible, the determination remains in effect until the  
13 department of administration finds under sub. (3) (c) 1. that the determination is no  
14 longer accurate.

*(2m) INSERT B*

15 (3) REVIEW OF FINDINGS AND REQUIREMENTS OF VARIANCE. (a) ~~Every 5 years,~~  
16 ~~beginning in 2019,~~ *In 2024, or upon a recommendation of the department under sub (2m),* if a determination under sub. (2) (a) that attaining the water  
17 quality standard for phosphorus through compliance with water quality based  
18 effluent limitations by point sources that cannot achieve compliance without major  
19 facility upgrades is not feasible is in effect, the department of administration, in  
20 consultation with the department of natural resources, shall prepare a report, no  
21 later than September 1, regarding any changes in the technology available for  
22 controlling phosphorus discharges from point sources and regarding the effluent  
23 limitations for phosphorus that are reasonably achievable. The department of  
24 administration shall consult with permittees that would be subject to water quality

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## SECTION 2

1 based effluent limitations for phosphorus and other interested parties in preparing  
2 the report.

3 (b) The department of <sup>natural resources</sup> ~~administration~~ shall include all of the following in a  
4 report <sup>to the department of administration:</sup> ~~under par. (a)~~:

5 1. A determination of whether technology is reasonably available for point  
6 sources to comply with effluent limitations for phosphorus that are more stringent  
7 than those in sub. (6) (a).

8 2. A determination of whether technology is reasonably available for any  
9 category of point sources to comply with effluent limitations for phosphorus that are  
10 more stringent than those in sub. (6) (a).

11 3. A determination of whether any technology that is reasonably available for  
12 compliance with effluent limitations for phosphorus that are more stringent than  
13 those in sub. (6) (a) is cost effective.

14 (c) Based on its report under par. (a) <sup>s and (b),</sup> the department of administration, in  
15 consultation with the department of natural resources, shall do all of the following:

16 1. Decide whether the determination that attaining the water quality standard  
17 for phosphorus through compliance with water quality based effluent limitations by  
18 point sources that cannot achieve compliance without major facility upgrades is not  
19 feasible remains accurate.

20 2. If the department of administration decides under subd. 1. that the  
21 determination remains accurate, decide whether it is appropriate to apply more  
22 stringent effluent limitations than those in sub. (6) (a) to all point sources or to any  
23 category of point sources, based on the availability and cost effectiveness of  
24 technology for compliance and, if so, <sup>The department of natural resources shall</sup> specify those more stringent effluent limitations  
25 based on the report under par. (a).

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1 (d) The department of administration shall provide public notice of its  
2 preliminary decisions under par. (c) no later than the 60th day after preparing the  
3 report under par. (a) and shall provide the opportunity for public comment on the  
4 decisions for at least 30 days following the public notice.

5 (e) The department of administration shall consider any public comments in  
6 making its final decisions under par. (c) and shall make the final decisions no later  
7 than the 30th day after the end of the public comment period.

8 (f) The department of administration shall send a notice that describes its final  
9 decisions under par. (c) to the legislative reference bureau for publication in the  
10 administrative register.

(g) *INSERT C*

11 (4) AVAILABILITY OF VARIANCE. (a) When a determination under sub. (2) (a) that  
12 attaining the water quality standard for phosphorus through compliance with water  
13 quality based effluent limitations by point sources that cannot achieve compliance  
14 without major facility upgrades is not feasible is in effect, a permittee is eligible for  
15 a variance to the water quality standard for phosphorus for an existing source if the  
16 permittee certifies that the existing source cannot achieve compliance with the water  
17 quality based effluent limitation for phosphorus without a major facility upgrade  
18 and agrees to comply with the requirements under sub. (6).

19 (b) A permittee may apply for the variance under this section in any of the  
20 following ways:

- 21 1. By requesting the variance in the application for reissuance of the permit.
- 22 2. By requesting the variance within 60 days after the department reissues or  
23 modifies the permit to include a water quality based effluent limitation for  
24 phosphorus.

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## SECTION 2

1           3. If the department issued a permit to the permittee before the effective date  
2 of this subdivision .... [LRB inserts date], that includes a water quality based effluent  
3 limitation for phosphorus, by requesting a modification of the permit.

4           4. If the department issued a permit to the permittee before the effective date  
5 of this subdivision .... [LRB inserts date], that includes a water quality based effluent  
6 limitation for phosphorus and that requires the permittee to submit to the  
7 department options for complying with the water quality based effluent limitation,  
8 by submitting a request for the variance as a compliance option.

9           (c) After an application for a variance is submitted to the department under par.  
10 (b) 2., 3., or 4., and until the last day for seeking review of the department's final  
11 decision on the application or a later date fixed by order of the reviewing court, the  
12 water quality based effluent limitation for phosphorus and any corresponding  
13 compliance schedule are not effective. All other provisions of the permit continue in  
14 effect except those for which a petition for review has been submitted under s. 283.63.

15           (d) The variance under this section remains in effect for a point source until the  
16 permit is reissued, modified, or revoked and reissued.

17           (e) Notwithstanding s. 227.42, there is no right to a hearing under this  
18 subsection.

19           (f) If the department approves a variance under this section and the  
20 department issues a modified water quality based effluent limitation under s. 283.63  
21 for phosphorus, the permittee shall comply with the least stringent of the 2 effluent  
22 limitations.

23           **(6) VARIANCE PROVISIONS.** (a) Except as provided in par. (am) or sub. (7), the  
24 department shall <sup>require the permittee to optimize its existing facility and process, and shall</sup> include the following interim limits in the permit for a point source  
25 for which the department approves the variance under this section:

**SENATE BILL 547**

1           1. In the first permit for which the department approves the variance, a  
2 requirement to achieve, by the end of the term of that permit, compliance with an  
3 effluent limitation for phosphorus equal to 0.8 milligrams per liter as a monthly  
4 average.

5           2. In the 2nd permit for which the department approves the variance, a  
6 requirement to achieve, by the end of the term of that permit, compliance with an  
7 effluent limitation for phosphorus equal to 0.6 milligrams per liter as a monthly  
8 average.

9           3. In the 3rd permit for which the department includes the variance, a  
10 requirement to achieve, by the end of the term of that permit, compliance with an  
11 effluent limitation for phosphorus equal to 0.5 milligrams per liter as a monthly  
12 average.

13           4. In the 4th permit for which the department includes the variance, a  
14 requirement to achieve, by the end of the term of that permit, compliance with the  
15 water quality based effluent limitation for phosphorus.

16           (am) If a permittee certifies that the point source cannot achieve compliance  
17 with an interim limit in par. (a) 1., 2., or 3. without a major facility upgrade, the  
18 department shall include in the permit a requirement to achieve compliance with the  
19 ~~highest~~ <sup>most stringent</sup> achievable interim limit, except that the department may not include an  
20 interim limit that is higher than the limit established under s. 283.11 (3) (am).

21           (b) In the permit for a point source for which the department approves the  
22 variance under this section, in addition to the requirements under par. (a) or (am)  
23 or sub. (7), the department shall require the permittee to implement the permittee's  
24 choice of the following measures to reduce the amount of phosphorus entering the  
25 waters of the state:

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## SECTION 2

1 1. Making payments to counties as provided in sub. (8).

2 2. Entering into a binding, written agreement with the department under  
3 which the permittee constructs a project or implements a plan that is designed to  
4 result in an annual reduction of phosphorus pollution from other sources in the basin  
5 in which the point source is located, in an amount equal to the difference between the  
6 annual amount of phosphorus discharged by the point source and the target value.

7 3. Entering into a binding written agreement, that is approved by the  
8 department, with another person under which the person constructs a project or  
9 implements a plan that is designed to result in an annual reduction of phosphorus  
10 pollution from other sources in the basin in which the point source is located, in an  
11 amount equal to the difference between the annual amount of phosphorus  
12 discharged by the point source and the target value.

(c) ~~INSERT F~~

13 (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department of ~~administration~~ <sup>natural resources</sup>  
14 determines under sub. (3) (c) 2. that it is appropriate to apply more stringent effluent  
15 limitations than those in sub. (6) (a) to all point sources or to a category of point  
16 sources, the department of natural resources shall include the more stringent  
17 effluent limitations specified under sub. (3) (c) 2. in permits reissued, modified, or  
18 revoked and reissued after that determination for all point sources or for the category  
19 of point sources to which the more stringent effluent limitations apply.

20 (8) PAYMENTS TO COUNTIES. (a) 1. A permittee that chooses to make payments  
21 for phosphorus reduction under sub. (6) (b) 1. shall make the payments to each  
22 county that is participating in the program under this subsection and that has  
23 territory within the basin in which the point source is located in proportion to the  
24 amount of territory each county has within the basin. The permittee shall make a  
25 total payment by March 1 of each calendar year in the amount equal to the per pound

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1 amount under subd. 2. times the number of pounds by which the amount of  
2 phosphorus discharged by the point source during the previous year exceeded the  
3 point source's target value. If no county that has territory within the basin is  
4 participating in the program under this subsection, the department shall direct the  
5 permittee to make payments to participating counties selected by the department.

6 2. The per pound payment for this subsection is \$50 beginning on the effective  
7 date of this subdivision .... [LRB inserts date]. Beginning in 2015, the department  
8 shall adjust the per pound payment each year by a percentage equal to the average  
9 annual percentage change in the U.S. consumer price index for all urban consumers,  
10 U.S. city average, as determined by the federal department of labor, for the 12  
11 months ending on the preceding December 31. The adjusted amount takes effect for  
12 permits reissued on April 1. The per pound payment in effect when a permit is  
13 reissued applies for the term of the permit.

14 (b) 1. A county shall use payments received under this subsection to provide  
15 cost sharing under s. 281.16 (3) (e) or (4) for projects to reduce the amount of  
16 phosphorus entering the waters of the state or for staff to implement projects to  
17 reduce the amount of phosphorus entering the waters of the state from nonpoint  
18 sources.

19 2. A county shall use at least 65 percent of the amounts received under this  
20 subsection to provide cost sharing under s. 281.16 (3) (e) or (4). <sup>IN SENT 2</sup> ~~To the extent~~  
21 ~~practicable, a county shall provide cost sharing for projects in the county that the~~  
22 ~~county has identified as being the highest priority or as having the greatest potential,~~  
23 ~~to reduce the amount of phosphorus per acre entering the waters of the state.~~

24 3. No later than May 1 of the year following a year in which a county receives  
25 payments under this subsection, the county shall submit an annual report to the

**SENATE BILL 547****SECTION 2**

1 department of natural resources, the department of administration, the department  
2 of agriculture, trade and consumer protection, ~~the use land and water conservation board~~<sup>^</sup> and each permittee from which it  
3 received payments during the previous year. In the annual report, the county shall  
4 describe the projects for which it provided cost sharing, quantify the associated  
5 phosphorus reductions <sup>in pounds</sup> achieved using accepted modeling technology, and identify  
6 any staff funded with the payments.

7 4. The department shall evaluate reports submitted under subd. 3. If the  
8 department determines that a county is not using the payments to effectively reduce  
9 the amount of phosphorus entering the waters of the state from nonpoint sources, the  
10 department may require permittees who made the payments to eliminate or reduce  
11 future payments to the county.

12 5. A county shall notify the department by January 1 of each year if it chooses  
13 not to participate in the program under this subsection.

(8m) INERT G

14 **SECTION 3.** 283.63 (1) (am) of the statutes is amended to read:

15 283.63 (1) (am) After a verified petition for review is filed and until the last day  
16 for seeking review of the department's decision or a later date fixed by order of the  
17 reviewing court, any term or condition, thermal effluent limitation or water quality  
18 based effluent limitation which is the subject of the petition is not effective. All other  
19 provisions of the permit continue in effect except those for which an application for  
20 a variance has been submitted under s. 283.15 or 283.16. For those provisions for  
21 which a petition for review has been submitted under this section, the corresponding  
22 or similar provisions of the prior permit continue in effect until the last day for  
23 seeking review of the department's final decision or a later date fixed by order of the  
24 reviewing court.

25 **SECTION 4.** 283.63 (4) of the statutes is amended to read:

**SENATE BILL 547**

1           283.63 (4) Subsections (1) and (2) do not apply to the modification of a permit  
2           which implements a decision under s. 283.15 or 283.16 or the denial of a request for  
3           a variance under s. 283.15 or 283.16. A proceeding under subs. (1) and (2) shall not  
4           be delayed pending completion of the review of a variance request under s. 283.15  
5           or 283.16.

6

(END)

**Inserts to Mark up of SB 547  
February 7, 2014**

**Insert A: page 7 line 8**

(em) The department of natural resources shall submit all necessary information to the United States Environmental Protection Agency for review and receive approval pursuant to 40 CFR 131.

**Insert B: page 7 after line 14**

(2m) Every three years as part of its triennial review of water quality standards pursuant to 33 U.S.C s. 1313(c)1., the department of natural resources shall review a variance determination under sub (2). If it has reason to believe that the findings in sub (2) require further review, it shall recommend that the department of administration undertake further review under sub.(3)

**Insert C: page 9 after line 10**

(g) If the finding warrants a renewal of the variance, the department of natural resources shall submit the findings under this section to the United States Environmental Protection Agency for review and approval pursuant to 40 CFR 131.21.

**Insert D: page 5 line 12**

“Target value” means:

(1) For point sources in a watershed for which a TMDL has been established as of the effective date [revisor insert date], the “target value” is the number of pounds of phosphorus that would be discharged from a point source during a year if the point source met its TMDL-based effluent limitation.

(2) For point sources where no TMDL has been established in the watershed, the “target value” is the number of pounds of phosphorus that would be discharged from a point source during a year if the average concentration of phosphorus in the effluent discharged by the point source during the year was 0.2 milligrams per liter.

**Insert E: page 13 line 20**

**[To be added]**

**Insert F page 12 line 12.**

(c) If a permittee subject to phosphorus water quality based effluent limitations has chosen an option to comply with a phosphorus water quality based effluent limitation by means other than a variance under sub (6), and in a subsequent permit chooses to utilize a variance under sub (6), then the permits under the other compliance options shall count as permits for purposes of sub (6)(a).

**Insert G page 14 line 13**

(8m) A permittee that chooses to develop an agreement under sub (6)(b) 2. or 3. that involves activities, for which the department of agriculture trade and consumer protection has promulgated performance standards and prohibitions pursuant to s. 281.16(3), shall conform to those performance standards and prohibitions and any associated technical standards. An agreement under sub (6)(b)2. or 3., shall require an annual report to the department that quantifies the associated phosphorus reductions achieved using accepted modeling technology. The department shall review the report and terminate or modify the agreement if the department determines, based upon the modeled results, that the project or plan is not effectively reducing the amount of phosphorus entering the waters of the state from nonpoint sources.



State of Wisconsin  
2013 - 2014 LEGISLATURE

*Wanted New Monday*



LRBa1686/P1

RCT/.....

*g's*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT ,**  
**TO SENATE BILL 547**

*6/11/13*

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 5, line 6: after "(1)" insert "or publicly owned treatment works".

3 **2.** Page 5, line 12: delete lines 12 to 15 and substitute:

4 "(h) "Target value" means the following:

5 1. For a point source in a watershed for which a total maximum daily load under  
6 33 USC 1313 (d) (1) (C) has been approved by the federal environmental protection  
7 agency, the number of pounds of phosphorus that would be discharged from the point  
8 source during a year if the point source complied with its effluent limitation based  
9 on the total maximum daily load.

10 2. For a point source in a watershed for which no total maximum daily load  
11 under 33 USC 1313 (d) (1) (C) has been approved by the federal environmental  
12 protection agency, the number of pounds of phosphorus that would be discharged

1 from the point source during a year if the average concentration of phosphorus in the  
2 effluent discharged by the point source during the year was 0.2 milligrams per liter.”.

Inserts  
a1644-A  
+  
a1642-A

3 **3.** Page 7, line 15: delete the material beginning with “Every” and ending with  
4 “2019”<sup>on</sup> line 16 and substitute “In 2024”.

Inserts  
a1642-B  
+

5 **4.** Page 11, line 19: delete “highest” and substitute “most stringent”.

6 **5.** Page 14, line 2: after “protection,” insert “the land and water conservation  
7 board,”.

8 **6.** Page 14, line 4: after “quantify” insert “, in pounds,”.

9 **7.** Page 14, line 13: after that line insert:

10 “(8m) PROJECTS OR PLANS. (a) A person who constructs a project or implements  
11 a plan under an agreement under sub. (6) (b) 2. or 3. that involves activities for which  
12 the department of agriculture, trade and consumer protection has prescribed  
13 conservation practices under s. 281.16 (3) (a) shall comply with those conservation  
14 practices and any associated technical standards.

13

b

15 (b) A person who constructs a project or implements a plan under an agreement  
16 under sub. (6) (b) 2. or 3. shall annually submit a report to the department that  
17 quantifies, in pounds, the phosphorus reductions achieved through the project or  
18 plan using accepted modeling technology. The department shall review reports  
19 submitted under this paragraph. If the department determines, based on the results  
20 of the modeling, that a project or plan is not effectively reducing the amount of  
21 phosphorus entering the waters of the state, the department shall terminate or  
22 modify the agreement.”.

23 (END)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT ,**  
**TO SENATE BILL 547**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 7, line 8: after that line insert:

3 “(em) If the department of administration determines under par. (a) that  
4 attaining the water quality standard for phosphorus through compliance with water  
5 quality based effluent limitations by point sources that cannot achieve compliance  
6 without major facility upgrades is not feasible, the department of natural resources  
7 shall seek approval under 40 CFR Part 131 from the federal environmental  
8 protection agency for the variance under this section.”

9 **2.** Page 7, line 14: after that line insert:

10 **“(2m) WATER QUALITY STANDARDS REVIEW.** Every 3 years as part of the review of  
11 water quality standards required by 33 USC 1313 (c) 1., if a determination under sub.  
12 (2) (a) that attaining the water quality standard for phosphorus through compliance

*Insert  
a1642-A*

*✓*



1 with water quality based effluent limitations by point sources that cannot achieve  
2 compliance without major facility upgrades is not feasible is in effect, the department  
3 shall review the basis for the determinations and calculations under sub. (2) (a) and  
4 (b) and shall decide whether formal review under sub. (3) should be undertaken.”

*end Insert a1642-A*

5 ~~3. Page 7, line 15: substitute “10” for “5”.~~

6 ~~4. Page 7, line 16: substitute “2024” for “2019”.~~

7 **5.** Page 7, line 19: after “effect,” insert “or upon a decision under sub. (2m) that  
8 review under this subsection should be undertaken.”

*Insert  
a1642-B*

9 **6.** Page 9, line 10: after that line insert:

10 “(g) If the department of administration decides under par. (c) 1. that the  
11 determination described in that subdivision remains accurate, the department of  
12 natural resources shall seek approval from the federal environmental protection  
13 agency under 40 CFR 131.21 for renewal of the variance under this section.”

14 **7.** Page 9, line 14: delete “is in” and substitute “and approval of the variance  
15 under this section by the federal environmental protection agency are in”.

16

(END)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT ,**  
**TO SENATE BILL 547**

1 At the locations indicated, amend the bill as follows:

*Insert  
a1644-A*

2 **1.** Page 6, line 2: after "basis." insert "The department of administration may  
3 make separate determinations under this paragraph for statewide categories of  
4 point sources based on differences in costs of compliance."

5 ~~**2.** Page 6, line 23: delete "60th" and substitute "210th".~~

*Insert  
a1644-B  
①*

6 **3.** Page 9, line 15: after "source" insert "in a category to which the  
7 determination <sup>*under sub.(2)(a)*</sup> applies".

8

(END)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT,**  
**TO SENATE BILL 547**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 10, line 24: delete "the following interim limits".

*Insert*  
*a1643*  
3 **2.** Page 10, line 25: after "section" insert "a requirement that the permittee  
4 optimize the performance of the point source in controlling phosphorus discharges  
5 and the following interim limits".

6 (END)

## Tradewell, Becky

---

**From:** Tradewell, Becky  
**Sent:** Saturday, February 08, 2014 3:29 PM  
**To:** 'pkent@staffordlaw.com'  
**Subject:** The amendment request

Paul,

Here are some observations and questions about the amendment to SB 547. I realize that the most efficient thing will probably for us to talk about these matters, rather than try to resolve them through email, but thought it would help to give you an idea of my concerns before we talk.

- ✓ 1. Regarding page 5, line 19: Would addition of chemical treatment require new equipment or be a new treatment process? *They don't want a change here after all.*
- ✓ 2. Should the language added on page 6, line 2 use the term "categories," which is the defined term, rather than "classifications"? *yes*
- ✓ 3. I don't understand the intent of the language added on page 6, line 4. This determination wouldn't be based on actual WQBELS determined for each point source, would it? DNR wouldn't have determined all of those yet, would it? Would this be based on estimates of the WQBELS? Is the idea that DOA should base its determination on the methodology DNR has specified in its rule for calculating WQBELS? *DOA will probably use information from sources for which DNR has already developed WQBELS.*
- ✓ 4. About the changes to sub. (3) (on page 8): I am uncertain of which responsibilities each agency is intended to have. Under the bill in sub. (3) (a), DOA prepares a report on any changes in the technology available for controlling phosphorus discharges and regarding the effluent limitations that are reasonably achievable. In that report, under par. (b), DOA is required to determine whether better technology is reasonably available for all or any category of point sources to comply with more stringent effluent limitations and, if so, whether that technology is cost effective. Then par. (c) requires DOA, based on its report, to: 1. Decide whether the infeasibility determination is still accurate and 2. If so, decide whether to apply more stringent effluent limitations and what those should be. *See his changes - dated 2/10.*

The instructions indicate that DNR should make a report to DOA on the matters in par. (b). The instructions also change sub. (3) (c) 2. so that DOA decides whether it is appropriate to apply more stringent interim effluent limitations and then, if so, DNR specifies them based on DOA's report under par. (a). It seems to me that it would be consistent with these changes to also change par. (a) so that DNR makes the whole report on technology, while DOA makes the determination about continued infeasibility. If not, then some other changes seem to be needed. If I am incorrect, I need help in understanding this.

- ✓ 5. The instructions also change "DOA" to "DNR" on page 12, line 13. But, as page 8 is marked up, DOA still makes the determination of whether it is appropriate to apply more stringent effluent limitations. These provisions would not be consistent. How should the inconsistency be resolved? *see his changes*
- ✓ 6. Regarding insert G: Sub. (6) (b) 2. and 3. are not limited to agricultural sources (or to nonpoint sources, for that matter). So, perhaps this should not be limited to the standards for agricultural sources. Note that DNR prescribes the performance standards and prohibitions under s. 281.16 (3) (a) and DATCP prescribes the conservation practices. *see his changes*

Becky  
266-7290



State of Wisconsin  
2013 - 2014 LEGISLATURE

Rec'd from  
Paul Kent  
at 1 p.m.  
on 2/10.



LRB-3079/1  
RCT:cjs:rs

**2013 SENATE BILL 547**

2/7 Markys

2/10 Revisions

February 3, 2014 - Introduced by Senators COWLES, FARROW, PETROWSKI, GROTHMAN and DARLING, cosponsored by Representatives LOUDENBECK, KRUG, STEINEKE, SPIROS, BIES, MARKLEIN, CZAJA, BALLWEG, TAUCHEN, THIESFELDT, LEMAHIEU, WEININGER, KAUFERT and KLENKE. Referred to Committee on Government, Operations, Public Works, and Telecommunications.

1 **AN ACT to amend** 283.63 (1) (am) and 283.63 (4); and **to create** 283.13 (7) and  
2 283.16 of the statutes; **relating to:** adaptive management plans for reducing  
3 discharges of phosphorus and total suspended solids to the waters of the state  
4 and a statewide variance to the water quality standard for phosphorus for  
5 certain dischargers.

---

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

This bill provides for a variance to limits on the amount of phosphorus allowed in discharges to water bodies that contain excessive amounts of phosphorus, if conditions specified in the bill are met. The bill also authorizes the use of adaptive management, explained below, to comply with water quality standards for phosphorus and total suspended solids.

***Water quality standards and effluent limitations***

The federal Clean Water Act allows the federal Environmental Protection Agency (EPA) to delegate responsibilities under the act, including issuing wastewater discharge permits for point sources (factories and sewage treatment plants, for example), to a state if the state's laws comply with requirements in the act. EPA has delegated these responsibilities to this state.

Consistent with the Clean Water Act, current state law requires the Department of Natural Resources (DNR) to promulgate rules setting water quality standards for the waters of the state. The standards include criteria for specific

**SENATE BILL 547**

pollutants. A criterion may be narrative (describing the characteristics that the water should have) or numeric (specifying the maximum concentration of a pollutant).

Under current federal and state law, wastewater discharge permits include restrictions, called effluent limitations, on the amount of various pollutants that may be discharged. One type of effluent limitation is applicable without regard to the quality of the receiving water body and is based on the level of control achieved using treatment technology that is reasonably available (considering cost, among other things) for limiting the discharge of a pollutant. If this kind of limitation (called a technology based effluent limitation) is not sufficient to ensure that a water quality standard for a pollutant will be met in a particular water body, permits for sources that discharge into the water body must generally contain effluent limitations for the pollutant that are more stringent than the technology based effluent limitation and that are designed to ensure that the water quality standard will be met. This kind of limitation is called a water quality based effluent limitation.

Current law allows DNR to grant a permittee a variance to a water quality based effluent limitation if the permittee demonstrates that complying with the effluent limitation is not feasible for one of several reasons, including that applying the effluent limitation to the source would cause substantial and widespread adverse social and economic impacts in the area where the source is located. The term of a variance may not exceed five years. A variance may be renewed, but only for as long as it remains infeasible for the source to comply with the water quality based effluent limitation. Variances are subject to review and approval by EPA.

***Phosphorus water quality rules***

In 2010, DNR promulgated rules adding a numerical water quality criterion to the water quality standard for phosphorus. Some water bodies in Wisconsin do not comply with the water quality standard for phosphorus. DNR's rules include some options for sources that might have difficulty complying with a water quality based effluent limitation for phosphorus, including extended schedules for achieving compliance.

The options in the phosphorus rule also include a variance to water quality based effluent limitations for stabilization pond and lagoon wastewater treatment systems, which DNR indicates primarily serve small communities and small industries. A permittee with one of these systems must provide information showing that compliance would cause substantial and widespread adverse social and economic impacts in the area where the system is located. If the variance is granted, the permit must include an effluent limitation based on the best past performance of the source with regard to phosphorus discharges and a requirement that the permittee investigate techniques that would enable compliance with a water quality based effluent limitation.

***Statewide variance for phosphorus discharges***

This bill requires the Department of Administration (DOA), in consultation with DNR, to consider the costs of compliance with water quality based effluent limitations for phosphorus by sources that cannot achieve compliance without making major facility upgrades. A major facility upgrade is the addition of new

**SENATE BILL 547**

treatment equipment and a new treatment process. If DOA determines, after public notice and consideration of public comments, that compliance by these sources is not feasible because it would cause substantial and widespread adverse social and economic impacts on a statewide basis, the bill provides for a variance to a water quality based effluent limitation for phosphorus for a source that was covered by a permit before the phosphorus water quality standard took effect if the permittee certifies that the source cannot comply with the effluent limitation without a major facility upgrade.

Under the bill, if a permittee receives the variance, DNR must include in the the permit interim effluent limitations for phosphorus that are generally lower in each successive permit term and must require the source to achieve compliance with the water quality based effluent limitation by the end of the fourth permit term for which DNR approves the variance (generally within 20 years). DNR must also require the implementation of the permittee's choice of three kinds of measures to reduce the amount of phosphorus entering the waters of the state.

The measures from which a permittee that receives the variance may choose are constructing a project or implementing a plan, approved by DNR, to reduce phosphorus pollution from other sources in the basin in which the source is located in an amount equal to the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill; having another person construct such a project or implement such a plan, also approved by DNR; or making payments to counties in the basin to provide cost sharing for projects that enable agricultural sources of nonpoint phosphorus pollution (runoff) to comply with state standards for reducing runoff or for staff to implement projects that reduce runoff. The payments are initially \$50 times the number of pounds by which the amount of phosphorus discharged by the point source exceeds a target amount specified in the bill. DNR adjusts the amount per pound based on increases in the consumer price index. A county is not required to accept these payments.

If DOA initially determines that compliance with water quality based effluent limitations for phosphorus by sources that cannot achieve compliance without making major facility upgrades is infeasible, the bill requires DOA, in consultation with DNR, to review the determination every five years. If DOA finds that the determination is no longer accurate, the variance terminates. As part of this review, the bill also requires DOA to determine whether cost-effective technology is available that would allow sources to comply with more stringent interim limitations than those specified in the bill. If so, DNR must include those more stringent interim limitations in permits when they are renewed.

***Adaptive management***

Adaptive management is a method for achieving compliance with a water quality standard in a water body that contains excessive amounts of a pollutant. Under adaptive management, a permittee who is subject to a water quality based effluent limitation implements a plan under which the permittee works with others to reduce the amount of pollution from various point sources and nonpoint sources and uses information from monitoring, modeling, and other sources to adjust the plan as needed. The permittee is subject to less restrictive effluent limitations while

**SENATE BILL 547**

the adaptive management plan is being implemented and less restrictive pollutant limits may continue to apply if the water quality standard is achieved.

The bill authorizes DNR to allow a permittee to use adaptive management to achieve compliance with the water quality standard for phosphorus or total suspended solids (particles in the water) and, if it does so, to allow the permittee four permit terms to achieve compliance.

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

---

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

1           **SECTION 1.** 283.13 (7) of the statutes is created to read:

2           283.13 (7) ADAPTIVE MANAGEMENT. (a) In this subsection, “adaptive  
3 management option” means an approach to achieving compliance with a water  
4 quality standard adopted under s. 281.15 or a total maximum daily load under 33  
5 USC 1313 (d) (1) (C) approved by the federal environmental protection agency under  
6 which a permittee implements a plan to achieve the water quality standard or total  
7 maximum daily load through verifiable reductions in the amount of water pollution  
8 from point sources and nonpoint sources, as defined in s. 281.16 (1) (e), in a basin or  
9 other area specified by the department and uses monitoring data, modeling, and  
10 other appropriate information to adjust the plan if needed to achieve compliance.

11           (b) The department may authorize a permittee to use an adaptive management  
12 option to achieve compliance with the water quality standard for phosphorus or an  
13 approved total maximum daily load for total suspended solids, and if it does so, the  
14 department may specify a date under sub. (5) that provides 4 permit terms for the  
15 permittee to comply with its water quality based effluent limitation for phosphorus  
16 or total suspended solids.

17           **SECTION 2.** 283.16 of the statutes is created to read:

## SENATE BILL 547

1           **283.16 Statewide variance for phosphorus. (1) DEFINITIONS.** In this  
2 section:

3           (a) "Basin" means the drainage area identified by an 8-digit hydrologic unit  
4 code, as determined by the U.S. Geological Survey.

5           (b) "Category" means a <sup>publicly owned treatment works or</sup> class or category of point sources specified by the  
6 department under s. 283.13 (1).

7           (d) "Existing source" means a point source that was covered by a permit on  
8 December 1, 2010.

9           (e) "Major facility upgrade" means the addition of new treatment equipment  
10 and a new treatment process, ~~but does not include the addition of chemical treatment~~  
~~that optimizes the existing treatment process.~~

11           (g) "Nonpoint source" has the meaning given in s. 281.16 (1) (e).

12           (h) "Target value" means ~~the number of pounds of phosphorus that would be~~  
13 ~~discharged from a point source during a year if the average concentration of~~  
14 ~~phosphorus in the effluent discharged by the point source during the year was 0.2~~  
15 ~~milligrams per liter.~~ *Replace with INSET D*

16           (i) "Water quality based effluent limitation" means an effluent limitation under  
17 s. 283.13 (5), including an effluent limitation based on a total maximum daily load  
18 under 33 USC 1313 (d) (1) (C) approved by the federal environmental protection  
19 agency.

20           **(2) INITIAL DETERMINATION CONCERNING THE WATER QUALITY STANDARD FOR**  
21 **PHOSPHORUS.** (a) The department of administration, in consultation with the  
22 department of natural resources, shall determine whether attaining the water  
23 quality standard for phosphorus, adopted under s. 281.15, through compliance with  
24 water quality based effluent limitations by point sources that cannot achieve  
25 compliance without major facility upgrades is not feasible because it would cause

## SENATE BILL 547

1 substantial and widespread adverse social and economic impacts on a statewide  
2 basis. *In making this determination, the department of administration may consider category  
~~statewide classification of point sources~~ on a statewide basis.*

3 (b) The department of administration shall include all of the following in its  
4 determination under par. (a) *based on <sup>the</sup> water quality based effluent limitations for phosphorus  
that have been ~~so~~ determined by the department of natural resources.*

5 1. A calculation of the statewide cost of compliance with water quality based  
6 effluent limitations for phosphorus by point sources that cannot achieve compliance  
7 without major facility upgrades.

8 2. A calculation of the statewide per household cost for water pollution control  
9 by publicly owned treatment works that cannot achieve compliance with water  
10 quality based effluent limitations for phosphorus without major facility upgrades,  
11 including the projected costs of compliance with those water quality based effluent  
12 limitations, and a calculation of the percentage of median household income the per  
13 household cost represents.

14 4. A determination of whether the cost of compliance with water quality based  
15 effluent limitations for phosphorus by point sources that cannot achieve compliance  
16 without major facility upgrades would cause substantial adverse social and economic  
17 impacts on a statewide basis.

18 5. A determination of whether the cost of compliance with water quality based  
19 effluent limitations for phosphorus by point sources that cannot achieve compliance  
20 without major facility upgrades would cause widespread adverse social and  
21 economic impacts on a statewide basis.

22 (c) The department of administration shall make a preliminary determination  
23 under par. (a) no later than the 60th day after the effective date of this paragraph ....  
24 [LRB inserts date]. The department of administration shall provide public notice,  
25 through an electronic notification system that it establishes or selects, of its

## SENATE BILL 547

1 preliminary determination and shall provide the opportunity for public comment on  
2 the preliminary determination for at least 30 days following the public notice.

3 (d) The department of administration shall consider any public comments in  
4 making its final determination under par. (a) and shall make the final determination  
5 no later than the 30th day after the end of the public comment period.

6 (e) The department of administration shall send a notice that describes its final  
7 determination under par. (a) to the legislative reference bureau for publication in the  
8 administrative register.

(cm) INSERT A

9 (f) If the department of administration determines under par. (a) that attaining  
10 the water quality standard for phosphorus through compliance with water quality  
11 based effluent limitations by point sources that cannot achieve compliance without  
12 major facility upgrades is not feasible, the determination remains in effect until the  
13 department of administration finds under sub. (3) (c) 1. that the determination is no  
14 longer accurate.

(2m) INSERT B

15 (3) REVIEW OF FINDINGS AND REQUIREMENTS OF VARIANCE. (a) ~~Every 5 years,~~  
16 ~~beginning in 2019,~~ *In 2024, or upon a recommendation of the department under sub (2m),* if a determination under sub. (2) (a) that attaining the water  
17 quality standard for phosphorus through compliance with water quality based  
18 effluent limitations by point sources that cannot achieve compliance without major  
19 facility upgrades is not feasible is in effect, the department of administration, in  
20 consultation with the department of natural resources, shall prepare a report, no  
21 later than September 1, ~~regarding any changes in the technology available for~~  
*to evaluate whether the determination under*  
~~controlling phosphorus discharges from point sources and regarding the effluent~~  
*sub (2)(a) remains accurate*  
22 ~~limitations for phosphorus that are reasonably achievable.~~ The department of  
23 administration shall consult with permittees that would be subject to water quality  
24

SENATE BILL 547

1 based effluent limitations for phosphorus and other interested parties in preparing  
2 the report.

3 (b) The department of <sup>natural resources</sup> ~~administration~~ shall <sup>provide</sup> ~~include~~ all of the following ~~in a~~  
4 ~~report under par. (a)~~ <sup>to the department of administration for its report under par. (a).</sup>

5 1. A determination of whether technology is reasonably available for point  
6 sources to comply with effluent limitations for phosphorus that are more stringent  
7 than those in sub. (6) (a).

8 2. A determination of whether technology is reasonably available for any  
9 category of point sources to comply with effluent limitations for phosphorus that are  
10 more stringent than those in sub. (6) (a).

11 3. A determination of whether any technology that is reasonably available for  
12 compliance with effluent limitations for phosphorus that are more stringent than  
13 those in sub. (6) (a) is cost effective.

14 (c) Based on its report under par. (a) <sup>and (b),</sup> the department of administration, in  
15 consultation with the department of natural resources, shall ~~do all of the following:~~

16 ~~+~~ Decide whether the determination that attaining the water quality standard  
17 for phosphorus through compliance with water quality based effluent limitations by  
18 point sources that cannot achieve compliance without major facility upgrades is not  
19 feasible remains accurate.

20 (cm) ~~2.~~ If the department of administration decides under subd. 1. that the  
21 determination remains accurate, <sup>the department of natural resources shall</sup> ~~decide~~ whether it is appropriate to apply more  
22 stringent effluent limitations than those in sub. (6) (a) to all point sources or to any  
23 category of point sources, based on the availability and cost effectiveness of  
24 ~~the department of natural resources shall~~ technology for compliance and, if so, <sup>specify</sup> those more stringent effluent limitations  
25 based on the report under par. (a).

**SENATE BILL 547**

1 (d) The department of administration shall provide public notice of its  
2 preliminary decisions under par. (c) no later than the 60th day after preparing the  
3 report under par. (a) and shall provide the opportunity for public comment on the  
4 decisions for at least 30 days following the public notice.

5 (e) The department of administration shall consider any public comments in  
6 making its final decisions under par. (c) and shall make the final decisions no later  
7 than the 30th day after the end of the public comment period.

8 (f) The department of administration shall send a notice that describes its final  
9 decisions under par. (c) to the legislative reference bureau for publication in the  
10 administrative register.

(g) *INSERT C*

11 (4) AVAILABILITY OF VARIANCE. (a) When a determination under sub. (2) (a) that  
12 attaining the water quality standard for phosphorus through compliance with water  
13 quality based effluent limitations by point sources that cannot achieve compliance  
14 without major facility upgrades is not feasible is in effect, a permittee is eligible for  
15 a variance to the water quality standard for phosphorus for an existing source if the  
16 permittee certifies that the existing source cannot achieve compliance with the water  
17 quality based effluent limitation for phosphorus without a major facility upgrade  
18 and agrees to comply with the requirements under sub. (6).

19 (b) A permittee may apply for the variance under this section in any of the  
20 following ways:

- 21 1. By requesting the variance in the application for reissuance of the permit.
- 22 2. By requesting the variance within 60 days after the department reissues or  
23 modifies the permit to include a water quality based effluent limitation for  
24 phosphorus.

SENATE BILL 547

1 3. If the department issued a permit to the permittee before the effective date  
2 of this subdivision .... [LRB inserts date], that includes a water quality based effluent  
3 limitation for phosphorus, by requesting a modification of the permit.

4 4. If the department issued a permit to the permittee before the effective date  
5 of this subdivision .... [LRB inserts date], that includes a water quality based effluent  
6 limitation for phosphorus and that requires the permittee to submit to the  
7 department options for complying with the water quality based effluent limitation,  
8 by submitting a request for the variance as a compliance option. I (bn)

9 (c) After an application for a variance is submitted to the department under par.  
10 (b) 2., 3., or 4., and until the last day for seeking review of the department's final  
11 decision on the application or a later date fixed by order of the reviewing court, the  
12 water quality based effluent limitation for phosphorus and any corresponding  
13 compliance schedule are not effective. All other provisions of the permit continue in  
14 effect except those for which a petition for review has been submitted under s. 283.63.

15 (d) The variance under this section remains in effect for a point source until the  
16 permit is reissued, modified, or revoked and reissued.

17 (e) Notwithstanding s. 227.42, there is no right to a hearing under this  
18 subsection.

19 (f) If the department approves a variance under this section and the  
20 department issues a modified water quality based effluent limitation under s. 283.63  
21 for phosphorus, the permittee shall comply with the least stringent of the 2 effluent  
22 limitations.

23 (6) 

23 (6) VARIANCE PROVISIONS. (a) Except as provided in par. (am) or sub. (7), the  
24 department ~~shall~~ *may require the permittee to upgrade its existing facility and process, and shall* include the following interim limits in the permit for a point source  
25 for which the department approves the variance under this section:

**SENATE BILL 547**

1           1. In the first permit for which the department approves the variance, a  
2 requirement to achieve, by the end of the term of that permit, compliance with an  
3 effluent limitation for phosphorus equal to 0.8 milligrams per liter as a monthly  
4 average.

5           2. In the 2nd permit for which the department approves the variance, a  
6 requirement to achieve, by the end of the term of that permit, compliance with an  
7 effluent limitation for phosphorus equal to 0.6 milligrams per liter as a monthly  
8 average.

9           3. In the 3rd permit for which the department includes the variance, a  
10 requirement to achieve, by the end of the term of that permit, compliance with an  
11 effluent limitation for phosphorus equal to 0.5 milligrams per liter as a monthly  
12 average.

13           4. In the 4th permit for which the department includes the variance, a  
14 requirement to achieve, by the end of the term of that permit, compliance with the  
15 water quality based effluent limitation for phosphorus.

16           (am) If a permittee certifies that the point source cannot achieve compliance  
17 with an interim limit in par. (a) 1., 2., or 3. without a major facility upgrade, the  
18 department shall include in the permit a requirement to achieve compliance with the  
19 ~~highest~~ <sup>most stringent</sup> achievable interim limit, except that the department may not include an  
20 interim limit that is higher than the limit established under s. 283.11 (3) (am).

21           (b) In the permit for a point source for which the department approves the  
22 variance under this section, in addition to the requirements under par. (a) or (am)  
23 or sub. (7), the department shall require the permittee to implement the permittee's  
24 choice of the following measures to reduce the amount of phosphorus entering the  
25 waters of the state:

**SENATE BILL 547**

1           1. Making payments to counties as provided in sub. (8).

2           2. Entering into a binding, written agreement with the department under  
3 which the permittee constructs a project or implements a plan that is designed to  
4 result in an annual reduction of phosphorus pollution from other sources in the basin  
5 in which the point source is located, in an amount equal to the difference between the  
6 annual amount of phosphorus discharged by the point source and the target value.

7           3. Entering into a binding written agreement, that is approved by the  
8 department, with another person under which the person constructs a project or  
9 implements a plan that is designed to result in an annual reduction of phosphorus  
10 pollution from other sources in the basin in which the point source is located, in an  
11 amount equal to the difference between the annual amount of phosphorus  
12 discharged by the point source and the target value.

13           (c) *INSERT F*  
14           (7) MORE STRINGENT EFFLUENT LIMITATIONS. If the department of *natural resources*  
15 *(CM)* ~~administration~~  
16 determines under sub. (3) ~~(c) 2.~~ that it is appropriate to apply more stringent effluent  
17 limitations than those in sub. (6) (a) to all point sources or to a category of point  
18 sources, the department of natural resources shall include the more stringent  
19 effluent limitations specified under sub. (3) (c) 2. in permits reissued, modified, or  
20 revoked and reissued after that determination for all point sources or for the category  
21 of point sources to which the more stringent effluent limitations apply.

22           (8) PAYMENTS TO COUNTIES. (a) 1. A permittee that chooses to make payments  
23 for phosphorus reduction under sub. (6) (b) 1. shall make the payments to each  
24 county that is participating in the program under this subsection and that has  
25 territory within the basin in which the point source is located in proportion to the  
amount of territory each county has within the basin. The permittee shall make a  
total payment by March 1 of each calendar year in the amount equal to the per pound

## SENATE BILL 547

1 amount under subd. 2. times the number of pounds by which the amount of  
2 phosphorus discharged by the point source during the previous year exceeded the  
3 point source's target value. If no county that has territory within the basin is  
4 participating in the program under this subsection, the department shall direct the  
5 permittee to make payments to participating counties selected by the department.

6 2. The per pound payment for this subsection is \$50 beginning on the effective  
7 date of this subdivision .... [LRB inserts date]. Beginning in 2015, the department  
8 shall adjust the per pound payment each year by a percentage equal to the average  
9 annual percentage change in the U.S. consumer price index for all urban consumers,  
10 U.S. city average, as determined by the federal department of labor, for the 12  
11 months ending on the preceding December 31. The adjusted amount takes effect for  
12 permits reissued on April 1. The per pound payment in effect when a permit is  
13 reissued applies for the term of the permit.

14 (b) 1. A county shall use payments received under this subsection to provide  
15 cost sharing under s. 281.16 (3) (e) or (4) for projects to reduce the amount of  
16 phosphorus entering the waters of the state or for staff to implement projects to  
17 reduce the amount of phosphorus entering the waters of the state from nonpoint  
18 sources, *or for modeling or monitoring to evaluate the amount of phosphorus in*  
*the waters of the state for planning purposes.*

19 2. A county shall use at least 65 percent of the amounts received under this  
20 subsection to provide cost sharing under s. 281.16 (3) (e) or (4). IN SECT 2  
21 ~~practicable, a county shall provide cost sharing for projects in the county that the~~  
22 ~~county has identified as being the highest priority or as having the greatest potential,~~  
23 ~~to reduce the amount of phosphorus per acre entering the waters of the state.~~

24 3. No later than May 1 of the year following a year in which a county receives  
25 payments under this subsection, the county shall submit an annual report to the

## SENATE BILL 547

## SECTION 2

1 department of natural resources, the department of administration, the department  
2 of agriculture, trade and consumer protection, ~~the wetland and water conservation board~~  
3 and each permittee from which it received payments during the previous year. In the annual report, the county shall  
4 describe the projects for which it provided cost sharing, quantify the associated  
5 phosphorus reductions <sup>in pounds</sup> achieved using accepted modeling technology, and identify  
6 any staff funded with the payments.

7 4. The department shall evaluate reports submitted under subd. 3. If the  
8 department determines that a county is not using the payments to effectively reduce  
9 the amount of phosphorus entering the waters of the state from nonpoint sources, the  
10 department may require permittees who made the payments to eliminate or reduce  
11 future payments to the county.

12 5. A county shall notify the department by January 1 of each year if it chooses  
13 not to participate in the program under this subsection.

(8m) INVERT 9

14 SECTION 3. 283.63 (1) (am) of the statutes is amended to read:

15 283.63 (1) (am) After a verified petition for review is filed and until the last day  
16 for seeking review of the department's decision or a later date fixed by order of the  
17 reviewing court, any term or condition, thermal effluent limitation or water quality  
18 based effluent limitation which is the subject of the petition is not effective. All other  
19 provisions of the permit continue in effect except those for which an application for  
20 a variance has been submitted under s. 283.15 or 283.16. For those provisions for  
21 which a petition for review has been submitted under this section, the corresponding  
22 or similar provisions of the prior permit continue in effect until the last day for  
23 seeking review of the department's final decision or a later date fixed by order of the  
24 reviewing court.

25 SECTION 4. 283.63 (4) of the statutes is amended to read:



2m. No later than March 1 of each year in which a county receives payments under this subsection, a county shall develop a plan for targeting the payments that have been received by March 1 of that year. The plan shall identify specific projects or watersheds within the county that the county has identified as having the greatest potential to reduce the amount of phosphorus per acre entering the waters of the state based on an assessment of the land and practices within the county. As part of that plan the county shall outline the steps it will take to ensure that each funded practice is completed.

2n. Upon completion of the plan under this paragraph, the county shall send the plan to the Wisconsin Land and Water Conservation Board for review and approval. The board shall have 30 days to review and make recommendations.

**Insert F page 12 line 12**

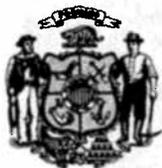
(c) If a permittee subject to phosphorus water quality based effluent limitations has chosen an option to comply with a phosphorus water quality based effluent limitation by means other than a variance under sub (6), and in a subsequent permit chooses to utilize a variance under sub (6), then the permits under the other compliance options shall count as permits for purposes of sub (6)(a).

 **Insert G page 14 line 13**

(8m) A permittee that chooses to develop an agreement under sub (6)(b) 2. or 3. that involves activities, for which *have been established* ~~the department of agriculture trade and consumer protection has promulgated~~ performance standards and prohibitions pursuant to s. 281.16(3), shall conform to those performance standards and prohibitions and any associated technical standards. An agreement under sub (6)(b)2. or 3., shall require an annual report to the department that quantifies the associated phosphorus reductions achieved using accepted modeling technology. The department shall review the report and terminate or modify the agreement if the department determines, based upon the modeled results, that the project or plan is not effectively reducing the amount of phosphorus entering the waters of the state from nonpoint sources.

**Insert H.**

Create Wis. Stat. s. 15.135(4)(b)4.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBa1642/P1  
RCT:kjf:jm

*recd from  
Paul Kent  
1 p.m. on 2/10*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT ,**  
**TO SENATE BILL 547**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 7, line 8: after that line insert:

3 “(em) If the department of administration determines under par. (a) that  
4 attaining the water quality standard for phosphorus through compliance with water  
5 quality based effluent limitations by point sources that cannot achieve compliance  
6 without major facility upgrades is not feasible, the department of natural resources  
7 shall seek approval under 40 CFR Part 131 from the federal environmental  
8 protection agency for the variance under this section.”

9 **2.** Page 7, line 14: after that line insert:

10 “(2m) WATER QUALITY STANDARDS REVIEW. Every 3 years as part of the review of  
11 water quality standards required by 33 USC 1313 (c) 1., if a ~~determination~~ *variance under this section is*  
12 ~~(2) (a) that attaining the water quality standard for phosphorus through compliance~~ *in effect,*

1 ~~with water quality based effluent limitations by point sources that cannot achieve~~  
2 ~~compliance without major facility upgrades is not feasible is in effect, the department~~  
3 ~~shall review the basis for the determinations and calculations under sub. (2) (a) and~~  
4 ~~(b) and shall decide whether formal review under sub. (3) should be undertaken.”.~~  
*may take comments on the variance may and may require shall determine whether*

5 **3.** Page 7, line 15: substitute “10” for “5”.

6 **4.** Page 7, line 16: substitute “2024” for “2019”.

7 **5.** Page 7, line 19: after “effect,” insert “or upon a decision under sub. (2m) that  
8 review under this subsection should be undertaken,”.

9 **6.** Page 9, line 10: after that line insert:

10 “(g) If the department of administration decides under par. (c) 1. that the  
11 determination described in that subdivision remains accurate, the department of  
12 natural resources shall seek approval from the federal environmental protection  
13 agency under 40 CFR 131.21 for renewal of the variance under this section.”.

14 **7.** Page 9, line 14: delete “is in” and substitute “and approval of the variance  
15 under this section by the federal environmental protection agency are in”.

16 (END)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBa1644/P1  
RCT:eev:jm

*recd. from  
Paul Kent  
1 p.m. 2/10*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
SENATE AMENDMENT ,  
TO SENATE BILL 547**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 6, line 2: after "basis." insert "The department of administration may  
3 make separate determinations under this paragraph for statewide categories of  
4 point sources ~~based on differences in costs of compliance.~~"

5 **2.** Page 6, line 23: delete "60th" and substitute "210th".

6 **3.** Page 9, line 15: after "source" insert "~~in a category~~ to which the  
7 determination applies".

8 (END)

## Tradewell, Becky

---

**From:** Paul Kent <pkent@staffordlaw.com>  
**Sent:** Monday, February 10, 2014 1:50 PM  
**To:** Tradewell, Becky  
**Subject:** RE: The amendment request  
**Attachments:** 3370149-Inserts 021014.docx

STAFFORD ROSENBAUM LLP	Paul G. Kent <a href="mailto:pkent@staffordlaw.com">pkent@staffordlaw.com</a>   608.259.2665   Fax. 608.259.2600     608.259.2637 Marjorie Irving – Legal Assistant   222 West Washington Avenue, Suite 900 P.O. Box 1784   Madison, Wisconsin 53701-1784 <a href="http://www.staffordlaw.com">www.staffordlaw.com</a>   <a href="#">profile</a>   <a href="#">vCard</a>
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Insert E to page 13 lines 20 to 23 after "...(3) (e) or (4)"

2m. No later than March 1 of each year a county shall develop a plan for targeting any payments that have been received under this section in the prior calendar year. The plan shall identify specific projects or watersheds within the county identified as having the greatest potential to reduce the amount of phosphorus per acre entering the waters of the state based on an assessment of the land and practices within the county. As part of that plan the county shall outline the steps it will take to ensure that each funded practice is completed and evaluated. The plan shall be consistent with the land and water conservation plans prepared under s. 92.10.

Insert H at page 10 line 8

(bn) The department has 30 days to review a variance request and certification under this subsection. The department must approve the variance and certification if it substantially complies with the statewide variance criteria and requirements under this subsection. If the department fails to act within 30 days the variance is deemed approved.

## Tradewell, Becky

---

**From:** Paul Kent <pkent@staffordlaw.com>  
**Sent:** Monday, February 10, 2014 4:00 PM  
**To:** Tradewell, Becky  
**Subject:** RE: The amendment request

Becky,

Thanks for your comments.

- ✓ On the first issue, I was not specifically thinking of that, but basically the item on which you want review is the variance determination and that is the one by DOA. That is what needs approval by EPA. If DNR decides more stringent interim limits are needed, that is really a separate determination for which judicial review should be adequate. So I think having the hearing reference to (c) should be fine.
- ✓ As for the material on insert G, really these alternatives could cover a range of items. It could for example involve a practice like removing a dam and the impounded sediment – things that are not traditional agricultural practices. I think the concern is that where there is a project that does fall within the performance standards (ag or non-ag) that the performances standards are applied for the sake of consistency. So I think the more general reference is ok.

Paul

STAFFORD ROSENBAUM LLP	Paul G. Kent pkent@staffordlaw.com   608.259.2665   Fax. 608.259.2600     608.259.2637 Marjorie Irving – Legal Assistant   222 West Washington Avenue, Suite 900 P.O. Box 1784   Madison, Wisconsin 53701-1784 <a href="http://www.staffordlaw.com">www.staffordlaw.com</a>   <a href="#">profile</a>   <a href="#">vCard</a>
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---

**From:** Tradewell, Becky [<mailto:Becky.Tradewell@legis.wisconsin.gov>]  
**Sent:** Monday, February 10, 2014 3:48 PM  
**To:** Paul Kent  
**Subject:** RE: The amendment request

Paul,

Putting the material on page 8, lines 20 to 25, into a new paragraph means that there won't be any public review and notice provisions (like those on page 9, lines 1 to 10) that apply to any more stringent limitations that DNR specifies. It seems to me that there should at least be a requirement for formal public notice of any new interim effluent limitations (like page 9, lines 8 to 9). What do you think?

I am unsure about whether the provisions in Insert G should cover point sources that are not agricultural as well as those that are agricultural.

Thanks,  
Becky

## Tradewell, Becky

---

**Subject:** FW: The amendment request

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**From:** Paul Kent [<mailto:pkent@staffordlaw.com>]

**Sent:** Monday, February 10, 2014 5:13 PM

**To:** Tradewell, Becky

**Subject:** Re: The amendment request

Yes

Sent from mobile device

Paul G. Kent  
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On Feb 10, 2014, at 4:46 PM, "Tradewell, Becky" <[Becky.Tradewell@legis.wisconsin.gov](mailto:Becky.Tradewell@legis.wisconsin.gov)> wrote:

Paul,

Thank you for your response.

You gave me a marked up copy of LRBA1644/P1, which I believe that you were given by Sen. Cowles' office. The instructions that you gave me on Friday did not include the second item in that draft, which extended the deadline for DOA to make its preliminary determination from 60 to 210 days. Should the amendment that I am working on now make that change?

Becky