

**2019 DRAFTING REQUEST****Bill**

For: **Todd Novak (608) 266-7502** Drafter: **mpfotenh**  
 By: **Jake** Secondary Drafters:  
 Date: **11/22/2019** May Contact:  
 Same as LRB: **-5282**

Submit via email: **YES**  
 Requester's email: **Rep.Novak@legis.wisconsin.gov**  
 Carbon copy (CC) to: **mary.pfotenhauer@legis.wisconsin.gov**  
**zachary.wyatt@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

DNR rules on municipal flood grants

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 11/25/2019	kfollett 11/27/2019			
/P1	mpfotenh 12/2/2019	kfollett 12/2/2019	mbarman 11/27/2019		State S&L
/P2	mpfotenh 12/6/2019	kfollett 12/6/2019	dwalker 12/2/2019		State S&L
/P3		kfollett 12/9/2019	dwalker 12/6/2019		State S&L
/P4	mpfotenh	kfollett	mbarman		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	12/9/2019	12/9/2019	12/9/2019		S&L
/P5			mbarman 12/9/2019		State S&L
/1			mbarman 1/7/2020	mbarman 1/8/2020	State S&L

FE Sent For: *At Intro*

<END>

## Pfotenhauer, Mary

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**From:** Wolf, Jake  
**Sent:** Friday, November 22, 2019 2:45 PM  
**To:** Pfotenhauer, Mary  
**Subject:** Water Quality Draft Requests 11/22

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Mary,

Below is some detail on the items we just discussed:

1. Under ATCP 50.30 (3). Currently, there are multiple lines that allow the county to take into account previous performance in executing their plans. We would like DATCP to take into account externalities that may have affected a county's ability to complete all the projects applied for under their resource management plan such as weather.
2. Allow for Producer Led Groups to operate in more than one watershed as long as they are adjacent to each other. I believe ATCP 93.59 requires membership to be limited to one watershed.
3. Under NR 199.01, the Municipal Flood Control Grant has the main goal of minimizing flooding and flood-related damages through activities including property acquisitions, floodproofing of structures and other activities. Currently, any activities other than property acquisitions are low-priority, meaning that very few funds get allocated beyond land acquisition and structure removal. We would like a that all types of flood control activities to be funded. See possible language below:
  4. **NR 199.05 Eligible and ineligible project activities.**
  5. **(1) ELIGIBLE ACTIVITIES.** The following activities, ~~in priority~~  
6. ~~order,~~ are eligible for funding under this section:
    7. (a) Acquisition and removal of structures which, due to zoning
    8. restrictions, cannot be rebuilt or repaired.
    9. (b) Acquisition and removal of structures in the 100-year
    10. floodplain.
    11. (c) Acquisition and removal of repetitive loss or substantially
    12. damaged structures.
    13. (d) Acquisition and removal of other flood damaged structures.
    14. (e) Floodproofing and elevation of structures.
    15. (f) Riparian restoration projects, including removal of dams
    16. and other artificial obstructions, restoration of fish and native
    17. plant habitat, erosion control and streambank restoration projects.
    18. (g) Acquisition of vacant land, or perpetual conservation or
    19. flowage easements to provide additional flood storage or to facilitate
    20. natural or more efficient flood flows.
    21. (h) Construction of structures for the collection, detention,
    22. retention, storage and transmission of stormwater and groundwater
    23. for flood control and riparian restoration projects.
    24. (i) Preparation of flood insurance studies and other flood mapping
    25. projects.
  26. **(2) INELIGIBLE ACTIVITIES.** The following activities are not eligible
  27. for funding under this chapter:
    28. (a) Dam repair and operation.
    29. (b) Design, installation, operation or maintenance of sanitary
    30. sewers, treatment plants or onsite sewerage systems.
    31. (c) Projects which would adversely affect a watercourse by
    32. causing increases in flood heights, velocities, sedimentation or
    33. erosion, reducing the amount or complexity of fish and wildlife
    34. habitat, reducing natural shore cover, or restricting navigation, or
    35. any other negative impact, except temporary impacts caused by
    36. dam removal or other approved restoration activities.

37. (d) Projects which would dredge or channelize a stream or line
38. a natural streambed with impervious materials.
39. (e) Projects which conflict with land use, watershed or other
40. resource management plans.
41. (f) Projects or applicants which are not compliant with minimum
42. state floodplain management requirements, as enumerated
43. in ch. NR 116, or with minimum national flood insurance program
44. requirements, as enumerated in 44 CFR Parts 59-78.
45. (g) Creation or enhancement of stormwater management
46. plans.
47. (h) Projects for the purchase, installation or operation of
48. mechanical pumping systems.
49. History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.
- 50.
51. **NR 199.07 Determination of project eligibility.** After
52. receiving the application, the department shall determine eligible
53. projects by considering the factors identified in ss. NR 199.01 and
54. 199.05. ~~The department may accept the application as eligible and~~
55. ~~score it based on priority projects identified in s. NR 199.05 (1)~~
56. ~~or deny the application as ineligible. The department shall score~~
57. the applications based on the cost effectiveness and shall
58. consider the loss of tax base as an adverse impact related to
59. project activities that involve the acquisition and removal
60. of structures. The department shall also consider additional
61. benefits to overall water quality
62. History: CR 01-014: Cr. Register October 2001 No. 550, eff. 11-1-01.

~~NR 199.03 (5)?~~

i.

Thank you,

Jake Wolf  
Office of State Representative Todd Novak  
51<sup>st</sup> Assembly District  
(608) 266-7502



State of Wisconsin  
2019 - 2020 LEGISLATURE

1/p1  
LRB-4984?  
MCP: jf

In 11/25  
Out 11/27

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 AN ACT ...; relating to: administrative rules on eligibility for municipal flood  
2 control grants.

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

X  
C  
K  
Under rules promulgated by the Department of Natural Resources, when DNR receives an application for a municipal flood control grant it must score the application based on a priority list for eligible projects. This bill eliminates that requirement, and instead requires DNR to score applications based on cost-effectiveness. In addition, if an application proposes to acquire and remove structures, the bill requires DNR, when scoring the application, to consider the loss of tax base to be an adverse impact. Finally, the bill requires DNR, in scoring applications, to also consider additional benefits to overall water quality.

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:***

3 SECTION 1. NR 199.05 (1) (intro.) of the administrative code is amended to read:  
4 *NR 199.05 (1)* 199.05 (1) (intro.) The following activities, ~~in priority order,~~ are eligible for  
5 funding under this section:





In 12/2  
Out Today

Instructions  
per memo:  
w/ Jake:  
-MCP

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

under its current rules, provides a list of activities that are eligible for municipal flood control grants. These activities are listed in priority order.

provides that any of the activities listed in DNR's rules are eligible for municipal flood control grants, and clarifies that the listed activities are not in priority order. The bill also

1 **AN ACT relating to:** administrative rules on eligibility for municipal flood control  
2 grants.

**Analysis by the Legislative Reference Bureau**

Under rules promulgated by the Department of Natural Resources, when DNR receives an application for a municipal flood control grant, it must score the application based on a priority list for eligible projects. This bill eliminates that requirement, and instead requires DNR to score applications based on cost-effectiveness. In addition, if an application proposes to acquire and remove structures, the bill requires DNR, when scoring the application, to consider the loss of tax base to be an adverse impact. Finally, the bill requires DNR, in scoring applications, to also consider additional benefits to overall water quality.

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  
of the proposed activity

for municipal flood control grants

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

3 **SECTION 1.** NR 199.05 (1) (intro.) of the administrative code is amended to read:  
4 NR 199.05 (1) (intro.) The following activities, in priority order, are eligible for  
5 funding under this section:





## **Pfotenhauer, Mary**

---

**From:** Wolf, Jake  
**Sent:** Thursday, December 05, 2019 3:15 PM  
**To:** Pfotenhauer, Mary  
**Subject:** Changes to LRB 4984

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Mary,

Could we make a small change to LRB 4984:

1. Maintain language as written but include clarifying language saying something like "Mitigation of flood damage is the priority of this program."

Thanks,

Jake Wolf  
Office of State Representative Todd Novak  
51<sup>st</sup> Assembly District  
(608) 266-7502

## **Pfotenhauer, Mary**

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**From:** Wolf, Jake  
**Sent:** Friday, December 06, 2019 10:09 AM  
**To:** Pfotenhauer, Mary  
**Subject:** RE: Changes to LRB 4984

Hi Mary,

Feel free to give me a call to discuss but I'm leaning more towards creating a 281.665(5)(c)5 as you described. Maybe it reads "The cost effectiveness of the project including any loss of tax base." The priority is to remove the language in the rule that requires that the activities listed are funded in priority order.

Thanks,

Jake Wolf  
Office of State Representative Todd Novak  
51<sup>st</sup> Assembly District  
(608) 266-7502

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**From:** Pfotenhauer, Mary <Mary.Pfotenhauer@legis.wisconsin.gov>  
**Sent:** Thursday, December 05, 2019 4:22 PM  
**To:** Wolf, Jake <Jake.Wolf@legis.wisconsin.gov>  
**Subject:** RE: Changes to LRB 4984

Jake:

I just noticed that we probably also need change the statutes to create a s. 281.665(5)(c)5.: "The cost-effectiveness of the project." Another option would be to get rid of 281.665(5)(c)1. to 4. entirely and list the criteria as "cost-effectiveness" and "benefits to overall water quality."

Let me know if you have a preference.

Thanks,

Mary Pfotenhauer  
Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 504-5854  
[mary.pfotenhauer@legis.wisconsin.gov](mailto:mary.pfotenhauer@legis.wisconsin.gov)

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**From:** Wolf, Jake <Jake.Wolf@legis.wisconsin.gov>  
**Sent:** Thursday, December 05, 2019 3:15 PM  
**To:** Pfotenhauer, Mary <Mary.Pfotenhauer@legis.wisconsin.gov>  
**Subject:** Changes to LRB 4984

Hi Mary,

Could we make a small change to LRB 4984:

1. Maintain language as written but include clarifying language saying something like "Mitigation of flood damage is the priority of this program."

Thanks,

Jake Wolf  
Office of State Representative Todd Novak  
51<sup>st</sup> Assembly District  
(608) 266-7502



In 12/6  
Out 12/6 Today

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Insert

1 AN ACT relating to: administrative rules on eligibility for municipal flood control  
2 grants. and riparian restoration program

priorities and criteria for the

and amending administrative rules

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

The Department of Natural Resources, under its current rules, provides a list of activities that are eligible for municipal flood control grants. These activities are listed in priority order. When DNR receives an application for a municipal flood control grant, it must score the application based on that priority order.

This bill provides that any of the activities listed in DNR's rules are eligible for municipal flood control grants, and clarifies that the listed activities are not in priority order. The bill also requires DNR to score applications for municipal flood control grants based on the cost-effectiveness of the proposed activity. In addition, if an application proposes to acquire and remove structures, the bill requires DNR, when scoring the application, to consider the loss of tax base to be an adverse impact. Finally, the bill requires DNR, in scoring applications, to also consider additional benefits to overall water quality.

The bill also

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

Ins A

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

→ Ins 1-1

3 SECTION 1. NR 199.05 (1) (intro.) of the administrative code is amended to read:

1 NR 199.05 (1) (intro.) The following activities, ~~in priority order~~, are eligible for  
2 funding under this section:

3 SECTION 2. NR 199.07 of the administrative code is amended to read:

4 NR 199.07 **Determination of project eligibility.** After receiving the  
5 application, the department shall determine eligible projects by considering the  
6 factors identified in ss. NR 199.01 and 199.05. The department may accept the  
7 application as eligible ~~and score it based on priority projects identified in s. NR~~  
8 ~~199.05 (1)~~ or deny the application as ineligible. The department shall score the  
9 application based on the cost-effectiveness of the proposed activity. For proposed  
10 activities that involve the acquisition and removal of structures, the department, in  
11 scoring the application, shall consider the loss of tax base to be an adverse impact.  
12 In scoring applications, the department shall also consider additional benefits to  
13 overall water quality.

14 (END)

2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4984/P2ins  
MCP:kjf

INSERT A *In addition,*

The bill <sup>also</sup> provides that the priority of the municipal flood control and riparian restoration program is the mitigation of flood damage.

INSERT 1-1

**SECTION 1.** 281.665 (2) of the statutes is amended to read:

281.665 (2) ADMINISTRATION. The department shall administer the program under this section to provide financial assistance to local governmental units for facilities and structures for the collection and transmission of storm water and groundwater, including the purchase of perpetual flowage and conservation easement rights on land within floodways, and for the floodproofing of public and private structures that remain in the 100-year floodplain. The priority of this program shall be the mitigation of flood damage.

History: 1999 a. 9; 2015 a. 55; 2017 a. 59, 369.

Cross-reference: See also ch. NR 199, Wis. adm. code.

**SECTION 2.** 281.665 (5) (c) 5. of the statutes is created to read:

X 281.665 (5) (c) 5. The ~~cost~~ effectiveness of the project, including any loss to the tax base.

**SECTION 3.** NR 199.01 of the administrative code is amended to read:

**NR 199.01 Purpose.** The purpose of this chapter is to establish procedures for implementing a municipal flood control and riparian restoration grant program as provided for in s. 281.665, Stats. Grants made under this program will help local governments minimize flooding and flood-related damages by acquiring property, floodproofing structures, creating open-space flood storage areas, constructing flood control structures and restoring the flood-carrying capacity and natural and

beneficial functions of watercourses. Projects eligible under this program shall minimize harm to existing beneficial functions of water bodies and wetlands, maintain natural aquatic and riparian environments, use stormwater detention and retention structures and natural storage to the greatest extent possible and provide opportunities for public access to water bodies and to the floodplain. The priority of this program shall be the mitigation of flood damage.



12/6/19

- 4984

Take @ Novak:

- Take out purpose statements.
- Require DPR to consider cost-effectiveness, but not sole method for saving.

- MCP





State of Wisconsin  
2019 - 2020 LEGISLATURE

pye  
LRB-4984/P3  
MCP:kjf

In 12/6

Out 12/9 AM

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 AN ACT *to amend* 281.665 (2); and *to create* 281.665 (5) (c) 5. of the statutes;  
2 **relating to:** priorities and criteria for the municipal flood control and riparian  
3 restoration program and amending administrative rules.

---

*Analysis by the Legislative Reference Bureau*

The Department of Natural Resources, under its current rules, provides a list of activities that are eligible for municipal flood control grants. These activities are listed in priority order. When DNR receives an application for a municipal flood control grant, it must score the application based on that priority order.

This bill provides that any of the activities listed in DNR's rules are eligible for municipal flood control grants, and clarifies that the listed activities are not in priority order. The bill also requires DNR to score applications for municipal flood control grants based on the cost-effectiveness of the proposed activity. In addition, if an application proposes to acquire and remove structures, the bill requires DNR, when scoring the application, to consider the loss of tax base to be an adverse impact. The bill also requires DNR, in scoring applications, to also consider additional benefits to overall water quality.

In addition, the bill provides that the priority of the municipal flood control and riparian restoration program is the mitigation of flood damage.

to consider

when scoring

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.** 281.665 (2) of the statutes is amended to read:

2           281.665 (2) ADMINISTRATION. The department shall administer the program  
3 under this section to provide financial assistance to local governmental units for  
4 facilities and structures for the collection and transmission of storm water and  
5 groundwater, including the purchase of perpetual flowage and conservation  
6 easement rights on land within floodways, and for the floodproofing of public and  
7 private structures that remain in the 100-year floodplain. The priority of this  
8 program shall be the mitigation of flood damage.

9           **SECTION 2.** 281.665 (5) (c) 5. of the statutes is created to read:

10          281.665 (5) (c) 5. The cost-effectiveness of the project, including any loss to the  
11 tax base.

12          **SECTION 3.** NR 199.01 of the administrative code is amended to read:

13          **NR 199.01 Purpose.** The purpose of this chapter is to establish procedures  
14 for implementing a municipal flood control and riparian restoration grant program  
15 as provided for in s. 281.665, Stats. Grants made under this program will help local  
16 governments minimize flooding and flood-related damages by acquiring property,  
17 floodproofing structures, creating open-space flood storage areas, constructing flood  
18 control structures and restoring the flood-carrying capacity and natural and  
19 beneficial functions of watercourses. Projects eligible under this program shall  
20 minimize harm to existing beneficial functions of water bodies and wetlands,  
21 maintain natural aquatic and riparian environments, use stormwater detention and

1 retention structures and natural storage to the greatest extent possible and provide  
2 opportunities for public access to water bodies and to the floodplain. The priority of  
3 this program shall be the mitigation of flood damage.

4 **SECTION 4.** NR 199.05 (1) (intro.) of the administrative code is amended to read:

5 NR 199.05 (1) (intro.) The following activities, ~~in priority order~~, are eligible for  
6 funding under this section:

7 **SECTION 5.** NR 199.07 of the administrative code is amended to read:

8 **NR 199.07 Determination of project eligibility.** After receiving the  
9 application, the department shall determine eligible projects by considering the  
10 factors identified in ss. NR 199.01 and 199.05. The department may accept the  
11 application as eligible and ~~score it based on priority projects identified in s. NR~~  
12 ~~199.05 (1) or deny the application as ineligible.~~ The department shall score the

13 application based on the cost-effectiveness of the proposed activity. For proposed  
14 activities that involve the acquisition and removal of structures, the department, in  
15 scoring the application, shall consider the loss of tax base to be an adverse impact. *more.*

16 In scoring applications, the department shall also consider additional benefits to  
17 overall water quality. and any

18 (END)

In scoring applications, the department shall consider

## **Pfotenhauer, Mary**

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**From:** Wolf, Jake  
**Sent:** Monday, December 09, 2019 12:35 PM  
**To:** Pfotenhauer, Mary  
**Subject:** LRB 4984

Hi Mary,

Could we remove the reference to overall water quality on page 2. Sorry to keep going back and forth on this. It should read "in scoring applications, the department shall consider the cost effectiveness of the proposed activity. For proposed activities...

Thanks,

Jake Wolf  
Office of State Representative Todd Novak  
51<sup>st</sup> Assembly District  
(608) 266-7502



State of Wisconsin  
2019 - 2020 LEGISLATURE

IPS - e  
LRB-4984/P4  
MCP:kjf

In 12/9  
Out Today

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

- 1 **AN ACT to create** 281.665 (5) (c) 5. of the statutes; **relating to:** priorities and  
2 criteria for the municipal flood control and riparian restoration program and  
3 amending administrative rules.

---

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

The Department of Natural Resources, under its current rules, provides a list of activities that are eligible for municipal flood control grants. These activities are listed in priority order. When DNR receives an application for a municipal flood control grant, it must score the application based on that priority order.

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

1           **SECTION 1.** 281.665 (5) (c) 5. of the statutes is created to read:

2           281.665 (5) (c) 5. The cost-effectiveness of the project, including any loss to the  
3 tax base.

4           **SECTION 2.** NR 199.05 (1) (intro.) of the administrative code is amended to read:

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7           **SECTION 3.** NR 199.07 of the administrative code is amended to read:

8           **NR 199.07 Determination of project eligibility.** After receiving the  
9 application, the department shall determine eligible projects by considering the  
10 factors identified in ss. NR 199.01 and 199.05. The department may accept the  
11 application as eligible ~~and score it based on priority projects identified in s. NR~~  
12 ~~199.05 (1) or deny the application as ineligible.~~ In scoring applications, the  
13 department shall consider the cost-effectiveness of the proposed activity and any  
14 additional benefits to overall water quality. For proposed activities that involve the  
15 acquisition and removal of structures, the department, in scoring the application,  
16 shall consider the loss of tax base to be an adverse impact.

17

(END)

## Pfotenhauer, Mary

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**From:** Wolf, Jake  
**Sent:** Tuesday, January 07, 2020 12:40 PM  
**To:** Pfotenhauer, Mary; Paczuski, Konrad; Wyatt, Zachary; Kunkel, Mark; Pleviak, Krista  
**Cc:** Abrahamian2, Robby; Conklin, Emily; Novak, Todd; Henning, Anna; Letzing, Rachel  
**Subject:** Water Quality Drafts for Introduction

Mary, Konrad, Zach, Mark, and Krista,

Thank you for all your help on these bills. I would like to request a 1 on the following bill drafts. As soon as possible is best.

LRB 3915  
LRB 4717  
LRB 4716  
LRB 4751  
LRB 4304  
LRB 4360  
LRB 4489  
LRB 5062 (I've copied Rep. Shankland's office on this in case you need their permission)  
LRB 4806  
LRB 3651  
LRB 4984  
LRB 5061  
LRB 4931

Thank you,

Jake Wolf  
Office of State Representative Todd Novak  
51<sup>st</sup> Assembly District  
(608) 266-7502



State of Wisconsin  
2019 - 2020 LEGISLATURE

1

LRB-4984/P5

MCP:kjf

No  
change

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

- 1     **AN ACT** *to create* 281.665 (5) (c) 5. of the statutes; **relating to:** priorities and  
2             criteria for the municipal flood control and riparian restoration program and  
3             amending administrative rules.

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

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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:***

- 4             **SECTION 1.** 281.665 (5) (c) 5. of the statutes is created to read:





**Walker, Dan**

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**From:** Wolf, Jake  
**Sent:** Wednesday, January 08, 2020 8:40 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -4984/1

ASAP

Please Jacket LRB -4984/1 for the ASSEMBLY.