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Testimony on 2017 Assembly Bill 926

Senator Robert Cowles

Assembly Committee on Environment and Forestry - February 19, 2018

Thank you Chairman Mursau and committee members for allowing me to testify on 2017 Assembly Bill 926. This bill exempts property owners from Department of Natural Resources (DNR) permitting requirements for simple alterations in the shoreline area on outlying waters.

Property owners along the Great Lakes and select Northeast Wisconsin Great Lakes tributaries face a unique situation as their water levels frequently rise and lower, which often leaves yards of shoreline exposed on their property. In many cases, this shoreline area, while on exposed land, is below the Ordinary High-Water Mark (OHWM). Under current law, the property owners must receive one or more permits from the DNR for most shoreline maintenance activities on the land below the OHWM. The general permit is not only cumbersome, but it is difficult for the average property owner to complete without hiring a professional consultant. Permitting for just simple alterations in the shoreline area is not only tedious and costly, but a lengthy process that will delay property owners from basic upkeep.

Assembly Bill 926 exempts landowners from DNR permitting when they perform maintenance activities such as leveling but not removing sand, grooming soil, removing debris, and mowing vegetation in the shoreline area below the OHWM but on exposed land. This exemption only applies in outlying waters where this exemption is needed most due to fluctuating water levels, including Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and the Fox River from the mouth to the De Pere Dam.

Property owners should have the ability to perform basic upkeep on their property without delays or additional costs. Assembly Bill 926 removes an unnecessary burden on property owners who are simply looking to maintain their property, which, when there is exposed land which is below the OHWM, should include that shoreline area.



John Nygren

WISCONSIN STATE REPRESENTATIVE ★ 89TH ASSEMBLY DISTRICT

Co-Chair, Joint Committee on Finance

Assembly Bill 926 Testimony

State Rep. John Nygren

February 19, 2017

Chairman Mursau and members of the Committee,

Thank you for the opportunity to testify in support of Assembly Bill 926. This bill removes an unnecessary burden between property owners and proper maintenance of shorelines.

AB 926 exempts, from DNR permitting, shoreline maintenance activities on outlying waters, which are defined as Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor, and a portion of the Fox River.

Under current law, property owners must obtain one or more permits from the DNR in order to conduct certain activities in the shoreline area, which is an exposed navigable water bed in the area between the ordinary high-water mark and the water's edge. This means that, when water levels are low, as they have been in recent years, a property owner must go through a permitting process with the DNR just to be able to groom shoreline areas or remove invasive species. As you probably know, the permitting process with the DNR can be quite burdensome.

The bill will allow a property owner to level or groom sand, remove debris or mow vegetation, and remove invasive species in shoreline areas on outlying waters.

I should note, this bill is similar to provisions contained in a bill introduced by some of my colleagues earlier in this session but differs in an important way. It does not allow for the removal of sand or dirt from below the original high water mark.

Property owners in the affected areas face unique challenges as water levels frequently rise and recede, which often leaves yards of shoreline area exposed on their property. Requiring these property owners to navigate the DNR permit process does not allow for the timely removal of invasive species nor does it allow property owners to conduct routine maintenance of property.

This bill will remove this unnecessary burden and will allow property owners to manage their property in a timely manner.

Thank you for your time.

Before the Assembly Committee on Environment and Forestry

Testimony of Paul G. Kent

Re: AB 926

February 19, 2018

My name is Paul Kent and I am an attorney whose practice focuses on water law issues for property owners and municipalities. I have represented dozens of riparian owners on issues related to regulation of shoreline activities. I am here today in support of AB 926.

This bill is a common sense bill that allows riparian owners on outlying waters to groom and maintain their beach without obtaining a permit from the Department of Natural Resources (DNR) for dredging, filling or aquatic plant maintenance. These underlying laws all serve legitimate purposes. There is a reason to regulate dredging, filling and aquatic plant maintenance *in our navigable waters*. But when those laws are applied to beach areas – the areas between the water’s edge and the ordinary high water mark, these laws make less sense.

A person that levels his beach could be said to be removing (dredging) material from high spots and filling in low spots, but this is hardly the kind of activity that the permits regulating dredging and filling of navigable waters were intended to address. Similarly, removing plants and debris from the shoreline is not the kind of activity aquatic plant regulations were intended to address. This bill clarifies this common sense interpretation of these laws.

At the same time, it is limited in scope so that it does not create the potential for adverse resource impacts. It is limited to outlying waters where lake levels are most likely to fluctuate. It restricts the person from bringing in material to create or enhance a beach area. It restricts the filling of coastal wetlands or alteration of coastal dunes. And it restricts aquatic plant removal to protect endangered or threatened species while preventing the spread of invasive species.

The bill simply makes sense and I urge you to adopt it.

If you have any questions I can be reached at pkent@staffordlaw.com 608-259-2665