



Jeff Mursau
STATE REPRESENTATIVE • 36TH ASSEMBLY DISTRICT

Testimony for 2013 Senate Bill 189

Vice Chairman Krug and Committee Members,

Thank you for hearing this bill today.

In 1999 the State of Wisconsin made an agreement with the Forest County Potawatomi Community to allow their comment on air permitting.

Last session, the Legislature and the state of Wisconsin enacted a significant and beneficial law to streamline the permitting process for citizens and businesses engaging in construction in and around Wisconsin waterways.

After several revisions, both prior to and following introduction, several cross references were identified by the DNR for correction following enactment of Act 167.

I submit the following provisions of the bill are simple corrections to statutes necessary for proper enforcement of the law by DNR:

1. Ensuring citation authority for violations of wetland permits;
2. Allowing DNR to publish public notices for permit applicants;
3. Extending confidentiality to electronically submitted violation-tips by the public;
4. Removes gross receipts as categories for membership to the Dry Cleaner Environmental Response Council; and
5. Ensures the youth spearing minimum age is 12 years old

A component of the bill regarding air modeling has been removed in order to that it can be considered separately and allow these basic and easily agreeable components may move forward.

Thank you again for hearing this bill today.



WISCONSIN LEGISLATIVE COUNCIL
ACT MEMO

2011 Wisconsin Act 167
[2011 Senate Bill 326]

**Structures, Deposits, and Other
Activities in or Near
Navigable Waters**

2011 Wisconsin Act 167 (the Act) makes changes to regulation of activities affecting navigable waters and makes other changes related to programs administered by the Department of Natural Resources (DNR). This Memo provides a brief summary of the provisions in the Act. For a more complete analysis of the Act, please see Information Memorandum 2012-06, entitled *2011 Wisconsin Act 167, Relating to the Permitting of Activities in or Near Navigable Waters and Certain Other Activities*.

The Act includes provisions regarding all of the following:

- Allows the DNR to issue general permits without promulgating these permits by rule, and creates procedures for general permit issuance.
- Authorizes the DNR to issue a general permit for any navigable waters activity for which it may issue an individual permit.
- Requires that activities subject to general permits may cause only minimal adverse environmental impacts, may not materially interfere with navigation, and may not have an adverse impact on the riparian property rights of adjacent riparian owners.
- Provides for temporary suspension of general permits by certain legislative committees.
- Requires reporting by the DNR about its activities related to general permits.
- Changes deadlines for DNR review of an application for an individual permit, and limits DNR's ability to deem an application incomplete.
- Includes automatic approval of applications for individual permits if the DNR fails to meet its deadline for taking final action on an application.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

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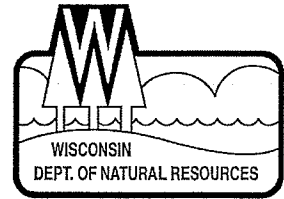
- Specifies that, in any hearing on a DNR action relating to an individual permit under subch. II of ch. 30, Stats., the petitioner proceeds first with the presentation of evidence and has the burden of proof.
- With respect to piers and wharves, modifies current law related to exemptions, enforcement, and general permits.
- Prohibits the DNR from issuing a general permit for a permanent boat shelter that extends beyond the waterward end or side of the owner's pier or wharf.
- Allows repair and maintenance of a boathouse that existed on December 16, 1979, under certain conditions.
- Modifies requirements for municipal work on bridges and culverts.
- Exempts land grading activities authorized under certain other permits from the ch. 30 permitting requirements.
- Requires the DNR to establish expedited procedures for approval of plans for certain low hazard dams and water or sewage systems.
- Requires the DNR to publish on its website its determinations regarding the navigability of waterways and the ordinary high-water mark of navigable waterways, and specifies that such determinations may be relied upon as accurate.
- Authorizes the DNR to charge applicants for various permits under ch. 30, Stats., a supplemental fee to be used by the DNR to maintain a computerized system by which an applicant may determine the status of an application.
- Establishes deadlines for the DNR to take final action on certain applications and directs the DNR to set other deadlines.
- Establishes limitations on DNR denial of certain applications and requires the refund of certain application fees if the DNR fails to approve or deny an application before the applicable deadline.
- Specifies that the DNR is not required to use air dispersion modeling in its review of air pollution control permit applications for a minor source unless certain conditions are met.
- Authorizes the DNR to renew WPDES permits and stormwater management permits under certain conditions.
- Requires the DNR to give notice of certain activities on its website, in addition to the publishing of a Class 1 notice under ch. 985, Stats., and makes other changes related to DNR notices.

Effective date: The majority of Act 167 takes effect on August 1, 2012. Certain provisions of the Act relating to the maintenance of and enforcement actions against piers that were placed on or before February 6, 2004, take effect on April 17, 2012.

Prepared by: Larry Konopacki, Senior Staff Attorney

April 25, 2012

LAK:jb;ty



July 23, 2013

Testimony for Senate Bill 189

Chairman Mursau and Committee members, thank you for the opportunity to testify on Senate Bill 189. The Department views Senate Bill 189 as a “clean-up” bill that addresses a number of smaller issues and drafting errors that Representative Mursau and Senator Kedzie are taking care of in one piece of legislation. There are three provisions in Senate Bill 189 that the Department would classify, simply, as drafting errors.

The first...last session, the Sporting Heritage Act lowered the age to spear sturgeon from 14 to 12 years of age. The law changed the age correctly in 29.237 (1m), but unfortunately missed changing the age in 29.569 (3) (bm).

Next, the new wetlands law passed last Session intended to give the DNR citation authority for minor wetland fills that may not rise to the level of a referral to the Department of Justice. This was a provision that many parties, including the Wisconsin Wetlands Association, advocated for inclusion in the final bill. This legislation fixes a cross reference to the Uniform Citation process found in 23.50, so that it cross-references 281.36, to give DNR the authority to use the 23.50 process in wetland enforcement.

Finally, there was a drafting error contained in the public notice section of the Chapter 30 Regulatory Reform Act. This legislation corrects that error, and allows permit applicants, who are required to publish a class 1 public notice for certain Chapter 30 and wetland permits, to request that the department publish the class 1 notice. The Department will charge the applicant the average cost of class 1 notices. This will allow the Department to begin the 30 day public comment period sooner, and ensure that permits are issued in a timely manner.

There are also 2 issues that are not the result of drafting errors. First, DNR’s Bureau of Law Enforcement has asked for an update to existing statutes, which protect the identity of people who use the DNR’s toll-free tip line. As technology changes, so too should the statutes. The protection of the identity of people who use e-mail, text, or other electronic means to alert the DNR of possible violations should be afforded the same confidentiality protection as people who use the toll-free hotline.

Next, Senate Bill 189 removes the requirement that one member of the Dry Cleaner Environmental Response Council in Chap. 15.347(2), represent dry cleaning operations with annual gross receipts of less than \$200,000. The \$200,000 threshold was established more than 15 years ago, and working with the industry; it has not been possible to find a member that meets this gross receipts criteria.

I would be happy to answer any questions.

Wisconsin Wildlife Federation

Testimony of the Wisconsin Wildlife Federation in Support of SB 189

Good morning Chairman Mursau and Members of the Assembly Environment and Forestry Committee. Thank you for this opportunity to testify on Senate Bill SB 189 representing the Wisconsin Wildlife Federation. My name is Leah McSherry from Waunakee, Wisconsin. I am a student in the College of Natural Resources, University of Wisconsin-Stevens Point and the Program Coordinator for the Wisconsin Wildlife Federation's new Conservation Leadership Corps.

The Federation is the state's largest conservation organization, now representing 185 hunting, fishing, trapping and forestry-related organizations. Wisconsin's wetlands are critically important to our members for hunting, fishing and trapping in the state and it is because of that that we strongly support SB 189 and thank Senator Kedzie and Representative Mursau for their leadership in introducing the bill. Strengthening the enforcement of the state's environmental protection regulations has been a long-time priority for the Federation.

If you are a duck hunter in this state, you know the great value that wetlands have as habitat for the population of migratory fowl in the state. There is a direct correlation between the population of waterfowl and the amount of acres of wetlands in the state. Because of this, sportsmen and women have spent tens of millions of dollars in excess of their hunting and fishing license dollars for wetland restoration in the state. We surely do not want to see existing wetlands being destroyed at the same time because of ineffective enforcement tools for the DNR to protect those existing wetlands. We know that our conservation partners Wisconsin Waterfowl Association and Ducks Unlimited support these changes.

Trappers are some of the strongest supporters of strong wetland protection regulations in the state because wetlands are the habitat for many furbearers such as beaver or muskrat. Wetlands also are the habitat for many prey species for furbearer predating species such as coyote, fox, raccoon and wolves. Lack of effective wetland protection enforcement measures reduce the opportunity for wetlands to trap in throughout the state. The Wisconsin Wildlife Federation represents the Wisconsin Trappers Association.

Wetlands play a critical role for protecting the water quality of our lakes and stream and also provide the spawning habitat for many fish species. That is why our many members that buy fishing licenses are also strong supporters of effective measures to enforce wetland protection wetland regulations.

The Wisconsin Wildlife Federation members also have interest in the provisions of SB 189 relating to the minimum age license requirement for youth sturgeon spearing and those relating to the changes in public notice requirements for wetland and navigable waters permits. We are fine with those changes. Chairman Mursau and Committee Members, thank you once again for this opportunity to testify on behalf of the membership of the Wisconsin Wildlife Federation.

Submitted on July 23, 2013 by Leah McSherry, Coordinator, Conservation Leadership Corp, Wisconsin Wildlife Federation.

WMC

WISCONSIN MANUFACTURERS & COMMERCE

TO: Members, Assembly Committee on Environment and Forestry
FROM: Eric Bott, Director of Environmental & Energy Policy
DATE: July 23, 2013
RE: Senate Bill 189 and Assembly Bill 231 – Air Dispersion Modeling

Chairman Mursau and members of the Assembly Committee on Environment and Forestry:

Thank you for the opportunity to testify today on behalf of Wisconsin Manufacturers and Commerce (WMC). WMC is Wisconsin's largest general business trade association, with roughly one-fourth of the state's private sector workforce employed by a WMC member company. We represent businesses in the manufacturing, banking, energy, health care, insurance, retail, mining and other service sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state in the nation to do business.

I had hoped and intended to testify **in favor** of Assembly Bill 231 but since it was removed from today's calendar I will instead be testifying in regards to its companion legislation, Senate Bill 189. Due to an amendment placed on Senate Bill 189 in committee, however, I will be testifying **for informational purposes only**, rather than in favor of the bill.

As I mentioned, Senate Bill 189 was amended by the Senate Committee on Natural Resources. Although, the amendment removed language relating to air dispersion modeling, WMC believes that it is important to address the matter before this committee. Simply put, Wisconsin's air modeling program, particularly as it relates to minor sources of air emissions is in need of reform.

Current applications of air dispersion modeling contribute to uncertainty for businesses, create increased costs for employers without providing tangible environmental benefits, and result in Wisconsin being less competitive with our neighboring states. Senate Bill 189 as originally drafted would have taken modest steps to address these three problems. As amended, Senate Bill 189 leaves them uncorrected.

Air dispersion modeling is sophisticated computer modeling used to predict future air quality associated with a business based upon circumstances unique to each individual facility. Modeling is expensive, and typically requires the hiring of outside consultants to perform the modeling analysis. Like any forecasting tool, dispersion modeling is only as good as its inputted data, and often does not reflect actual air quality conditions observed by ambient air monitors.

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WMC is a business association dedicated to making Wisconsin the most competitive state in the nation.

Additionally, the current language Wis. Stat. § 285.63 and the interpretation of that language by the Department of Natural Resources (DNR) creates uncertainty for the regulated community. In past years, the DNR expressed ambiguity regarding whether air quality modeling was required to satisfy statutory requirements before any construction or operating permit could be issued, and required modeling before issuing most permits.

More recently, the WDNR has issued air quality modeling guidance to clarify that air quality modeling is not required for renewal of certain operating and construction permits, but is required for most new minor and major source air permits issued by the Department. This guidance, however, is currently the subject of challenge in various administrative proceedings. Uncertainty for the job creators in this state remains a problem.

SB 189 would have revised Chapter 285 to clarify when modeling is and is not required.

Specifically, the bill states that modeling would not be required for the renewal of minor and major source operating permits or for new minor source construction permits.

A minor source is defined under federal law as a facility with a potential to emit less than 100 tons per year of a criteria pollutant. They are often small businesses such as light manufacturers, printers, coaters, furniture makers and hospitals. These facilities are not even required to be permitted under the Clean Air Act, and many states choose not to permit them at all. However, in addition to requiring permits for minor sources, Wisconsin typically requires the same costly dispersion modeling for these facilities as if they were a "major" source like a power plant or refinery.

Because of the insignificant air emissions associated with minor facilities, it does not make sense to force these small businesses to endure the cost, delay and hassle associated with dispersion modeling. In fact, **an audit of Wisconsin's air management program by the Legislative Audit Bureau (LAB)¹ specifically recommended eliminating the modeling requirement for minor sources** as a means to reduce air permit backlogs and more efficiently use DNR permitting staff resources.

The LAB report noted that minor sources comprised 73 percent of all permitted facilities in Wisconsin, but **collectively accounted for only 1.2 percent of all emissions.**² These businesses do not significantly impact air quality, and it is therefore a waste of both private sector and public sector resources to require costly air dispersion modeling for permits.

Additionally, this change will bring Wisconsin's requirements for when modeling is required for air permitting in line with those of neighboring states such as Illinois and Michigan.

Neither Michigan nor Illinois require sources that are renewing a minor or major source operating permit to conduct air quality modeling nor do they require air quality modeling to be conducted when minor source construction permits are issued. Consistent with the

¹ *Air Management Programs*, Audit 04-1, Wisconsin Legislative Audit Bureau; Page 44

² *Ibid*; Page 38

requirements of the federal Clean Air Act **and this bill**, those states require sources to conduct air quality modeling as a part of the application for a major source construction permit.

In addition to the changes I've outlined, Senate Bill 189 would have specified that the DNR may not require dispersion modeling to obtain coverage under registration permits or general permits. These "off the shelf" air permit streamlining tools were enacted in the bipartisan Jobs Creation Act (2003 Act 118) signed into law by Governor Doyle in 2004.

The intent of registration and general permits is a simplified and speedy permitting process for businesses with relatively small emissions that do not present unique permitting challenges. For example, registration permits may be applied for online, and DNR is required to issue or deny the permit within 15 days.

Recognizing the success of these programs as both tools for the Department to reduce its workload and as a means of reducing costs and red tape for employers, the legislature voted to expand the availability of registration permits for minor sources as part of the recently enacted state budget.

WMC strongly commends and thanks the members of this committee who supported these important pro-growth policies in the state budget as expanded availability of registration permits will make it easier for Wisconsin to attract and grow businesses, particularly in manufacturing. We now ask and encourage the committee to ensure that these permits remain valuable tools by supporting the changes that had originally been proposed in SB 189.

Without the changes proposed in this bill, dispersion modeling requirements will continue to significantly diminish the value of registration permits by reintroducing the cost, delay and complexity that typically accompanies an individual permit. The modeling requirements have in many cases diluted the usefulness of these bipartisan streamlining tools without a corresponding environmental benefit, and have only succeeded in adding cost to small businesses.

In their totality, the proposed revisions contained in SB 189 as it was introduced would be good for Wisconsin businesses, good for the Wisconsin Department of Natural Resources, and good for the Wisconsin environment.

Businesses would benefit from being required to conduct air quality monitoring under the same circumstances as they are required under the federal Clean Air Act and as they are required to do in neighboring states.

Simultaneously, these changes would reduce the burdens on DNR staff, and would allow the Department to issue operating permits and minor source construction permits more quickly. This would allow the DNR to focus additional resources on more pressing environmental concerns, which would benefit the environment.

WMC respectfully requests that the committee reconsider passage of SB 189 as amended by the Senate and instead move to advance an unamended version of the bill or its Assembly companion, AB 231.