



2009 ASSEMBLY BILL 162

March 19, 2009 – Introduced by Representatives MILROY, POCAN, A. OTT, FIELDS, HRAYCHUCK, HUBLER, RICHARDS, SEIDEL, SHERMAN, SINICKI, SPANBAUER, STASKUNAS and STEINBRINK, cosponsored by Senators JAUCH, HOLPERIN, LASSA, LEHMAN, PLALE, RISSER, SULLIVAN and TAYLOR. Referred to Committee on Natural Resources.

1 **AN ACT to repeal** 23.225, 23.245 and 30.715 (title) and (1) to (4); **to renumber**
2 30.715 (5); **to renumber and amend** 30.715 (6); **to amend** 23.22 (3) (c), 23.22
3 (6) (b), 23.22 (6) (c), 30.124 (1) (a), 30.1255 (3) (b) and 66.0407 (1) (b); and **to**
4 **create** 23.22 (2t), 23.22 (5m), 23.2355, 30.07, 30.80 (5m), 287.07 (7) (cm) and
5 345.11 (1j) of the statutes; **relating to:** regulating the transportation of aquatic
6 plants and aquatic animals, the administration of federal funds for the control
7 and eradication of noxious weeds, the placement of vehicles, seaplanes,
8 watercraft, and other objects in navigable waters, the regulation of noxious
9 weeds by municipalities, the disposal of invasive species, providing an
10 exemption from rule-making procedures, requiring the exercise of
11 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers various laws to control invasive species. DNR also regulates the placement of certain boats, boat trailers, and equipment (boats) in navigable waters with aquatic plants

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attached. This draft makes various changes to those laws and imposes new restrictions relating to invasive species and aquatic plants and animals.

Placement of certain objects in navigable waters

Under current law, no person may place or use a boat in a navigable water if the person has reason to believe that it has any aquatic plants attached. Current law also prohibits the placement or use of a boat in the Lower St. Croix River if the person has reason to believe that the boat has zebra mussels attached. This bill expands these restrictions by prohibiting the placement or operation of any vehicle, seaplane, watercraft, or other object of any kind in a navigable water if the object has any aquatic plants or aquatic animals attached. Under the bill, this prohibition applies regardless of whether the person had reason to believe that such plants or animals are attached. The bill specifies that the prohibition does not require a person to remove attached aquatic plants or animals during the period of time when the object is being used in the same navigable body of water in which the aquatic plants or animals became attached.

Current law authorizes a law enforcement officer to order a person to remove aquatic plants from a boat before placing the boat in a navigable water and to remove a boat from, or to not place a boat in, a navigable water if the law enforcement officer has reason to believe that the boat has aquatic plants attached. This bill broadens this authority to allow a law enforcement officer to order removal of aquatic animals in addition to aquatic plants and to order their removal from any vehicle, seaplane, watercraft, or other object of any kind before placing it in a navigable water. Under this expanded authority a law enforcement officer may also order removal of any object from a navigable water.

Transportation of vehicles, watercraft, seaplanes, and other objects.

Current law prohibits any person, with certain exceptions, from transporting a boat on a highway if it has an invasive species attached to the boat. This bill expands this prohibition. Under this bill, no person may transport or operate a vehicle, watercraft, or other object of any kind on a highway with aquatic plants or aquatic animals attached. The bill also prohibits a person from taking off with a seaplane with such plants or animals attached. The bill also authorizes, with certain exceptions, a law enforcement officer to order a person not to take off with a seaplane or not to transport or operate a vehicle, watercraft, or other object on a highway if the law enforcement officer has reason to believe that it has aquatic plants or aquatic animals attached. Under the bill, the transportation restrictions do not apply to certain persons, including a person who transports commercial aquatic plant harvesting equipment for the purpose of cleaning the equipment to remove aquatic plants or aquatic animals or to a person who transports duckweed that is incidentally attached to the object being transported.

Invasive species compliance investigation and department authority

Under current law, DNR administers a statewide program to control invasive species. This bill authorizes DNR, for the purpose of administering and enforcing the statewide invasive species program, to conduct compliance investigations. The bill

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authorizes a DNR warden or other DNR representative to enter certain premises, other than a dwelling, where invasive species are stored, where records relating to invasive species are kept, where vehicles, boats, equipment, or materials used to transport or hold invasive species are located, or where activities related to invasive species are conducted. It also authorizes DNR to inspect invasive species stored or possessed by any person, inspect records or reports relating to invasive species, take diagnostic samples, and seize and destroy certain invasive species.

This bill also establishes DNR's authority to hold hearings relating to any aspect of the administration of the statewide invasive species program. It also authorizes DNR to waive compliance with certain requirements of the program or shorten time periods under the program to the extent necessary to prevent an emergency condition threatening public health, safety, or welfare or the environment. The bill requires every state agency to cooperate with DNR in the administration of the statewide invasive species program where the interests of DNR and the respective state agency overlaps.

Rules

Under current law, DNR is required to promulgate rules to identify, classify, and control invasive species for the purposes of the statewide invasive species program. This bill authorizes DNR to promulgate an emergency rule to identify, classify, or control an invasive species without providing evidence of an emergency. Under the bill, a rule promulgated in this manner remains in effect until the earlier of two years after the rule's effective date, the repeal of the rule, or the date on which a corresponding permanent rule takes effect.

Other provisions

Under current law, any person who owns land is required to destroy noxious weeds on that land. Noxious weeds are defined to include certain weeds such as Canada thistle, leafy spurge, and any other weed that a municipality or county by ordinance or resolution declares to be noxious within its respective borders. This bill expands the definition of a noxious weed to include any weed that DNR designates as a noxious weed by rule.

Under current law, with limited exceptions, no person may dispose of yard waste in a solid waste disposal facility. This bill provides that the prohibition does not apply to the disposal of plants that are classified by DNR as invasive species or seeds of those plants, if the plants or seeds are not commingled with other yard waste.

For further information see the **state** 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. 23.22 (2t) of the statutes is created to read:

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1 23.22 (2t) DEPARTMENT POWERS AND COOPERATION. (a) Using the procedure
2 under s. 227.24, the department may promulgate an emergency rule to identify,
3 classify, or control an invasive species under sub. (2) (b) 6. Notwithstanding s. 227.24
4 (1) (a) and (3), the department is not required to provide evidence that promulgating
5 a rule under this paragraph as an emergency rule is necessary for the preservation
6 of public peace, health, safety, or welfare and is not required to provide a finding of
7 emergency for a rule promulgated under this paragraph. Notwithstanding s. 227.24
8 (1) (c) and (2), an emergency rule promulgated under this paragraph remains in
9 effect until whichever of the following occurs first:

10 1. The first day of the 25th month beginning after the effective date of the
11 emergency rule.

12 2. The effective date of the repeal of the emergency rule.

13 3. The date on which the permanent rule identifying, classifying, or controlling
14 the invasive species, promulgated under sub. (2) (b) 6., takes effect.

15 (b) The department may hold hearings relating to any aspect of the
16 administration of this section and, in connection with those hearings, compel the
17 attendance of witnesses and the production of evidence.

18 (c) The department may waive compliance with any requirement under this
19 section or shorten the time periods under this section to the extent necessary to
20 prevent an emergency condition threatening public health, safety, or welfare or the
21 environment.

22 (d) The department may secure necessary scientific, technical, administrative,
23 and operational services, including laboratory facilities, by contract or otherwise for
24 purposes of this section.

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1 (e) The department may advise and may consult, contract, and cooperate with,
2 other state agencies, local governments, industries, other states, interstate or
3 interlocal agencies, the federal government, and other interested persons or groups
4 for purposes if this section.

5 (f) Every state agency shall cooperate with the department in the
6 administration of this section where the interests of the department and the
7 respective state agency overlap. The cooperating state agencies may provide by
8 agreement for the manner of sharing expenses and responsibilities under this
9 section.

10 **SECTION 2.** 23.22 (3) (c) of the statutes is amended to read:

11 23.22 (3) (c) The council shall make recommendations to the department on the
12 establishment of a procedure for awarding cost-sharing grants under sub. (2) (c) to
13 public and private entities for up to ~~50%~~ 75 percent of the costs of eligible projects
14 to control invasive species. The recommendations shall contain criteria for
15 determining eligibility for these grants and for determining which applicants should
16 be awarded the grants.

17 **SECTION 3.** 23.22 (5m) of the statutes is created to read:

18 23.22 (5m) COMPLIANCE INVESTIGATION. (a) For the purpose of administering
19 and enforcing this section, a warden or a representative of the department, upon
20 presentation of his or her identification, may do any of the following:

21 1. Enter at any reasonable time any premises, building, or structure, other
22 than a dwelling, that is publicly owned or operated or where a commercial enterprise
23 is conducted, and where any of the following occur:

24 a. An invasive species is stored, processed, or held.

25 b. Records or reports relating to invasive species are kept.

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1 c. Vehicles, boats, equipment, or materials used to transport or hold invasive
2 species are located.

3 d. Activities related to invasive species are conducted.

4 2. Inspect invasive species stored or possessed by any person.

5 3. Inspect records or reports relating to invasive species.

6 4. Take reasonable diagnostic samples for biological examination.

7 5. Seize and destroy any invasive species possessed or transported in violation
8 of this section or s. 23.235, 23.24, or 30.07 or any rule promulgated or permit or order
9 issued under this section or s. 23.235, 23.24, or 30.07.

10 6. Enter any vehicle, boat, or equipment used to transport or hold invasive
11 species.

12 (b) No person may do any of the following:

13 1. Prohibit the department from gaining access to, or conducting an inspection
14 of, any place the department is authorized to inspect under this subsection.

15 2. Fail to promptly provide records to the department that the person is
16 required to produce under this subsection.

17 **SECTION 4.** 23.22 (6) (b) of the statutes is amended to read:

18 23.22 (6) (b) The department shall submit the biennial report under par. (a)
19 before ~~July~~ October 1 of each even-numbered year. ~~The first biennial report shall~~
20 ~~be submitted no later than July 1, 2004.~~ Each report shall cover the 24-month period
21 ending on the ~~March 31~~ June 30 that immediately precedes the date of the report.

22 **SECTION 5.** 23.22 (6) (c) of the statutes is amended to read:

23 23.22 (6) (c) In addition to the report required under par. (a), the department
24 shall submit an interim performance report to the legislature under s. 13.172 (2), and
25 to the governor and the council, on the progress that has been made on the control

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1 of invasive species. The department shall submit this interim performance report
2 before ~~July~~ October 1 of each odd-numbered year. ~~The first interim performance~~
3 ~~report shall be submitted no later than July 1, 2005.~~ Each interim performance
4 report shall cover the 12-month period ending on the ~~March 31~~ June 30 that
5 immediately precedes the date of the interim performance report.

6 **SECTION 6.** 23.225 of the statutes is repealed.

7 **SECTION 7.** 23.2355 of the statutes is created to read:

8 **23.2355 Weed management grants.** The department, in consultation with
9 the department of agriculture, trade and consumer protection, shall promulgate
10 rules that authorize the department, in consultation with the department of
11 agriculture, trade and consumer protection, to provide funds received from the
12 federal government under 7 USC 7782 to eligible recipients for the control or
13 eradication of noxious weeds. The rules shall authorize the department and the
14 department of agriculture, trade and consumer protection to use the funds received
15 from the federal government to provide technical assistance and to make grants to
16 eligible recipients to control or eradicate noxious weeds.

17 **SECTION 8.** 23.245 of the statutes is repealed.

18 **SECTION 9.** 30.07 of the statutes is created to read:

19 **30.07 Transportation of aquatic plants and animals; placement of**
20 **objects in navigable waters. (1)** In this section:

21 (a) "Aquatic animal" means any animal that lives or grows only in water during
22 any life state and includes that animal's eggs, larvae, or young.

23 (b) "Aquatic plant" means a submergent, emergent, floating-leaf, or free-
24 floating plant or any part thereof. "Aquatic plant" does not mean wild rice.

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1 (c) “Highway” has the meaning given in s. 340.01 (22), except that it does not
2 include public boat access sites or parking areas for public boat access sites.

3 (d) “Law enforcement officer” has the meaning given in s. 30.50 (4s).

4 (e) “Local governmental unit” means a city, village, town, or county; a special
5 purpose district in this state; an agency or corporation of a city, village, town, county,
6 or special purpose district; or a combination or subunit of any of the foregoing.

7 (f) “Public boat access site” means a site that provides access to a navigable
8 water for boats and that is open to the general public for free or for a charge or that
9 is open only to certain groups of persons for a charge.

10 (g) “Vehicle” has the meaning given in s. 340.01 (74).

11 **(2)** (a) No person may place or operate a vehicle, seaplane, watercraft, or other
12 object of any kind in a navigable water if it has any aquatic plants or aquatic animals
13 attached. This paragraph does not require a person to remove aquatic plants or
14 aquatic animals from a vehicle, seaplane, watercraft, or other object during the
15 period of time when the vehicle, seaplane, watercraft, or other object is being
16 operated in the same navigable body of water in which the aquatic plants or aquatic
17 animals became attached.

18 (b) No person may take off with a seaplane, or transport or operate a vehicle,
19 watercraft, or other object of any kind on a highway with aquatic plants or aquatic
20 animals attached.

21 **(3)** A law enforcement officer who has reason to believe that a person is in
22 violation of sub. (2) may order the person to do any of the following:

23 (a) Remove aquatic plants or aquatic animals from a vehicle, seaplane,
24 watercraft, or other object of any kind before placing it in a navigable water.

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1 (b) Remove aquatic plants or aquatic animals from a seaplane before taking off
2 with the seaplane.

3 (c) Remove from, or not place in, a navigable water, a vehicle, seaplane,
4 watercraft, or other object of any kind.

5 (d) Not take off with a seaplane, or transport or operate a vehicle, watercraft,
6 or other object of any kind on a highway.

7 **(4)** Subsection (2) does not apply to any of the following:

8 (a) A person who transports aquatic plants or aquatic animals in a manner
9 authorized by an approval issued by the department or by a rule promulgated by the
10 department.

11 (b) A person who transports or operates commercial aquatic plant harvesting
12 equipment if all of the following apply:

13 1. The equipment is owned or operated by a local governmental unit.

14 2. The person transports or operates the equipment for the purpose of cleaning
15 the equipment to remove aquatic plants or aquatic animals.

16 3. The person transports the equipment to, or operates the equipment at, a
17 suitable location away from any body of water.

18 (c) A person who transports aquatic plants for the purpose of constructing a
19 waterfowl hunting blind or an observation blind, if the aquatic plants are emergent,
20 cut above the waterline, and contain no invasive species as defined under s. 23.22 (1)

21 (c).

22 (d) A person who transports duckweed that is incidentally attached to a vehicle,
23 seaplane, watercraft, or other object of any kind.

24 **SECTION 10.** 30.124 (1) (a) of the statutes is amended to read:

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1 30.124 (1) (a) Cut aquatic plants, as defined in s. ~~30.715~~ 30.07 (1) (a) (b),
2 without removing them from the water, for the purpose of improving waterfowl
3 nesting, brood, and migration habitat.

4 **SECTION 11.** 30.1255 (3) (b) of the statutes is amended to read:

5 30.1255 (3) (b) The department shall submit the first report required under
6 par. (a) before July 1, 1994, and shall submit subsequent reports before July October
7 1 of each even-numbered year thereafter. ~~Beginning with the report due before July~~
8 ~~1, 2004, the department shall submit each report required under par. (a) as part of~~
9 the corresponding biennial report under s. 23.22 (6).

10 **SECTION 12.** 30.715 (title) and (1) to (4) of the statutes are repealed.

11 **SECTION 13.** 30.715 (5) of the statutes is renumbered 30.07 (5).

12 **SECTION 14.** 30.715 (6) of the statutes is renumbered 30.07 (6) and amended
13 to read:

14 30.07 (6) No person may refuse to obey the order of a law enforcement officer
15 who is acting under sub. (4) (3).

16 **SECTION 15.** 30.80 (5m) of the statutes is created to read:

17 30.80 (5m) Any person violating any provision of s. 30.07 (2) or (6) shall forfeit
18 not more than \$500 for the first offense and shall forfeit not more than \$2,000 upon
19 conviction of the same offense a 2nd or subsequent time within 3 years.

20 **SECTION 16.** 66.0407 (1) (b) of the statutes is amended to read:

21 66.0407 (1) (b) “Noxious weed” means Canada thistle, leafy spurge and, field
22 bindweed ~~(creeping Jenny), any weed designated as a noxious weed by the~~
23 department of natural resources by rule, and any other weed the governing body of
24 any municipality or the county board of any county by ordinance or resolution
25 declares to be noxious within its respective boundaries.

