



WISCONSIN LAKES

We Speak for Lakes!

**WISCONSIN
LAKES**

716 Lois Dr / Sun Prairie WI 53590

608.661.4313

info@wisconsinlakes.org

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TESTIMONY TO SENATE COMMITTEE ON NATURAL RESOURCES AND ENERGY ON SB789

Thank you for the opportunity to testify today on SB789. My name is Michael Engleson, and I am the Executive Director of Wisconsin Lakes, a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For 25 years, Wisconsin Lakes has advocated for the conservation, protection, and restoration of Wisconsin's lake resources.

Wisconsin Lakes is opposed to SB789, even though we recognize the utility of dredging in many circumstances. While the problem the bill attempts to fix - the ability of riparians on impoundments that tend to fill in with sediment to reach the navigational channel of the lake - is real, the fix the bill employs jeopardizes the safety of the waters the riparian owner seeks to enjoy, and endangers the enjoyment and possibly the property values of *other* riparians on the lake because of the degradation a poorly done or badly located dredge can cause. In addition, the bill uses ambiguous definitions and does not take into account the sometimes murky question of who owns the lakebed in an impoundment.

Dredging is not a simple project, akin to scooping the scum out of the bottom of the bathtub. Dredging in the wrong place can destroy habitat and upset the nearshore lake ecosystem. For instance, aquatic invasive species near the dredged area would find attractive habitat, especially aquatic invasive plants such as eurasian watermilfoil, flowering rush, Hydrilla, and others. AIS monitors tell stories of finding EWM established exclusively along a dredging line. The state and local lake organizations spend thousands of dollars to control such invaders, often on the very lakes on which dredging projects like this would take place.

But invasives are not the only worry from a dredging project gone bad. Sediment, especially that of impoundments, often contains suspended contaminants - everything from algae inducing phosphorus to heavy metals and other harmful materials for which excavation must be done extremely carefully, and is costly to dispose of. If the lake was subject to aquatic plant management activities in the mid-20th century, its sediments may contain residue from then-standard treatments of copper or sodium arsenite - arsenic. In fact, according to information from the Department of Natural Resources, 89% of all impoundments do not support fish consumption "[d]ue, in part, to the accumulation of sediment behind riverine structures and proclivity of pollutants ... to attach to sediment."

The riparian members of Wisconsin Lakes do expect to be able to take steps to take advantage of the lake, which sometimes reasonably includes dredging. But they also reasonably expect to be protected from harms caused by the actions of their neighbors, including from dredging projects gone wrong. That's why the state requires dredging activities to be permitted through DNR - to identify problem dredging areas before projects cause lasting, costly harm to the lake and other property owners.

Wisconsin Lakes is a statewide non-profit conservation organization of waterfront property owners, lake users, lake associations, and lake districts who in turn represent over 80,000 citizens and property owners. For 25 years, Wisconsin Lakes has been a powerful bipartisan advocate for the conservation, protection, and restoration of Wisconsin's lake resources.

If a dredging project is exempt from a permit as it is under this bill, there is no site visit by a resource professional from DNR or anywhere else required, that might identify a problem *and its solution that would allow the dredge to proceed safely*. There is no public notice that would allow a neighbor to communicate information that the riparian who wishes to dredge does not know and that might cause harm. It opens the door to unscrupulous contractors who might not care about the need or safety of a particular dredge. And the bill's admonition to follow best management practices published on the DNR's website is a weak protection at best - it fails to require the use of a contractor with demonstrated understanding or certification in those BMP's, and provides no penalty for failing to meet them.

On the other hand, continuing the existing permit requirement not only allows DNR to provide some oversight to make the project safe and conducted with best management practices, it also serves as a vehicle to educate the applicant on why dredging is a more complicated process than one might at first think. It allows the Department to advise the riparian on ways that might make the project more lake friendly, or at least less likely to cause harm. Yes, it can be a burden, and sometimes the answers might not be the ones we want to hear, but for the sake of the lake, for the sake other riparians, and frankly, for the sake of protecting your own property from the mistakes and negligence of others, permitting is a proactive form of management that the members of Wisconsin Lakes understand we need to accept.

Moreover, in 2017 the DNR issued a general permit that greatly simplifies the permitting process for a riparian wishing to dredge. In Wisconsin Lakes's opinion, that GP creates many of the same dangers as this bill, but it does at least create a balance between the burden of an individual permit and the danger of no permit at all.

In addition to these general faults with SB789, the bill uses ambiguous language such as "man-made impoundment". To my knowledge, this is not a term typically used by DNR, nor is it clearly defined in statute or case law, and it is unclear what sort of waterbody it means. Is it any water backed up behind a dam? Does it exclude riverine lake systems, such as Lake Winnebago where water levels are controlled by a dam, but a natural lake exists with or without the dam? This is an important question, because it determines which riparians are being given the exemption.

The bill also fails to provide any method to ensure the only sediment being removed is "unconsolidated sediment that was deposited after the navigable water was affected by the impoundment", leading to more questions of the impact of untrained dredgers.

And the amount of sediment allowed to be removed, 50 cubic yards per year, (about 5 dump truck loads) seems drastic, arbitrary, and overly-large. The DNR's GP, presumably developed to maximize flexibility while minimizing risk, allows only 25 cubic yards, over 5 years. This bill would allow 10 times as much! Because the bill doesn't factor in the size of the lake or the number of properties on the lake, that could be a significant percentage of a small and/or heavily developed waterbody's bed.

And finally, the bill fails to take into account the recent Wisconsin Supreme Court decision *Movrich v Lobermeier* (2105AP583), which held that a riparian does not have the right to place a pier on the lakebed of an impoundment if a private entity owns the lakebed, even if the waters above that lakebed are clearly covered by the Public Trust Doctrine. This is not an entirely uncommon experience, most notably in the utility owned reservoirs on the Wisconsin River (which seem to fall under the scope of this bill).

Wisconsin law holds that the state only owns the lakebed of natural lakes; the land that an impoundment floods does not suddenly transfer to public ownership. So, an impoundment's lake bed could be owned by one landowner, with a riparian owning up to the water's edge. If that riparian can't affix a pier to the other's lakebed even if the lake is navigable and its waters are under the public trust, it would seem to follow that they would not be allowed to dredge the lakebed they do not own. SB789, however, seems to grant the riparian the right to dredge simply because of the presence of navigable waters, in contravention of the constitutional principles laid out by the court in *Movrich*. At best, this appears to be a lawsuit waiting to happen.

Despite the concerns raised above over the extreme risk posed by permitless dredging in general to the lake itself, as well as to neighboring riparians and their property values, and the specific concerns with the language and terms of this bill, Wisconsin Lakes does believe there is a place for dredging, and we understand the need for riparians to be able to access the navigational channel of their lake from their shore, if it can be done without undue harm.

We also understand, that for some lakes, requiring every waterfront owner to go through even the general permitting process is probably inefficient. To solve this problem, we return to a suggestion we made when this bill was introduced in the previous legislative session. For some lakes, a lakewide permitting process could be established where DNR does one inventory of the entire lake, determines places that could be problematic or require additional investigation, and then for all other areas of the lake issues a lake-specific general permit, or GP-like mechanism that would allow individual riparians to proceed. This entire process could be facilitated by a local lake organization, and might be eligible for funding through a lake management grant. Indeed, this could potentially be part of the lake management planning process for that lake.

Solutions, therefore, exist to ease the burden on riparians on sediment rich impoundments to undertake activities to reach the navigational channel of their lake short of simply allowing them to dredge with no oversight whatsoever. To protect our waters, and to protect our properties, we must have in place some level of oversight. Otherwise, who knows what we'll stir up.

Wisconsin Lakes would be happy to participate in a discussion to reach the sort of workable compromise we've proposed on this issue. In the meantime, we urge this committee to reject SB789.