



October 17, 2017

Honorable Representative John Jagler
Chair, Assembly Committee on Housing and Real Estate
Wisconsin State Capitol, 411 South
Madison, WI

Re: AB 479

Chairman Jagler and members of the Assembly Committee on Housing and Real Estate, on behalf of River Alliance of Wisconsin's thousands of members across the state comprised of individuals, small businesses and local watershed protection groups, we urge you to reject AB 479 due to the constitutional questions embedded in the bill.

The term private ponds in the bill creates an exception to the statutory definition of navigable waters in Section 30.10(1), of Wisconsin Statutes. All lakes wholly or partly within this state which are navigable in fact are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters. There is no standard for the size of the waterbody and/or property ownership above the original high water mark in the declaration and public rights are affirmed in these waterbodies.

Further, the State of Wisconsin owns the beds of all natural lakes and they are held in trust for the citizens of the state. Current law generally prohibits a person from removing material from the bed of a navigable body of water unless the Department of Natural Resources has issued an individual permit or a general permit authorizing the removal.

There is already a critical exception in current law related to navigability and public rights. Navigable waters and Public Rights apply in most cases only to natural waterbodies that are navigable in fact. Public Rights in most case do not apply artificial lakes and streams.

AB 479, if enacted as law, will limit Public Rights in small natural lakes (clearly with Public Rights under current law) by declaring them exempt for permit requirements and exempt from Shore land Zoning based on:

- **Property ownership,**
- **Dimensional standards**
- **Hydrologic standards.**

Who will make the determination that these small natural waterbodies are exempt from permits or approval (including Shoreland Zoning) and assure that Public Rights are protected? What will happen if land ownership changes and the property around these waterbodies involve several landowners? Who will resolve costly user legal conflicts—likely should the bill pass—over alterations to the near shore areas resulting in disagreements between landowners over management and protection?

We believe AB 479, if enacted, will erode the Public Rights in navigable waters by an extensive body of Law.

Environmental damage could result from impacts from the exemptions within AB 479 and include but are not limited to:

- Adverse impacts to Areas of Special Natural Resource Interest (ASNRI). Many of small waterbodies ironically have be protected by private ownership and they have unique natural resource values.
- Loss of valuable waterfowl habitat. Unregulated dredging could result in **loss of food sources for waterfowl** during migration and other critical periods.
- Many small isolated lakes have rare fish and herptile species, and aquatic vegetation because of their landscape position. Unregulated dredging may adversely impacted herptile species residing on lake beds during hibernation. Habitat for fish species (spawning and rearing) would likely be eliminated. **Invasive species will likely be introduced into these small lakes.**
- Hydrologic connection determinations are time consuming and can be complex and there can be unintended consequences to groundwater functions from the impacts to Lake Morphometry from dredging. For example isolated seepage lakes (no inlet or outlet) may be “mounded lakes” that actually recharge groundwater and contribute to a stable groundwater resource. Repeated dredging could adversely impact the local hydrologic cycle. This is just one example of an unknown.
- Adverse impacts to wetland functional values are likely from removal and disposal of dredge spoil.

It appears the intent of AB 479 is to erode the Public Rights and the Public Trust Doctrine by privatizing valuable public resources, and the benefits will go to a relatively small portion of the public, and at the expense of Wisconsin’s long standing history of public benefit and use of our natural resources. River Alliance of Wisconsin cannot support AB 479 and we urge the Assembly Committee on Housing and Real Estate to reject it.

Sincerely,



Raj Shukla
Executive Director