



WISCONSIN ASSOCIATION OF LAKES, INC.

*is a nonprofit group of citizens,
organizations, and businesses working for clean, safe, healthy lakes for everyone.*

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MEMORANDUM

TO: Senate Committee on Judiciary, Corrections and Privacy

FROM: Bill O'Connor
Wisconsin Association of Lakes

DATE: May 4, 2005

RE: AB-278
Public Nuisance Law Provisions

The Wisconsin Association of Lakes (WAL) urges you to oppose AB-278 or amend the bill to remove Section 7. We believe enactment of Section 7 as drafted could significantly impair the protection of navigable waters and other public property. We believe it is a foundation purpose of government to protect the public and that legislation prohibiting governments from doing that essential job should be considered only under extraordinary circumstances and should be narrowly drafted.

But Section 7 is very broadly written. It would prohibit governments from seeking redress in the courts where private activities directly injure public rights or public property, except where the offending actions directly violate a specific regulatory provision. It would bar the abatement of any nuisance activity arising from technology changes or variations on accustomed activities that are not the subject of legislative regulation by the state or local governments.

With due respect to the Legislature, it is unwise to assume that every activity that might materially injure public rights has already been thoughtfully considered and regulated by the State or by towns, villages, cities and counties. The public cannot expect the Legislature to see the future and anticipate each threat to the public. Nuisance law plays an important role in protecting the public against threats not yet recognized or invented. But under Section 7, the Legislature declares that "activities, uses, or practices" cannot possibly interfere with public rights, unless elected officials have already considered the matter and established regulations.

Where there is any question whether a nuisance activity is in violation of any existing regulation, a government could seek to abate the interference with public rights only at the risk that a Court may conclude otherwise and impose the costs of the offending person's defense on the taxpayers.

A "public nuisance" is generally defined as "an unreasonable interference with a right common to the general public." Public nuisance cases typically involve private actions

that interfere with public property, including parks, highways or waterways. Some recent reported cases involve court actions to abate public nuisances created by the placement of posts in public alleys, obstructions in public sidewalks, junkyards and buildings unfit for human occupancy.

Nuisance is necessarily a broad legal cause of action because it is beyond the practical capacity of state and local officials to expressly identify each specific action that could unreasonably interfere with public rights or property. WAL is concerned that by prohibiting the abatement of nuisances that have been expressly regulated, that the State and local governments will lose their practical ability to protect public lands and waters against activities and uses that are clearly detrimental but have not been the subject of regulations.

We urge you to seriously consider the potential impacts of this overbroad and imprudent legislation on public property, public waters and people. Please reject Section 7 of AB-278.