



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-0881/1  
EHS:jld

## 2017 ASSEMBLY BILL 388

June 16, 2017 - Introduced by Representatives JACQUE, HORLACHER, BERNIER, BRANDTJEN, E. BROOKS, FELZKOWSKI, JARCHOW, KREMER, MURPHY, MURSAU, QUINN, RIPP, SKOWRONSKI, STEFFEN, TAUCHEN, THIESFELDT, TITTL and WICHGERS, cosponsored by Senators WANGGAARD, NASS and STROEBEL. Referred to Committee on Environment and Forestry.

1     **AN ACT to amend** 281.36 (3b) (b), 281.36 (3m) (a), 281.36 (6) (a) (intro.) and  
2           281.36 (9) (a) (intro.); and **to create** 281.36 (4m) of the statutes; **relating to:**  
3           the discharge of dredged or fill material into artificial wetlands and requiring  
4           the exercise of rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

This bill exempts from wetland permitting requirements a discharge of dredged or fill material into an artificial wetland.

Current law requires the Department of Natural Resources to issue wetland general permits for discharges of dredged or fill material into certain wetlands. Current law allows DNR to establish different requirements, conditions, and exceptions in general permits to ensure that the discharges will cause only minimal adverse environmental effects. A person who wishes to proceed with a discharge that is covered by a general permit must notify DNR. If DNR does not request additional information or notify the person that an individual permit will be required within 30 days after receipt of the notification, the person may proceed with the discharge.

Current law also authorizes DNR to require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur. Also under current law, before DNR may issue a wetland individual permit, it must require the restoration, enhancement, creation, or preservation of other

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wetlands to compensate for adverse impacts to a wetland resulting from the discharge, also known as mitigation.

Under current rules promulgated by DNR, certain artificial wetlands are exempt from the wetland permitting requirements unless DNR determines that significant functional values are present. This bill exempts from these permitting requirements a discharge to any artificial wetland. The bill defines an artificial wetland as a wetland inadvertently created by human modifications to the landscape or hydrology and for which there is no prior wetland or stream history, but excludes from the definition a wetland that is subject to federal jurisdiction and a wetland that serves as a fish spawning area or a passage to a fish spawning area.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 281.36 (3b) (b) of the statutes is amended to read:

2           281.36 **(3b)** (b) No person may discharge dredged material or fill material into  
3 a wetland unless the discharge is authorized by a wetland general permit or  
4 individual permit issued by the department under this section or the discharge is  
5 exempt under sub. (4) or (4m). No person may violate any condition contained in a  
6 wetland general or individual permit issued by the department under this section.  
7 The department may not issue a wetland general or individual permit under this  
8 section unless it determines that the discharge authorized pursuant to the wetland  
9 general or individual permit will comply with all applicable water quality standards.

10           **SECTION 2.** 281.36 (3m) (a) of the statutes is amended to read:

11           281.36 **(3m)** (a) *When permit required.* Any person wishing to proceed with a  
12 discharge into any wetland shall submit an application for a wetland individual  
13 permit under this subsection unless the discharge has been authorized under a  
14 wetland general permit as provided in sub. (3g) or is exempt under sub. (4) or (4m).  
15 Before submitting the application, the department shall hold a meeting with the  
16 applicant to discuss the details of the proposed discharge and the requirements for  
17 submitting the application and for delineating the wetland. An applicant may

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1 include in the application a request for a public informational hearing. The  
2 application shall be accompanied by the applicable fee specified in sub. (11) or (12)  
3 (a).

4 **SECTION 3.** 281.36 (4m) of the statutes is created to read:

5 281.36 (4m) EXEMPTION; ARTIFICIAL WETLANDS. (a) In this subsection, “artificial  
6 wetland” means a wetland inadvertently created by human modifications to the  
7 landscape or hydrology and for which there is no prior wetland or stream history but  
8 does not include any of the following:

- 9 1. A wetland that is subject to federal jurisdiction under 33 USC 1344.
- 10 2. A wetland that serves as a fish spawning area or a passage to a fish spawning  
11 area.

12 (b) The permitting requirement under sub. (3b) does not apply to any discharge  
13 into an artificial wetland.

14 **SECTION 4.** 281.36 (6) (a) (intro.) of the statutes is amended to read:

15 281.36 (6) (a) (intro.) The department shall promulgate rules to interpret and  
16 implement the provisions under subs. (4), ~~(4m)~~, and (5). In promulgating these rules,  
17 the department shall do all of the following:

18 **SECTION 5.** 281.36 (9) (a) (intro.) of the statutes is amended to read:

19 281.36 (9) (a) (intro.) For purposes of determining whether to issue a wetland  
20 individual permit, whether authorization to proceed as authorized under a wetland  
21 general permit is appropriate, or whether an exemption under sub. (4) or (4m) is  
22 appropriate, and for purposes of enforcing this section, any employee or other  
23 representative of the department, upon presenting his or her credentials, may do any  
24 of the following:

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(END)