



State of Wisconsin
2017 - 2018 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 547**

January 31, 2018 - Offered by Representative BROSTOFF.

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** 15.347 (22) and 281.36 (4n) of the statutes;
3 **relating to:** the discharge of dredged or fill material into artificial wetlands
4 and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill exempts from wetland permitting requirements a discharge of dredged or fill material into an artificial wetland, subject to certain Department of Natural Resources determinations.

Current law requires DNR 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 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, if DNR determines that an artificial wetland is present and that the artificial wetland is not providing significant functions relating to flooding or water quality. The bill defines an “artificial wetland” as a landscape feature where hydrophytic vegetation may be present as a result of human modification to the landscape or hydrology and for which there is no prior wetland or stream history, but excludes from the definition a wetland that serves as a fish spawning area or a passage to a fish spawning area or that was created as a result of mitigation.

The bill creates within DNR a wetland study council, consisting of nine members, appointed for staggered six-year terms by the governor and the secretary of natural resources, representing various interests and expertises, to research and provide recommendations on various issues relating to wetlands.

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

1 **SECTION 1.** 15.347 (22) of the statutes is created to read:

2 15.347 (22) WETLAND STUDY COUNCIL. (a) There is created in the department
3 of natural resources a wetland study council consisting of the following members,
4 appointed for staggered 6-year terms:

5 1. One member who is a representative of a statewide organization
6 representing the business community.

7 2. One member who is a representative of a statewide organization
8 representing waterfowl interests.

9 3. One member who is a representative of a statewide organization
10 representing real estate and development interests.

1 4. One member who is a representative of a statewide organization
2 representing municipal interests.

3 5. One member who is a representative of a statewide organization
4 representing rural and agricultural interests.

5 6. One member who is a representative of a statewide organization
6 representing an outdoor sporting group with a specific interest in wetlands.

7 7. One member who is a statewide wetland delineator.

8 8. One member who is a statewide wetland consultant.

9 9. One member who is a department of natural resources biologist or
10 hydrologist and who is a wetland expert, appointed by the secretary of natural
11 resources.

12 (b) The wetland study council shall research and develop recommendations on
13 all of the following:

14 1. The implementation and effectiveness of statewide wetland mitigation
15 programs.

16 2. Program elements that would be necessary for the department of natural
17 resources to implement if the department assumes from the federal government the
18 authority to administer the state's own individual and general permit program for
19 the discharge of dredged or fill material into the navigable waters of the state under
20 s. 281.12 (2).

21 3. Issues related to the analysis of practicable alternatives that avoid and
22 minimize the adverse impacts of a discharge into a wetland on wetland functional
23 values and that will not result in any other significant adverse environmental
24 consequences.

1 4. Storm water management ponds and their potential to serve a role in
2 wetland mitigation.

3 5. Statewide incentive programs for creating, restoring, and enhancing
4 wetlands.

5 6. Statewide wetland trainings for department of natural resources staff,
6 wetland consultants, and wetland delineators.

7 7. The simplification of regulations associated with creating wetlands on farm
8 drainage ditches for the purpose of phosphorus pollution retention.

9 8. Ways to improve the in-lieu fee subprogram of the wetland mitigation
10 program, under s. 281.36 (3r) (e), including subcontracting the management of a
11 program to a nonprofit organization.

12 9. The possibility of a professional, whose wetland delineation work is assured
13 under the department of natural resources' wetland delineation professional
14 assurance initiative, performing a wetland delineation confirmation under s. 23.321
15 on behalf of the department.

16 10. Any other item related to wetlands at the discretion of the council.

17 **SECTION 2.** 281.36 (3b) (b) of the statutes, as affected by 2017 Wisconsin Acts
18 58 and 115, is amended to read:

19 281.36 **(3b)** (b) No person may discharge dredged material or fill material into
20 a wetland unless the discharge is authorized by a wetland general permit or
21 individual permit issued by the department under this section or the discharge is
22 exempt under sub. (4), (4m) (a), (4n), or (4r). No person may violate any condition
23 contained in a wetland general or individual permit issued by the department under
24 this section. The department may not issue a wetland general or individual permit
25 under this section unless it determines that the discharge authorized pursuant to the

1 wetland general or individual permit will comply with all applicable water quality
2 standards.

3 **SECTION 3.** 281.36 (3m) (a) of the statutes, as affected by 2017 Wisconsin Acts
4 58 and 115, is amended to read:

5 281.36 **(3m)** (a) *When permit required.* Any person wishing to proceed with a
6 discharge into any wetland shall submit an application for a wetland individual
7 permit under this subsection unless the discharge has been authorized under a
8 wetland general permit as provided in sub. (3g) or is exempt under sub. (4), (4m) (a),
9 (4n), or (4r). Before submitting the application, the department shall hold a meeting
10 with the applicant to discuss the details of the proposed discharge and the
11 requirements for submitting the application and for delineating the wetland. An
12 applicant may include in the application a request for a public informational hearing.
13 The application shall be accompanied by the applicable fee specified in sub. (11) or
14 (12) (a).

15 **SECTION 4.** 281.36 (4n) of the statutes is created to read:

16 281.36 **(4n)** EXEMPTION; ARTIFICIAL WETLANDS. (a) In this subsection, “artificial
17 wetland” means a landscape feature where hydrophytic vegetation may be present
18 as a result of human modification to the landscape or hydrology and for which there
19 is no prior wetland or stream history but does not include any of the following:

20 1. A wetland that serves as a fish spawning area or a passage to a fish spawning
21 area.

22 2. A wetland created as a result of a mitigation requirement under sub. (3r).

23 (b) Subject to par. (c), the permitting requirement under sub. (3b) does not
24 apply to any discharge into an artificial wetland.

1 (c) 1. A person who proposes a project that may affect an artificial wetland shall
2 notify the department no fewer than 15 working days before initiating the project.
3 The notice may include evidence that the landscape feature is an artificial wetland,
4 such as a statement issued by a professional who has investigated the wetland and
5 who is qualified to give such an opinion. The department shall publish information
6 on its Internet site describing the types of evidence needed for the department to
7 issue its determination.

8 2. The department shall issue a determination as to whether the landscape
9 feature is an artificial wetland within 15 working days after receiving notification
10 of the proposed project under subd. 1. unless the department notifies the person that
11 one of the following conditions applies:

12 a. The department does not have sufficient information about the parcel of land
13 to determine whether it contains an artificial wetland.

14 b. The department determines that the landscape feature is providing
15 significant functions that either protect adjacent or downstream property or
16 infrastructure from flooding or significantly improve the water quality of adjacent
17 or downstream water body.

18 3. If, within 15 working days after the notification under subd. 1. is delivered
19 to the department, the department notifies the person that subd. 2. a. applies, the
20 person shall cooperate with the department's efforts to obtain information about the
21 relevant parcel of land and may only proceed with the project upon notification that
22 the department has determined the landscape feature to be an artificial wetland. If,
23 within 15 working days after the notification is delivered to the department, the
24 department notifies the person that subd. 2. b. applies, the person may not proceed

1 with the project unless authorized by, or otherwise exempted from, a wetland general
2 or individual permit under this section.

3 **SECTION 5.** 281.36 (6) (a) (intro.) of the statutes, as affected by 2017 Wisconsin
4 Act 115, is amended to read:

5 281.36 **(6)** (a) (intro.) The department shall promulgate rules to interpret and
6 implement the provisions under subs. (4), (4n), (4r), and (5). In promulgating these
7 rules, the department shall do all of the following:

8 **SECTION 6.** 281.36 (9) (a) (intro.) of the statutes, as affected by 2017 Wisconsin
9 Act 115, is amended to read:

10 281.36 **(9)** (a) (intro.) For purposes of determining whether to issue a wetland
11 individual permit, whether authorization to proceed as authorized under a wetland
12 general permit is appropriate, or whether an exemption under sub. (4), (4n), or (4r)
13 is appropriate, and for purposes of enforcing this section, any employee or other
14 representative of the department, upon presenting his or her credentials, may do any
15 of the following:

16 **SECTION 7. Nonstatutory provisions.**

17 (1) APPOINTMENT OF MEMBERS OF WETLAND STUDY COUNCIL. The governor shall
18 appoint the members of the wetland study council under section 15.347 (22) (a) 1. to
19 8. of the statutes and the secretary of natural resources shall appoint the member
20 of the wetland study council under section 15.347 (22) (a) 9. of the statutes no later
21 than 6 months after the effective date of this subsection.

22 (2) INITIAL TERMS FOR WETLAND STUDY COUNCIL MEMBERS. Notwithstanding
23 section 15.347 (22) of the statutes, of the members of the wetland study council who

1 are appointed as initial members, 3 members shall serve for a 2-year term and 3
2 members shall serve for a 4-year term.

3 (END)