



2015 ASSEMBLY BILL 640

January 7, 2016 – Introduced by Representatives CZAJA, BRANDTJEN, HORLACHER, JARCHOW, T. LARSON and MURPHY, cosponsored by Senators TIFFANY and GUDEX. Referred to Committee on Environment and Forestry.

1 **AN ACT** *to renumber* 29.733 (1); *to renumber and amend* 29.733 (3) and 281.36
2 (3m) (b); *to amend* 29.733 (2) (a), 29.733 (2) (b), 29.733 (2) (e), 30.19 (1m) (b),
3 30.40 (1), 234.91 (1) (a), 234.91 (2) (b), 281.16 (1) (b), 281.36 (3g) (a) 7., 281.36
4 (3n) (a), 281.36 (4) (c), 281.36 (4) (e) (intro.), 283.31 (3) (intro.), 283.31 (4)
5 (intro.), 283.31 (5m) and 348.27 (18) (c); and *to create* 29.733 (1d), 29.733 (1h)
6 (c) 4., 29.733 (3) (b), 31.34 (3) (am), 281.346 (2) (bm), 281.36 (3m) (b) 2., 281.36
7 (3n) (bm), 281.36 (3r) (bm), 281.36 (4) (am), 283.15 (4m) and 348.27 (18) (a) 1.
8 e. of the statutes; **relating to:** regulation of aquaculture and fish farms.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the regulation of aquaculture and fish farms.

Wetland permits

Under current law, no person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the Department of Natural Resources (DNR). An individual permit is issued to a person for a particular discharge that is not covered under a general permit. A general permit is issued for certain categories of discharges, including a discharge that is part of a development for agricultural purposes if the discharge does not affect more than 10,000 square feet of wetland. This bill adds aquacultural purposes to this category of discharge.

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This bill also exempts normal aquaculture activities, if the discharge is to a wetland that has been created for aquacultural purposes, and the construction or maintenance of ponds or roads used in fish farms from the requirement to obtain an individual or general wetland permit.

Current law requires an applicant for an individual wetland permit to submit to DNR an analysis of the practicable alternatives to the proposed discharge that will avoid and minimize the discharge's adverse impacts on the wetland and that will not result in any other significant adverse environmental consequences. The bill creates an exemption to this requirement if the application is for a permit authorizing a discharge from a fish farm.

Current law specifies that DNR must require wetland mitigation for each wetland individual permit that it issues. A person may conduct wetland mitigation by the use of various methods, including purchasing credits from a mitigation bank or completing mitigation within the same watershed or within one-half mile of the site of the discharge. This bill requires DNR to consider wetlands created in the ordinary course of a fish farm's operation when determining whether the facility has completed wetland mitigation within the same watershed or within one-half mile of the site of the discharge.

The bill also provides that, if DNR considers whether proposed activities are water or wetland dependent when determining whether to issue a wetland individual permit, DNR must regard a fish farm's activities as water or wetland dependent.

Natural bodies of water used as fish farms

The bill expands the category of natural bodies of water that may be used as part of a fish farm to include a spring that provides water to an artificial water body that is used as a fish farm. Under current law, a natural body of water may be used as a fish farm or part of a fish farm only if the water body is a freeze-out pond, a preexisting fish rearing facility, or a body of water for which DNR has issued a permit. The bill defines "natural body of water" as a spring, stream, pond, lake, or wetland that was historically present in a natural state but may have been physically altered over time.

The bill also creates an exemption to the general prohibition on using a natural water body as a fish farm for a person who previously held a permit from DNR to use a natural water body as a fish farm and who takes no action in the water body other than maintaining the fish farm facility.

Dams on navigable streams

This bill also creates an additional exemption to the requirement that a person maintaining a dam on a navigable stream must allow at least 25 percent of the natural low flow of water of the stream to pass through the dam. Under current law, this requirement does not apply to a dam where the water is discharged directly into a lake, mill pond, storage pond, or cranberry marsh, or to cases in which the DNR determines that the required minimum discharge is not necessary for the protection of fish life. Under the bill, this requirement also does not apply to a dam in a fish farm where the water is returned to the navigable stream.

ASSEMBLY BILL 640***WPDES permits***

This bill clarifies what conditions DNR may include in a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued to a fish farm.

Under current law, DNR must include in WPDES permits issued to certain large fish farms requirements that are based on certain provisions under federal law. Those provisions require fish farms to use specified best-management practices relating to discharging solids, storing materials, and inspecting and maintaining production and wastewater treatment systems.

This bill requires DNR to include the federal requirements in all WPDES permits issued to fish farms. The bill also prohibits DNR from including additional conditions in a permit issued to a fish farm unless those conditions are necessary to meet certain standards, such as federal or state water quality standards or schedules of compliance established by DNR. The bill also states that any condition that is included in a permit issued to a fish farm must be based on site-specific best management practices to the greatest extent allowed under federal law.

Variances to water quality standards

The bill also specifies certain information that DNR must use in deciding whether to grant a variance to a fish farm.

Current law allows a WPDES permittee to request a variance from applicable water quality standards. Under current federal regulations, any variance granted by DNR must also be reviewed and either approved or disapproved by the federal environmental protection agency (EPA). This bill states that, when deciding whether to grant a variance to a fish farm, DNR must rely on the same guidance documents and other information that would be used by EPA in reviewing the variance.

Water withdrawals under the Great Lakes Compact

The bill also provides that if a fish farm withdraws water and places it in an aquacultural pond that is registered with the Department of Agriculture, Trade and Consumer Protection (DATCP), any subsequent withdrawal of that water from that pond is not a “withdrawal” for purposes of the Great Lakes Compact. The Great Lakes Compact generally prohibits water from within the Great Lakes basin from being diverted out of the basin and imposes certain requirements on a person who withdraws 100,000 gallons of water per day or more from the Great Lakes basin.

Cost-sharing exemption from nonpoint performance standards

Current law requires DNR to promulgate rules setting performance standards for sources of nonpoint water pollution, which is water pollution from diffuse sources. Under current law, the owner or operator of an agricultural facility or practice that existed before October 14, 1997, is exempt from complying with these nonpoint performance standards unless cost-sharing is available to the owner or operator under the soil and water resource management program administered by DATCP or the nonpoint source pollution abatement financial assistance program administered by DNR. This bill adds aquaculture to the list of activities that make up “agricultural practice” and that are associated with an “agricultural facility” in this context.

ASSEMBLY BILL 640***Agricultural use in the Lower Wisconsin State Riverway***

Under current law, a person may develop or use land in the Lower Wisconsin State Riverway for agricultural use if the development and use comply with the rules for the soil and water resource management program promulgated by DATCP. This bill adds aquaculture to the list of activities that make up “agricultural use” in this context.

WHEDA loan guarantees

Under current law, the Wisconsin Housing and Economic Development Authority administers the Wisconsin Development Reserve Fund (WDRF) to provide loan guarantees to farmers and other small businesses. Current law provides that a loan made to a farmer to finance the acquisition of agricultural assets or the cost of improvements to facilities or land, which are acquired or made for agricultural purposes, is eligible for a guarantee from the WDRF. This bill expands the type of loans that are eligible for this guarantee to include loans made to acquire assets used in aquaculture and loans that are made for aquacultural purposes.

Navigable water permits

This bill also exempts aquacultural uses of land from the requirement to obtain a permit from DNR to construct, dredge, or enlarge an artificial water body that connects with a navigable waterway or that is located within 500 feet of the ordinary high-water mark of an existing navigable waterway, or to grade or remove more than 10,000 square feet of topsoil from the bank of a navigable waterway.

Transportation of agricultural products

Finally, this bill allows the Department of Transportation to issue permits for the transportation of fish and minnows in vehicles that exceed certain weight limitations.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1 **SECTION 1.** 29.733 (1) of the statutes is renumbered 29.733 (1h).
- 2 **SECTION 2.** 29.733 (1d) of the statutes is created to read:
- 3 29.733 (1d) In this section:
- 4 (a) “Artificial water body” has the meaning given in s. 30.19 (1b) (a).

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1 (b) "Natural body of water" means a spring, stream, pond, lake, or wetland that
2 was historically present in a natural state but may have been physically altered over
3 time.

4 **SECTION 3.** 29.733 (1h) (c) 4. of the statutes is created to read:

5 29.733 (1h) (c) 4. A spring that provides water to an artificial water body that
6 is used as a fish farm or as part of a fish farm.

7 **SECTION 4.** 29.733 (2) (a) of the statutes is amended to read:

8 29.733 (2) (a) The department, subject to s. 29.024 (2g) and (2r), shall issue a
9 permit under this subsection for a natural body of water specified under sub. ~~(1)~~ (1h)
10 (c) 1. if the department determines that no substantial public interest exists in the
11 body of water and that no public or private rights in the body of water will be
12 damaged.

13 **SECTION 5.** 29.733 (2) (b) of the statutes is amended to read:

14 29.733 (2) (b) Notwithstanding par. (a), for a freeze-out pond that is licensed
15 as a private fish hatchery, or as part of a private fish hatchery, under s. 29.52, 1995
16 stats., on January 1, 1998, or for a natural body of water as described under sub. ~~(1)~~
17 (1h) (c) 2., the department shall issue an initial permit without making the
18 determination under par. (a).

19 **SECTION 6.** 29.733 (2) (e) of the statutes is amended to read:

20 29.733 (2) (e) The department may suspend a permit for a body of water
21 specified in sub. ~~(1)~~ (1h) (c) 2. for 90 days if the department finds that the permit
22 holder has failed to adequately maintain the fish barriers and may revoke the permit
23 if the department determines that the failure to adequately maintain the barriers
24 has not been corrected within the 90-day period.

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1 **SECTION 7.** 29.733 (3) of the statutes is renumbered 29.733 (3) (intro.) and
2 amended to read:

3 29.733 **(3)** (intro.) This section does not apply to ~~a~~ any of the following:

4 (a) A person who places a net pen in a natural body of water for the purpose of
5 holding or rearing fish in accordance with a general permit issued under s. 30.12 (3)
6 (b).

7 **SECTION 8.** 29.733 (3) (b) of the statutes is created to read:

8 29.733 **(3)** (b) A person who previously held a permit under sub. (2) and who
9 takes no action in the natural body of water other than maintaining the fish farm
10 facility, including maintaining ponds, ditches, canals, berms, and other structures
11 within the facility.

12 **SECTION 9.** 30.19 (1m) (b) of the statutes is amended to read:

13 30.19 **(1m)** (b) Any agricultural or aquacultural use of land.

14 **SECTION 10.** 30.40 (1) of the statutes is amended to read:

15 30.40 **(1)** “Agricultural use” means aquaculture; beekeeping; dairying; egg
16 production; feedlots; grazing; floriculture; raising of livestock; raising of poultry;
17 raising of fruits, nuts and berries; raising of grains, grass, mint and seed crops;
18 raising of vegetables; and sod farming.

19 **SECTION 11.** 31.34 (3) (am) of the statutes is created to read:

20 31.34 **(3)** (am) A dam in a fish farm where the water is returned to the navigable
21 stream.

22 **SECTION 12.** 234.91 (1) (a) of the statutes is amended to read:

23 234.91 **(1)** (a) “Agricultural assets” means machinery, equipment, facilities,
24 land or livestock used in agriculture or aquaculture.

25 **SECTION 13.** 234.91 (2) (b) of the statutes is amended to read:

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1 234.91 (2) (b) The loan is made to finance the acquisition of agricultural assets
2 or the cost of improvements to facilities or land. The agricultural assets must be
3 acquired, and the improvements must be made, for agricultural or aquacultural
4 purposes.

5 **SECTION 14.** 281.16 (1) (b) of the statutes is amended to read:

6 281.16 (1) (b) “Agricultural practice” means aquaculture; beekeeping;
7 commercial feedlots; dairying; egg production; floriculture; fish or fur farming;
8 grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and
9 seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal
10 programs in return for payments in kind; owning land, at least 35 acres of which is
11 enrolled in the conservation reserve program under 16 USC 3831 to 3836; and
12 vegetable raising.

13 **SECTION 15.** 281.346 (2) (bm) of the statutes is created to read:

14 281.346 (2) (bm) *Subsequent withdrawals for aquacultural purposes.* If a fish
15 farm withdraws water and places it in an aquacultural pond that is registered with
16 the department of agriculture, trade and consumer protection, any subsequent
17 withdrawal of that water from that pond is not a withdrawal for the purposes of this
18 section.

19 **SECTION 16.** 281.36 (3g) (a) 7. of the statutes is amended to read:

20 281.36 (3g) (a) 7. A discharge that is part of a development for agricultural or
21 aquacultural purposes, if the discharge does not affect more than 10,000 square feet
22 of wetland.

23 **SECTION 17.** 281.36 (3m) (b) of the statutes is renumbered 281.36 (3m) (b) 1.
24 and amended to read:

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1 281.36 (3m) (b) 1. ~~An~~ Subject to subd. 2., an applicant shall include in an
2 application submitted under par. (a) an analysis of the practicable alternatives that
3 will avoid and minimize the adverse impacts of the discharge on wetland functional
4 values and that will not result in any other significant adverse environmental
5 consequences.

6 **SECTION 18.** 281.36 (3m) (b) 2. of the statutes is created to read:

7 281.36 (3m) (b) 2. If an application submitted under par. (a) is for a permit
8 authorizing a discharge from a fish farm, the applicant is not required to provide an
9 analysis of practicable alternatives.

10 **SECTION 19.** 281.36 (3n) (a) of the statutes is amended to read:

11 281.36 (3n) (a) *Review limits.* For the purpose of issuing a wetland individual
12 permit, during the period between the date on which the application under sub. (3m)
13 (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the
14 department shall conduct its review under this subsection. The department shall
15 review the analysis of practicable alternatives presented in the application under
16 sub. (3m) (b). The department shall limit its review to those practicable alternatives
17 that are located at the site of the discharge and that are located adjacent to that site
18 if the applicant has demonstrated that the proposed project causing the discharge
19 will result in a demonstrable economic public benefit, that the proposed project is
20 necessary for the expansion of an existing industrial, commercial, ~~or~~ agricultural, or
21 aquacultural facility that is in existence at the time the application is submitted, or
22 that the proposed project will occur in an industrial park that is in existence at the
23 time the application is submitted.

24 **SECTION 20.** 281.36 (3n) (bm) of the statutes is created to read:

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1 281.36 **(3n)** (bm) If, in determining whether to issue a wetland individual
2 permit under sub. (3m) or under rules promulgated by the department to implement
3 33 USC 1341 (a), the department considers whether proposed activities are water or
4 wetland dependent, the department shall consider the activities of constructing and
5 operating a fish farm to be water or wetland dependent.

6 **SECTION 21.** 281.36 (3r) (bm) of the statutes is created to read:

7 281.36 **(3r)** (bm) Under the mitigation program, in determining whether
8 mitigation as specified in par. (a) 3. has been accomplished by a fish farm, the
9 department shall consider wetlands created in the ordinary course of the facility's
10 operation.

11 **SECTION 22.** 281.36 (4) (am) of the statutes is created to read:

12 281.36 **(4)** (am) Normal aquaculture activities, if the discharge is to a wetland
13 created for aquacultural purposes.

14 **SECTION 23.** 281.36 (4) (c) of the statutes is amended to read:

15 281.36 **(4)** (c) Construction or maintenance of farm ponds, stock ponds, or ponds
16 used in fish farms, or irrigation ditches.

17 **SECTION 24.** 281.36 (4) (e) (intro.) of the statutes is amended to read:

18 281.36 **(4)** (e) (intro.) Construction or maintenance of farm roads, roads used
19 in fish farms, forest roads, or temporary mining roads that is performed in
20 accordance with best management practices, as determined by the department, to
21 ensure all of the following:

22 **SECTION 25.** 283.15 (4m) of the statutes is created to read:

23 283.15 **(4m)** VARIANCES FOR FISH FARMS. In deciding whether to grant an
24 application for a variance for a fish farm, the secretary shall rely on the same
25 guidance documents and other information that would be used by the federal

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1 environmental protection agency to review and approve or disapprove the variance
2 as required under 40 CFR 131.14.

3 **SECTION 26.** 283.31 (3) (intro.) of the statutes is amended to read:

4 283.31 (3) (intro.) The department may issue a permit under this section for
5 the discharge of any pollutant, or combination of pollutants, other than those
6 prohibited under sub. (2), upon condition that such discharges will meet all the
7 following, whenever applicable, subject to sub. (5m):

8 **SECTION 27.** 283.31 (4) (intro.) of the statutes is amended to read:

9 283.31 (4) (intro.) The department shall prescribe conditions for permits issued
10 under this section to assure compliance with the requirements of sub. (3). Such
11 additional conditions shall include at least the following, subject to sub. (5m):

12 **SECTION 28.** 283.31 (5m) of the statutes is amended to read:

13 283.31 (5m) ~~PERMITS FOR CERTAIN CONCENTRATED AQUATIC ANIMAL PRODUCTION~~
14 ~~FACILITIES.~~ The department shall include the requirements of 40 CFR 451.11 in
15 permits issued under this section for concentrated aquatic animal production
16 facilities described in 40 CFR 451.10 requirements that are based on, and are not
17 more stringent than, the requirements in 40 CFR 451.11 fish farms. The department
18 may not include additional conditions in a permit for a fish farm except as necessary
19 for the farm to meet the applicable limitations, standards, and other provisions
20 described in sub. (3) (a) to (f). Any conditions included in a permit issued under this
21 section for a fish farm shall be limited to site-specific best management practices to
22 the greatest extent allowed under federal law.

23 **SECTION 29.** 348.27 (18) (a) 1. e. of the statutes is created to read:

24 348.27 (18) (a) 1. e. Fish or minnows.

25 **SECTION 30.** 348.27 (18) (c) of the statutes is amended to read:

