

2001 ASSEMBLY BILL 215

March 15, 2001 – Introduced by Representatives KEDZIE and JOHNSRUD. Referred to Committee on Environment.

1 **AN ACT** *to create* 281.163 of the statutes; **relating to:** discharges of dredged or
2 fill material into nonfederal wetlands.

Analysis by the Legislative Reference Bureau

Under federal law, activities involving the discharge of dredged or fill material into “navigable waters” must comply with certain guidelines contained in regulations promulgated by the federal environmental protection agency (EPA) in order for a discharge permit to be issued by the U.S. army corps of engineers (ACE). Before ACE may issue a permit, the department of natural resources (DNR) must determine that the project complies with state water quality standards, including those for wetlands.

Federal law defines “navigable waters” to be “the waters of the United States.” ACE in turn has interpreted “the waters of the United States” to include nonnavigable, isolated, intrastate wetlands if they serve as habitat for migratory birds that cross state lines.

A recent U.S. Supreme Court decision, *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, 69 U.S.L.W. 4048 (2001), limited the types of bodies of waters for which ACE discharge permits are required. The court held that these nonnavigable, isolated, intrastate wetlands that serve as habitat for migratory birds cannot be interpreted by ACE to be navigable waters and that, therefore, no ACE discharge permits are required to discharge dredged or fill material into these wetlands.

This bill places a moratorium on any person discharging dredged or fill material into wetlands for which ACE discharge permits are no longer required, with certain

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exceptions. Discharges that are authorized by certain permits or approvals under state law, discharges that are not subject to these requirements and that would have been exempt on January 8, 2001, from the wetland water quality standards set by DNR, discharges that are allowed under discharge permits that were issued by ACE before the date of the U.S. Supreme Court decision, and discharges that are the result of activities that would have qualified for an exemption from the federal permitting process on January 8, 2001 are excepted from the moratorium. These provisions sunset on July 1, 2001.

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.** 281.163 of the statutes is created to read:

2 **281.163 Prohibitions against discharges into nonfederal wetlands. (1)**

3 DEFINITIONS. In this section:

4 (a) “Nonfederal wetland” means a wetland to which the federal permitting
5 process under 33 USC 1344 does not apply due to the decision in Solid Waste Agency
6 of Northern Cook County v. U.S. Army Corps of Engineers, No. 99–1178 (U.S. Jan.
7 9, 2001) but to which such permitting process did apply on January 8, 2001.

8 (b) “Wetland” has the meaning given in s. 23.32 (1).

9 **(2) PROHIBITION.** No person may discharge dredged or fill material into a
10 nonfederal wetland.

11 **(3) INAPPLICABILITY.** (a) Subsection (2) does not apply to any of the following:

12 1. A discharge of dredged or fill material into a nonfederal wetland if the
13 discharge is authorized by a permit or other approval under ss. 59.692, 61.351,
14 62.231, 87.30, 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85 or ch. 30, 31,
15 283, 289, 291, 292, 293, 295, or 299.

16 2. A discharge of dredged or fill material into a nonfederal wetland if the
17 discharge is not subject to a permitting or other approval requirement under ss.

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1 59.692, 61.351, 62.231, 87.30, 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85
2 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299 and if the discharge would have been
3 exempt on January 8, 2001 from the water quality standards for wetlands that are
4 set under rules promulgated under s. 281.15 (1).

5 3. A discharge of dredged or fill material into a nonfederal wetland if the
6 discharge is permitted under a permit issued by the U.S. army corps of engineers on
7 or before January 8, 2001, and if the discharge is performed in compliance with that
8 permit.

9 4. A discharge of dredged or fill material into a nonfederal wetland that is the
10 result of an activity that would have qualified for an exemption under 33 USC 1334
11 (f) on January 8, 2001, or under any other regulation, rule, memorandum of
12 agreement, guidance letter, or other provision established by a federal agency that
13 was promulgated or adopted pursuant to that subsection or that was used to
14 implement that subsection and that was in effect on January 8, 2001.

15 (b) This section does not apply on or after July 1, 2001.

16 (END)