

2001 DRAFTING REQUEST

Bill

Received: 03/13/2001

Received By: gibsom

Wanted: As time permits

Identical to LRB:

For: Neal Kedzie (608) 266-9650

By/Representing: Dan Johnson

This file may be shown to any legislator: NO

Drafter: gibsom

May Contact:

Addl. Drafters:

Subject: Nat. Res. - wet/shore/flood

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Moratorium on discharges into wetlands

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	gibsom 03/13/2001	gilfokm 03/13/2001	pgreensl 03/13/2001	_____			
/2	gibsom 03/13/2001 lrb_docadmin 03/14/2001 rkite 03/14/2001	gilfokm 03/14/2001	pgreensl 03/13/2001	_____	lrb_docadmin 03/14/2001 lrb_docadmin 03/14/2001		State
/3			kfollet 03/14/2001	_____	lrb_docadmin 03/14/2001	lrb_docadmin	State 03/14/2001

FE Sent For:

<END>

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/2	gibsom 03/13/2001 lrb_docadmin 03/14/2001 rkite 03/14/2001	gilfokm 03/14/2001	pgreensl 03/13/2001	_____	lrb_docadmin 03/14/2001 lrb_docadmin 03/14/2001		State
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Extra Copies:

To Kedzie's office
→ e-mail Dan Johnson in Kedzie's office
→ John Stolzenberg office

Pre Topic:

No specific pre topic given

Topic:

Moratorium on discharges into wetlands

Instructions:

See attached

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1?	gibsom	1-3/Kmg 1/3-01	3/ 1/3	PS/KK			
		1/2-3/Kmg 1/3-01	PS	3/13			
FE Sent For:			10/1 3/14	<END> 10/1/JF 3/14			



State of Wisconsin
2001 - 2002 LEGISLATURE

RMR
LRB-2845/1
MCC
img

now

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

are excepted from the moratorium

INS
REL

INS ANL

1 AN ACT ^{GEN. CAT.} relating to: ???

Analysis by the Legislative Reference Bureau

ACE

with certain exceptions. Discharges that are subject to certain approval and permitting requirements under state law, discharges that are not subject to these requirements and that are exempt from the ~~water~~ wetland quality standards promulgated by the department of natural resources and discharges that are allowed under discharge permits that were issued by the Army Corps of Engineers before the date of the U.S. Supreme Court decision. ~~These legislative provisions~~ sunset on July 2001.

set

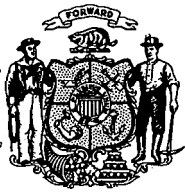
FE-S

DNR

1

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

INS BODY



2001 SENATE BILL 54

February 20, 2001 - Introduced by Senator SHIBILSKI. Referred to Committee on Environmental Resources.

INS
REL

1 AN ACT ...; relating to: discharges of dredged or fill material into nonfederal
2 wetlands.

INS
ANL

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} ban on any person discharging dredged or fill material into wetlands for which ACE discharge permits are no longer required.

Handwritten scribble and arrow pointing to the word "ban" in the previous paragraph.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 54

1 AN ACT relating to: discharges of dredged or fill material into nonfederal
2 wetlands.

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

3 SECTION 1. Nonstatutory provisions.

4 (1) DEFINITIONS. In this SECTION:

5 (a) "Artificial wetland" has the meaning given in the water quality standards
6 for wetlands that are set under rules promulgated under section 281.15 (1) of the
7 statutes.

8 ~~(a)~~ [#] "Nonfederal wetland" means a wetland to which the federal permitting
9 process under 33 USC 1344 does not apply due to the decision in Solid Waste Agency
10 of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178 (U.S. Jan.
11 9, 2001) but to which such permitting process did apply on January 8, 2001.

INSERT
BODY



1 [#](b) ~~(c)~~ "Wetland" has the meaning given in section 23.32 (1) of the statutes.

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

4 (3) INAPPLICABILITY.

5 (a) Subsections ~~(1) and~~ (2) ^{does} do not apply to a discharge of dredged or fill material
6 into a nonfederal wetland that is subject to a permitting or other approval
7 requirement under sections 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47, or 281.49
8 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299 of the statutes.

9 (b) Subsections ~~(1) and~~ (2) ^{does} do not apply to a discharge of dredged or fill material
10 into a nonfederal wetland that is not subject to a permitting or other approval
11 requirement under sections 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47, or 281.49
12 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299 ^{if the discharge is exempt}
13 from the water quality standards for wetlands that are set under rules promulgated ^{of the}
14 under section 281.15 (1) of the statutes. ^{statutes}

15 (c) Subsections ~~(1) and~~ (2) ^{does} do not apply to a discharge of dredged or fill material
16 into a nonfederal wetland if the discharge is permitted under a permit issued by the
17 U.S. Army Corps of Engineers on or before January 8, 2001, and if the discharge is
18 performed in compliance with that permit.

19 (d) This SECTION does not apply on or after July 1, 2001.

*end of
insert.*

20 ~~(END)~~



State of Wisconsin
2001 - 2002 LEGISLATURE

NOW

LRB-2845/P 2
MGG:kmg:pg

2001 BILL

1 AN ACT relating to: discharges of dredged or fill material into nonfederal
2 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 (PEA) 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

BILL

and discharges that are necessary for aquaculture operations
excepted

FE-S

exceptions. Discharges that are subject to certain approval and permitting requirements under state law, discharges that are not subject to these requirements and that are exempt from the wetland water quality standards set by DNR, and discharges that are allowed under discharge permits that were issued by ACE before the date of the U.S. Supreme Court decision are ~~exempt~~ *excepted* from the moratorium. These provisions sunset on July 1, 2001.

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

1 **SECTION 1. Nonstatutory provisions.**

2 (1) DEFINITIONS. In this SECTION:

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

7 (b) "Wetland" has the meaning given in section 23.32 (1) of the statutes.

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

10 (3) INAPPLICABILITY.

11 (a) Subsection (2) does not apply to a discharge of dredged or fill material into
12 a nonfederal wetland ~~that~~ *if the discharge* is subject to a permitting or other approval requirement
13 under sections 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47, or 281.49 to 281.85 or
14 ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299 of the statutes.

15 2. ~~(b)~~ Subsection (2) does not apply to a discharge of dredged or fill material into
16 a nonfederal wetland ~~that~~ *if the discharge* is not subject to a permitting or other approval
17 requirement under sections 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47, or 281.49
18 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299 of the statutes *and* *if the*

(c)

any of the following: 1. A

A

A

BILL

1 discharge is exempt from the water quality standards for wetlands that are set under
2 rules promulgated under section 281.15 (1) of the statutes.

3 ~~3. (c) Subsection (2) does not apply to~~ ^A discharge of dredged or fill material into
4 a nonfederal wetland if the discharge is permitted under a permit issued by the U.S.
5 Army Corps of Engineers on or before January 8, 2001, and if the discharge is
6 performed in compliance with that permit.

7 (b) ~~(c)~~ This SECTION does not apply on or after July 1, 2001.

8 (b) # (END)

4. A discharge of dredged or fill material that
is necessary for an ~~open~~ ^{re} aquaculture operation.

Amendment to LRB-2845/2

✓ 1. Page 2, line 13: delete "subject to a permitting or other approval requirement" and substitute "authorized by a permit or other approval".

2. Page 3, line 2: delete "is exempt" and substitute "would have been exempt on January 8, 2001". *were exempt?*

3. Page 3, line 9: delete lines 9 and 10 and substitute:

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

5. A discharge of dredged or fill material into a nonfederal wetland if the activity which will result in the discharge is carried out under the direction and supervision of the department of transportation in connection with highway, bridge or other transportation project design, location, construction, reconstruction, maintenance or repair in conformance with section 30.12 of the statutes.

Note: Item 5 adds an exemption for highway projects which applied in SB 54 due to the placement of the prohibition in SB 54 in ch. 281, Stats. An alternative to item 5 is to move the contents of this bill from a nonstatutory provision to a provision in ch. 281, Stats.

2 (4) Administration. The department of natural resources shall administer this section.

(5) Enforcement.

(a) Any person who violates this section shall be subject to the penalties, awards and orders in section 281.98 of the statutes. *?*

(b) Sections 299.93 and 299.95 of the statutes apply to the enforcement of this section."

(End)

Today 3:00 p.m.

RM not run
and RNK
13
LRB-28452
MGG:kmg:pg

2001 - 2002 LEGISLATURE

2001 BILL

Gen. Cat.

1 AN ACT relating to: discharges of dredged or fill material into nonfederal
2 wetlands.

Analysis by the Legislative Reference Bureau

(EPA)

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

BILL

exceptions. Discharges that are ^{would have been} ~~subject to~~ ^{on January 8, 2001,} certain ^{authorized by} approval ^{permits or} and ~~permitting~~ ^{requirements} under state law, discharges that are not subject to these requirements and that ~~are~~ exempt 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 ~~necessary for~~ ^{necessary for} ~~aquaculture operations~~ 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.

→ 281.163 (text: treat A)

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

Wetlands.

SEC. #. CR; 281.163 Prohibitions against discharges into nonfederal

1 SECTION 1. Nonstatutory provisions.

2 (1) DEFINITIONS. In this ~~SECTION~~ ^{section} ~~section~~

(NOA)

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

7 (b) "Wetland" has the meaning given in ~~section~~ ^{s.} 23.32 (1) of the statutes.

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

10 (3) INAPPLICABILITY.

(NOA)

11 (a) Subsection (2) does not apply to any of the following:

to 281.161
281.165

authorized by a permit or other approval

12 1. A discharge of dredged or fill material into a nonfederal wetland if the
13 discharge is ~~subject to~~ ^{subject to} a permitting or other approval requirement under ~~sections~~
14 ^{ss.} 59.692, 61.351, 62.231, 87.30, 281.11, to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283,
15 289, 291, 292, 293, 295, or 299 of the statutes.

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 ~~sections~~

that ~~was~~ the result of activities that would have qualified for an exemption from the federal permitting process on January 8, 2001

BILL

*to 281.16, 281.165
etc*

*would have been
§ 3
on January 8, 2001*

1 ^{ss.} 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283,
2 289, 291, 292, 293, 295, or 299 ~~of the statutes~~ and if the discharge ~~is~~ exempt from the
3 water quality standards for wetlands that are set under rules promulgated under
4 ~~Section~~ ^{s.} 281.15 (1) ~~of the statutes.~~

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
7 on or before January 8, 2001, and if the discharge is performed in compliance with
8 that permit.

9 4. A discharge of dredged or fill material that is necessary for an aquaculture
10 operation.

*Insert
3-10*

11 (b) This ~~SECTION~~ ^{section} does not apply on or after July 1, 2001.

12 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2845/3ins.
RNK.....

Insert 3-10 ✓

text: treat

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

Barman, Mike

From: Barman, Mike
Sent: Wednesday, March 14, 2001 2:42 PM
To: Johnson, Dan (Legislature); Stolzenberg, John; Rep.Kedzie
Subject: LRB 01-2845/3 (per RNK)



01-2845/3

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

March 14, 2001

MEMORANDUM

To: Representative Kedzie

From: Mary Gibson-Glass, Senior Legislative Attorney

Re: LRB-2845 Moratorium on discharges into wetlands

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-3215 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

ccc

AB-215

LRB-2845/3

#. Page 3, line 10: substitute
"1344" for "1334".

KMG.



State of Wisconsin
2001-2002 LEGISLATURE

CORRECTIONS IN:

2001 ASSEMBLY BILL 215

Prepared by the Legislative Reference Bureau
(March 19, 2001)

1. Page 3, line 10: substitute "1344" for "1334".