

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 ASSEMBLY BILL 215**

March 20, 2001 – Offered by Representative MILLER.

1 **AN ACT** *to amend* 281.98 (1) and 299.95; and *to repeal and recreate* 281.36 (2)
2 and 281.36 (3) of the statutes; **relating to:** discharges of dredged or fill material
3 into nonfederal wetlands.

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

4 **SECTION 1.** 281.36 (2) of the statutes, as created by 2001 Wisconsin Act
5 (Senate Bill 54), is repealed and recreated to read:

6 281.36 (2) PROHIBITION. (a) Except as provided in par. (b), no person may
7 discharge dredged or fill material into a nonfederal wetland.

8 (b) Paragraph (a) does not apply to any person who discharges dredged or fill
9 material into a nonfederal wetland if any of the following applies:

10 1. The person has received notification from the department that the discharge
11 is authorized by a permit or other approval under ss. 59.692, 61.351, 62.231, 87.30,

1 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291,
2 292, 293, 295, or 299.

3 2. The person has received notification from the department that the discharge
4 is not subject to a permitting or other approval requirement under ss. 59.692, 61.351,
5 62.231, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31,
6 283, 289, 291, 292, 293, 295, or 299 and if the discharge would have been exempt on
7 January 8, 2001, from the water quality standards for wetlands that are set under
8 rules promulgated under s. 281.15 (1).

9 3. The person has received notification from the department that the discharge
10 is permitted under a permit issued by the U.S. army corps of engineers on or before
11 January 8, 2001, and a water quality certification required by rules promulgated by
12 the department to implement 33 USC 1341 (a) has been issued by the department,
13 on or before January 8, 2001, and the discharge is performed in compliance with that
14 permit.

15 4. The person has received notification from the department that the discharge
16 is the result of an activity that would have qualified for an exemption under 33 USC
17 1344 (f) on January 8, 2001, or under any other regulation, rule, memorandum of
18 agreement, guidance letter, or other provision established by a federal agency that
19 was promulgated or adopted pursuant to that subsection or that was used to
20 implement that subsection and that was in effect on January 8, 2001.

21 **SECTION 2.** 281.36 (3) of the statutes, as created by 2001 Wisconsin Act
22 (Senate Bill 54), is repealed and recreated to read:

23 281.36 (3) This section does not apply on or after December 1, 2001.

24 **SECTION 3.** 281.98 (1) of the statutes is amended to read:

1 281.98 (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19) and 281.99 (2),
2 any person who violates this chapter or any rule promulgated or any plan approval,
3 license or special order issued under this chapter or who violates the prohibition
4 under s. 281.36 shall forfeit not less than \$10 nor more than \$5,000 for each violation.
5 Each day of continued violation is a separate offense. While an order is suspended,
6 stayed or enjoined, this penalty does not accrue.

7 **SECTION 4.** 299.95 of the statutes is amended to read:

8 **299.95 Enforcement; duty of department of justice; expenses.** The
9 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
10 ss. 281.48, 285.57, 285.59 and 299.64, and all rules, special orders, licenses, plan
11 approvals and permits of the department, except those promulgated or issued under
12 ss. 281.48, 285.57, 285.59 and 299.64 and except as provided in s. 285.86, and shall
13 enforce the prohibition under s. 281.36. The circuit court for Dane county or for any
14 other county where a violation occurred in whole or in part has jurisdiction to enforce
15 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
16 approval or permit by injunctive and other relief appropriate for enforcement. For
17 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
18 the rule, special order, license, plan approval or permit prohibits in whole or in part
19 any pollution, a violation is considered a public nuisance. The department of natural
20 resources may enter into agreements with the department of justice to assist with
21 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
22 to the department of justice under these agreements shall be credited to the
23 appropriation account under s. 20.455 (1) (k).

24 **SECTION 5. Nonstatutory provisions.**

25 (1) RECONCILIATION PROVISIONS.

1 (a) If 2001 Senate Bill 54, as shown by the engrossed bill passed by the senate,
2 is enacted into law without change and if the creation of section 281.36 of the statutes
3 by 2001 Wisconsin Act ... (Senate Bill 54) takes effect on or before the effective date
4 of this paragraph, then the treatment of sections 281.36 (2) and (3), 281.98 (1), and
5 299.95 of the statutes by this act takes effect on the day after publication of this act.

6 (b) If 2001 Senate Bill 54, as shown by the engrossed bill passed by the senate,
7 is not enacted into law without change on or before the effective date of this
8 paragraph, then the treatment of sections 281.36 (2) and (3), 281.98 (1), and 299.95
9 of the statutes by this act is void.

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(END)