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No specific pre topic given

Topic:

Non-federal 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 03/27/2001	csicilia 03/28/2001	haugeca 03/28/2001	_____	lrb_docadmin 03/28/2001	lrb_docadmin 03/28/2001	

FE Sent For:

<END>

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FE Sent For:

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2001

LRB -2940 / 1

ENGROSS BILL

[or 2nd House Sub]

(To Be Printed for Legislature)

1966+RPN: :

✓ ENGROSSED 2001 Assembly BILL 215 ✓

(Date) March 26, 2001 - Printed by direction of Senate ✓ CHIEF CLERK

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ADOPTED DOCUMENTS:

Orig SubAmdt

- 284513 ✓

Amendments to above (if none, write "NONE"): _____

AA 1, AA 3,

Corrections - show date (if none, write "NONE"): ~~3-20~~ 3-20

3/26/01

Date

RPN for MGG

Drafter

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Editor

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1 **BILL HISTORY FOR ASSEMBLY BILL 215 (LRB -2845)**

2 An Act to create 281.163 of the statutes; relating to: discharges of dredged or fill material into nonfederal wetlands. (FE)

2001

3	03-15.	A.	Introduced by Representatives Kedzie and Johnsrud .	
4	03-15.	A.	Read first time and referred to committee on Environment	148
5	03-15.	A.	Public hearing held.	
6	03-15.	A.	Executive action taken.	
7	03-16.	A.	Report passage recommended by committee on Environment. Ayes 6. Noes 4	152
8	03-16.	A.	Referred to calendar	152
9	03-20.	A.	LRB correction	163
10	03-20.	A.	Fiscal estimate received.	
11	03-20.	A.	Read a second time	160
12	03-20.	A.	Assembly substitute amendment 1 offered by Representative Miller (LRB s0077)	160
13	03-20.	A.	Assembly substitute amendment 1 withdrawn and returned to author	160
14	03-20.	A.	Assembly amendment 1 offered by Representative Kedzie (LRB a0355)	160
15	03-20.	A.	Assembly amendment 1 adopted	160
16	03-20.	A.	Assembly amendment 2 offered by Representatives Miller and J. Lehman (LRB a0358)	160
17	03-20.	A.	Assembly amendment 2 laid on table, Ayes 57, Noes 40	161
18	03-20.	A.	Assembly amendment 3 offered by Representative Gunderson (LRB a0365)	161
19	03-20.	A.	Assembly amendment 3 adopted	161
20	03-20.	A.	Ordered to a third reading	161
21	03-20.	A.	Rules suspended	161
22	03-20.	A.	Read a third time and passed , Ayes 70, Noes 27, Paired 2	161
23	03-20.	A.	Ordered immediately messaged	161
24	03-22.	S.	Received from Assembly	135
25	03-22.	S.	Read first time and referred to committee on Environmental Resources	135
	03-26.	S.	Printed engrossed by the direction of the Senate Chief Clerk.	

History of Assembly Bill 215

ASSEMBLY BILL 215

An Act to create 281.163 of the statutes; relating to: discharges of dredged or fill material into nonfederal wetlands. (FE)

2001

03-15.	A.	Introduced by Representatives Kedzie and Johnsrud.	
03-15.	A.	Read first time and referred to committee on Environment	148
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03-16.	A.	Report passage recommended by committee on Environment, Ayes 6, Noes 4	152
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03-20.	A.	Assembly substitute amendment <u>1</u> offered by Representative Miller	160
03-20.	A.	Assembly substitute amendment <u>1</u> withdrawn and returned to author	160
03-20.	A.	Assembly amendment <u>1</u> offered by Representative Kedzie	160
03-20.	A.	Assembly amendment <u>1</u> adopted	160
03-20.	A.	Assembly amendment <u>2</u> offered by Representatives Miller and J. Lelmann	160
03-20.	A.	Assembly amendment <u>2</u> laid on table, <u>Ayes 57, Noes 40</u>	161
03-20.	A.	Assembly amendment <u>3</u> offered by Representative Gunderson	161
03-20.	A.	Assembly amendment <u>3</u> adopted	161
03-20.	A.	Ordered to a third reading	161
03-20.	A.	Rules suspended	161
03-20.	A.	Read a third time and passed, <u>Ayes 70, Noes 27, Paired 2</u>	161
03-20.	A.	Ordered immediately messaged	161
03-22.	S.	Received from Assembly	135
03-22.	S.	Read first time and referred to committee on Environmental Resources	135



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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

ASSEMBLY BILL 215

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 the day after enacted the legislature enacts

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

legislation

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.

ASSEMBLY BILL 215

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)

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

March 20, 2001 - Offered by Representative KEDZIE.

1 At the locations indicated, amend the bill as follows:

2 ✓ **1.** Page 2, line 11: delete "any of the following" and substitute "a person who
3 discharges dredged or fill material into a nonfederal wetland if any of the following
4 applies".

5 ✓ **2.** Page 2, line 12: delete "A discharge of dredged or fill material into a
6 nonfederal wetland if" and substitute "The person has received notification from the
7 department that".

8 ✓ **3.** Page 2, line 16: delete "A discharge of dredged or fill material into a
9 nonfederal wetland if" and substitute "The person has received notification from the
10 department that".

11 ✓ **4.** Page 3, line 2: delete "if".

1 ✓ 5. Page 3, line 5: delete “A discharge of dredged or fill material into a
2 nonfederal wetland if” and substitute “The person has received notification from the
3 department that”.

4 ✓ 6. Page 3, line 7: after “2001,” insert “and a water quality certification required
5 by rules promulgated by the department to implement 33 USC 1341 (a) has been
6 issued by the department on or before January 8, 2001,”.

7 ✓ 7. Page 3, line 7: delete “if”.

8 ✓ 8. Page 3, line 9: delete “A discharge of dredged or fill material into a
9 nonfederal wetland that” and substitute “The person has received notification from
10 the department that the discharge”.

11 ✓ 9. Page 3, line 15: after that line insert:

12 “SECTION 2m. 281.98 (1) of the statutes is amended to read:

13 281.98 (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19) and 281.99 (2),
14 any person who violates this chapter or any rule promulgated or any plan approval,
15 license or special order issued under this chapter or who violates the prohibition
16 under s. 281.163, shall forfeit not less than \$10 nor more than \$5,000 for each
17 violation. Each day of continued violation is a separate offense. While an order is
18 suspended, stayed or enjoined, this penalty does not accrue.

19 SECTION 3. 299.95 of the statutes is amended to read:

20 **299.95 Enforcement; duty of department of justice; expenses.** The
21 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
22 ss. 281.48, 285.57, 285.59 and 299.64, and all rules, special orders, licenses, plan
23 approvals and permits of the department, except those promulgated or issued under
24 ss. 281.48, 285.57, 285.59 and 299.64 and except as provided in s. 285.86, and shall

1 enforce the prohibition under s. 281.163. The circuit court for Dane county or for any
2 other county where a violation occurred in whole or in part has jurisdiction to enforce
3 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
4 approval or permit by injunctive and other relief appropriate for enforcement. For
5 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
6 the rule, special order, license, plan approval or permit prohibits in whole or in part
7 any pollution, a violation is considered a public nuisance. The department of natural
8 resources may enter into agreements with the department of justice to assist with
9 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
10 to the department of justice under these agreements shall be credited to the
11 appropriation account under s. 20.455 (1) (k).".

12 (END)

**ASSEMBLY AMENDMENT 3,
TO 2001 ASSEMBLY BILL 215**

March 20, 2001 – Offered by Representative GUNDERSON.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 3, line 15: delete “on or after July 1, 2001.” and substitute “beginning
3 on the earlier of the following:

4 1. July 1, 2001.

5 2. The day after the effective date of legislation enacted by the state legislature
6 that subjects discharges of dredged or fill material into nonfederal wetlands to a
7 certification process that includes provisions that afford protection to nonfederal
8 wetlands that is comparable to, or more protective than, the protection afforded
9 under the federal certification and permitting processes under 33 USC 1341 (a) and
10 1344 that applied to nonfederal wetlands on January 8, 2001.”.

11

(END)



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".



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2845/en - tags
MGG&RNK:kmg:kjf

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

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

3 **SECTION 1.** 281.163 of the statutes is created to read:

4 **281.163 Prohibitions against discharges into nonfederal wetlands. (1)**

5 **DEFINITIONS.** In this section:

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

10 (b) "Wetland" has the meaning given in s. 23.32 (1).

ASSEMBLY BILL 215

SECTION 1

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

3 → [1; AA1-AB215; Page: 2, Line: 11; Could not find pattern match.] ←

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

5 1. [1; AA1-AB215; Page: 2, Line: 12] The person has received notification
6 from the department that[1; AA1-AB215; Page: 2, Line: 12] the discharge is
7 authorized by a permit or other approval under ss. 59.692, 61.351, 62.231, 87.30,
8 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291,
9 292, 293, 295, or 299.

10 2. [1; AA1-AB215; Page: 2, Line: 16] The person has received notification
11 from the department that[1; AA1-AB215; Page: 2, Line: 16] the discharge is not
12 subject to a permitting or other approval requirement under ss. 59.692, 61.351,
13 62.231, 87.30, 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85 or ch. 30, 31,
14 283, 289, 291, 292, 293, 295, or 299 and[1; AA1-AB215; Page: 3, Line: 2] the
15 discharge would have been exempt on January 8, 2001 from the water quality
16 standards for wetlands that are set under rules promulgated under s. 281.15 (1).

17 3. [1; AA1-AB215; Page: 3, Line: 5] The person has received notification from
18 the department that[1; AA1-AB215; Page: 3, Line: 5] the discharge is permitted
19 under a permit issued by the U.S. army corps of engineers on or before January 8,
20 2001, and a water quality certification required by rules promulgated by the
21 department to implement 33 USC 1341 (a) has been issued by the department on or
22 before January 8, 2001,[1; AA1-AB215; Page: 3, Line: 7] and[1; AA1-AB215;
23 Page: 3, Line: 7] the discharge is performed in compliance with that permit.

24 4. [1; AA1-AB215; Page: 3, Line: 9] The person has received notification from
25 the department that the discharge[1; AA1-AB215; Page: 3, Line: 9] is the result

ASSEMBLY BILL 215

1 of an activity that would have qualified for an exemption under 33 USC[1;
2 **CCC-1-AB215; Page: 3, Line: 10]** 1344[1; **CCC-1-AB215; Page: 3, Line: 10]** (f)
3 on January 8, 2001, or under any other regulation, rule, memorandum of agreement,
4 guidance letter, or other provision established by a federal agency that was
5 promulgated or adopted pursuant to that subsection or that was used to implement
6 that subsection and that was in effect on January 8, 2001.

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

8 **SECTION 2m.** 281.98 (1) of the statutes is amended to read:

9 281.98 (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19) and 281.99 (2),
10 any person who violates this chapter or any rule promulgated or any plan approval,
11 license or special order issued under this chapter or who violates the prohibition
12 under s. 281.163, shall forfeit not less than \$10 nor more than \$5,000 for each
13 violation. Each day of continued violation is a separate offense. While an order is
14 suspended, stayed or enjoined, this penalty does not accrue.

15 **[2m; AA1-AB215; Page: 3, Line: 15]**

16 **SECTION 3.** 299.95 of the statutes is amended to read:

17 **299.95 Enforcement; duty of department of justice; expenses.** The
18 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
19 ss. 281.48, 285.57, 285.59 and 299.64, and all rules, special orders, licenses, plan
20 approvals and permits of the department, except those promulgated or issued under
21 ss. 281.48, 285.57, 285.59 and 299.64 and except as provided in s. 285.86, and shall
22 enforce the prohibition under s. 281.163. The circuit court for Dane county or for any
23 other county where a violation occurred in whole or in part has jurisdiction to enforce
24 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
25 approval or permit by injunctive and other relief appropriate for enforcement. For

ASSEMBLY BILL 215

SECTION 3

1 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
2 the rule, special order, license, plan approval or permit prohibits in whole or in part
3 any pollution, a violation is considered a public nuisance. The department of natural
4 resources may enter into agreements with the department of justice to assist with
5 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
6 to the department of justice under these agreements shall be credited to the
7 appropriation account under s. 20.455 (1) (k). **[3; AA1-AB215; Page: 3, Line: 15]**

8

(END)



*Did not work right.
Had to do manually insert*



2001 ASSEMBLY BILL 215

- 1 AN ACT *to amend* 281.98 (1) and 299.95; and *to create* 281.163 of the statutes;
2 relating to: discharges of dredged or 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

ASSEMBLY BILL 215

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, ^{or on the day after}

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 a person who
12 discharges dredged or fill material into a nonfederal wetland if any of the following
13 applies:

14 1. The person has received notification from the department that the discharge
15 is authorized by a permit or other approval under ss. 59.692, 61.351, 62.231, 87.30,
16 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291,
17 292, 293, 295, or 299.

ASSEMBLY BILL 215

1 2. The person has received notification from the department that the discharge
2 is not subject to a permitting or other approval requirement under ss. 59.692, 61.351,
3 62.231, 87.30, 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85 or ch. 30, 31,
4 283, 289, 291, 292, 293, 295, or 299 and the discharge would have been exempt on
5 January 8, 2001 from the water quality standards for wetlands that are set under
6 rules promulgated under s. 281.15 (1).

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

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

19 (b) This section does not apply beginning on the earlier of the following:

20 1. July 1, 2001.

21 2. The day after the effective date of legislation enacted by the state legislature
22 that subjects discharges of dredged or fill material into nonfederal wetlands to a
23 certification process that includes provisions that afford protection to nonfederal
24 wetlands that is comparable to, or more protective than, the protection afforded

ASSEMBLY BILL 215**SECTION 1**

1 under the federal certification and permitting processes under 33 USC 1341 (a) and
2 1344 that applied to nonfederal wetlands on January 8, 2001.

3 **SECTION 2m.** 281.98 (1) of the statutes is amended to read:

4 281.98 (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19) and 281.99 (2),
5 any person who violates this chapter or any rule promulgated or any plan approval,
6 license or special order issued under this chapter or who violates the prohibition
7 under s. 281.163, shall forfeit not less than \$10 nor more than \$5,000 for each
8 violation. Each day of continued violation is a separate offense. While an order is
9 suspended, stayed or enjoined, this penalty does not accrue.

10 **SECTION 3.** 299.95 of the statutes is amended to read:

11 **299.95 Enforcement; duty of department of justice; expenses.** The
12 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
13 ss. 281.48, 285.57, 285.59 and 299.64, and all rules, special orders, licenses, plan
14 approvals and permits of the department, except those promulgated or issued under
15 ss. 281.48, 285.57, 285.59 and 299.64 and except as provided in s. 285.86, and shall
16 enforce the prohibition under s. 281.163. The circuit court for Dane county or for any
17 other county where a violation occurred in whole or in part has jurisdiction to enforce
18 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
19 approval or permit by injunctive and other relief appropriate for enforcement. For
20 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
21 the rule, special order, license, plan approval or permit prohibits in whole or in part
22 any pollution, a violation is considered a public nuisance. The department of natural
23 resources may enter into agreements with the department of justice to assist with
24 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid

ASSEMBLY BILL 215

1 to the department of justice under these agreements shall be credited to the
2 appropriation account under s. 20.455 (1) (k).

3 (END)

Bill Sect. No.	Introduced No.	Page No.	Line No.	Error Message
1	AA1-AB215	2	11	Could not find pattern match.
1	AA1-AB215	2	12	
1	AA1-AB215	2	16	
1	AA1-AB215	3	2	
1	AA1-AB215	3	5	
1	AA1-AB215	3	7	
1	AA1-AB215	3	9	
1	CCC-1-AB215	3	10	
2M	AA1-AB215	3	15	
3	AA1-AB215	3	15	

Error No.	Introduced No.	Page No.	Line No.
1	There is an unrecognizable error.		
2	There is an unrecognizable error.		
3	AA1-AB215	000003	000007
	AA1-AB215	000003	000007
4	There is an unrecognizable error.	000003	000015



State of Wisconsin
2001 - 2002 LEGISLATURE

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ENGROSSED 2001 ASSEMBLY BILL 215

INSERT

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March 26, 2001 - Printed by direction of SENATE CHIEF CLERK.

- 1 AN ACT to amend 281.98 (1) and 299.95; and to create 281.163 of the statutes;
- 2 relating to: discharges of dredged or fill material into nonfederal wetlands.

Analysis by the Legislative Reference Bureau

INSERT
ACE

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

ENGROSSED ASSEMBLY BILL 215

the earlier of these two dates:

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.)

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

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

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SECTION 1. 281.163 of the statutes is created to read:

to those wetlands that is comparable to, or more protective than, protective

281.163 Prohibitions against discharges into nonfederal wetlands. (1)

DEFINITIONS. In this section:

the protection afforded under the federal permitting process

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

(b) "Wetland" has the meaning given in s. 23.32 (1).

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

(3) INAPPLICABILITY. (a) Subsection (2) does not apply to a person who discharges dredged or fill material into a nonfederal wetland if any of the following applies:

1. The person has received notification from the department that the discharge is authorized by a permit or other approval under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

LPS:
this word is "per- mitting"

ENGROSSED ASSEMBLY BILL 215

1 2. The person has received notification from the department that the discharge
2 is not subject to a permitting or other approval requirement under ss. 59.692, 61.351,
3 62.231, 87.30, 281.11 to 281.16, 281.165 to 281.47, or 281.49 to 281.85 or ch. 30, 31,
4 283, 289, 291, 292, 293, 295, or 299 and the discharge would have been exempt on
5 January 8, 2001 from the water quality standards for wetlands that are set under
6 rules promulgated under s. 281.15 (1).

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

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

19 (b) This section does not apply beginning on the earlier of the following:

20 1. July 1, 2001.

21 2. The day after the effective date of legislation enacted by the state legislature
22 that subjects discharges of dredged or fill material into nonfederal wetlands to a
23 certification process that includes provisions that afford protection to nonfederal
24 wetlands that is comparable to, or more protective than, the protection afforded

AA 3

ENGROSSED ASSEMBLY BILL 215**SECTION 1**

1 under the federal certification and permitting processes under 33 USC 1341 (a) and
2 1344 that applied to nonfederal wetlands on January 8, 2001.

3 **SECTION 2m.** 281.98 (1) of the statutes is amended to read:

4 281.98 (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19) and 281.99 (2),
5 any person who violates this chapter or any rule promulgated or any plan approval,
6 license or special order issued under this chapter or who violates the prohibition
7 under s. 281.163, shall forfeit not less than \$10 nor more than \$5,000 for each
8 violation. Each day of continued violation is a separate offense. While an order is
9 suspended, stayed or enjoined, this penalty does not accrue.

10 **SECTION 3.** 299.95 of the statutes is amended to read:

11 **299.95 Enforcement; duty of department of justice; expenses.** The
12 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
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18 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
19 approval or permit by injunctive and other relief appropriate for enforcement. For
20 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
21 the rule, special order, license, plan approval or permit prohibits in whole or in part
22 any pollution, a violation is considered a public nuisance. The department of natural
23 resources may enter into agreements with the department of justice to assist with
24 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid

ENGROSSED ASSEMBLY BILL 215

1 to the department of justice under these agreements shall be credited to the
2 appropriation account under s. 20.455 (1) (k).

3 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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as passed by
the assembly
on March 20,
2001,

✓
Engrossment information:

The text of Engrossed 2001 Assembly Bill 215, consists of the bill, as affected by the following documents adopted by the Assembly on March 20, 2001: the bill as affected by Assembly Amendment 1 and Assembly Amendment 3. The text also includes the March 20, 2001, chief clerk's correction to the bill.

Content of Engrossed 2001 Assembly Bill 215:

i.c.