

**2001 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB54)**

Received: 03/06/2001

Received By: gibsom

Wanted: Today

Identical to LRB:

For: Kevin Shibilski (608) 266-3123

By/Representing: Aaron Nuutinen

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:**

Description of federal wetland process in inapplicability provision

**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 03/06/2001	gilfokm 03/06/2001	pgreensl 03/06/2001	_____	lrb_docadmin 03/07/2001	lrb_docadmin 03/07/2001	
/2	gibsom 03/07/2001		kfollet 03/07/2001	_____	lrb_docadmin 03/07/2001	lrb_docadmin 03/07/2001	

FE Sent For:

<END>

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Extra Copies: 2-mail copy  
to John Stolzenberg

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FE Sent For:		12-3/Kmg 17-01	KJ 3/7	KJ/JF 3/7 <END>			

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1?	gibsom	1-3/ King 1-16-01	3/6 pg	3/6 pg/SE			

FE Sent For:

<END>

S 0064/1 RMR  
LRBA 2485/1  
MGG: km  
not  
Run  
KMG

→ SSA (1) (2)  
→ to 2001 SENATE BILL 54  
Wed  
9:30 am

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

1 AN ACT <sup>Gen.</sup>; 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 (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 ban on any person discharging dredged or fill material into wetlands for which ACE discharge permits are no longer required.

**SENATE BILL 54**

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. 281.36 of the statutes is created to read:

2 **281.36 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. This section does not apply on the day after the effective  
12 date of legislation enacted by the state legislature that subjects discharges of  
13 dredged or fill material into nonfederal wetlands to a permitting process that  
14 ~~conforms to~~ the federal permitting process under 33 USC 1344 that applied to  
15 nonfederal wetlands on January 8, 2001. The secretary of natural resources shall  
16 determine when such legislation has been enacted and shall certify to the revisor of  
17 statutes the effective date of the legislation.

18 (END)

*certification and permitting*  
*certification process*  
*does not conform to*  
*1344(a) and 3309C*  
*includes provisions that are consistent with*

## Gibson-Glass, Mary

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**From:** Stolzenberg, John  
**Sent:** Wednesday, March 07, 2001 10:53 AM  
**To:** Nuutinen, Aaron  
**Cc:** Gibson-Glass, Mary  
**Subject:** SB 54 Sub

Aaron,

After we talked, Mary called me and asked for a copy of the changes I had proposed to your SB 54 sub (LRBs0064/1). She job shares and will be leaving work at noon today. I have a meeting today from 11 AM to noon.

The first change is intended to clarify what is meant by consistency or comparability between the new state and "old" federal programs. She may have some further modifications in the first change after she reviews my language. Also, if you make changes, don't forget to return the "stripes" to her. Here are the 2 changes:

1. Page 4, line 4: delete "are consistent with" and substitute "afford protection to nonfederal wetlands comparable to, or more protective than, the protection under".

[I added the "more protective" language after I talked to you to provide more flexibility in the implementation of the provision. Let me know if it isn't consistent with your intent.]

2. Page 2, line 5: delete "134 (1)" and substitute "1341".

John

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John Stolzenberg, Staff Scientist  
Wisconsin Legislative Council Staff  
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State of Wisconsin  
2001 - 2002 LEGISLATURE

RMR 2  
LRBs00641  
MGG:kmg:pg

Now

open

Sent to WPO

**SENATE SUBSTITUTE AMENDMENT,  
TO 2001 SENATE BILL 54**

1 **AN ACT to create** 281.36 of the statutes; **relating to:** discharges of dredged or  
2 fill material into nonfederal wetlands.

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

3 **SECTION 1.** 281.36 of the statutes is created to read:

4 **281.36 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.

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12 nonfederal wetland.

1           (3) INAPPLICABILITY. This section does not apply on the day after the effective  
 2 date of legislation enacted by the state legislature that subjects discharges of  
 3 dredged or fill material into nonfederal wetlands to a certification process that  
 4 includes provisions that ~~are consistent with~~ the federal certification and permitting  
 5 processes under 33 USC 134(1)(a) and 1344 that applied to nonfederal wetlands on  
 6 January 8, 2001. The secretary of natural resources shall determine when such  
 7 legislation has been enacted and shall certify to the revisor of statutes the effective  
 8 date of the legislation.

(END)

afford protection to nonfederal  
 wetlands that is comparable <sup>(to)</sup>;  
 or more protective than, the  
 protection afforded under



## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Wednesday, March 07, 2001 12:15 PM  
**To:** Stolzenberg, John  
**Subject:** LRB 01s0064/2



01s0064/2

*Mike Barman*

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(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

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