

2005 ASSEMBLY BILL 277

March 30, 2005 – Introduced by Representatives HUNDERTMARK, GARD, GUNDERSON, SUDER, JESKEWITZ, WIECKERT, HUEBSCH, NISCHKE, VRAKAS, LOEFFELHOLZ, WOOD, KAUFERT, HINES, LEMAHIEU, HAHN, VOS, STRACHOTA, OWENS, MOULTON, TOWNS, MURSAU, NERISON, MCCORMICK, HONADEL, MONTGOMERY, KRAWCZYK, KLEEFISCH, DAVIS, VAN ROY, PETROWSKI, ALBERS, PRIDEMORE, MEYER, KREIBICH, GIELOW, J. FITZGERALD and OTT, cosponsored by Senators STEPP, SCHULTZ, DARLING, LEIBHAM, OLSEN, GROTHMAN, S. FITZGERALD, ZIEN and A. LASEE. Referred to Committee on Natural Resources.

1 **AN ACT to amend** 285.60 (1) (a) 1., 285.60 (3) (a), 285.66 (2) (b) (intro.), 285.66
 2 (2) (b) 1., 285.66 (2) (b) 3. and 285.81 (1m) (b) of the statutes; **relating to:**
 3 general air pollution control permits, the term of registration air pollution
 4 control permits, the effect of a challenge to an emission limitation in an air
 5 pollution operation permit, and a report on regulatory barriers affecting
 6 manufacturing.

Analysis by the Legislative Reference Bureau

Under current law, a person must generally obtain an air pollution construction permit from the Department of Natural Resources (DNR) before constructing or modifying a stationary source of air pollution. A person must also generally obtain an air pollution operation permit from DNR before operating a stationary source of air pollution, except that a stationary source that was constructed before the operation permit requirement became law is allowed to continue to operate pending DNR's issuance of an operation permit if a complete application was submitted to DNR.

Current law requires DNR to promulgate rules for general air pollution control permits that authorize the construction or operation or both for similar stationary sources of air pollution. This bill authorizes DNR, in its rules, to exempt a person who qualifies for a general permit from the requirement to obtain a construction permit.

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Current law generally provides that the term of an air pollution operation permit may not exceed five years. Under current law, however, coverage under a general permit generally does not expire. Current law requires DNR to promulgate rules providing a simplified process under which the department issues a permit, called a registration permit, for a stationary source of air pollution with low actual or potential emissions. This bill provides that a registration permit generally does not expire.

Under current law, if a person who is issued either a construction permit or an operation permit files a timely challenge to part of the permit, the remainder of the permit takes effect and the person may begin the activity for which the permit was issued, except that if the person challenges an emission limitation, the emission limitation applies pending resolution of the challenge unless the administrative hearing examiner or court considering the challenge stays the emission limitation.

Under this bill, if a permit holder challenges an emission limitation in an air pollution operation permit, the emission limitation does not apply pending resolution of the challenge. The bill takes effect retroactively to February 6, 2004, so that if a timely challenge was filed to an emission limitation in an operation permit that was issued on that date or later, the emission limit does not apply pending resolution of the challenge. The bill does not change current law with respect to a challenge to an emission limitation in an air pollution construction permit.

This bill also requires the Department of Administration to prepare a report that identifies regulatory barriers to the growth of this state's manufacturing sector.

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.** 285.60 (1) (a) 1. of the statutes is amended to read:

2 285.60 (1) (a) *Construction permit.* 1. Except as provided in sub. (2g), (3), (5m),
3 or (6), no person may commence construction, reconstruction, replacement, or
4 modification of a stationary source unless the person has a construction permit from
5 the department.

6 **SECTION 2.** 285.60 (3) (a) of the statutes is amended to read:

7 285.60 (3) (a) *Rules.* The department shall promulgate rules for the issuance
8 of general permits authorizing construction or operation or both for similar
9 stationary sources. In the rules, the department shall specify criteria for identifying

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1 categories of sources for which the department may issue general permits and
2 general requirements applicable to sources that qualify for general permits. In the
3 rules, the department may exempt persons who qualify for a general permit from the
4 requirement to obtain a construction permit.

5 **SECTION 3.** 285.66 (2) (b) (intro.) of the statutes is amended to read:

6 285.66 (2) (b) (intro.) Notwithstanding par. (a), the department may not specify
7 that a registration permit under s. 285.60 (2g) or coverage under a general permit
8 under s. 285.60 (3) expires except as follows:

9 **SECTION 4.** 285.66 (2) (b) 1. of the statutes is amended to read:

10 285.66 (2) (b) 1. The department may specify an expiration date for a
11 registration permit or for coverage under a general permit at the request of an owner
12 or operator.

13 **SECTION 5.** 285.66 (2) (b) 3. of the statutes is amended to read:

14 285.66 (2) (b) 3. The department may specify a term of 5 years or less for a
15 registration permit or for coverage under a general permit if required by the federal
16 clean air act.

17 **SECTION 6.** 285.81 (1m) (b) of the statutes is amended to read:

18 285.81 (1m) (b) An emission limitation contained in a construction permit
19 becomes effective despite a challenge under par. (a), unless the permit holder or
20 applicant challenging the emission limitation obtains a stay of the emission
21 limitation from the hearing examiner or court considering the challenge.

22 **SECTION 7. Nonstatutory provisions.**

23 (1) REPORT ON REGULATORY BARRIERS. The department of administration, in
24 consultation with representatives of industry and others, shall prepare a report that
25 identifies major regulatory barriers to the growth of this state's manufacturing

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1 sector. The department shall examine state rules in areas that include employment,
2 the environment, financial services, utilities, and transportation and shall report on
3 unnecessary barriers to growth and on consistency with the requirements of federal
4 law and the laws of surrounding states. The department shall submit the report
5 under this subsection to the joint committee for review of administrative rules no
6 later the first day of the 13th month beginning after the effective date of this
7 subsection.

SECTION 8. Initial applicability.

8
9 (1) The treatment of section 285.81 (1m) (b) of the statutes first applies to
10 challenges to operation permits that were issued on the effective date of this
11 subsection.

12 **SECTION 9. Effective dates.** This act takes effect on the day after publication,
13 except as follows:

14 (1) The treatment of section 285.81 (1m) (b) of the statutes and SECTION 8 take
15 effect retroactively to February 6, 2004.

16 (END)