



2009 ASSEMBLY BILL 360

July 31, 2009 – Introduced by Representatives MOLEPSKE JR., MILROY, DANOU, ZEPNICK, BLACK, HRAYCHUCK, TURNER, ZIGMUNT, BERCEAU, HUBLER, TOWNSEND, POCAN, MASON, PARISI, CLARK, POPE-ROBERTS, KLEEFISCH, ROYS, HINTZ, SOLETSKI and BERNARD SCHABER, cosponsored by Senators SCHULTZ, WIRCH, LASSA and RISSER. Referred to Committee on Natural Resources.

1 **AN ACT** *to amend* 283.11 (2) (a), 283.13 (2) (intro.), 283.31 (1), 283.37 (1), 283.53
2 (1), 283.53 (2) (a) (intro.), 283.53 (2d) (intro.) and 283.53 (2h); and *to create*
3 20.370 (4) (ci) and 283.34 of the statutes; **relating to:** discharges of ballast
4 water and related substances into the waters of the state, aquatic nuisance
5 species, providing an exemption from emergency rule procedures, granting
6 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law generally prohibits the discharge of pollutants into the waters of this state without a permit from the Department of Natural Resources (DNR). The law authorizes DNR to exempt classes or categories of vessels from the prohibition.

Beginning six months after enactment, this bill prohibits the discharge of ballast water, and sediments that have settled out of ballast water, into the waters of this state from a vessel that takes on ballast water outside of the waters of this state without a permit from DNR. A permit must require ballast water and sediments to be treated to kill or remove aquatic nuisance species and other organisms, to the extent possible. Aquatic nuisance species are nonnative species that threaten native species or the ecological stability of waters or that threaten commercial, agricultural, aquacultural, or recreational activities. The bill requires DNR to promulgate rules specifying fees for the permits and any additional requirements it determines are necessary to ensure that aquatic nuisance species do not enter the waters of this state through discharges.

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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.** 20.370 (4) (ci) of the statutes is created to read:

2 20.370 (4) (ci) *Ballast water management — fees.* From the general fund, all
3 moneys received under s. 283.34 for the ballast water discharge program under s.
4 283.34.

5 **SECTION 2.** 283.11 (2) (a) of the statutes is amended to read:

6 283.11 (2) (a) Except for rules concerning storm water discharges for which
7 permits are issued under s. 283.33 and rules concerning discharges for which
8 permits are issued under s. 283.34, all rules promulgated by the department under
9 this chapter as they relate to point source discharges, effluent limitations, municipal
10 monitoring requirements, standards of performance for new sources, toxic effluent
11 standards or prohibitions and pretreatment standards shall comply with and not
12 exceed the requirements of the federal water pollution control act, 33 USC 1251 to
13 1387, and regulations adopted under that act.

14 **SECTION 3.** 283.13 (2) (intro.) of the statutes is amended to read:

15 283.13 (2) SOURCES OTHER THAN PUBLIC TREATMENT WORKS. (intro.) The
16 discharge from any point source, other than a publicly owned treatment works or a
17 source of storm water permitted under s. 283.33 or 283.34, shall comply with the
18 following requirements:

19 **SECTION 4.** 283.31 (1) of the statutes is amended to read:

20 283.31 (1) The discharge of any pollutant into any waters of the state or the
21 disposal of sludge from a treatment work by any person is unlawful unless such

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1 discharge or disposal is done under a permit issued by the department under this
2 section or s. 283.33 or 283.34. The department may by rule exempt certain classes
3 or categories of vessels from this section, but not from s. 283.34. Except as provided
4 in s. 283.33, the department may require only one permit for a publicly owned
5 treatment or collection facility or system, regardless of the number of point sources
6 from such facility or system.

7 **SECTION 5.** 283.34 of the statutes is created to read:

8 **283.34 Ballast water and aquatic nuisance species. (1) DEFINITIONS.** In
9 this section:

10 (a) “Aquatic nuisance species” means a nonindigenous species that threatens
11 the diversity or abundance of native species or the ecological stability of infested
12 waters or that threatens a commercial, agricultural, aquacultural, or recreational
13 activity dependent on infested waters.

14 (b) “Ballast tank” means a tank or hold that is used for carrying ballast water.

15 (c) “Ballast water” means water and associated solids taken on board a vessel
16 to control or maintain trim, draft, or stability or to control stresses on the vessel.

17 (d) “Sediment” means any matter that has settled out of ballast water.

18 **(2) PERMIT REQUIRED.** (a) Beginning on the first day of the 7th month beginning
19 after the effective date of this subsection [LRB inserts date], a person who
20 operates a vessel that takes on ballast water outside of the waters of the state may
21 not discharge any of the following without a permit under this section that
22 authorizes the discharge:

23 1. Ballast water.

24 2. Sediment.

25 3. Water other than ballast water that has been in a ballast tank.

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1 (b) Paragraph (a) and the management requirements under par. (3) apply
2 without regard to whether the vessel is considered to have ballast water on board
3 when the vessel enters the waters of the state.

4 **(3) PERMIT CONDITIONS.** (a) In a permit issued under this section, the
5 department shall require treatment of the substances described in sub. (2) (a) 1. to
6 3. before discharge to kill or remove aquatic nuisance species and other organisms,
7 to the extent possible, through the use of one of the following:

- 8 1. Filtration.
- 9 2. Thermal methods.
- 10 3. Ultraviolet light.
- 11 4. Biocides.
- 12 5. Another technique approved by the department.

13 (b) In a permit issued under this section, the department shall include any
14 applicable requirements in the rules promulgated under sub. (5) (a).

15 **(4) INSPECTION PROGRAM.** The department shall conduct a program to inspect
16 vessels to ensure that aquatic nuisance species do not enter the waters of this state
17 through discharges of the substances described in sub. (2) (a) 1. to 3.

18 **(5) RULES.** (a) The department shall promulgate rules that include all of the
19 following:

- 20 1. Fees for permits under this section.
- 21 2. Circumstances under which a vessel for which a permit is required under
22 sub. (2) (a) may take on ballast water.
- 23 3. Any ballast water management requirements, in addition to the
24 requirements under sub. (3) (a), that the department determines are necessary to

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1 ensure that aquatic nuisance species do not enter the waters of this state through
2 discharges of the substances described in sub. (2) (a) 1. to 3.

3 4. Any other provisions necessary for the administration of this section.

4 (b) The department shall review the rules promulgated under par. (a) at least
5 once every 3 years and revise the rules as necessary.

6 **SECTION 6.** 283.37 (1) of the statutes is amended to read:

7 283.37 (1) The department shall promulgate rules relating to applications for
8 permits under this chapter which shall require at a minimum that every owner or
9 operator of a point source discharging pollutants into the waters of the state shall
10 have on file either a completed permit application on forms provided by the
11 department or a completed permit application under section 13 of the rivers and
12 harbors act of 1899, 33 USC 407 or under the federal water pollution control act, as
13 amended, 33 USC 1251 to 1376. The rules may specify different requirements for
14 permits issued under s. 283.31 ~~and~~, for permits issued under s. 283.33, and for
15 permits issued under s. 283.34.

16 **SECTION 7.** 283.53 (1) of the statutes is amended to read:

17 283.53 (1) No permit issued by the department under s. 283.31 ~~or~~, 283.33, or
18 283.34 shall have a term for more than 5 years.

19 **SECTION 8.** 283.53 (2) (a) (intro.) of the statutes is amended to read:

20 283.53 (2) (a) (intro.) Any permit issued by the department under s. 283.31 ~~or~~,
21 283.33, or 283.34 may, after an opportunity for hearing, be modified, suspended or
22 revoked, in whole or in part, for cause, including but not limited to:

23 **SECTION 9.** 283.53 (2d) (intro.) of the statutes is amended to read:

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1 283.53 **(2d)** (intro.) The department may, with the consent of the permittee,
2 modify a permit issued under s. 283.31 ~~or~~, 283.33, or 283.34 without following the
3 procedures in sub. (2) (b) to (f) in order to do any of the following:

4 **SECTION 10.** 283.53 (2h) of the statutes is amended to read:

5 283.53 **(2h)** The department may, with the consent of the permittee, revoke a
6 permit issued under s. 283.31 ~~or~~, 283.33, or 283.34 without following the procedures
7 in sub. (2) (b) to (f).

8 **SECTION 11. Nonstatutory provisions.**

9 (1) RULE MAKING.

10 (a) The department of natural resources shall submit in proposed form the
11 rules required under section 283.34 (5) (a) of the statutes, as created by this act, to
12 the legislative council staff under section 227.15 (1) of the statutes no later than the
13 first day of the 9th month beginning after the effective date of this paragraph.

14 (b) Using the procedure under section 227.24 of the statutes, the department
15 of natural resources shall promulgate the rules required under section 283.34 (5) (a)
16 of the statutes, as created by this act, no later than the first day of the 4th month
17 beginning after the effective date of this paragraph. Notwithstanding section 227.24
18 (1) (c) and (2) of the statutes, emergency rules promulgated under this paragraph
19 remain in effect until the first day of the 18th month beginning after the effective
20 date of this paragraph, or the date on which permanent rules take effect, whichever
21 is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the
22 department is not required to provide evidence that promulgating a rule under this
23 paragraph as an emergency rule is necessary for the preservation of public peace,

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1 health, safety, or welfare and is not required to provide a finding of emergency for a
2 rule promulgated under this paragraph.

3 (END)