



2011 SENATE BILL 537

March 1, 2012 – Introduced by Senators HOLPERIN, JAUCH, KEDZIE, SCHULTZ and VINEHOUT, cosponsored by Representatives MARKLEIN, KRUG, BROOKS, BEWLEY, ENDSLEY and SPANBAUER. Referred to Committee on Natural Resources and Environment.

1 **AN ACT** *to repeal* 29.733 (2) (c) 2., 29.733 (2) (c) 3., 29.733 (2) (c) 4. and 95.60 (2)
2 (d); *to renumber and amend* 29.733 (2) (c) 1.; *to amend* 29.733 (1) (d), 29.733
3 (2) (f), 95.60 (2) (a) and 95.60 (4) (c); and *to create* 29.733 (1) (c) 3., 29.733 (1m),
4 36.58 (7), 95.60 (2) (e), 95.60 (4) (d), 283.31 (5m) and 299.15 (3) (f) of the statutes;
5 **relating to:** the regulation of aquaculture.

Analysis by the Legislative Reference Bureau

AQUACULTURE

Use of natural bodies of water

Under current law, a person may not use a natural body of water as a fish farm unless the water body is a freeze-out pond or preexisting fish rearing facility and unless the Department of Natural Resources (DNR) issues person a permit (natural water body permit). The person and the water body must also meet certain additional conditions. One of those conditions requires DNR to determine that no substantial public interest exists in the body of water and that no public or private rights in the body of water will be damaged (interest and rights determination). This bill provides that the requirement to obtain a natural water body permit, the requirement that the water body be a freeze-out pond or preexisting fish rearing facility, and the requirement that DNR make an interest and rights determination do not apply to a person seeking to use a natural body of water as a fish farm if the person has been issued a permit with respect to that body of water that authorizes

SENATE BILL 537

the person to change the course of or straighten a stream, to enlarge a waterway, or to construct a dam.

Generally, under current law, DNR must renew a natural water body permit unless DNR finds that there has been a substantial change in circumstances related to DNR's interest and rights determination. This bill provides that a natural water body permit, once issued, does not expire unless DNR makes such a finding.

This bill also prohibits DNR from promulgating rules that require DNR, before it issues a natural water body permit, to hold a hearing or provide notice that it will not hold a hearing. In addition, the bill requires DNR to post notice of every application for a natural water body permit on DNR's Internet Web site.

Wastewater discharge permits

Current law generally prohibits a person from discharging pollutants into the surface water or groundwater without a wastewater discharge permit from DNR. The law requires persons required to have permits, other than persons who operate livestock farms, to pay an annual wastewater discharge fee based in part on the amount of pollutants discharged. The fees are deposited into the general fund.

This bill exempts persons who operate fish farms from the wastewater discharge fee.

The bill also requires DNR to include, in wastewater discharge permits for fish farms that produce more than 100,000 pounds of fish per year, requirements that are based on, and are not more stringent than, requirements in a specified regulation of the federal Environmental Protection Agency applicable to those fish farms.

Record-keeping

Current law requires a person who operates a fish farm to keep records on purchases, sales, and production of fish and fish eggs and any other records required by the Department of Agriculture, Trade and Consumer Protection (DATCP).

This bill provides that a person who operates a fish farm is not required to keep records on the sale of fish to an individual for the individual's personal use.

Importing fish

Current law generally requires a person who brings fish or fish eggs into this state for the purpose of introduction into lakes or streams, of use as bait, or of rearing in a fish farm without an annual permit issued by DATCP.

This bill exempts a person bringing fish or fish eggs from a fish farm in another state to a fish farm in this state from the requirement to have an importation permit if the person has a fish health certificate that covers the fish or fish eggs and that complies with DATCP's rules on fish health certificates.

Current law exempts DNR from the requirement to have a permit from DATCP to bring fish into this state. This bill eliminates that exemption.

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:

SENATE BILL 537

1 **SECTION 1.** 29.733 (1) (c) 3. of the statutes is created to read:

2 29.733 (1) (c) 3. A body of water for which the department has issued a permit
3 under s. 30.19, 30.195, or 31.04.

4 **SECTION 2.** 29.733 (1) (d) of the statutes is amended to read:

5 29.733 (1) (d) ~~A~~ If the department has not issued a permit for the body of water
6 under s. 30.19, 30.195, or 31.04, a permit for the body of water has been issued under
7 sub. (2).

8 **SECTION 3.** 29.733 (1m) of the statutes is created to read:

9 29.733 (1m) The department shall post notice of every application submitted
10 to the department under this section on the department's Internet Web site.

11 **SECTION 4.** 29.733 (2) (c) 1. of the statutes is renumbered 29.733 (2) (c) and
12 amended to read:

13 29.733 (2) (c) ~~The department, subject~~ Subject to s. 29.024 (2g) and (2r), shall
14 ~~renew~~ a permit issued under this subsection does not expire unless the department
15 determines that there has been a substantial change in circumstances that is related
16 to a determination made under par. (a) for the natural body of water or that is related
17 to the application of the criteria promulgated under par. (f) to the body of water.

18 **SECTION 5.** 29.733 (2) (c) 2. of the statutes is repealed.

19 **SECTION 6.** 29.733 (2) (c) 3. of the statutes is repealed.

20 **SECTION 7.** 29.733 (2) (c) 4. of the statutes is repealed.

21 **SECTION 8.** 29.733 (2) (f) of the statutes is amended to read:

22 29.733 (2) (f) The department shall promulgate rules to establish the fees,
23 criteria and procedures to be used in issuing permits under this subsection. The
24 rules may not require the department, before issuing a permit under this subsection,

SENATE BILL 537

1 to hold a hearing or to provide notice to any person, other than the applicant, that
2 the department will proceed on an application for a permit without a hearing.

3 **SECTION 9.** 36.58 (7) of the statutes is created to read:

4 **36.58 (7)** CONFIDENTIALITY OF RECORDS RELATING TO AQUACULTURE. Any
5 information kept by the veterinary diagnostic laboratory that identifies the owners
6 of farm-raised fish, as defined in s. 95.001 (1) (ah), and that relates to testing results
7 or diagnosis is not subject to inspection or copying under s. 19.35 except as the
8 veterinary diagnostic laboratory determines is necessary to protect the public
9 health, safety, or welfare.

10 **SECTION 10.** 95.60 (2) (a) of the statutes is amended to read:

11 **95.60 (2) (a)** ~~No~~ Except as provided in par. (e), no person may bring any fish or
12 fish eggs into this state for the purpose of introduction into the waters of the state,
13 of use as bait or of rearing in a fish farm without an annual permit issued by the
14 department.

15 **SECTION 11.** 95.60 (2) (d) of the statutes is repealed.

16 **SECTION 12.** 95.60 (2) (e) of the statutes is created to read:

17 **95.60 (2) (e)** A person bringing fish or fish eggs from a fish farm in another state
18 to a fish farm in this state is not required to have a permit under par. (a) if the person
19 has a fish health certificate that covers the fish or fish eggs and that complies with
20 the requirements for fish health certificates specified by the department by rule.

21 **SECTION 13.** 95.60 (4) (c) of the statutes is amended to read:

22 **95.60 (4) (c)** ~~A~~ Except as provided in par. (d), a person who operates a fish farm
23 shall keep records on purchases, sales and production of fish and fish eggs and any
24 other records required by the department by rule. The department may inspect these
25 records upon request.

SENATE BILL 537

1 **SECTION 14.** 95.60 (4) (d) of the statutes is created to read:

2 95.60 (4) (d) A person who operates a fish farm is not required to keep records
3 on the sale of fish to an individual for the individual's personal use. A person who
4 buys fish under this paragraph may not introduce the fish into a public water body.

5 **SECTION 15.** 283.31 (5m) of the statutes is created to read:

6 **283.31 (5m)** PERMITS FOR CERTAIN CONCENTRATED AQUATIC ANIMAL PRODUCTION
7 FACILITIES. The department shall include in permits issued under this section for
8 concentrated aquatic animal production facilities described in 40 CFR 451.10
9 requirements that are based on, and are not more stringent than, the requirements
10 in 40 CFR 451.11.

11 **SECTION 16.** 299.15 (3) (f) of the statutes is created to read:

12 299.15 (3) (f) Notwithstanding par. (a), a person who owns or operates a
13 concentrated aquatic animal production facility is not required to pay the
14 wastewater discharge environmental fee under this subsection.

15 **(END)**