



2013 SENATE BILL 547

1 **AN ACT** *to amend* 283.63 (1) (am) and 283.63 (4); and *to create* 283.13 (7) and
2 283.16 of the statutes; **relating to:** adaptive management plans for reducing
3 discharges of phosphorus and total suspended solids to the waters of the state
4 and a statewide variance to the water quality standard for phosphorus for
5 certain dischargers.

Analysis by the Legislative Reference Bureau

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

6 **SECTION 1.** 283.13 (7) of the statutes is created to read:
7 283.13 (7) ADAPTIVE MANAGEMENT. (a) In this subsection, “adaptive
8 management option” means an approach to achieving compliance with a water
9 quality standard adopted under s. 281.15 or a total maximum daily load under 33
10 USC 1313 (d) (1) (C) approved by the federal environmental protection agency under

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1 which a permittee implements a plan to achieve the water quality standard or total
2 maximum daily load through verifiable reductions in the amount of water pollution
3 from point sources and nonpoint sources, as defined in s. 281.16 (1) (e), in a basin or
4 other area specified by the department and uses monitoring data, modeling, and
5 other appropriate information to adjust the plan if needed to achieve compliance.

6 (b) The department may authorize a permittee to use an adaptive management
7 option to achieve compliance with the water quality standard for phosphorus or an
8 approved total maximum daily load for total suspended solids, and if it does so, the
9 department may specify a date under sub. (5) that provides 4 permit terms for the
10 permittee to comply with its water quality based effluent limitation for phosphorus
11 or total suspended solids.

12 **SECTION 2.** 283.16 of the statutes is created to read:

13 **283.16 Statewide variance for phosphorus.** (1) DEFINITIONS. In this
14 section:

15 (a) “Basin” means the drainage area identified by an 8–digit hydrologic unit
16 code, as determined by the U.S. Geological Survey.

17 (b) “Category” means a class or category of point sources specified by the
18 department under s. 283.13 (1) or publicly owned treatment works.

19 (d) “Existing source” means a point source that was covered by a permit on
20 December 1, 2010.

21 (e) “Major facility upgrade” means the addition of new treatment equipment
22 and a new treatment process.

23 (g) “Nonpoint source” has the meaning given in s. 281.16 (1) (e).

24 (h) “Target value” means the following:

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1 1. For a point source in a watershed for which a federally approved total
2 maximum daily load under 33 USC 1313 (d) (1) (C) is in effect on the effective date
3 of this subdivision [LRB inserts date], the number of pounds of phosphorus that
4 would be discharged from the point source during a year if the point source complied
5 with its effluent limitation based on the total maximum daily load in effect on the
6 effective date of this subdivision [LRB inserts date].

7 2. For a point source in a watershed for which no federally approved total
8 maximum daily load under 33 USC 1313 (d) (1) (C) is in effect on the effective date
9 of this subdivision [LRB inserts date], the number of pounds of phosphorus that
10 would be discharged from the point source during a year if the average concentration
11 of phosphorus in the effluent discharged by the point source during the year was 0.2
12 milligrams per liter.

13 (i) “Water quality based effluent limitation” means an effluent limitation under
14 s. 283.13 (5), including an effluent limitation based on a total maximum daily load
15 under 33 USC 1313 (d) (1) (C) approved by the federal environmental protection
16 agency.

17 **(2) INITIAL DETERMINATION CONCERNING THE WATER QUALITY STANDARD FOR**
18 **PHOSPHORUS.** (a) The department of administration, in consultation with the
19 department of natural resources, shall determine whether attaining the water
20 quality standard for phosphorus, adopted under s. 281.15, through compliance with
21 water quality based effluent limitations by point sources that cannot achieve
22 compliance without major facility upgrades is not feasible because it would cause
23 substantial and widespread adverse social and economic impacts on a statewide
24 basis. The department of administration may make separate determinations under
25 this paragraph for statewide categories of point sources.

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1 (b) The department of administration shall include all of the following in its
2 determination under par. (a), based on water quality based effluent limitations for
3 phosphorus determined by the department of natural resources:

4 1. A calculation of the statewide cost of compliance with water quality based
5 effluent limitations for phosphorus by point sources that cannot achieve compliance
6 without major facility upgrades.

7 2. A calculation of the statewide per household cost for water pollution control
8 by publicly owned treatment works that cannot achieve compliance with water
9 quality based effluent limitations for phosphorus without major facility upgrades,
10 including the projected costs of compliance with those water quality based effluent
11 limitations, and a calculation of the percentage of median household income the per
12 household cost represents.

13 4. A determination of whether the cost of compliance with water quality based
14 effluent limitations for phosphorus by point sources that cannot achieve compliance
15 without major facility upgrades would cause substantial adverse social and economic
16 impacts on a statewide basis.

17 5. A determination of whether the cost of compliance with water quality based
18 effluent limitations for phosphorus by point sources that cannot achieve compliance
19 without major facility upgrades would cause widespread adverse social and
20 economic impacts on a statewide basis.

21 (c) The department of administration shall make a preliminary determination
22 under par. (a) no later than the 240th day after the effective date of this paragraph
23 [LRB inserts date]. The department of administration shall provide public notice,
24 through an electronic notification system that it establishes or selects, of its

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1 preliminary determination and shall provide the opportunity for public comment on
2 the preliminary determination for at least 30 days following the public notice.

3 (d) The department of administration shall consider any public comments in
4 making its final determination under par. (a) and shall make the final determination
5 no later than the 30th day after the end of the public comment period.

6 (e) The department of administration shall send a notice that describes its final
7 determination under par. (a) to the legislative reference bureau for publication in the
8 administrative register.

9 (em) If the department of administration determines under par. (a) that
10 attaining the water quality standard for phosphorus through compliance with water
11 quality based effluent limitations by point sources that cannot achieve compliance
12 without major facility upgrades is not feasible, the department of natural resources
13 shall seek approval under 40 CFR Part 131 from the federal environmental
14 protection agency for the variance under this section.

15 (f) If the department of administration determines under par. (a) that attaining
16 the water quality standard for phosphorus through compliance with water quality
17 based effluent limitations by point sources that cannot achieve compliance without
18 major facility upgrades is not feasible, the determination remains in effect until the
19 department of administration finds under sub. (3) (c) that the determination is no
20 longer accurate.

21 **(2m) WATER QUALITY STANDARDS REVIEW.** Every 3 years as part of the review of
22 water quality standards required by 33 USC 1313 (c) (1), if the variance under this
23 section is in effect, the department shall determine whether formal review under
24 sub. (3) should be undertaken, considering any comments it receives on the variance
25 under this section.

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1 **(3) REVIEW OF FINDINGS AND REQUIREMENTS OF VARIANCE.** (a) In 2024, if a
2 determination under sub. (2) (a) that attaining the water quality standard for
3 phosphorus through compliance with water quality based effluent limitations by
4 point sources that cannot achieve compliance without major facility upgrades is not
5 feasible is in effect, or upon a determination under sub. (2m) that review under this
6 subsection should be undertaken, the department of administration, in consultation
7 with the department of natural resources, shall prepare a report, no later than
8 September 1, to evaluate whether the determination under sub. (2) (a) remains
9 accurate. The department of administration shall consult with permittees that
10 would be subject to water quality based effluent limitations for phosphorus and other
11 interested parties in preparing the report.

12 (b) The department of natural resources shall provide all of the following to the
13 department of administration for the report under par. (a):

14 1. A determination of whether technology is reasonably available for point
15 sources to comply with effluent limitations for phosphorus that are more stringent
16 than those in sub. (6) (a).

17 2. A determination of whether technology is reasonably available for any
18 category of point sources to comply with effluent limitations for phosphorus that are
19 more stringent than those in sub. (6) (a).

20 3. A determination of whether any technology that is reasonably available for
21 compliance with effluent limitations for phosphorus that are more stringent than
22 those in sub. (6) (a) is cost effective.

23 (c) Based on its report under par. (a), the department of administration, in
24 consultation with the department of natural resources, shall decide whether the
25 determination that attaining the water quality standard for phosphorus through

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1 compliance with water quality based effluent limitations by point sources that
2 cannot achieve compliance without major facility upgrades is not feasible remains
3 accurate.

4 (cm) If the department of administration decides under par. (c) that the
5 determination remains accurate, the department of natural resources shall decide
6 whether it is appropriate to apply more stringent effluent limitations than those in
7 sub. (6) (a) to all point sources or to any category of point sources, based on the
8 availability and cost effectiveness of technology for compliance and, if so, specify
9 those more stringent effluent limitations based on the report under par. (a).

10 (d) The department of administration shall provide public notice of its
11 preliminary decisions under par. (c) no later than the 60th day after preparing the
12 report under par. (a) and shall provide the opportunity for public comment on the
13 decisions for at least 30 days following the public notice.

14 (e) The department of administration shall consider any public comments in
15 making its final decisions under par. (c) and shall make the final decisions no later
16 than the 30th day after the end of the public comment period.

17 (f) The department of administration shall send a notice that describes its final
18 decisions under par. (c) to the legislative reference bureau for publication in the
19 administrative register.

20 (g) If the department of administration decides under par. (c) that the
21 determination described in that paragraph remains accurate, the department of
22 natural resources shall seek approval from the federal environmental protection
23 agency under 40 CFR 131.21 for renewal of the variance under this section.

24 **(4) AVAILABILITY OF VARIANCE.** (a) When a determination under sub. (2) (a) that
25 attaining the water quality standard for phosphorus through compliance with water

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1 quality based effluent limitations by point sources that cannot achieve compliance
2 without major facility upgrades is not feasible and approval of the variance under
3 this section by the federal environmental protection agency are in effect, a permittee
4 is eligible for a variance to the water quality standard for phosphorus for an existing
5 source if all of the following apply:

6 1. The determination applies to the existing source.

7 2. Subject to par. (am) 1., the permittee certifies that the existing source cannot
8 achieve compliance with the water quality based effluent limitation for phosphorus
9 without a major facility upgrade.

10 3. The permittee agrees to comply with the requirements under sub. (6).

11 (am) 1. The department shall approve an application for a variance if the
12 requirements in pars. (a) and (b) are complied with, unless the department
13 determines that the certification under par. (a) 2. is substantially inaccurate.

14 2. The department shall act on an application for a variance under this section
15 no later than the 30th day after the day on which the department receives the
16 application for the variance.

17 3. If the department does not act on the application for a variance by the
18 deadline under subd. 2., the application is approved.

19 (b) A permittee may apply for the variance under this section in any of the
20 following ways:

21 1. By requesting the variance in the application for reissuance of the permit.

22 2. By requesting the variance within 60 days after the department reissues or
23 modifies the permit to include a water quality based effluent limitation for
24 phosphorus.

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1 3. If the department issued a permit to the permittee before the effective date
2 of this subdivision ... [LRB inserts date], that includes a water quality based effluent
3 limitation for phosphorus, by requesting a modification of the permit.

4 4. If the department issued a permit to the permittee before the effective date
5 of this subdivision ... [LRB inserts date], that includes a water quality based effluent
6 limitation for phosphorus and that requires the permittee to submit to the
7 department options for complying with the water quality based effluent limitation,
8 by submitting a request for the variance as a compliance option.

9 (c) After an application for a variance is submitted to the department under par.
10 (b) 2., 3., or 4., and until the last day for seeking review of the department's final
11 decision on the application or a later date fixed by order of the reviewing court, the
12 water quality based effluent limitation for phosphorus and any corresponding
13 compliance schedule are not effective. All other provisions of the permit continue in
14 effect except those for which a petition for review has been submitted under s. 283.63.

15 (d) The variance under this section remains in effect for a point source until the
16 permit is reissued, modified, or revoked and reissued.

17 (e) Notwithstanding s. 227.42, there is no right to a hearing under this
18 subsection.

19 (f) If the department approves a variance under this section and the
20 department issues a modified water quality based effluent limitation under s. 283.63
21 for phosphorus, the permittee shall comply with the least stringent of the 2 effluent
22 limitations.

23 **(6) VARIANCE PROVISIONS.** (a) Except as provided in par. (ae) or (am) or sub. (7),
24 in the permit for a point source for which the department approves the variance
25 under this section the department may include a requirement that the permittee

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1 optimize the performance of the point source in controlling phosphorus discharges
2 and shall include the following interim limits:

3 1. In the first permit for which the department approves the variance, a
4 requirement to achieve, by the end of the term of that permit, compliance with an
5 effluent limitation for phosphorus equal to 0.8 milligrams per liter as a monthly
6 average.

7 2. In the 2nd permit for which the department approves the variance, a
8 requirement to achieve, by the end of the term of that permit, compliance with an
9 effluent limitation for phosphorus equal to 0.6 milligrams per liter as a monthly
10 average.

11 3. In the 3rd permit for which the department includes the variance, a
12 requirement to achieve, by the end of the term of that permit, compliance with an
13 effluent limitation for phosphorus equal to 0.5 milligrams per liter as a monthly
14 average.

15 4. In the 4th permit for which the department includes the variance, a
16 requirement to achieve, by the end of the term of that permit, compliance with the
17 water quality based effluent limitation for phosphorus.

18 (ae) If a permittee who chose an option for complying with a water quality based
19 effluent limitation for phosphorus other than the variance under this section applies
20 for the variance under this section, the department shall count a permit that
21 included the other compliance option as though the permit had included the
22 variance, for the purposes of par. (a), including determining the applicable interim
23 limit.

24 (am) If a permittee certifies that the point source cannot achieve compliance
25 with an interim limit in par. (a) 1., 2., or 3. without a major facility upgrade, the

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1 department shall include in the permit a requirement to achieve compliance with the
2 most stringent achievable interim limit, except that the department may not include
3 an interim limit that is higher than the limit established under s. 283.11 (3) (am).

4 (b) In the permit for a point source for which the department approves the
5 variance under this section, in addition to the requirements under par. (a) or (am)
6 or sub. (7), the department shall require the permittee to implement the permittee's
7 choice of the following measures to reduce the amount of phosphorus entering the
8 waters of the state:

9 1. Making payments to counties as provided in sub. (8).

10 2. Entering into a binding, written agreement with the department under
11 which the permittee constructs a project or implements a plan that is designed to
12 result in an annual reduction of phosphorus pollution from other sources in the basin
13 in which the point source is located, in an amount equal to the difference between the
14 annual amount of phosphorus discharged by the point source and the target value.

15 3. Entering into a binding written agreement, that is approved by the
16 department, with another person under which the person constructs a project or
17 implements a plan that is designed to result in an annual reduction of phosphorus
18 pollution from other sources in the basin in which the point source is located, in an
19 amount equal to the difference between the annual amount of phosphorus
20 discharged by the point source and the target value.

21 **(7) MORE STRINGENT EFFLUENT LIMITATIONS.** If the department determines under
22 sub. (3) (cm) that it is appropriate to apply more stringent effluent limitations than
23 those in sub. (6) (a) to all point sources or to a category of point sources, the
24 department shall include the more stringent effluent limitations specified under
25 sub. (3) (cm) in permits reissued, modified, or revoked and reissued after that

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1 determination for all point sources or for the category of point sources to which the
2 more stringent effluent limitations apply.

3 (8) PAYMENTS TO COUNTIES. (a) 1. A permittee that chooses to make payments
4 for phosphorus reduction under sub. (6) (b) 1. shall make the payments to each
5 county that is participating in the program under this subsection and that has
6 territory within the basin in which the point source is located in proportion to the
7 amount of territory each county has within the basin. The permittee shall make a
8 total payment by March 1 of each calendar year in the amount equal to the per pound
9 amount under subd. 2. times the number of pounds by which the amount of
10 phosphorus discharged by the point source during the previous year exceeded the
11 point source's target value or \$640,000, whichever is less. If no county that has
12 territory within the basin is participating in the program under this subsection, the
13 department shall direct the permittee to make payments to participating counties
14 selected by the department.

15 2. The per pound payment for this subsection is \$50 beginning on the effective
16 date of this subdivision ... [LRB inserts date]. Beginning in 2015, the department
17 shall adjust the per pound payment each year by a percentage equal to the average
18 annual percentage change in the U.S. consumer price index for all urban consumers,
19 U.S. city average, as determined by the federal department of labor, for the 12
20 months ending on the preceding December 31. The adjusted amount takes effect for
21 permits reissued on April 1. The per pound payment in effect when a permit is
22 reissued applies for the term of the permit.

23 (b) 1. A county shall use payments received under this subsection to provide
24 cost sharing under s. 281.16 (3) (e) or (4) for projects to reduce the amount of
25 phosphorus entering the waters of the state, for staff to implement projects to reduce

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1 the amount of phosphorus entering the waters of the state from nonpoint sources, or
2 for modeling or monitoring to evaluate the amount of phosphorus in the waters of the
3 state for planning purposes.

4 2. A county shall use at least 65 percent of the amounts received under this
5 subsection to provide cost sharing under s. 281.16 (3) (e) or (4).

6 2m. No later than March 1 of each year, a county shall develop a plan for using
7 the payments received under this subsection in the previous year that is consistent
8 with the county's land and water resource management plan under s. 92.10. A
9 county shall do all of the following in the plan under this subdivision:

10 a. Identify projects that have, or watersheds in which there exists, the greatest
11 potential to reduce the amount of phosphorus per acre entering the waters of the
12 state, based on an assessment of the land and land use practices in the county.

13 b. Describe the measures it will take to ensure that each project that it funds
14 is completed and evaluated.

15 3. No later than May 1 of the 2nd year following a year in which a county
16 receives payments under this subsection, the county shall submit an annual report
17 to the department of natural resources, the department of administration, the
18 department of agriculture, trade and consumer protection, and each permittee from
19 which it received those payments. In the annual report, the county shall describe the
20 projects for which it provided cost sharing, quantify, in pounds, the associated
21 phosphorus reductions achieved using accepted modeling technology, and identify
22 any staff funded with the payments.

23 4. The department shall evaluate reports submitted under subd. 3. If the
24 department determines that a county is not using the payments to effectively reduce
25 the amount of phosphorus entering the waters of the state from nonpoint sources, the

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1 department may require permittees who made the payments to eliminate or reduce
2 future payments to the county.

3 5. A county shall notify the department by January 1 of each year if it chooses
4 not to participate in the program under this subsection.

5 **(8m) PROJECTS OR PLANS.** (a) A person who constructs a project or implements
6 a plan under an agreement under sub. (6) (b) 2. or 3. that involves activities for which
7 performance standards and prohibitions have been prescribed under s. 281.16 (2) or
8 (3) shall comply with those performance standards and prohibitions and any
9 associated technical standards.

10 (b) A person who constructs a project or implements a plan under an agreement
11 under sub. (6) (b) 2. or 3. shall annually submit a report to the department that
12 quantifies, in pounds, the phosphorus reductions achieved through the project or
13 plan, using accepted modeling technology. The department shall review reports
14 submitted under this paragraph. If the department determines, based on the results
15 of the modeling, that a project or plan is not effectively reducing the amount of
16 phosphorus entering the waters of the state, the department shall terminate or
17 modify the agreement.

18 **SECTION 3.** 283.63 (1) (am) of the statutes is amended to read:

19 283.63 (1) (am) After a verified petition for review is filed and until the last day
20 for seeking review of the department's decision or a later date fixed by order of the
21 reviewing court, any term or condition, thermal effluent limitation or water quality
22 based effluent limitation which is the subject of the petition is not effective. All other
23 provisions of the permit continue in effect except those for which an application for
24 a variance has been submitted under s. 283.15 or 283.16. For those provisions for
25 which a petition for review has been submitted under this section, the corresponding

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1 or similar provisions of the prior permit continue in effect until the last day for
2 seeking review of the department's final decision or a later date fixed by order of the
3 reviewing court.

4 **SECTION 4.** 283.63 (4) of the statutes is amended to read:

5 283.63 (4) Subsections (1) and (2) do not apply to the modification of a permit
6 which implements a decision under s. 283.15 or 283.16 or the denial of a request for
7 a variance under s. 283.15 or 283.16. A proceeding under subs. (1) and (2) shall not
8 be delayed pending completion of the review of a variance request under s. 283.15
9 or 283.16.

10 (END)