



State of Wisconsin
2001 - 2002 LEGISLATURE

May 2001 Special Session

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SENATE BILL 1

May 1, 2001 - Introduced by COMMITTEE ON SENATE ORGANIZATION, by request of Governor Scott McCallum. Referred to Committee on Environmental Resources.

1 **AN ACT** *to repeal* 23.321 (1) (c); *to renumber* 23.321 (title) and (1) (title), (a) and
2 (b), 23.321 (1) (d) to (f) and 23.321 (2); *to renumber and amend* 23.321 (2m)
3 to (5); *to amend* 281.22 (title), 281.22 (3), 281.69 (3) (b) 2., 281.98 (1), 299.95
4 and 814.04 (intro.); and *to create* 281.01 (21), 281.22 (4) and 281.36 of the
5 statutes; **relating to:** water quality certification for nonfederal wetlands, time
6 limits and procedures for processing applications for water quality
7 certifications that are applicable to wetlands, granting rule-making authority,
8 and providing a penalty.

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 waters 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 waters that serve as habitat for migratory birds cannot be interpreted by ACE to be navigable waters and, therefore, no ACE discharge permits are required to discharge dredged or fill material into these bodies of water.

For discharges into wetlands that no longer are subject to the ACE permitting process (nonfederal wetlands), this bill incorporates into state law the content of some of the federal provisions governing the issuance of ACE discharge permits. These provisions are in addition to any other requirements under current state law that regulate discharges into wetlands. Under the bill, no one may discharge dredged or fill material into a nonfederal wetland unless the discharge is authorized by a certification from DNR that the discharge will meet all applicable state water quality standards. The bill exempts from this certification process activities that are exempt from ACE discharge permits under federal law. These exemptions include normal farming, forestry, and ranching activities, maintenance and reconstruction of damaged parts of structures that are in bodies of water, maintenance of drainage ditches, and construction and maintenance of certain farm roads, forest roads, and temporary mining roads if certain requirements are met. As under federal law, a discharge that would be exempt loses its exemption under certain circumstances. The exemption is lost if the discharge is incidental to an activity that brings the nonfederal wetland into a use for which it was not previously used and if the activity may impair the flow or circulation or reduce the reach of any nonfederal wetland. Under the bill, DNR must promulgate rules to interpret and implement the provisions under the bill that establish the exemptions and the provisions concerning the loss of the exemptions. These rules must be consistent with applicable federal law or interpretations of that law made by the federal government. If federal law or the federal interpretations are subsequently modified, DNR must incorporate the modifications into the rules. The bill also creates a temporary process to be used between the date on which the bill becomes law and the date on which the rules are promulgated for determining whether a discharge is exempt. During that time, no person may discharge into a nonfederal wetland based on the discharge being exempt unless the person demonstrates to DNR that the discharge is exempt from current DNR rules governing discharges into wetlands or that the discharge would be exempt under federal law or interpretations if the discharge were subject to the ACE permitting process.

Parallel to the general permitting procedures under federal law, this bill provides that DNR may issue general certifications for types of discharges that are similar in nature. A general certification allows any person to carry out the type of discharge subject to the general certification as opposed to an individual certification that is issued to a specific person. The bill requires that DNR issue general water

quality certifications that are consistent with the general permits issued by ACE that applied to nonfederal wetlands before the U.S. supreme court decision.

For an individual certification for a nonfederal wetland, DNR must approve or deny the certification within 120 days after the completed application for the certification is submitted unless the applicant and DNR agree to an extension. The bill imposes specific requirements on DNR for determining whether the application is complete. If DNR fails to meet the applicable deadline, the applicant may petition a court to compel DNR to approve or deny the application. If the court grants the petition, DNR must comply within 30 days after the granting of the petition, and the applicant shall be awarded reasonable attorney fees and court costs. The bill also requires DNR to promulgate a rule to establish time limits for determinations that DNR makes as to whether projects comply with water quality standards that are applicable to wetlands that are not nonfederal wetlands.

The bill also prohibits DNR from promulgating a rule that requires an applicant for a water quality certification for a nonfederal wetland that is less than one acre in size and that is not in an "area of special natural resource interest" to submit information concerning practicable alternatives to the discharge that exist or that may be viable if a local governmental unit, a state transportation agency, or a federal transportation agency makes a determination that the discharge is necessary for public safety. Current law defines "an area of special natural resource interest" as being an area that has significant ecological, cultural, aesthetic, educational, recreational, or scientific values and specifically lists certain areas. The areas listed include Lake Superior, Lake Michigan, the Mississippi River, the Lower Wisconsin State Riverway, fish and wildlife refuges, and state parks and forests. The bill defines a state transportation agency to be the state department of transportation or the office of the commissioner of railroads, and defines a federal transportation agency to be the federal aviation administration, the federal highway administration, or the federal railroad administration.

Under the bill, a local governmental unit or a state transportation agency must make a determination of public safety if requested to do so by an applicant for a water quality certification for a nonfederal wetland. The bill provides specific procedural and judicial review provisions for these determinations and allows any aggrieved party or DNR to seek judicial review of these determinations. The bill also authorizes an applicant to seek such a determination from a federal transportation agency.

The bill also provides that, even if an applicant for a water quality certification for a nonfederal wetland receives such a determination, DNR may proceed on its own to determine whether there is a practicable alternative. Under this procedure, DNR must first look for a practicable alternative that will not conflict with the determination that the discharge is necessary for public safety on the land where the nonfederal wetland is located. If there is no practicable alternative on that land, DNR may look for a nonconflicting practicable alternative on land where the nonfederal wetland is not located. If DNR finds that no such practicable alternative exists, it may require the applicant to implement a wetland mitigation project. A wetland mitigation project is one that restores, enhances, or creates another wetland to compensate for the adverse impact to the nonfederal wetland.

The bill contains provisions for identifying nonfederal wetlands. Under the bill, if ACE has issued a determination as to whether a wetland is a nonfederal wetland, DNR must adopt that determination. If ACE has not issued a determination, then DNR makes the determination. The bill also requires that certain procedures be used to delineate the boundaries of nonfederal wetlands.

The bill authorizes DNR to inspect any property on which there is located a nonfederal wetland beginning on the date on which an application for water quality certification that applies to that wetland is submitted and ending on the 30th day immediately following completion of the discharge or of any conditions imposed under the certification, or, if the application is denied or withdrawn, on the date of denial or withdrawal. DNR may also inspect any property to investigate a discharge of dredged or fill material that DNR has reason to believe is in violation of the statutes regulating nonfederal wetlands. The bill specifies a procedure DNR must follow in investigating these possible violations. The bill also authorizes DNR to gain access to inspect any records that must be kept by a holder of a water quality certification for a nonfederal wetland.

For further information see the *state and local* 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.** 23.321 (title) and (1) (title), (a) and (b) of the statutes are
2 renumbered 281.37 (title) and (1) (title), (a) and (b).

3 **SECTION 2.** 23.321 (1) (c) of the statutes is repealed.

4 **SECTION 3.** 23.321 (1) (d) to (f) of the statutes are renumbered 281.37 (1) (d) to
5 (f).

6 **SECTION 4.** 23.321 (2) of the statutes, as created by 1999 Wisconsin Act 147, is
7 renumbered 281.37 (2).

8 **SECTION 5.** 23.321 (2m) to (5) of the statutes are renumbered 281.37 (2m) to (5),
9 and 281.37 (2m) (a) and (b) 3., as renumbered, are amended to read:

10 281.37 **(2m)** (a) 1. A person who is the holder of a permit or other approval that
11 authorizes a mitigation project shall grant a conservation easement under s. 700.40
12 to the department to ensure that a wetland that is being restored, enhanced, or

1 created will not be destroyed or substantially degraded by any subsequent ~~owner~~
2 proprietor of or holder of interest in the property on which the wetland is located.
3 The department shall revoke the permit or other approval if the holder of the permit
4 or other approval fails to take these measures.

5 2. A person who is restoring, enhancing, or creating a wetland to provide
6 transferable credits as part of a wetlands mitigation bank shall grant a conservation
7 easement under s. 700.40 to the department, to ensure that the wetland will not be
8 destroyed or substantially degraded by any subsequent ~~owner~~ proprietor of or holder
9 of interest in the property on which the wetland is located.

10 (b) 3. Any subsequent ~~owner~~ proprietor of or holder of interest in the property
11 on which the wetland specified in subd. 1. is located did not contribute to the loss of
12 the wetland.

13 **SECTION 6.** 281.01 (21) of the statutes is created to read:

14 281.01 (21) "Wetland" has the meaning given in s. 23.32 (1).

15 **SECTION 7.** 281.22 (title) of the statutes is amended to read:

16 **281.22 (title) Fees and time limits for water quality determinations for**
17 **wetlands.**

18 **SECTION 8.** 281.22 (3) of the statutes is amended to read:

19 281.22 (3) EXEMPTIONS FROM FEES. ~~This section does~~ Subsections (1), (2) and
20 (2m) do not apply to any federal agency or state agency.

21 **SECTION 9.** 281.22 (4) of the statutes is created to read:

22 281.22 (4) TIME LIMITS. The department shall promulgate a rule to establish
23 time limits for the steps involved in processing, approving, and denying applications
24 for determinations that the department makes as to whether projects comply with
25 the standards of water quality established by rules promulgated under s. 281.15 that

1 are applicable to wetlands other than nonfederal wetlands, as defined in s. 281.36
2 (1) (c). Upon referral of any proposed rule under this subsection to the presiding
3 officer of each house of the legislature under s. 227.19 (2), the presiding officers shall
4 refer the proposed rule to a senate committee and an assembly committee concerned
5 with the environment.

6 **SECTION 10.** 281.36 of the statutes is created to read:

7 **281.36 Water quality certification for nonfederal wetlands. (1)**

8 DEFINITIONS. In this section:

9 (a) "Additional federal law or interpretation" means any of the following:

10 1. An amendment to 33 USC 1344 (f) that becomes effective after January 9,
11 2001.

12 2. Any other federal statutory provision that affects the exemptions under 33
13 USC 1344 (f) and that becomes effective after January 9, 2001.

14 3. A regulation, rule, memorandum of agreement, guidance letter, interpretive
15 document, or other provision established by a federal agency that is promulgated or
16 adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC
17 1344 (f), that applies to wetlands located in this state, and that becomes effective
18 after January 9, 2001.

19 4. A decision issued by a federal district or federal appellate court that affects
20 the application of a federal amendment or provision described in subds. 1. to 3., that
21 applies to wetlands located in this state, and that is issued after January 9, 2001.

22 (am) "Area of special natural resource interest" has the meaning given in s.
23 281.37 (1) (a).

24 (b) "Existing federal law or interpretation" means any of the following:

25 1. 33 USC 1344 (f), as amended to January 8, 2001.

1 2. A regulation, rule, memorandum of agreement, guidance letter, interpretive
2 document, or other provision established by a federal agency that is promulgated or
3 adopted pursuant to 33 USC 1344 (f) or that is used to interpret or implement 33 USC
4 1344 (f), that applies to wetlands located in this state, and that is in effect on January
5 8, 2001.

6 3. A decision issued by a federal district or federal appellate court that affects
7 the application of a federal statute or provision described in subd. 1. or 2., that
8 applies to wetlands located in this state, and that is issued on or before January 8,
9 2001.

10 (bg) "Federal transportation agency" means the federal aviation
11 administration, the federal highway administration, or the federal railroad
12 administration.

13 (c) "Nonfederal wetland" means a wetland that is identified as such under sub.
14 (1m).

15 (cm) "Political subdivision" means a city, village, town, or county.

16 (cr) "State transportation agency" means the department of transportation or
17 the office of the commissioner of railroads.

18 (d) "Water quality standards" means water quality standards set under rules
19 promulgated by the department under s. 281.15.

20 **(1m) DETERMINATION OF NONFEDERAL WETLANDS.** (a) A wetland is identified as
21 a nonfederal wetland if either of the following applies:

22 1. Any discharges of dredged or fill material into the wetland are determined
23 not to be subject to regulation under 33 USC 1344 due to the decision in Solid Waste
24 Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178 (U.S.
25 Jan. 9, 2001) or any subsequent interpretations of that decision by a federal agency

1 or by a federal district or federal appellate court that applies to wetlands located in
2 this state.

3 2. The wetland is determined to be a nonnavigable, intrastate, and isolated
4 wetland under the decision in Solid Waste Agency of Northern Cook County v. U.S.
5 Army Corps of Engineers, No. 99-1178 (U.S. Jan. 9, 2001) or any subsequent
6 interpretations of that decision by a federal agency or by a federal district or federal
7 appellate court that applies to wetlands located in this state.

8 (b) For the purpose of identifying wetlands under par. (a):

9 1. If the U.S. army corps of engineers issues a determination as to whether a
10 wetland is a nonfederal wetland, the department shall adopt that determination.

11 2. If the U.S. army corps of engineers does not issue a determination as to
12 whether a wetland is a nonfederal wetland, the department shall determine whether
13 the wetland is a nonfederal wetland.

14 **(2) CERTIFICATION REQUIREMENT.** (a) No person may discharge dredged or fill
15 material into a nonfederal wetland unless the discharge is authorized by a water
16 quality certification issued by the department under this section. No person may
17 violate any condition imposed by the department in a water quality certification
18 under this section. The department may not issue a water quality certification under
19 this section unless it determines that the discharge will comply with all applicable
20 water quality standards.

21 (b) 1. The department shall approve or deny a complete application for a water
22 quality certification under this section within 120 days after the date the department
23 determines that a complete application for the certification has been submitted
24 unless the applicant and the department agree to extend the time period. The
25 department may not determine an application to be complete until the requirements

1 under s. 1.11 have been met and until all of the items of information for the water
2 quality certification and for any associated permits or other approvals have been
3 submitted to the department. If the department fails to approve or deny the complete
4 application within the applicable time period, the applicant may bring an action for
5 mandamus to compel the department to approve or deny the application. If the court
6 grants the mandamus, the department shall approve or deny the application within
7 30 days after the mandamus is granted and the court shall award the applicant
8 reasonable attorney fees and court costs incurred in bringing the action.

9 2. For purposes of subd. 1., the department shall initially determine whether
10 a complete application has been submitted and, no later than 30 days after the
11 application is submitted, notify the applicant in writing about the initial
12 determination of completeness. If the department determines that the application
13 is incomplete, the notice shall state the reason for the determination and the specific
14 items of information necessary to make the application complete. An applicant may
15 supplement and resubmit an application that the department has determined to be
16 incomplete. There is no limit on the number of times that an applicant may resubmit
17 an application that the department has determined to be incomplete under this
18 subdivision. The department may not demand items of information that are not
19 specified in the notice as a condition for determining whether the application is
20 complete unless both the department and the applicant agree or unless the applicant
21 makes material additions or alterations to the project for which the the application
22 has been submitted.

23 **(3) DELINEATION PROCEDURES.** For purposes of delineating the boundary of a
24 nonfederal wetland, the department and the person who is applying for or who holds
25 a water quality certification under this section shall use the procedures contained

1 in the wetlands delineation manual published by the U.S. army corps of engineers.
2 The edition of the manual that shall be used shall be the 1987 edition of the manual
3 and any document that the U.S. army corps of engineers issues interpreting that
4 manual, unless the U.S. army corps of engineers publishes an edition of the manual
5 after January 9, 2001, and the department by rule designates that edition as the one
6 to be used under this subsection. If the U.S. army corps of engineers issues a
7 guidance document interpreting the edition of the wetlands delineation manual that
8 the department is required to use under this subsection and if that guidance
9 document is issued after the effective date of this paragraph [revisor inserts date],
10 the department shall notify the appropriate standing committee of each house of the
11 legislature, as determined by the speaker of the assembly and the president of the
12 senate, of the issuance of the guidance document and whether the department
13 intends to promulgate a rule incorporating the provisions of the guidance document.

14 (4) EXEMPTIONS. Except as provided in sub. (5), the certification requirement
15 under sub. (2) does not apply to any discharge that is the result of any of the following
16 activities:

17 (a) Normal farming, silviculture, or ranching activities.

18 (b) Maintenance, emergency repair, or reconstruction of damaged parts of
19 structures that are in use in a nonfederal wetland.

20 (c) Construction or maintenance of farm ponds, stock ponds, or irrigation
21 ditches.

22 (d) Maintenance of drainage ditches.

23 (e) Construction or maintenance of farm roads, forest roads, or temporary
24 mining roads that is performed in accordance with best management practices, as
25 determined by the department, to ensure all of the following:

1 1. That the flow and circulation patterns and chemical and biological
2 characteristics of the affected nonfederal wetland are not impaired.

3 2. That the reach of the affected nonfederal wetland is not reduced.

4 3. That any adverse effect on the aquatic environment of the affected
5 nonfederal wetland is minimized to the degree required by the department.

6 **(5) INAPPLICABILITY OF EXEMPTIONS.** Notwithstanding sub. (4), a discharge that
7 would be exempt under sub. (4) is subject to the certification requirement under sub.
8 (2) if the discharge is incidental to an activity that has as its purpose bringing a
9 nonfederal wetland, or part of a nonfederal wetland, into a use for which it was not
10 previously subject and if the activity may do any of the following:

11 (a) Impair the flow or circulation of any nonfederal wetland.

12 (b) Reduce the reach of any nonfederal wetland.

13 **(6) RULES FOR EXEMPTIONS.** (a) The department shall promulgate rules to
14 interpret and implement the provisions under subs. (4) and (5). In promulgating
15 these rules, the department shall do all of the following:

16 1. Make the rules consistent with existing federal law.

17 2. Incorporate any applicable additional federal law or interpretation into the
18 rules.

19 (b) Whenever an additional federal law or interpretation is initially
20 incorporated into the rules, the department may modify the additional federal law
21 or interpretation as it determines is necessary, but the department may not
22 otherwise amend or modify any of the rules promulgated under this subsection.

23 **(7) RULES PROHIBITION; DETERMINATIONS OF PUBLIC SAFETY.** (a) The department
24 may not promulgate or enforce a rule requiring a person who submits an application
25 for a water quality certification under this section for the discharge of dredged or fill

1 material into a nonfederal wetland to submit a description of practicable alternatives
2 to the discharge or to submit a description of any investigation conducted to
3 determine the viability of such alternatives if all of the following apply:

4 1. The wetland is less than one acre in size.

5 2. The wetland is not in an area of special natural resource interest.

6 3. The application for the water quality certification includes a copy of a
7 determination that the discharge is necessary for public safety that is made under
8 par. (b) or that is made in response to a request made under par. (bn).

9 (b) 1. A political subdivision shall make a determination as to whether a
10 discharge into a nonfederal wetland within the boundaries of the political
11 subdivision is necessary for public safety if requested to do so by an applicant for a
12 water quality certification under this section. A state transportation agency shall
13 make a determination as to whether a discharge into a nonfederal wetlands is
14 necessary for public safety if requested to do so by an applicant for a water quality
15 certification under this section.

16 2. Before a political subdivision or a state transportation agency makes any
17 determination under subd. 1., it shall publish appropriate notice, as determined by
18 the political subdivision or the state transportation agency, to the public that
19 describes the request and that states that it will be making the determination. On
20 or before the date of the publication of the notice, the political subdivision or state
21 transportation agency shall mail or otherwise provide a written copy of the notice to
22 the department. After publication of the notice, the governing body of the political
23 subdivision or the state transportation agency may hold a public hearing to
24 determine whether the discharge is necessary for public safety. Any public hearing
25 held under this subdivision shall be held no later than 30 days after the applicant

1 for the water quality certification made the request for the determination. The
2 governing body of the political subdivision or the state transportation agency shall
3 issue the determination in writing, and the determination shall include a statement
4 of the grounds for making the determination.

5 3. The department or any person whose substantial interests are adversely
6 affected by a determination issued under subd. 2. by a governing body of a political
7 subdivision or by a state transportation agency may file for judicial review of the
8 determination. Section 68.13 shall apply to the judicial review of a determination
9 made by a political subdivision. Sections 227.52 to 227.58 shall apply to the judicial
10 review of a determination made by a state transportation agency.

11 (bn) An applicant for a water quality certification may submit a request to a
12 federal transportation agency for a determination as to whether a discharge into a
13 nonfederal wetland is necessary for public safety.

14 (c) 1. Notwithstanding the fact that an applicant for a water quality
15 certification under this section has received a determination that the discharge is
16 necessary for public safety, the department may conduct an examination of the
17 practicable alternatives to the proposed discharge that will not adversely affect the
18 nonfederal wetland and that will not result in other significant adverse
19 environmental consequences.

20 2. If the department decides under subd. 1. to conduct an examination, the
21 department shall conduct the examination by first determining, after consulting
22 with the applicant for the water quality certification, whether an alternative to the
23 discharge exists on the parcel of land on which the nonfederal wetland is located that
24 would not conflict with the determination that the discharge is necessary for public
25 safety. At the same time that the department is conducting the examination of the

1 practicable alternatives under this subdivision, the department shall consider the
2 functional value of the nonfederal wetland. If the department determines that such
3 a practicable alternative exists, the department may deny the water quality
4 certification.

5 3. If the department determines that no practicable alternative exists after
6 conducting the examination under subd 2., the department may proceed with the
7 examination by determining, after consulting with the applicant for the water
8 quality certification, whether an alternative to the discharge exists on the parcel of
9 land on which the nonfederal wetland is not located that would not conflict with the
10 determination that the discharge is necessary for public safety. At the same time
11 that the department is conducting an examination of the practicable alternatives
12 under this subdivision, the department shall consider the functional value of the
13 nonfederal wetland. If the department determines that such a practicable
14 alternative exists, the department may deny the water quality certification.

15 4. If the department determines that no practicable alternative exists after
16 conducting the examination under subds. 2. and 3., the department may require that
17 the applicant implement a mitigation project under s. 281.37 (2).

18 **(8) GENERAL WATER QUALITY CERTIFICATIONS.** (a) In lieu of issuing individual
19 water quality certifications under this section, the department may issue a general
20 water quality certification for types of discharges that the department determines
21 are similar in nature or for the purpose of simplifying the certification process if the
22 discharges meet all of the following standards:

23 1. The discharges will cause only minimal adverse environmental effects, as
24 determined by the department, if they are performed separately.

1 2. The cumulative adverse effect on the environment by the discharges will be
2 minimal, as determined by the department.

3 (b) No general water quality certification issued under par. (a) may be effective
4 for more than 5 years after the date of its issuance.

5 (bn) 1. The department shall issue general water quality certifications that are
6 consistent with all of the general permits issued under 33 USC 1344 (e) that applied
7 on January 8, 2001, to nonfederal wetlands located in this state.

8 2. If a general permit as specified in subd. 1. is amended or modified after
9 January 8, 2001, the department shall incorporate the amendments or modifications
10 into the general water quality certification issued under subd. 1. and may not
11 otherwise amend or modify the general water quality certification.

12 (c) If the department determines that any of the discharges under a general
13 water quality certification issued under par. (a) fails to meet any of the standards in
14 par. (a), the department shall modify the certification so that the discharges meet all
15 of the standards. If the department cannot modify the certification so that all of the
16 standards will be met or if the department determines that the discharges subject
17 to the general certification are more appropriately certified by using individual
18 water quality certifications, the department shall revoke the general certification.

19 (d) Before issuing, modifying, or revoking a general water quality certification
20 issued under par. (a), the department shall provide notice and a hearing under ss.
21 227.17 and 227.18.

22 (e) Subsection (2) (b) does not apply to general water quality certifications
23 issued under this subsection.

1 **(9) INSPECTION AUTHORITY.** (a) For purposes of enforcing this section, any
2 employee or other representative of the department, upon presenting his or her
3 credentials, may do any of the following:

4 1. Enter and inspect any property on which is located a nonfederal wetland, or
5 part of a nonfederal wetland, for which an application for a water quality
6 certification has been submitted to the department.

7 2. Enter and inspect any property on which is located a nonfederal wetland to
8 investigate a discharge of dredged or fill material that the department has reason
9 to believe is in violation of this section.

10 3. Gain access to and inspect any records that the department requires a holder
11 of a water quality certification to keep.

12 (am) An employee or representative of the department may not exercise the
13 authority granted under par. (a) 1. before the date on which the application is
14 submitted. If the application is denied or withdrawn, an employee or representative
15 of the department may not exercise this authority after the date on which the
16 application is denied or withdrawn. If the application is approved, an employee or
17 representative of the department may not exercise this authority after the 30th day
18 immediately following the completion date of the discharge of the dredged or fill
19 material or the completion date of any conditions imposed under the water quality
20 certification, whichever date is later.

21 (ar) 1. Before entering and inspecting a property under par. (a) 2., the
22 department shall make at least one of the following requests:

23 a. A request for consent from the proprietor to enter and inspect the property.

1 b. A request, orally or in writing, that the proprietor provide an oral or written
2 explanation, as elected by the department, concerning the activity that the
3 department has reason to believe may constitute a violation of this section.

4 2. a. If the proprietor grants consent for the entry on, and the inspection of, the
5 property to investigate a discharge as authorized under par. (a) 2., the department,
6 upon reasonable advance notice, may enter and inspect the property in compliance
7 with the terms of the consent granted by the proprietor.

8 b. If the proprietor refuses to grant consent for the entry on, or the inspection
9 of, the property or if the proprietor's explanation or terms of consent are not
10 acceptable to the department of natural resources, the department of natural
11 resources may apply for, obtain, or execute a special inspection warrant under s.
12 66.0119 or refer the matter to the department of justice for enforcement under s.
13 299.95.

14 c. If the proprietor fails to respond to all requests made under subd. 1., an agent
15 of the department of natural resources may apply for, obtain, and execute a special
16 inspection warrant under s. 66.0119.

17 3. Any employee or representative of the department may make the requests
18 under subd. 1. or enter or inspect property under subd. 2. a. only during reasonable
19 hours.

20 (b) Any employee or representative of the department may exercise the
21 authority granted under par. (a) 1. or 3. only during reasonable hours and only after
22 the department has provided reasonable advance notice to the proprietor of the
23 property involved or to the holder of the water quality certification.

24 (c) An employee or representative of the department may not gain access to or
25 inspect any records as authorized under par. (a) 3. unless the holder of the water

1 quality certification, or the holder's designee, is present or unless the holder of the
2 certification waives this requirement.

3 **(10) OTHER REQUIREMENTS.** This section does not affect the authority of the
4 department to do any of the following:

5 (a) Regulate the discharge of dredged or fill material in a nonfederal wetland
6 under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49
7 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

8 (b) Issue a water quality certification under rules promulgated under this
9 chapter to implement 33 USC 1341 (a).

10 **SECTION 11.** 281.69 (3) (b) 2. of the statutes is amended to read:

11 281.69 (3) (b) 2. The restoration of a wetland, as defined in s. 23.32 (1), if the
12 restoration will protect or improve a lake's water quality or its natural ecosystem.

13 **SECTION 12.** 281.98 (1) of the statutes is amended to read:

14 281.98 (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19), and 281.99 (2),
15 any person who violates this chapter or any rule promulgated or any plan approval,
16 license or, special order, or water quality certification issued under this chapter shall
17 forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of
18 continued violation is a separate offense. While an order is suspended, stayed, or
19 enjoined, this penalty does not accrue.

20 **SECTION 13.** 299.95 of the statutes is amended to read:

21 **299.95 Enforcement; duty of department of justice; expenses.** The
22 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
23 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
24 approvals and, permits, and water quality certifications of the department, except
25 those promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except

1 as provided in s. 285.86. The circuit court for Dane county or for any other county
2 where a violation occurred in whole or in part has jurisdiction to enforce chs. 281 to
3 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval
4 ~~or~~, permit, or certification by injunctive and other relief appropriate for
5 enforcement. For purposes of this proceeding where chs. 281 to 285 and 289 to 295
6 or this chapter or the rule, special order, license, plan approval ~~or~~, permit or
7 certification prohibits in whole or in part any pollution, a violation is considered a
8 public nuisance. The department of natural resources may enter into agreements
9 with the department of justice to assist with the administration of chs. 281 to 285 and
10 289 to 295 and this chapter. Any funds paid to the department of justice under these
11 agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

12 **SECTION 14.** 814.04 (intro.) of the statutes is amended to read:

13 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),
14 106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 769.313, 814.025, 814.245,
15 895.035 (4), 895.10 (3), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b),
16 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

17 **SECTION 15. Nonstatutory provisions.**

18 (1) TEMPORARY PROCESS.

19 (a) In this subsection, “existing federal law or interpretation” has the meaning
20 given in section 281.36 (1) (b) of the statutes, as created by this act.

21 (b) Except as provided in paragraph (c), no person may discharge dredged or
22 fill material into a nonfederal wetland before the date on which the rules required
23 under section 281.36 (6) of the statutes, as created by this act, are effective unless
24 one of the following applies:

