



2017 ASSEMBLY BILL 160

March 20, 2017 - Introduced by Representatives FELZKOWSKI, STAFSHOLT, NYGREN, MURSAU, SPIROS, QUINN, KULP, JARCHOW, E. BROOKS, HORLACHER, EDMING, RIPP, SKOWRONSKI, MURPHY, SNYDER, TITTL, SWEARINGEN, BALLWEG, TAUCHEN, LOUDENBECK, R. BROOKS and BERNIER, cosponsored by Senators TIFFANY, TESTIN, MOULTON, NASS, LEMAHIEU, MARKLEIN and STROEBEL. Referred to Committee on Natural Resources and Sporting Heritage.

1 **AN ACT to renumber 29.733 (1); to renumber and amend 29.733 (3); to amend**
2 29.705 (2) (a), 29.733 (2) (a), 29.733 (2) (b), 29.733 (2) (e), 30.40 (1), 234.91 (1)
3 (a), 234.91 (2) (b), 281.36 (3g) (a) 7., 281.36 (3n) (a) 1. b., 281.36 (4) (e) (intro.),
4 283.31 (3) (intro.), 283.31 (4) (intro.), 283.31 (5m) and 348.27 (18) (c); and **to**
5 **create** 29.707, 29.733 (1d), 29.733 (1h) (c) 4., 29.733 (3) (b), 30.19 (1m) (bm),
6 31.34 (3) (am), 281.346 (2) (bm), 281.36 (4) (am), 283.15 (4m) and 348.27 (18)
7 (a) 1. e. of the statutes; **relating to:** regulation of aquaculture and fish farms,
8 providing an exemption from emergency rule procedures, and granting
9 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the regulation of aquaculture and fish farms.

Wetland permits

Under current law, no person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the Department of Natural Resources. An individual permit is issued to a person for a particular discharge that is not covered under a general permit. A general permit is issued for certain categories of discharges,

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including a discharge that is part of a development for agricultural purposes if the discharge does not affect more than 10,000 square feet of wetland. This bill adds aquacultural purposes to this category of discharge.

This bill also exempts normal aquaculture activities from the requirement to obtain an individual or general wetland permit, if the discharge is to a wetland that has been created for aquacultural purposes in an area without any prior wetland history. The bill defines “normal aquaculture activities” to include the following activities in fish farms: 1) constructing, maintaining, or repairing ponds or raceways; 2) filling in or drawing down ponds or raceways; 3) maintaining or improving swales or other drainage areas; and 4) maintaining, repairing, or replacing drains, pipes, or other flowage controls. The bill also exempts the construction or maintenance of roads used in fish farms from the requirement to obtain an individual or general wetland permit.

Current law requires an applicant for an individual wetland permit to submit to DNR an analysis of the practicable alternatives to the proposed discharge that will avoid and minimize the discharge’s adverse impacts on the wetland and that will not result in any other significant adverse environmental consequences. Under current law, DNR must limit its review of practicable alternatives to those alternatives that are located at the discharge site and any adjacent site if the proposed project is necessary for the expansion of an existing industrial, commercial or agricultural facility. The bill adds the expansion of an existing aquacultural facility to this list.

Natural bodies of water used as fish farms

The bill expands the category of natural bodies of water that may be used as part of a fish farm to include an artificial water body that is used as a registered fish farm or as part of a registered fish farm, regardless of the water source of the artificial water body, including an artificial water body that is fed by a spring. Under current law, a natural body of water may be used as a fish farm or part of a fish farm only if the water body is a freeze-out pond, a preexisting fish rearing facility, or a body of water for which DNR has issued a permit. The bill defines “natural body of water” as a spring, stream, pond, lake, or wetland that was historically present in a natural state but may have been physically altered over time.

The bill also creates an exemption to the general prohibition on using a natural water body as a fish farm for a person who holds a permit from DNR to use a natural water body as a fish farm and who takes no action in the water body other than maintaining the fish farm facility.

Navigable water permits

This bill also creates an exemption from the requirement to obtain a permit from DNR to construct, dredge, or enlarge an artificial water body that connects with a navigable waterway or that is located within 500 feet of the ordinary high-water mark of an existing navigable waterway. This exemption applies only to the maintenance or repair of an artificial water body or registered fish farm. This exemption does not apply to the requirement under current law to obtain a permit to grade or remove more than 10,000 square feet of topsoil from the bank of a navigable waterway.

ASSEMBLY BILL 160***Dams on navigable streams***

This bill also creates an additional exemption to the requirement that a person maintaining a dam on a navigable stream must allow at least 25 percent of the natural low flow of water of the stream to pass through the dam. Under current law, this requirement does not apply to a dam where the water is discharged directly into a lake, mill pond, storage pond, or cranberry marsh, or to cases in which the DNR determines that the required minimum discharge is not necessary for the protection of fish life. Under the bill, this requirement also does not apply to an existing dam in an existing, registered commercial fish farm, located in Langlade County, where the water is returned to the navigable stream.

WPDES permits

This bill clarifies what conditions DNR may include in a Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued to a fish farm.

Under current law, DNR must include in WPDES permits issued to certain large fish farms requirements that are based on certain provisions under federal law. Those provisions require fish farms to use specified best-management practices relating to discharging solids, storing materials, and inspecting and maintaining production and wastewater treatment systems.

This bill also prohibits DNR from including additional conditions in a permit issued to a large fish farm unless those conditions are necessary to meet certain standards, such as federal or state water quality standards or schedules of compliance established by DNR. The bill also states that any condition that is included in a permit issued to a large fish farm must be based on site-specific best management practices to the greatest extent allowed under federal law.

Variances to water quality standards

The bill also specifies certain information that DNR must use in deciding whether to grant a variance to a fish farm.

Current law allows a WPDES permittee to request a variance from applicable water quality standards. Under current federal regulations, any variance granted by DNR must also be reviewed and either approved or disapproved by the federal Environmental Protection Agency. This bill states that, when deciding whether to grant a variance to a fish farm, DNR must rely on the same guidance documents and other information that would be used by EPA in reviewing the variance.

Water withdrawals under the Great Lakes Compact

The bill also provides that if a fish farm withdraws water and places it in an aquacultural pond that is registered with the Department of Agriculture, Trade and Consumer Protection, any subsequent use of that water from that pond is not a "withdrawal" for purposes of the Great Lakes Compact, as long as the subsequent use is not, and does not result in, a diversion or intrabasin transfer out of the original lake basin. The Great Lakes Compact generally prohibits water from within the Great Lakes basin from being diverted out of the basin and imposes certain requirements on a person who withdraws 100,000 gallons of water per day or more from the Great Lakes basin.

ASSEMBLY BILL 160***Furnishing fish eggs for stocking purposes***

This bill also allows DNR to furnish fish or fish eggs to private ponds, private club, corporations, or preserves that are located in this state and that have entered into an agreement with DNR, if the fish or the fish grown from the fish eggs will ultimately be stocked into waters of the state that are open to the general public. Under the bill, if the entity receiving fish eggs from DNR creates more fish than are required under its contract with DNR, those excess fish are not required to be stocked into waters of the state that are open to the general public.

Agricultural use in the Lower Wisconsin State Riverway

Under current law, a person may develop or use land in the Lower Wisconsin State Riverway for agricultural use if the development and use comply with the rules for the soil and water resource management program promulgated by DATCP. This bill adds aquaculture to the list of activities that make up “agricultural use” in this context.

WHEDA loan guarantees

Under current law, the Wisconsin Housing and Economic Development Authority administers the Wisconsin Development Reserve Fund (WDRF) to provide loan guarantees to farmers and other small businesses. Current law provides that a loan made to a farmer to finance the acquisition of agricultural assets or the cost of improvements to facilities or land, which are acquired or made for agricultural purposes, is eligible for a guarantee from the WDRF. This bill expands the type of loans that are eligible for this guarantee to include loans made to acquire assets used in aquaculture and loans that are made for aquacultural purposes.

Transportation of agricultural products

This bill also allows the Department of Transportation to issue permits for the transportation of fish and minnows in vehicles that exceed certain weight limitations.

DNR and DATCP rules

In addition, the bill requires DNR to promulgate rules that define the role and extent that genetics is involved in DNR’s fish stocking strategies and that standardize DNR’s fish donation procedures. The bill also requires DNR to assess the viability of continuing to classify bait fish and forage fish as established nonnative fish species and to promulgate new rules as necessary. Under the bill, DNR and DATCP must review the departments’ rules relating to viral hemorrhagic septicemia and promulgate new rules as necessary. The bill also requires DNR to assess, with DATCP, the efficiency and utility of the fish hatchery classification system under rules promulgated by DATCP, and requires DATCP to promulgate new rules as necessary.

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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.** 29.705 (2) (a) of the statutes is amended to read:

2 29.705 (2) (a) The department may not furnish fish or fish eggs from state
3 hatcheries to private ponds, private clubs, corporations, or preserves unless the
4 private pond, private club, corporation, or preserve is located in this state and has
5 entered into an agreement with the department and the fish or the fish grown from
6 the fish eggs will ultimately be stocked, into waters of the state where the general
7 public is allowed, according to any applicable permits and certificates, and, if the
8 private pond, private club, corporation, or preserve is a fish farm, the fish farm is
9 registered with the department of agriculture, trade and consumer protection. If the
10 private pond, private club, corporation, or preserve creates more fish from fish eggs
11 provided under this paragraph than are required under its agreement with the
12 department, the excess fish are not required to ultimately be stocked into waters of
13 the state where the general public is allowed.

14 **SECTION 2.** 29.707 of the statutes is created to read:

15 **29.707 Propagation of fish; department rules.** (1) The department shall
16 promulgate rules that do all of the following:

17 (a) Define the role and extent that genetics is involved in the department's fish
18 stocking strategies.

19 (b) Standardize the department's fish donation procedures.

20 **(2)** The department and the department of agriculture, trade and consumer
21 protection shall review the departments' rules relating to viral hemorrhagic

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1 septicemia, and shall promulgate new rules as the departments determine are
2 necessary.

3 (3) The department, with the department of agriculture, trade and consumer
4 protection, shall assess the efficiency and utility of the fish hatchery classification
5 system under rules promulgated by the department of agriculture, trade and
6 consumer protection, and the department of agriculture, trade and consumer
7 protection shall promulgate new rules as it determines are necessary.

8 (4) The department shall assess the viability and use of bait fish and forage fish
9 and of the continued classification of bait fish and forage fish as established
10 nonnative fish species, and shall promulgate new rules as it determines are
11 necessary.

12 (5) The department shall consider economic factors, healthy fish populations,
13 and fishing opportunities, and shall consult with interested parties, including
14 fishing groups and the aquaculture industry, when promulgating rules under this
15 section.

16 (6) The final draft of a proposed rule under this section shall be submitted
17 under s. 227.19 (2) no later than June 28, 2019.

18 **SECTION 3.** 29.733 (1) of the statutes is renumbered 29.733 (1h).

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

20 29.733 (1d) In this section:

21 (a) "Artificial water body" has the meaning given in s. 30.19 (1b) (a).

22 (b) "Natural body of water" means a spring, stream, pond, lake, or wetland that
23 was historically present in a natural state but may have been physically altered over
24 time.

25 **SECTION 5.** 29.733 (1h) (c) 4. of the statutes is created to read:

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1 29.733 **(1h)** (c) 4. An artificial water body that is used as a fish farm that is
2 registered with the department of agriculture, trade and consumer protection on the
3 effective date of this subdivision [LRB inserts date], or as part of a fish farm that
4 is registered with the department of agriculture, trade and consumer protection on
5 the effective date of this subdivision [LRB inserts date], regardless of its water
6 source, including an artificial water body that is fed by a spring.

7 **SECTION 6.** 29.733 (2) (a) of the statutes is amended to read:

8 29.733 **(2)** (a) The department, subject to s. 29.024 (2g) and (2r), shall issue a
9 permit under this subsection for a natural body of water specified under sub. ~~(1)~~ **(1h)**
10 (c) 1. if the department determines that no substantial public interest exists in the
11 body of water and that no public or private rights in the body of water will be
12 damaged.

13 **SECTION 7.** 29.733 (2) (b) of the statutes is amended to read:

14 29.733 **(2)** (b) Notwithstanding par. (a), for a freeze-out pond that is licensed
15 as a private fish hatchery, or as part of a private fish hatchery, under s. 29.52, 1995
16 stats., on January 1, 1998, or for a natural body of water as described under sub. ~~(1)~~
17 **(1h)** (c) 2., the department shall issue an initial permit without making the
18 determination under par. (a).

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

20 29.733 **(2)** (e) The department may suspend a permit for a body of water
21 specified in sub. ~~(1)~~ **(1h)** (c) 2. for 90 days if the department finds that the permit
22 holder has failed to adequately maintain the fish barriers and may revoke the permit
23 if the department determines that the failure to adequately maintain the barriers
24 has not been corrected within the 90-day period.

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1 **SECTION 9.** 29.733 (3) of the statutes is renumbered 29.733 (3) (intro.) and
2 amended to read:

3 29.733 **(3)** (intro.) This section does not apply to ~~a~~ any of the following:

4 (a) A person who places a net pen in a natural body of water for the purpose of
5 holding or rearing fish in accordance with a general permit issued under s. 30.12 (3)
6 (b).

7 **SECTION 10.** 29.733 (3) (b) of the statutes is created to read:

8 29.733 **(3)** (b) A person who holds a permit under sub. (2) and who takes no
9 action in the natural body of water other than maintaining the fish farm facility,
10 including maintaining ponds, raceways, ditches, canals, berms, swales, drains,
11 pipes, and other structures, drainage areas, and flowage controls within the facility.

12 **SECTION 11.** 30.19 (1m) (bm) of the statutes is created to read:

13 30.19 **(1m)** (bm) The maintenance or repair of an artificial water body or fish
14 farm that is registered with the department of agriculture, trade and consumer
15 protection, except that this exemption does not apply to the requirement under sub.
16 (1g) (c).

17 **SECTION 12.** 30.40 (1) of the statutes is amended to read:

18 30.40 **(1)** "Agricultural use" means aquaculture; beekeeping; dairying; egg
19 production; feedlots; grazing; floriculture; raising of livestock; raising of poultry;
20 raising of fruits, nuts and berries; raising of grains, grass, mint and seed crops;
21 raising of vegetables; and sod farming.

22 **SECTION 13.** 31.34 (3) (am) of the statutes is created to read:

23 31.34 **(3)** (am) A dam, in existence on the effective date of this paragraph ...
24 [LRB inserts date], in a commercial fish farm, in existence and registered with the
25 department of agriculture, trade and consumer protection on the effective date of this

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1 paragraph [LRB inserts date], and located in Langlade County, where the water
2 is returned to the navigable stream.

3 **SECTION 14.** 234.91 (1) (a) of the statutes is amended to read:

4 234.91 (1) (a) "Agricultural assets" means machinery, equipment, facilities,
5 land or livestock used in agriculture or aquaculture.

6 **SECTION 15.** 234.91 (2) (b) of the statutes is amended to read:

7 234.91 (2) (b) The loan is made to finance the acquisition of agricultural assets
8 or the cost of improvements to facilities or land. The agricultural assets must be
9 acquired, and the improvements must be made, for agricultural or aquacultural
10 purposes.

11 **SECTION 16.** 281.346 (2) (bm) of the statutes is created to read:

12 281.346 (2) (bm) *Subsequent withdrawals for aquacultural purposes.* If a fish
13 farm withdraws water and places it in an aquacultural pond that is registered with
14 the department of agriculture, trade and consumer protection, any subsequent use
15 of that water from that pond is not a withdrawal for the purposes of this section, if
16 the subsequent use is not, and does not result in, a diversion or an intrabasin
17 transfer.

18 **SECTION 17.** 281.36 (3g) (a) 7. of the statutes is amended to read:

19 281.36 (3g) (a) 7. A discharge that is part of a development for agricultural or
20 aquacultural purposes, if the discharge does not affect more than 10,000 square feet
21 of wetland.

22 **SECTION 18.** 281.36 (3n) (a) 1. b. of the statutes is amended to read:

23 281.36 (3n) (a) 1. b. That the proposed project is necessary for the expansion
24 of an existing industrial, commercial, ~~or~~ agricultural, or aquacultural facility that is
25 in existence at the time the application is submitted.

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1 **SECTION 19.** 281.36 (4) (am) of the statutes is created to read:

2 281.36 (4) (am) Normal aquaculture activities, if the discharge is to a wetland
3 created for aquacultural purposes in an area without any prior wetland history. In
4 this paragraph, “normal aquaculture activities” includes all of the following:

5 1. Construction, maintenance, or repair of ponds, raceways, or other similar
6 retention structures used in fish farms.

7 2. The filling in or drawing down of ponds, raceways, or other similar retention
8 structures used in fish farms.

9 3. Maintenance or improvement of swales or other drainage areas into or out
10 of ponds used in fish farms.

11 4. Maintenance, repair, or replacement of drains, pipes, or other flowage
12 controls used in fish farms.

13 **SECTION 20.** 281.36 (4) (e) (intro.) of the statutes is amended to read:

14 281.36 (4) (e) (intro.) Construction or maintenance of farm roads, roads used
15 in fish farms, forest roads, or temporary mining roads that is performed in
16 accordance with best management practices, as determined by the department, to
17 ensure all of the following:

18 **SECTION 21.** 283.15 (4m) of the statutes is created to read:

19 283.15 (4m) VARIANCES FOR FISH FARMS. In deciding whether to grant an
20 application for a variance for a fish farm, the secretary shall rely on the same
21 guidance documents and other information that would be used by the federal
22 environmental protection agency to review and approve or disapprove the variance
23 as required under 40 CFR 131.14.

24 **SECTION 22.** 283.31 (3) (intro.) of the statutes is amended to read:

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1 283.31 (3) (intro.) The department may issue a permit under this section for
2 the discharge of any pollutant, or combination of pollutants, other than those
3 prohibited under sub. (2), upon condition that such discharges will meet all the
4 following, whenever applicable, subject to sub. (5m):

5 **SECTION 23.** 283.31 (4) (intro.) of the statutes is amended to read:

6 283.31 (4) (intro.) The department shall prescribe conditions for permits issued
7 under this section to assure compliance with the requirements of sub. (3). Such
8 additional conditions shall include at least the following, subject to sub. (5m):

9 **SECTION 24.** 283.31 (5m) of the statutes is amended to read:

10 283.31 (5m) ~~PERMITS FOR CERTAIN CONCENTRATED AQUATIC ANIMAL PRODUCTION~~
11 ~~FACILITIES.~~ The department shall include the requirements of 40 CFR 451.11 in
12 permits issued under this section for concentrated aquatic animal production
13 facilities described in 40 CFR 451.10 ~~requirements that are based on, and are not~~
14 ~~more stringent than, the requirements in 40 CFR 451.11.~~ The department may not
15 include additional conditions in a permit for a fish farm except as necessary for the
16 farm to meet the applicable limitations, standards, and other provisions described
17 in sub. (3) (a) to (f). Any conditions included in a permit issued under this section for
18 a fish farm shall be limited to site-specific best management practices to the greatest
19 extent allowed under federal law.

20 **SECTION 25.** 348.27 (18) (a) 1. e. of the statutes is created to read:

21 348.27 (18) (a) 1. e. Fish or minnows.

22 **SECTION 26.** 348.27 (18) (c) of the statutes is amended to read:

23 348.27 (18) (c) A permit under this subsection is valid only for the
24 transportation of agricultural products to a farm or from a field or farm to a storage
25 facility on the grower's farmer's owned or leased land, a facility for initial storage

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1 that is not on the grower's farmer's owned or leased land, or a facility for initial
2 processing.

3 **SECTION 27. Nonstatutory provisions.**

4 (1) EMERGENCY RULES CONCERNING FISH PROPAGATION. The department of natural
5 resources and the department of agriculture, trade and consumer protection may
6 promulgate emergency rules under section 227.24 of the statutes implementing
7 section 29.707 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the
8 statutes, emergency rules promulgated under this subsection remain in effect until
9 June 28, 2019, or the date on which permanent rules take effect, whichever is sooner.
10 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, those departments are
11 not required to provide evidence that promulgating a rule under this subsection as
12 an emergency rule is necessary for the preservation of the public peace, health,
13 safety, or welfare and is not required to provide a finding of emergency for a rule
14 promulgated under this subsection.

15 (END)