



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa2089/1
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**SENATE AMENDMENT 1,
TO 2011 SENATE BILL 368**

January 17, 2012 – Offered by Senator KEDZIE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 8, line 15: after that line insert:

3 “**SECTION 12m.** 23.321 (4) (a) 2. and 3. of the statutes are amended to read:

4 23.321 (4) (a) 2. Provide a wetland identification not later than ~~30~~ 60 days after
5 a person files a request, in the manner and form required by the department, for a
6 wetland identification.

7 3. Provide a wetland confirmation not later than ~~30~~ 60 days after a person files
8 a request, in the manner and form required by the department, for a wetland
9 confirmation.”.

10 **2.** Page 16, line 12: substitute “enhancement, creation, or preservation” for
11 “enhancement, or creation”.

12 **3.** Page 19, line 25: after “effects” insert “, and a general permit may apply only
13 to a single and complete project”.

1 **4.** Page 20, line 7: delete that line and substitute:

2 “5m. Sphagnum bogs that are located in the area located south of a horizontal
3 line drawn across the state based on the routes of STH 16 and STH 21 west of Lake
4 Winnebago and on USH 151 east of Lake Winnebago.”.

5 **5.** Page 22, line 20: substitute “single and complete” for “total”.

6 **6.** Page 23, line 9: after that line insert:

7 “2m. If adverse weather conditions prevent the department from conducting
8 an accurate on-site inspection during this 30-day period specified in subd. 1., the
9 department shall give notice to the person wishing to proceed with the discharge that
10 adverse weather conditions will prevent the department from complying with the
11 30-day deadline and shall complete the inspection as soon as weather conditions
12 permit.”.

13 **7.** Page 23, line 20: after “authorized” insert “or until the discharge is
14 completed, whichever occurs first”.

15 **8.** Page 27, line 22: delete “industrial or commercial” and substitute
16 “industrial, commercial, or agricultural”.

17 **9.** Page 29, line 3: after “subsection.” insert “This subsection does not entitle
18 an applicant to a wetland individual permit or any other approval in exchange for
19 conducting mitigation.”.

20 **10.** Page 29, line 7: after “(3m)” insert “and notices of administrative hearings
21 under sub. (3q)”.

22 **11.** Page 29, line 10: substitute “provided” for “mailed”.

1 **12.** Page 29, line 15: after “(3m)” insert “and notices of administrative
2 hearings under sub. (3q)”.

3 **13.** Page 30, line 21: after that line insert:

4 “**SECTION 86m.** 281.36 (3q) of the statutes is created to read:

5 281.36 **(3q)** ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this
6 subsection, “applicant” means any person applying for a wetland individual permit
7 under this section or any person who has been issued such a permit under this
8 section.

9 (b) *Request for administrative review.* Any interested person may file a petition
10 with the department for administrative review within 30 days after any of the
11 following decisions given by the department:

12 1. The issuance, denial, or modification of any wetland individual permit issued
13 under this section

14 2. The imposition of, or failure to impose, a condition on any wetland individual
15 permit issued under this section.

16 (c) *Content of the petition.* If the petitioner is not the applicant, the petition
17 shall describe the petitioner’s objection to the wetland individual permit and shall
18 contain all of the following:

19 1. A description of the objection that is sufficiently specific to allow the
20 department to determine which provisions of this section may be violated if the
21 proposed discharge under the wetland individual permit is allowed to proceed.

22 2. A description of the facts supporting the petition that is sufficiently specific
23 to determine how the petitioner believes the discharge, as proposed, may result in
24 a violation of the provisions of this section.

1 3. A commitment by the petitioner to appear at the administrative hearing and
2 present information supporting the petitioner's objection.

3 (d) *Stays*. 1. The discharge shall be stayed pending an administrative hearing
4 under this subsection if the petition contains a request for the stay showing that a
5 stay is necessary to prevent significant adverse impacts or irreversible harm to the
6 environment.

7 2. If a stay is requested under subd. 1., the stay shall be in effect until either
8 the department denies the request for an administrative hearing or the hearing
9 examiner determines that the stay is not necessary.

10 (e) *Filings*. The petitioner shall file a copy of the petition with the department.
11 If the petitioner is not the applicant, the petitioner shall simultaneously provide a
12 copy of the petition to the applicant. The applicant may file a response to the petition
13 with the department. If the applicant files a response under this paragraph, it shall
14 be filed within 15 days after the petition is filed.

15 (f) *Action on petition*. The department shall grant or deny the petition within
16 30 days after the petition is filed. The failure of the department to dispose of the
17 petition within this 30-day period is a denial. The department shall deny the
18 petition if any of the following applies:

19 1. The petitioner is not the applicant, and the petition does not comply with the
20 requirements of par. (c).

21 2. The objection contained in the petition is not substantive. The department
22 shall determine that an objection is substantive if the supporting facts contained in
23 the objection appear to be substantially true and raise reasonable grounds to believe
24 that the provisions of this section may be violated if the activity or project is
25 undertaken.

1 3. If the department denies the petition, the department shall send the
2 petitioner the denial in writing, stating the reasons for the denial.

3 4. If the department grants a petition under this subsection, the department
4 shall refer the matter to the division of hearings and appeals in the department of
5 administration within 15 days after granting the petition unless the petitioner and
6 the applicant agree to an extension.

7 (g) *Administrative hearing.* 1. An administrative hearing under this
8 subsection shall be treated as a contested case under ch. 227.

9 2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30
10 days after receipt of the referral under par. (f) 4., determine whether continuation
11 of the stay is necessary to prevent significant adverse impacts or irreversible harm
12 to the environment pending completion of the administrative hearing. The hearing
13 examiner shall make the determination based on the request under par. (d) 1., any
14 response from the applicant under par. (e), and any testimony at a public hearing or
15 any public comments. The determination shall be made without a hearing.

16 3. An administrative hearing under this subsection shall be completed within
17 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties
18 agree to an extension of that period. In addition, a hearing examiner may grant a
19 one-time extension for the completion of the hearing of up to 60 days on the motion
20 of any party and a showing of good cause demonstrating extraordinary
21 circumstances justifying an extension.

22 4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the
23 administrative hearing at least 30 days before the date of the hearing to all of the
24 following:

25 a. The applicant.

1 b. Each petitioner, if other than the applicant.

2 c. Any other persons required to receive notice as provided under sub. (3p).

3 5. In an administrative hearing under this subsection, the petitioner shall
4 proceed first with the presentation of evidence and shall have the burden of proof.

5 (h) *Judicial review.* 1. Any person whose substantial interest is affected by a
6 decision of the department under par. (b) 1. or 2. may commence an action in circuit
7 court to review that decision.

8 2. Any party aggrieved by a decision of the hearing examiner under par. (g) may
9 commence an action in circuit court to review that decision.”

10 **14.** Page 38, line 11: delete “enhanced or created” and substitute “enhanced
11 or, created, or preserved”.

12 **15.** Page 38, line 22: delete “or created” and substitute “or created, or
13 preserved”.

14 **16.** Page 39, line 3: delete “enhancing, or creating” and substitute “enhancing,
15 or creating, or preserving”.

16 **17.** Page 41, line 6: delete “or created” and substitute “or created, or
17 preserved”.

18 **18.** Page 43, line 13: after “(3p),” insert “(3q),”.

19 (END)