



2013 SENATE BILL 189

May 23, 2013 – Introduced by Senator KEDZIE, cosponsored by Representatives MURSAU, A. OTT, BIES, BALLWEG and BROOKS. Referred to Natural Resources.

1 **AN ACT** *to repeal* 15.347 (2) (a); *to renumber* 30.208 (5) (c) (intro.) and 281.36
2 (3p) (d) (intro.); *to renumber and amend* 285.63 (11); *to amend* 15.347 (2) (b),
3 23.38 (1), 23.38 (2), 23.50 (1), 23.65 (1), 23.65 (3), 29.569 (3) (bm) 2., 30.208 (5)
4 (bm), 281.36 (3p) (c) and 299.95; and *to create* 23.38 (1m), 30.208 (5) (c) 2m.,
5 281.36 (3p) (d) 2m., 281.36 (14) (e), 281.36 (14) (f), 285.63 (11) (a) 1., 285.63 (11)
6 (a) 2., 285.63 (11) (a) 3., 285.63 (11) (a) 4., 285.63 (11) (a) 5. and 285.63 (11) (b)
7 of the statutes; **relating to:** a citation procedure applicable to wetland
8 discharge violations, sturgeon spearing license issuance period, electronic
9 methods for reporting natural resource and environmental law violations,
10 publication of class 1 notices, air dispersion modeling requirements, and
11 membership on the Dry Cleaner Environmental Response Council.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Natural Resources (DNR) to maintain a toll-free telephone number for receiving reports of violations of any statute or administrative rule that DNR enforces or administers. This bill provides that DNR may also establish other electronic methods to receive reports of these violations.

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Under current law, DNR may recover forfeitures imposed for the violation of certain natural resource and environmental laws using a citation procedure. This bill allows DNR to use this citation procedure to enforce laws that regulate the discharge of certain materials into wetlands.

Under current law, 12 is the minimum age for obtaining a sturgeon spearing license. Also under current law, issuance of a sturgeon spearing license is generally prohibited during a period beginning on November 1 and ending on the last day of the open season for the spearing of lake sturgeon. One exception to this prohibition is for a resident who has attained the age of 14 during that period. This bill lowers this age to 12, consistent with the minimum age for obtaining a license.

Current law requires DNR to make specified findings before it issues certain air pollution permits. Under current law DNR is not required to use air dispersion modeling as a basis for making those findings for a minor source unless specifically provided for under the federal Clean Air Act (CAA), rules promulgated by DNR, or a federal or state agreement. A minor source is a facility that emits air contaminants from a fixed location in an amount that is less than an amount specified by DNR by rule.

This bill prohibits DNR from requiring an applicant for certain air pollution permits, including some permits for major sources, to conduct air dispersion modeling unless required by the CAA. The bill also creates an exception to this prohibition under certain circumstances affecting American Indian tribes or bands (tribes). The exception applies if a tribe is treated as a state by the federal Environmental Protection Agency (EPA) or if a tribe's reservation has been designated by EPA as a class 1 area. Federal law gives class 1 areas special protection under the CAA. This bill provides that DNR may require an applicant to perform air dispersion modeling if that modeling is authorized under an agreement between the tribe and this state or federal government, authorized under a CAA implementation plan, or authorized under department rules.

Under current law, the Dry Cleaner Environmental Response Council (council) in DNR is composed of six members. Of those members, one member must represent dry cleaning operations with annual gross receipts of less than \$200,000 and two members must represent dry cleaning operations with annual gross receipts of at least \$200,000. This bill eliminates these gross receipts requirements for representation on the council and provides, instead, that three members of the council must represent dry cleaning operations, regardless of the amount of the operation's annual gross receipts.

Under current law, with certain exceptions, a person may not conduct an activity in or on a navigable water or wetland without a permit or other approval (permit) from DNR. Current law also requires DNR to give certain notices to the public and to various interested persons with regard to these permit applications. In some circumstances, the notices must be provided in the form of publication by a single insertion of the notice in the official state newspaper (class 1 notice). In certain instances, current law also authorizes DNR to delegate to a permit applicant the requirement to publish a class 1 notice. Under this bill, if DNR delegates to a permit applicant the requirement to publish a class 1 notice, the applicant may, in lieu of

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publishing the notice, request that DNR publish the notice. The bill requires DNR to charge the applicant a fee in an amount that equals the average cost to DNR for publishing class 1 notices.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 15.347 (2) (a) of the statutes is repealed.

2 **SECTION 2.** 15.347 (2) (b) of the statutes is amended to read:

3 15.347 (2) (b) ~~Two~~ Three members representing dry cleaning operations with
4 annual gross receipts of at least \$200,000.

5 **SECTION 3.** 23.38 (1) of the statutes is amended to read:

6 23.38 (1) The department shall maintain a toll-free telephone number at
7 ~~department headquarters~~ to receive reports of violations of any statute or
8 administrative rule that the department enforces or administers. The department
9 shall relay these reports to the appropriate warden or officer for investigation and
10 enforcement action. The department shall publicize the toll-free telephone number
11 as widely as possible in the state.

12 **SECTION 4.** 23.38 (1m) of the statutes is created to read:

13 23.38 (1m) In addition to the toll-free telephone number under sub. (1), the
14 department may establish additional electronic methods to receive reports of
15 violations of any statute or administrative rule that the department enforces or
16 administers.

17 **SECTION 5.** 23.38 (2) of the statutes is amended to read:

18 23.38 (2) The department shall maintain records ~~which~~ that permit the release
19 of information provided by informants while protecting the identity of the informant.

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1 Any records ~~maintained by the department which~~ received under this section that
2 relate to the identity of informants shall be only for the confidential use of the
3 department in the administration of this section, unless the informant expressly
4 agrees to release the records. Appearance in court as a witness shall not be
5 considered consent by an informant to release confidential records ~~maintained by the~~
6 ~~department~~ received under this section.

7 **SECTION 6.** 23.50 (1) of the statutes is amended to read:

8 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
9 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
10 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
11 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81, and 299.64 (2),
12 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
13 administrative rules promulgated thereunder, violations specified under s. 280.98
14 (2) or 285.86, violations of s. 281.36 if the department chooses to proceed under s.
15 281.36 (14) (f), violations of ch. 951 if the animal involved is a captive wild animal,
16 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
17 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
18 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

19 **SECTION 7.** 23.65 (1) of the statutes is amended to read:

20 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
21 134.60, 281.36, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07,
22 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or
23 any administrative rule promulgated pursuant thereto, a violation specified under
24 s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild animal, has
25 been committed the district attorney may proceed by complaint and summons.

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1 **SECTION 8.** 23.65 (3) of the statutes is amended to read:

2 23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,
3 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he
4 or she finds there is probable cause to believe that the person charged has committed
5 a violation of s. 281.36, 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29,
6 30, 31 or 350 or a violation specified under s. 285.86. The district attorney shall be
7 informed of the hearing and may attend.

8 **SECTION 9.** 29.569 (3) (bm) 2. of the statutes is amended to read:

9 29.569 (3) (bm) 2. A person who is a resident and who has attained the age of
10 14 12 during that period.

11 **SECTION 10.** 30.208 (5) (bm) of the statutes is amended to read:

12 30.208 (5) (bm) For the purpose of determining the date on which notice is
13 provided under this subsection, the date of the notice shall be the date on which the
14 department first publishes the notice on its Internet Web site, ~~unless the department~~
15 ~~delegates to the applicant under par. (c) the requirement to provide notice. If the~~
16 ~~department delegates to the applicant the requirement to provide notice, the date of~~
17 ~~the notice shall be the date on which the department first publishes the notice on its~~
18 ~~Internet Web site or 10 days after the date on which the department receives~~
19 ~~satisfactory proof of publication of a class 1 notice from the applicant, whichever is~~
20 later.

21 **SECTION 11.** 30.208 (5) (c) (intro.) of the statutes is renumbered 30.208 (5) (c)
22 1m. (intro.).

23 **SECTION 12.** 30.208 (5) (c) 2m. of the statutes is created to read:

24 30.208 (5) (c) 2m. If, under subd. 1m., the department delegates to an applicant
25 the requirement to provide notice under sub. (3) by publishing a class 1 notice under

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1 ch. 985, the applicant may in lieu of publishing the class 1 notice request that the
2 department publish the class 1 notice. The department shall charge the applicant
3 a fee for publishing the class 1 notice in an amount that equals the average cost to
4 the department for publishing under this chapter class 1 notices under ch. 985.

5 **SECTION 13.** 281.36 (3p) (c) of the statutes is amended to read:

6 281.36 **(3p)** (c) For the purpose of determining the date on which notice is
7 provided under this subsection, the date of the notice shall be the date on which the
8 department first publishes the notice on its Internet Web site, ~~unless the department~~
9 ~~delegates to the applicant under par. (d) the requirement to provide notice. If the~~
10 ~~department delegates to the applicant the requirement to provide notice, the date of~~
11 ~~the notice shall be the date on which the department first publishes the notice on its~~
12 ~~Internet Web site or 10 days after the date on which the department receives~~
13 ~~satisfactory proof of publication of a class 1 notice from the applicant, whichever is~~
14 ~~later.~~

15 **SECTION 14.** 281.36 (3p) (d) (intro.) of the statutes is renumbered 281.36 (3p)

16 (d) 1m. (intro.).

17 **SECTION 15.** 281.36 (3p) (d) 2m. of the statutes is created to read:

18 281.36 **(3p)** (d) 2m. If, under subd. 1m., the department delegates to an
19 applicant the requirement to provide notice under sub. (3m) by publishing a class 1
20 notice under ch. 985, the applicant may in lieu of publishing the class 1 notice request
21 that the department publish the class 1 notice. The department shall charge the
22 applicant a fee for publishing the class 1 notice in an amount that equals the average
23 cost to the department for publishing under this chapter class 1 notices under ch.
24 985.

25 **SECTION 16.** 281.36 (14) (e) of the statutes is created to read:

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1 281.36 (14) (e) Each day of a continuing violation is a separate offense.

2 **SECTION 17.** 281.36 (14) (f) of the statutes is created to read:

3 281.36 (14) (f) The department may follow the procedures for the issuance of
4 a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of this section.

5 **SECTION 18.** 285.63 (11) of the statutes is renumbered 285.63 (11) (a) (intro.)
6 and amended to read:

7 285.63 (11) (a) (intro.) The Except as specifically required under the federal
8 clean air act or as provided in par. (b), the department is may not required require
9 an applicant to use perform air dispersion modeling as a basis for making its findings
10 under sub. (1) for a minor source unless modeling is specifically provided for under
11 the federal clean air act, rules promulgated under this chapter, or a federal or state
12 agreement. before the department does any of the following:

13 **SECTION 19.** 285.63 (11) (a) 1. of the statutes is created to read:

14 285.63 (11) (a) 1. Determines whether a source qualifies for a registration
15 permit issued under s. 285.60 (2g).

16 **SECTION 20.** 285.63 (11) (a) 2. of the statutes is created to read:

17 285.63 (11) (a) 2. Determines whether a source is covered by a general permit
18 issued under s. 285.60 (3).

19 **SECTION 21.** 285.63 (11) (a) 3. of the statutes is created to read:

20 285.63 (11) (a) 3. Issues or renews an operation permit for a minor source under
21 s. 285.62.

22 **SECTION 22.** 285.63 (11) (a) 4. of the statutes is created to read:

23 285.63 (11) (a) 4. Renews an operation permit for a major source under s.
24 285.62.

25 **SECTION 23.** 285.63 (11) (a) 5. of the statutes is created to read:

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1 285.63 (11) (a) 5. Issues a construction permit for a minor source under s.
2 285.60 that the applicant indicates will emit the pollutants listed in 40 CFR 51.166
3 (b) (23) (i) at a rate that is less than the rate specified for those pollutants in 40 CFR
4 51.166 (b) (23) (i).

5 **SECTION 24.** 285.63 (11) (b) of the statutes is created to read:

6 285.63 (11) (b) 1. In this paragraph, "tribe" means a federally recognized
7 American Indian tribe or band.

8 2. If the federal environmental protection agency treats a tribe as a state under
9 42 USC 7601 (d) or designates as class 1 all or a portion of a tribe's reservation under
10 42 USC 7474, the department may require an applicant to perform air dispersion
11 modeling notwithstanding the prohibition under par. (a) if air dispersion modeling
12 is authorized under any of the following:

13 a. An agreement between the tribe and this state or between the tribe and the
14 federal government, the terms of which implement the tribe's treatment as a state
15 or designation as a class 1 area.

16 b. An implementation plan under 40 CFR part 49, subpart H.

17 c. Rules promulgated by the department that implement the tribe's treatment
18 as a state or designation as a class 1 area.

19 **SECTION 25.** 299.95 of the statutes, as affected by 2013 Wisconsin Act 1, is
20 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. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,
24 permits, and water quality certifications of the department, except those
25 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided

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1 in ss. 281.36 (14) (f), 285.86 and 299.85 (7) (am). Except as provided in s. 295.79 (1),
2 the circuit court for Dane county or for any other county where a violation occurred
3 in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this
4 chapter or the rule, special order, license, plan approval, permit, or certification by
5 injunctive and other relief appropriate for enforcement. For purposes of this
6 proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special
7 order, license, plan approval, permit or certification prohibits in whole or in part any
8 pollution, a violation is considered a public nuisance. The department of natural
9 resources may enter into agreements with the department of justice to assist with
10 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
11 to the department of justice under these agreements shall be credited to the
12 appropriation account under s. 20.455 (1) (k).

13 (END)