



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0337/1
EHS&ZDW:all

**SENATE SUBSTITUTE AMENDMENT 3,
TO SENATE BILL 459**

February 12, 2016 – Offered by Senator COWLES.

1 **AN ACT** *to repeal* 30.01 (1am) (c) and 30.12 (3) (a) 6. a., b. and c.; *to renumber*
2 281.16 (2) (am) 1. a.; *to renumber and amend* 30.12 (3) (a) 6. (intro.), 30.121
3 (3c), 30.121 (3w) (c) and 281.36 (3n) (a); *to amend* 30.01 (1am) (a), (b) and (bm),
4 30.01 (1d), 30.025 (5), 30.12 (1k) (f), 30.12 (3) (a) 13., 30.12 (3) (c), 30.121 (1),
5 30.121 (3), 30.19 (1b) (a), 30.19 (1g) (a), 30.19 (1g) (am), 31.02 (1), 31.185 (5) and
6 281.36 (3m) (b); and *to create* 30.01 (1am) (d), (e), (f), (g) and (h), 30.01 (3c),
7 30.01 (6b), 30.053, 30.12 (3m) (cr), 30.121 (3c) (c), 30.121 (3w) (c) 3., 30.19 (1m)
8 (dm), 30.19 (4) (d), 281.16 (1) (bg), 281.16 (2) (c), 281.36 (1) (am), 281.36 (1) (ct),
9 281.36 (3n) (a) 2. and 3., 281.36 (3n) (am) and 281.36 (4) (f) of the statutes;
10 **relating to:** the regulation of navigable waters and wetlands.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This substitute amendment makes various changes to the regulation of navigable waters, artificial water bodies, wetlands, and nonpoint source pollution.

NAVIGABLE WATERS

Applicability of navigable water law to artificial water bodies

Under this substitute amendment, except in the laws that govern boating and unless specifically provided otherwise, the statutes that regulate navigable waters and harbors do not apply to an artificial water body that is not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm events. An artificial water body is a body of water that does not have a history of being a lake or stream or of being part of a lake or stream.

The level and flow of water

Under the substitute amendment, the Department of Natural Resources may regulate and control the level and flow of water in all navigable waters in the interest of public rights in navigable waters; to promote safety; and to protect life, health, property, property values, and economic values.

Navigable water permits

Under current law, a person must obtain one or more permits from DNR in order to conduct certain activities in or near navigable waterways, including placing structures or deposits in navigable waters; constructing or maintaining bridges and culverts; enlarging or connecting waterways; altering the courses of streams and rivers; removing material from the bed of a navigable waterway; and constructing, dredging, or enlarging 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. The bed of a navigable water includes the area between the water's edge and the ordinary high-water mark (shoreline area).

Under current law, some activities are exempt from these permitting requirements, some activities require that the person be issued an individual permit for the activity, and some activities are authorized under statewide general permits. If a general permit covers an activity, the person proposing to conduct the activity must notify DNR that the person wishes to proceed with the activity. If DNR does not request additional information or notify the person that an individual permit will be required within 30 days after receipt of the notification, the person may proceed with the activity.

This substitute amendment does the following with respect to general permits and individual permits to conduct activities in navigable waters:

1. Exempts from the permit requirements the dredging of an artificial water body that does not connect with a navigable waterway.
2. Establishes that a permit is required to construct or enlarge an artificial water body that is within 500 feet of the ordinary high-water mark of an existing navigable waterway but that does not or will not connect with the existing navigable waterway.
3. Limits the types of areas that DNR may identify as areas of special natural resource interest (ASNRI). Under current law, a riparian owner is exempt from the permit requirement for depositing material or placing a structure on the bed of certain navigable waters if the structure or material is located in an area other than

an ASNRI, does not interfere with riparian rights of other riparian owners, and is a certain type of structure or material.

Structures in navigable waters

Piers

Under this substitute amendment, a DNR decision that a riparian owner does not fall under an exemption to the prohibition on placing a pier or wharf on the bed of a navigable water may be challenged only through a declaratory judgment proceeding in the circuit court for the county in which the riparian property is located and is not subject to a contested case hearing or judicial review under the statutory administrative review procedures. Under current law, a DNR decision against the riparian owner is subject to a new trial.

Boathouses

This substitute amendment changes the definition of a “boathouse” to specify that a boathouse is a structure used for one or more years for the storage of watercraft and associated materials regardless of its current use. The substitute amendment also makes various changes to the regulation of boathouses, including:

1. Adds as a condition to the repair and maintenance of a boathouse or fixed houseboat extending beyond the ordinary high-water mark that is allowed if within certain cost limits under current law that the repair or maintenance may not involve the placement of a floor over a wet bay.

2. Adds foundations to the list of structural elements of a boathouse or fixed houseboat that may be replaced within the current cost limit on repairing and maintaining a boathouse or fixed houseboat.

3. Allows the repair or maintenance of a boathouse in existence on December 16, 1979, to affect the configuration of the boathouse and still fall under the exception to the cost limit on repairing and maintaining such a boathouse, but adds a condition that the repair or maintenance may not involve the placement of a floor over a wet bay in the boathouse.

Boat shelters

Under current law, a boat shelter is a structure used for the storage of watercraft and associated materials that has no walls or sides. This substitute amendment prohibits DNR from placing, on a general permit authorizing a riparian owner to place a boat shelter, conditions relating to the location of the shelter and other existing structures. Under the substitute amendment, DNR may impose conditions on the general permit governing the architectural features of boat shelters and the number of boat shelters that may be placed adjacent to a parcel of land, but those conditions may not govern the distance that a boat shelter will extend from the shore, except to prohibit the boat shelter from extending beyond the line of navigation, and may not be based on the degree to which adjacent land is developed. Also under the substitute amendment, in determining whether to issue an individual permit to the owner of a proposed permanent boat shelter, DNR may not deny the permit on the basis of the distance at which a boat shelter will extend from the shore or the degree to which adjacent land is developed, except that DNR may deny the permit on the basis that the boat shelter will extend beyond the line of navigation.

Seawalls

This substitute amendment requires DNR, in the general permit authorizing a riparian owner to replace an existing seawall for which DNR has issued a permit, to authorize a seawall for which DNR granted an exemption from a permit requirement or for which no permit was required when the seawall was built. The substitute amendment also provides that DNR may impose conditions on the replacement of a seawall located in an ASNRI only if those conditions do not prohibit the replacement of a seawall located in an ASNRI.

WETLANDS

Wetland permits

Current law requires DNR to issue certain wetland general permits for discharges to wetlands that are necessary for the treatment or disposal of hazardous waste or toxic pollutants if not more than two acres of wetlands are affected, and discharges for commercial, residential, or agricultural purposes if not more than 10,000 square feet of wetland are affected. Current law allows DNR to establish different requirements, conditions, and exceptions in general permits to ensure that the discharges will cause only minimal adverse environmental effects. Current law establishes a procedure for obtaining authorization to proceed under a wetland general permit that is similar to the procedure for obtaining authorization under general permits that authorize structures and other activities in or near navigable waters. Current law also authorizes DNR to require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

This substitute amendment exempts from the permitting requirement any discharge that is the result of maintaining a sedimentation or stormwater detention basin and associated conveyance features.

Practicable alternatives review

Under current law, DNR reviews the practicable alternatives presented in an application for a individual permit and must find that the project complies with wetland quality standards if it determines that the proposed project represents the least environmentally damaging practicable alternative, all practicable measures to minimize the adverse impact to wetland functional values will be taken, and the discharge will not result in significant adverse impacts to wetland functional values or to water quality or result in any other significant adverse environmental consequences. Upon making such a finding, DNR is authorized, but is not required, to issue a wetland individual permit.

Current law requires DNR to limit its review of practicable alternatives to those that are located at the site of the discharge or adjacent to that site if the applicant has demonstrated that the proposed project causing the discharge will result in a demonstrable economic public benefit, that the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, or that the proposed project will occur in an industrial park that is in existence at the time the application is

submitted. This substitute amendment instead requires DNR to limit its review of practicable alternatives to those that are located at the site of the discharge or adjacent to that site if only one of those conditions is met.

This substitute amendment also requires DNR to limit its review of practicable alternatives to those located on the property owned by the applicant for projects involving fewer than two acres of wetland if the project is limited to either the construction or expansion of a single-family home and attendant features, the construction or expansion of a barn or farm buildings, or the expansion of a small business project. However, the substitute amendment provides that a lot created as part of a subdivision, land division, or other development initiated after July 1, 2012, is not eligible for this limited review.

The substitute amendment requires DNR to limit its review of practicable alternatives to those that are consistent with the overall purpose and scope of the project. The substitute amendment also requires DNR to impose a level of scrutiny and to require an applicant to provide an amount of information that is commensurate with the severity of the environmental impact of the project, as determined by DNR.

UTILITY PERMIT PROCEDURE

Under current law, with certain exceptions, a public utility may not begin construction on a utility project, and no person, including a public utility, may construct a large electric generating facility or a high-voltage transmission line, unless the Public Service Commission has issued a certificate for the project. A public utility is a company or municipality that produces or delivers heat, light, water, or power to or for the public.

Generally, under current law, a person must submit an application to DNR for each required permit, including an individual permit to conduct an activity in a navigable water or a discharge in a wetland. If the applicant is a utility that is required to obtain a certificate from the PSC, however, the utility must submit a single application to DNR requesting all of the DNR permits that the utility is required to obtain for a given project affecting navigable waters and wetlands and must follow a different procedure for obtaining these DNR permits (utility application procedure).

This substitute amendment removes the exemption in current law that provides that the permit application procedures that would normally apply to an application for an individual permit do not apply to an application for an individual permit submitted under the utility application procedure. This substitute amendment also removes the exemption in current law that provides that the procedures that would normally apply to administrative and judicial review of a DNR decision on an individual permit do not apply to decisions on an individual permit submitted under the utility application procedure. Instead, the substitute amendment specifies that the utility permit procedures are exclusive and apply in lieu of any other procedures that would otherwise apply to permits applied for under the utility permit procedure.

NONPOINT WATER POLLUTION

This substitute amendment provides that, if a covered municipality has obtained all permits required for the construction of a stormwater management pond in an artificial water body, whether navigable or nonnavigable, DNR may not prohibit the construction of the stormwater management pond as a method by which the covered municipality may achieve compliance with DNR's prescribed performance standards for sources of nonpoint water pollution, which is water pollution from diffuse sources, or with an approved total maximum daily load (TMDL) requirement. A covered municipality is a municipality that has been issued an individual municipal separate storm sewer permit or that is covered by a general municipal separate storm sewer permit. A TMDL is the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.

DNR's current rules provide that, for the purpose of determining compliance with performance standards, DNR may give credit for the use of practices, measures, or techniques (best management practices) that minimize pollutants carried in runoff. The rules prohibit DNR from giving credit for a best management practice that is located in a navigable water. The substitute amendment provides that DNR must give credit for any pollutant reduction achieved by a pond constructed by a covered municipality in determining compliance with performance standards specified in a stormwater discharge permit or with an approved TMDL requirement.

The substitute amendment also provides that, if a covered municipality applies for an individual permit for the construction of a stormwater management pond in an artificial water body, whether navigable or nonnavigable, for the purpose of achieving compliance with performance standards specified in a stormwater discharge permit or with an approved TMDL requirement, in making its determination DNR is required to take into consideration the sediment control in and water quality improvements to the watershed as a whole that result from the stormwater management pond.

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

- 1 **SECTION 1.** 30.01 (1am) (a), (b) and (bm) of the statutes are amended to read:
- 2 30.01 (**1am**) (a) A state natural area designated or dedicated under ss. 23.27
- 3 to 23.29 and shown on a map published on the department's Internet site.
- 4 (b) A surface water identified as a trout stream by the department and shown
- 5 on a map published on the department's Internet site.

1 (bm) A surface water identified as an outstanding or exceptional resource
2 water under s. 281.15 and shown on a map published on the department's Internet
3 site.

4 **SECTION 2.** 30.01 (1am) (c) of the statutes is repealed.

5 **SECTION 3.** 30.01 (1am) (d), (e), (f), (g) and (h) of the statutes are created to read:

6 30.01 (**1am**) (d) A body of water designated as a wild rice water under a written
7 agreement between the department and the Great Lakes Indian Fish and Wildlife
8 Commission and shown on a map published on the department's Internet site.

9 (e) A body of water in a wetland along Lake Michigan or Lake Superior that the
10 department has identified as an ecologically significant coastal wetland and shown
11 on a map published on the department's Internet site.

12 (f) A river that is included in the national wild and scenic rivers system or
13 designated as a wild river under s. 30.26 and shown on a map published on the
14 department's Internet site.

15 (g) The portion of a body of water that contains a sensitive area and shown on
16 a map published on the department's Internet site.

17 (h) A unique and significant wetland specified by the department in a special
18 wetland inventory study or a special area management plan and shown on a map
19 published on the department's Internet site.

20 **SECTION 4.** 30.01 (1d) of the statutes is amended to read:

21 30.01 (**1d**) "Boathouse" means a structure with one or more walls or sides that
22 has been used for one or more years for the storage of watercraft and associated
23 materials ~~which has one or more walls or sides, regardless of the current use of the~~
24 structure.

25 **SECTION 5.** 30.01 (3c) of the statutes is created to read:

1 30.01 **(3c)** “Line of navigation” means the depth of a navigable water that is
2 the greater of the following:

3 (a) Three feet, as measured at summer low levels.

4 (b) The depth required to operate a boat on the navigable water.

5 **SECTION 6.** 30.01 (6b) of the statutes is created to read:

6 30.01 **(6b)** “Sensitive area” means an area of aquatic vegetation identified by
7 the department as offering critical or unique fish and wildlife habitat, including
8 seasonal or lifestage requirements, or offering water quality or erosion control
9 benefits to the body of water.

10 **SECTION 7.** 30.025 (5) of the statutes is amended to read:

11 30.025 **(5)** ~~EXEMPTION FROM CERTAIN EXCLUSIVE PROCEDURES. Sections 30.208~~
12 ~~and 30.209 do not apply to an application for any permit~~ The procedures provided
13 under this section are exclusive and apply in lieu of any other procedures that would
14 otherwise apply to permits applied for under this section.

15 **SECTION 8.** 30.053 of the statutes is created to read:

16 **30.053 Applicability of chapter to artificial water bodies.** Except in
17 subch. V of this chapter and except as specifically provided otherwise in this chapter,
18 nothing in this chapter applies to an artificial water body, as defined in s. 30.19 (1b)
19 (a), that is not hydrologically connected to a natural navigable waterway and that
20 does not discharge into a natural navigable waterway except as a result of storm
21 events.

22 **SECTION 9.** 30.12 (1k) (f) of the statutes is amended to read:

23 30.12 **(1k)** (f) ~~–A decision of~~ If the department against determines that the
24 owner of a structure for which is not entitled to an exemption is claimed under this
25 subsection is subject to a trial de novo, the owner may bring an action for declaratory

1 judgment under s. 806.04 in the circuit court for the county in which the riparian
2 property is located. The owner is not entitled to a contested case hearing or judicial
3 review under ch. 227.

4 **SECTION 10.** 30.12 (3) (a) 6. (intro.) of the statutes is renumbered 30.12 (3) (a)
5 6. and amended to read:

6 30.12 (3) (a) 6. Place a permanent boat shelter adjacent to the owner's property
7 for the purpose of storing or protecting watercraft and associated materials, ~~except~~
8 ~~that no general or individual permit may be issued for a permanent boat shelter that~~
9 ~~is constructed after May 3, 1988, if any of the following apply:.~~

10 **SECTION 11.** 30.12 (3) (a) 6. a., b. and c. of the statutes are repealed.

11 **SECTION 12.** 30.12 (3) (a) 13. of the statutes is amended to read:

12 30.12 (3) (a) 13. Place a seawall to replace an existing seawall for which a
13 permit has been issued or an exemption granted under this chapter, or for which no
14 permit was required at the time the seawall was built. The replacement may not
15 exceed 100 continuous feet in an inland lake of 300 or more acres and may not exceed
16 300 continuous feet in a Great Lakes water body. In issuing the permit, the
17 department may impose conditions on the replacement of a seawall located in an
18 area of special natural resource interest only if those conditions do not prohibit the
19 replacement of a seawall located in an area of special natural resource interest.

20 **SECTION 13.** 30.12 (3) (c) of the statutes is amended to read:

21 30.12 (3) (c) The department may impose conditions on general permits issued
22 under par. (a) 6. to govern the architectural features of boat shelters and the number
23 of boat shelters that may be constructed adjacent to a parcel of land. The conditions
24 may not govern the aesthetic features or color of boat shelters or the distance at
25 which a boat shelter may extend from the shore, except to prohibit a boat shelter from

1 extending beyond the line of navigation, and may not be based on the degree to which
2 adjacent land is developed. The conditions shall be designed to ensure the structural
3 soundness and durability of boat shelters. A municipality may enact ordinances that
4 are consistent with this paragraph and with any conditions imposed on general
5 permits issued to regulate the architectural features of boat shelters that are under
6 the jurisdiction of the municipality.

7 **SECTION 14.** 30.12 (3m) (cr) of the statutes is created to read:

8 30.12 **(3m)** (cr) In determining whether to issue an individual permit to the
9 owner of a proposed permanent boat shelter, the department may not deny the
10 permit on the basis of any of the following:

11 1. The distance at which the shelter will extend from the shore, except that the
12 department may deny the permit on the basis that the boat shelter will extend
13 beyond the line of navigation.

14 2. The degree to which adjacent land is developed.

15 **SECTION 15.** 30.121 (1) of the statutes is amended to read:

16 30.121 **(1)** DEFINITION. In this section, the terms “maintain” and “repair”
17 include replacing structural elements, including roofs, doors, walls, windows,
18 beams, porches, and floors, and foundations.

19 **SECTION 16.** 30.121 (3) of the statutes is amended to read:

20 30.121 **(3)** MAINTENANCE AND REPAIR. The riparian owner of any boathouse or
21 fixed houseboat extending beyond the ordinary high-water mark of any navigable
22 waterway may repair or maintain the boathouse or fixed houseboat if the cost to
23 repair or maintain the boathouse or fixed houseboat does not exceed 50% of the
24 equalized assessed value of the boathouse or fixed houseboat and the repair or
25 maintenance does not involve the placement of a floor over a wet bay on or after the

1 effective date of this subsection [LRB inserts date]. If the boathouse or fixed
2 houseboat is not subject to assessment, the owner may repair or maintain the
3 boathouse or the fixed houseboat if the cost of the repair or maintenance does not
4 exceed 50% of the current fair market value of the boathouse or fixed houseboat and
5 the repair or maintenance does not involve the placement of a floor over a wet bay
6 on or after the effective date of this subsection [LRB inserts date].

7 **SECTION 17.** 30.121 (3c) of the statutes is renumbered 30.121 (3c) (intro.) and
8 amended to read:

9 30.121 (3c) EXCEPTION; CERTAIN BOATHOUSES. (intro.) Subsection (3) does not
10 apply to repairing or maintaining a boathouse if the boathouse was in existence on
11 December 16, 1979, and if all of the following apply to the repairing or maintaining
12 repair or maintenance:

13 (a) It does not affect the size, or location, or configuration of the boathouse and.

14 (b) It does not result in the boathouse being converted into living quarters.

15 **SECTION 18.** 30.121 (3c) (c) of the statutes is created to read:

16 30.121 (3c) (c) It does not involve the placement of a floor over a wet bay in the
17 boathouse on or after the effective date of this paragraph [LRB inserts date].

18 **SECTION 19.** 30.121 (3w) (c) of the statutes is renumbered 30.121 (3w) (c) (intro.)
19 and amended to read:

20 30.121 (3w) (c) (intro.) The boathouse is located within in any of the following
21 locations:

22 1. Within a harbor that is being operated as a commercial enterprise or is
23 located on,

24 2. On a river that is a tributary of Lake Michigan or Lake Superior.

25 **SECTION 20.** 30.121 (3w) (c) 3. of the statutes is created to read:

1 30.121 **(3w)** (c) 3. On an outlying water and the work is limited to the
2 expansion, repair, or maintenance of an existing boathouse.

3 **SECTION 21.** 30.19 (1b) (a) of the statutes is amended to read:

4 30.19 **(1b)** (a) “Artificial water body” means a ~~proposed or existing~~ body of
5 water that does not have a history of being a lake or stream or of being part of a lake
6 or stream.

7 **SECTION 22.** 30.19 (1g) (a) of the statutes is amended to read:

8 30.19 **(1g)** (a) Construct, dredge, or enlarge any artificial water body that
9 connects with ~~a~~ an existing navigable waterway.

10 **SECTION 23.** 30.19 (1g) (am) of the statutes is amended to read:

11 30.19 **(1g)** (am) Construct, ~~dredge~~, or enlarge any part of an artificial water
12 body that is or will be located within 500 feet of the ordinary high-water mark of, but
13 that does not or will not connect with, an existing navigable waterway, ~~including~~.
14 An artificial water body that meets the requirements of this paragraph includes a
15 stormwater management pond that does not discharge into a navigable waterway
16 except as a result of storm events.

17 **SECTION 24.** 30.19 (1m) (dm) of the statutes is created to read:

18 30.19 **(1m)** (dm) The dredging of any part of an artificial water that does not
19 connect with a navigable waterway. An artificial water body that meets the
20 requirements of this paragraph includes a stormwater management pond that does
21 not discharge into a navigable waterway except as a result of storm events.

22 **SECTION 25.** 30.19 (4) (d) of the statutes is created to read:

23 30.19 **(4)** (d) 1. In this paragraph, “covered municipality” has the meaning
24 given in s. 281.16 (1) (br).

1 2. If the applicant is a covered municipality seeking an individual permit for
2 the construction of a stormwater management pond in an artificial water body,
3 whether navigable or nonnavigable, for the purpose of achieving compliance with
4 performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr)
5 or with an approved total maximum daily load under 33 USC 1313 (d) (1) (C), the
6 department shall, in making its determinations under par. (c), take into
7 consideration the sediment control in and water quality improvements to the
8 watershed as a whole that result from the stormwater management pond.

9 **SECTION 26.** 31.02 (1) of the statutes is amended to read:

10 31.02 (1) The department, in the interest of public rights in navigable waters
11 ~~or~~, to promote safety, and to protect life, health and, property, property values, and
12 economic values may regulate and control the level and flow of water in all navigable
13 waters and may erect, or may order and require bench marks to be erected, upon
14 which shall be designated the maximum level of water that may be impounded and
15 the lowest level of water that may be maintained by any dam heretofore or hereafter
16 constructed and maintained and which will affect the level and flow of navigable
17 waters; and may by order fix a level for any body of navigable water below which the
18 same shall not be lowered except as provided in this chapter; and shall establish and
19 maintain gauging stations upon the various navigable waters of the state and shall
20 take other steps necessary to determine and record the characteristics of such
21 waters.

22 **SECTION 27.** 31.185 (5) of the statutes is amended to read:

23 31.185 (5) As a prerequisite to the granting of a permit under this section, the
24 department may require the applicant to comply with such conditions as it deems
25 reasonably necessary in the particular case to preserve public rights in navigable

1 waters, to promote safety, and to protect life, health and, property, property values,
2 and economic values.

3 **SECTION 28.** 281.16 (1) (bg) of the statutes is created to read:

4 281.16 (1) (bg) “Artificial water body” has the meaning given in s. 30.19 (1b)
5 (a).

6 **SECTION 29.** 281.16 (2) (am) 1. a. of the statutes is renumbered 281.16 (1) (br).

7 **SECTION 30.** 281.16 (2) (c) of the statutes is created to read:

8 281.16 (2) (c) If a covered municipality has obtained all permits required for
9 the construction of a storm water management pond in an artificial water body,
10 whether navigable or nonnavigable, the department may not prohibit the
11 construction of the storm water management pond as a method by which the covered
12 municipality may achieve compliance with performance standards under par. (a) or
13 with an approved total maximum daily load under 33 USC 1313 (d) (1) (C). The
14 department shall give credit to the covered municipality for any pollutant reduction
15 achieved by the storm water management pond in determining compliance with
16 performance standards specified in a permit under s. 283.33 (1) (b), (c), (cg), or (cr)
17 or an approved total maximum daily load under 33 USC 1313 (d).

18 **SECTION 31.** 281.36 (1) (am) of the statutes is created to read:

19 281.36 (1) (am) “Demonstrable economic public benefit” means an economic
20 benefit to the community or region that is measurable, such as increased access to
21 natural resources, local spending by the proposed project, employment, or
22 community investment.

23 **SECTION 32.** 281.36 (1) (ct) of the statutes is created to read:

24 281.36 (1) (ct) “Small business” has the meaning given in s. 227.114 (1).

25 **SECTION 33.** 281.36 (3m) (b) of the statutes is amended to read:

1 281.36 **(3m)** (b) *Analysis of practicable alternatives*. An applicant shall include
2 in an application submitted under par. (a) an analysis of the practicable alternatives
3 that will avoid and minimize the adverse impacts of the discharge on wetland
4 functional values and that will not result in any other significant adverse
5 environmental consequences, subject to the limitations in sub. (3n) (a).

6 **SECTION 34.** 281.36 (3n) (a) of the statutes is renumbered 281.36 (3n) (a) (intro.)
7 and amended to read:

8 281.36 **(3n)** (a) *Review limits*. (intro.) For the purpose of issuing a wetland
9 individual permit, during the period between the date on which the application
10 under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m)
11 (i) is rendered, the department shall conduct its review under this subsection. The
12 department shall review the analysis of practicable alternatives presented in the
13 application under sub. (3m) (b). The department shall limit its review of practicable
14 alternatives as follows:

15 1. The department shall limit its review to those practicable alternatives that
16 are located at the site of the discharge and that are located adjacent to that site if the
17 applicant has demonstrated that any of the following:

18 a. That the proposed project causing the discharge will result in a demonstrable
19 economic public benefit, ~~that,~~

20 b. That the proposed project is necessary for the expansion of an existing
21 industrial, commercial, or agricultural facility that is in existence at the time the
22 application is submitted, ~~or that,~~

23 c. That the proposed project will occur in an industrial park that is in existence
24 at the time the application is submitted.

25 **SECTION 35.** 281.36 (3n) (a) 2. and 3. of the statutes are created to read:

