

2001 SENATE BILL 54

February 20, 2001 – Introduced by Senator SHIBILSKI. Referred to Committee on Environmental Resources.

1 **AN ACT ...; relating to:** discharges of dredged or fill material into nonfederal
2 wetlands.

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

This bill places a ban on any person discharging dredged or fill material into wetlands for which ACE discharge permits are no longer required.

