



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5125/1  
EHS:kjf

## 2017 ASSEMBLY BILL 833

January 12, 2018 - Introduced by Representatives TUSLER, KITCHENS and MURSAU, cosponsored by Senators COWLES, MARKLEIN and PETROWSKI. Referred to Committee on Environment and Forestry.

1     **AN ACT to amend** 20.370 (9) (bm), 23.0917 (4) (c) 3. and 281.36 (13m); and **to**  
2     **create** 20.370 (9) (bn), 23.099 and 281.37 of the statutes; **relating to:** grant  
3     programs for wetland mitigation and property development projects on  
4     Department of Natural Resources lands and making an appropriation.

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### *Analysis by the Legislative Reference Bureau*

This bill creates a wetland mitigation grant program under which the Department of Natural Resources awards grants to nonprofit organizations to conduct wetland creation, restoration, or enhancement projects on certain DNR lands. The bill also creates a related grant program under which DNR may award grants to nonprofit organizations that receive wetland mitigation grants in order to increase public access to the affected wetland or to improve habitat in, on, or near, that wetland.

***Wetland mitigation grant program.*** Under current law, DNR must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may 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. Under current law, before DNR may issue a wetland individual permit, it must require the restoration, enhancement, creation, or preservation of other wetlands to compensate for adverse impacts to a wetland resulting from the discharge, also known as mitigation.

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Under the authority of current law, and in consultation with the U.S. Army Corps of Engineers (ACE), DNR has created the in lieu fee subprogram as one method by which wetland mitigation may be accomplished. Under this subprogram, payments are made to DNR or another entity for the purposes of improving or preserving wetlands or other water resource features.

This bill requires DNR to establish a wetland mitigation grant program (“mitigation program”) using up to \$2,500,000 each fiscal year from moneys received under the in lieu fee program and from surcharge fees charged for each application to proceed under a wetland general permit. Under the mitigation program, nonprofit organizations may apply to DNR on a rolling basis for grants to conduct projects to create, restore, or enhance wetlands on certain DNR lands.

The bill requires DNR to identify land under its jurisdiction that is appropriate to include in the mitigation program, but limits eligible land to that acquired by the state in whole or in part with funding from the Warren Knowles–Gaylord Nelson stewardship program or the Warren Knowles–Gaylord Nelson stewardship 2000 program (DNR stewardship land). The bill requires DNR to include in the mitigation program no less than 25 percent of all DNR stewardship land and, with some exceptions, to include land in every watershed located on DNR stewardship land.

The bill requires DNR to issue a request for proposals within three months after identifying appropriate lands or at the beginning of the next fiscal year, whichever is earlier, and no later than July 1 of each subsequent year. Under the bill, DNR must select and announce grant recipients at the end of each quarter, as funds are available.

The bill imposes requirements for what a wetland mitigation grant application must include, such as specifications of the wetland functional values that the project area does not provide or only sparsely provides and those that the proposed project would restore, enhance, or create. If an application is approved, the bill requires DNR and the grantee to identify all DNR permits that are required in order for the grantee to conduct the project, requires DNR to waive all permit fees for those permits, and limits the timelines for approval of those permits.

Generally, under current law, when a person notifies DNR of an intent to conduct an activity under a general permit, if DNR does not request any additional information about the activity that is subject to the notification and does not inform the applicant that an individual permit will be required by a certain deadline, the activity is considered to be authorized by the general permit. With respect to a general permit required to conduct a project under the mitigation program, this bill requires DNR to inform an applicant that the activity is authorized by the general permit, instead of relying on passive review.

The bill also authorizes DNR to submit a request to ACE that ACE move up all deadlines relating to its review and approval of wetland mitigation project proposals under the in lieu fee subprogram.

The bill requires DNR to pay out a wetland mitigation grant in three phases, withholding the final payment until the grantee certifies that the project is complete. If the grantee fails to certify that the project is complete by the date indicated for completion in its application, the bill requires DNR to use the remaining unpaid

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grant amount to either complete the project or contract with or issue a grant to another nonprofit organization to complete the project, unless DNR agrees to modify the deadline because of unusual or unforeseen circumstances. Under the bill, an organization that fails to certify completion of a project by the date indicated in its application for completion, or another date agreed to by DNR, is not eligible for a new grant for two grant cycles.

The bill requires DNR to report to the legislature on the effectiveness of the mitigation program's first five years and any recommended changes.

***Property development grants.*** The bill also requires DNR to establish a separate grant program under which it makes grants to nonprofit organizations for certain property development activities relating to wetlands affected by a project under a wetland mitigation grant. Property development activities that may be funded under this grant program include those that increase public access to, awareness about, or recreational use of the affected wetland, or that improve habitat in, on, or near, the affected wetland. Under the bill, the property development grant program is funded from the property development and local assistance subprogram of the Warren Knowles-Gaylord Nelson stewardship 2000 program.

Though it is separate from the wetland mitigation grant program, the bill requires an application for a property development grant to be submitted at the same time as an application for a wetland mitigation grant, requires DNR to make a determination on both grants at the same time, and prohibits DNR from awarding a property development grant unless it also awards a wetland mitigation grant. The bill also restricts a property development grant to no more than 10 percent of the amount of the wetland mitigation grant and provides that a property development grant may not be paid until the grantee certifies that the project funded by the wetland mitigation grant is complete.

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

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

1           **SECTION 1.** 20.370 (9) (bm) of the statutes, as affected by 2017 Wisconsin Act  
2           59, is amended to read:

3           20.370 (9) (bm) *Wetland restoration — fees; payments.* From the general fund,  
4           all moneys received as surcharge fees under s. 281.36 (11), all moneys received as  
5           transfers to the in lieu fee subprogram as provided in s. 281.36 (3s) (h), and all  
6           moneys received under the in lieu fee subprogram under s. 281.36 (3r) (e) for the

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1 restoration or creation of wetlands, to transfer \$2,500,000 each fiscal year to the  
2 appropriation account under par. (bn), and for any other activities authorized under  
3 the in lieu fee subprogram. If the transfer of money under this paragraph to the  
4 appropriation account under par. (bn) would cause the unencumbered balance in  
5 that appropriation account to exceed \$5,000,000 the transfer shall be limited to an  
6 amount that causes the unencumbered balance in the appropriation account under  
7 par. (bn) to be equal to \$5,000,000.

8 **SECTION 2.** 20.370 (9) (bn) of the statutes is created to read:

9 20.370 (9) (bn) *Wetland mitigation grants.* All moneys transferred from the  
10 appropriation account under par. (bm) for the wetland mitigation grant program  
11 under s. 281.37.

12 **SECTION 3.** 23.0917 (4) (c) 3. of the statutes is amended to read:

13 23.0917 (4) (c) 3. Grants under s. ss. 23.098 and 23.099.

14 **SECTION 4.** 23.099 of the statutes is created to read:

15 **23.099 Grants for property development relating to wetland**  
16 **mitigation. (1)** In this section:

17 (a) "Department stewardship land" has the meaning given under s. 281.37 (1)  
18 (a).

19 (b) "Nonprofit organization" means an organization that is described in section  
20 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax  
21 under section 501 (a) of the Internal Revenue Code.

22 (2) The department shall establish a program to make grants from the  
23 appropriation under s. 20.866 (2) (ta) to nonprofit organizations for property  
24 development activities relating to wetlands created, restored, or enhanced under a  
25 wetland mitigation grant under s. 281.37 on department stewardship land. Property

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1 development activities for which a grant under this section may be awarded include  
2 those that increase public access to, awareness about, or recreational use of the new,  
3 restored, or enhanced wetland, or that improve habitat in, on, or near, the new,  
4 restored, or enhanced wetland.

5 (3) A nonprofit organization that applies for a grant under this section shall  
6 submit the application at the same time that it submits an application for a grant  
7 under s. 281.37. The department shall make its determination with respect to both  
8 grants at the same time, and may only award a grant under this section if it also  
9 awards a grant under s. 281.37.

10 (4) A grant awarded under this section may not exceed 10 percent of the  
11 amount of the related grant awarded under s. 281.37. The department may not issue  
12 the grant funding under this section to the grantee until the grantee has certified  
13 that the project funded by the grant under s. 281.37 is complete.

14 **SECTION 5.** 281.36 (13m) of the statutes is amended to read:

15 281.36 (13m) REPORT TO LEGISLATURE. No later than January 31, 2003, and no  
16 later than January 31 of each subsequent odd-numbered year, the department shall  
17 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the  
18 impact of the implementation of mitigation on wetland resources and on the issuance  
19 of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30,  
20 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.  
21 The department shall include in its report a discussion of proposals and projects  
22 under the wetland mitigation grant program under s. 281.37 and the property  
23 development grant program under s. 23.099.

24 **SECTION 6.** 281.37 of the statutes is created to read:

25 **281.37 Wetland mitigation grant program.** (1) In this subsection:

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1 (a) "Department stewardship land" means an area of land that is acquired by  
2 the state in whole or in part with funding from the stewardship program and that  
3 is under the jurisdiction of the department and used for one of the purposes specified  
4 in s. 23.09 (2) (d).

5 (b) "Mitigation program" means the wetland mitigation grant program  
6 established under sub. (2).

7 (c) "Nonprofit organization" means an organization that is described in section  
8 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax  
9 under section 501 (a) of the Internal Revenue Code.

10 (d) "Stewardship program" means the stewardship program under s. 23.0915  
11 or 23.0917.

12 **(2)** The department shall establish a wetland mitigation grant program under  
13 which it awards grants to nonprofit organizations to conduct projects to create,  
14 restore, or enhance wetlands under the in lieu fee subprogram in s. 281.36 (3r) (e)  
15 on department stewardship land as provided in this subsection.

16 **(3)** No later than 6 months after the effective date of this subsection .... [LRB  
17 inserts date], the department shall identify department stewardship land that is  
18 appropriate to include in the mitigation program. The department shall identify no  
19 less than 25 percent of department stewardship land for this purpose. The land  
20 identified shall include land in every watershed located on department stewardship  
21 land, except that if land in one watershed is not appropriate to include in the  
22 program, it is sufficient to include land in an adjacent watershed.

23 **(4)** (a) No later than 3 months after completion of the land identification stage  
24 under sub. (3) or at the beginning of the following fiscal year, whichever is earlier,  
25 and no later than July 1 of each subsequent year, the department shall issue a

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1 request for proposals from nonprofit organizations for grants to conduct wetland  
2 mitigation projects on department stewardship land identified under sub. (3). The  
3 issuance of each new request for proposal begins a new grant cycle.

4 (b) The department shall require applications for grants under this section to  
5 include all of the following:

6 1. The scope of the proposed project.

7 2. A project timeline.

8 3. If possible, a specification of the functional values or uses listed in s. NR  
9 103.03 (1), Wis. Adm. Code, that the project area does not provide or only sparsely  
10 provides.

11 4. A specification of the functional values or uses listed in s. NR 103.03 (1), Wis.  
12 Adm. Code, that the proposed project would create, restore, or enhance.

13 (c) The department shall accept grant applications on a rolling basis over the  
14 course of a fiscal year. The department shall select and announce grant recipients  
15 at the end of each quarter as funds are available.

16 **(5)** (a) If an application under sub. (4) is approved, the grantee and the  
17 department, in consultation, shall identify all department permits required for the  
18 grantee to conduct the project. The department shall waive all permit fees for the  
19 grantee in relation to department permits required to conduct the project.

20 (b) Notwithstanding timelines and procedures otherwise established for  
21 general permits, within 30 days of receiving the grantee's notice of intent to proceed  
22 under a general permit that is required to conduct the project, if the department does  
23 not require any additional information about the activity that is subject to the  
24 notification, the department shall inform the applicant either that an individual  
25 permit will be required or that the activity is authorized by the general permit. If

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1 authorized, the applicant may proceed without further notice, hearing, permit, or  
2 approval if the activity is carried out in compliance with all of the conditions of the  
3 general permit.

4 (c) Notwithstanding timelines otherwise established for individual permits,  
5 within 60 days of receiving the grantee's application for an individual permit that is  
6 required to conduct the project, department shall render a decision issuing, denying,  
7 or modifying the permit, and the department shall adjust all other deadlines relating  
8 to the review of the application accordingly.

9 (7) (a) The department shall pay out a grant under the mitigation program in  
10 3 phases, withholding the final payment until the grantee certifies that the project  
11 is complete.

12 (b) If the grantee fails to certify that the project is complete by the date  
13 indicated for completion in its application, the department shall use the remaining  
14 unpaid grant amount to either complete the project or contract with or issue a grant  
15 to another nonprofit organization to complete the project. An organization that fails  
16 to certify completion of a project by the date indicated in its application for  
17 completion is not eligible for a new grant under the mitigation program for 2 grant  
18 cycles.

19 (c) The department may agree to a modified deadline for the project if unusual  
20 or unforeseen circumstances cause a delay. If the department agrees to a modified  
21 deadline, the consequences under par. (b) apply only if the grantee fails to certify that  
22 a project is complete by the date indicated in that agreement.

23 (8) Before 6 months have elapsed after the 5th anniversary of the department's  
24 first issuance of a request for proposals under sub. (4), the department shall submit  
25 to the legislature under s. 13.172 (2) a report analyzing the effectiveness of the first



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1 5 years of the mitigation program and making recommendations for changes to the  
2 program.

3 **SECTION 7. Nonstatutory provisions.**

4 (1) The department of natural resources may submit a request to the U.S. army  
5 corps of engineers that the U.S. army corps of engineers move up all deadlines  
6 relating to its review and approval of wetland mitigation project proposals under the  
7 in lieu fee subprogram under section 281.36 (3r) of the statutes so that the time it  
8 takes for the U.S. army corps of engineers to approve such a proposal is shortened.

9 (END)