2011 DRAFTING REQUEST

Bill

Received: **12/30/2011**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Jeffrey Mursau (608) 266-3780**

By/Representing: **Tim Gary**

May Contact:

Drafter: **mglass**

Subject: **Nat. Res. - wet/shore/flood**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Mursau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Wetland regulation, mitigation, and fees for DNR permits

Instructions:

Same as 2803/1

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mglass 12/30/2011	wjackson 01/03/2012		_____ _____			State
/1			jfrantze 01/03/2012	_____ _____	ggodwin 01/03/2012	ggodwin 01/03/2012	

FE Sent For: At intro 1/6/2012

<END>

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/?	mglass	/1 WLJ 1/3	1	1/3			

FE Sent For:

<END>

Gibson-Glass, Mary

From: Gary, Tim
Sent: Friday, December 30, 2011 10:34 AM
To: Gibson-Glass, Mary
Cc: Johnson, Dan
Subject: Wetland bill

Mary,

Please draft up an Assembly version of the Wetland bill for Mursau that is identical to the Kedzie draft as a /1.

Thank you and Happy New Year.

Dan of Kedzie's office gave permission

Tim Gary
Wisconsin State Assembly
Office of **Representative Jeff Mursau**
36th Assembly District, Research Assistant
Committee on Natural Resources, Clerk
Committee on Forestry, Clerk
PO Box 8952
Madison, WI 53708-8953
(608) 266-3780
Sign Up for E-Updates

State of Wisconsin
2011 – 2012 LEGISLATURE

RMnst R 3704/1

LRB-2803/1
MGG:wlj:md

1/3

Stays

2011 BILL

Please fix request sheet.

Only Change p. 43

Regen

AN ACT ***to repeal*** 23.321 (2) (a), 23.321 (3) (a), 23.321 (4) (a) 1., 30.28 (2) (title), 30.28 (2) (a) (intro.), 30.28 (2) (a) 1., 30.28 (2) (a) 2., 30.28 (2) (a) 3., 30.28 (2m) (c), 31.39 (2m) (c), 281.22 (1), 281.22 (2) (c), 281.22 (4), 281.36 (1) (am), 281.36 (1) (bg), 281.36 (1) (c) and (cm), 281.36 (1) (cr), 281.36 (1m), 281.36 (2) (title), 281.36 (2) (b), 281.36 (7), 281.36 (8) (title), 281.36 (8) (a), 281.36 (8) (b), 281.36 (8) (bn) 2., 281.36 (8) (c), 281.36 (8) (d), 281.36 (8) (e), 281.36 (9) (am) to (c), 281.36 (10) (b), 281.37 (title), 281.37 (1) (intro.), 281.37 (1) (a), 281.37 (1) (e), 281.37 (1) (f), 281.37 (2), 281.37 (3) (g), 281.37 (3) (j), 281.37 (3m) and 281.37 (4); ***to renumber*** 30.28 (2) (b) 1., 30.28 (2) (b) 2., 281.22 (2) (title), 281.22 (2m) (title) and 281.22 (2m) (a) 2.; ***to renumber and amend*** 30.28 (1), 281.22 (title), 281.22 (2) (a), 281.22 (2) (b), 281.22 (2) (d), 281.22 (2m) (a) (intro.), 281.22 (2m) (a) 1., 281.22 (2m) (b), 281.22 (3), 281.36 (2) (a), 281.36 (3), 281.36 (8) (bn) 1., 281.37 (1) (b), 281.37 (1) (d), 281.37 (2m), 281.37 (3) (intro.), 281.37 (3) (a), 281.37 (3) (b), 281.37 (3) (c), 281.37 (3) (d), 281.37 (3) (e), 281.37 (3) (f), 281.37

(3) (h), 281.37 (3) (i) and 281.37 (5); ***to consolidate, renumber and amend*** 281.36 (10) (intro.) and (a); ***to amend*** 20.370 (4) (bi), 23.321 (title), 30.025 (1b) (b), 30.03 (4) (a), 30.2022 (2), 30.207 (7) (a), 30.28 (title), 30.28 (2m) (a), 30.28 (2m) (am), 30.28 (2m) (b), 30.28 (2m) (d), 30.28 (2r) (a) (intro.), 30.28 (2r) (a) 1., 30.28 (2r) (b), 281.165 (4) (a) 1m., 281.36 (4) (intro.), 281.36 (4) (b), 281.36 (4) (e) 1., 281.36 (4) (e) 2., 281.36 (4) (e) 3., 281.36 (5) (intro.), 281.36 (5) (a), 281.36 (5) (b), 281.36 (6) (a) 1., 281.36 (9) (a) (intro.), 281.36 (9) (a) 1., 281.36 (9) (a) 2., 281.36 (9) (a) 3., 281.98 (1) and 814.04 (intro.); ***to repeal and recreate*** 281.36 (title); and ***to create*** 20.370 (4) (bm), 23.321 (1) (title), 23.321 (2) (title), 23.321 (2m) (title), 23.321 (3) (title), 23.321 (3m), 23.321 (4) (title), 23.321 (5) (title), 23.321 (6) (title), 30.28 (1) (a), 30.28 (1) (b), 30.28 (1m), 227.01 (13) (ru), 281.17 (10) (c), 281.36 (1) (bd), 281.36 (1) (bj), 281.36 (1) (cp), 281.36 (3b) (title), 281.36 (3b) (a), 281.36 (3g) (title), 281.36 (3g) (a), 281.36 (3g) (c), 281.36 (3g) (d), 281.36 (3g) (e), 281.36 (3g) (f), 281.36 (3g) (fg), 281.36 (3g) (fm), 281.36 (3g) (fr), 281.36 (3g) (g), 281.36 (3g) (h), 281.36 (3g) (i), 281.36 (3m), 281.36 (3n), 281.36 (3p), 281.36 (3r), 281.36 (9) (d) and (e), 281.36 (11), 281.36 (12) (a), 281.36 (12) (b), 281.36 (13) and 281.36 (14) of the statutes; **relating to:** permits for discharges into wetlands; wetland mitigation; wetland mapping and delineation; fees for permits and other authorizations or determinations by the Department of Natural Resources relating to structures, deposits, and other activities in or near navigable waters; making appropriations; and providing penalties.

Analysis by the Legislative Reference Bureau

Wetland permitting and mitigation

Under current law, there are two permitting procedures for discharging dredged or fill material into a wetland depending on whether the wetland is subject

to federal jurisdiction. Under federal law, activities involving the discharge of dredged or fill material into wetlands subject to federal jurisdiction (federal wetlands) must comply with certain guidelines contained in regulations promulgated by the U.S. Army Corps of Engineers (ACE). Wetlands that are exempt from federal jurisdiction are those that are nonnavigable and that are isolated, intrastate wetlands. Current state law regulates discharges in these wetlands (nonfederal wetlands).

Current law makes a distinction between wetlands that are in, or that are in proximity to, an area of special natural resource interest (ASNRI) wetlands and those wetlands that are outside these areas. Current law defines ASNRI as being an area that has significant ecological, cultural, aesthetic, educational, recreational, or scientific value and specifically lists certain areas.

Under current law, a discharge into a federal or nonfederal wetland will be authorized under an individual or general water quality certification only if the discharge complies with all of the water quality standards that apply to wetlands. These standards are promulgated as rules by the Department of Natural Resources (DNR) and require that various functional values of wetlands be protected from adverse impacts. These functional values include providing protection from flooding, recharging groundwater, and providing habitat for wildlife.

Under current law, before ACE may issue a federal permit applicable to a federal wetland, or authorize an activity pursuant to a general federal permit, DNR must issue a water quality certification. For a nonfederal wetland, the discharge must be authorized by a water quality certification issued by DNR but no federal permit is required. For a nonfederal wetland, the discharge may be authorized by an individual certification or a general certification. Under current law, DNR may issue a general water quality certification for types of discharges that are similar in nature and will cause minimal adverse environmental effects. Under current law, DNR must issue general water quality certifications that are consistent with all of the general permits issued under federal law.

Under rules promulgated by DNR, in order for DNR to issue an individual wetland water quality certification DNR must first find that no practicable alternative exists which would avoid causing adverse impacts to the wetland and that all practicable measures will be taken to minimize the adverse impacts to the functional value of the affected wetlands. DNR then considers any proposed mitigation and various other factors to determine whether there will be an adverse impact to wetland functional values or to water quality that is significant or other environmental consequences that are significant. The factors used in this step of the analysis include whether the project is wetland dependent, consideration of any practicable alternatives for the project, potential impacts to ASNRI wetlands, and other cumulative and potential secondary impacts. If DNR finds that there will be no significant adverse impacts or other significant environmental consequences, DNR must find that the project complies with wetland quality standards and must issue the wetland water quality certification. For certain projects that are wetland dependent, that involve impacts to not more that 0.10 acres, or that are not a wetland

that merits special consideration, DNR may limit the scope of the analysis of practicable alternatives.

Under current law, DNR is authorized, but is not required, to consider mitigation in determining whether to issue a water quality certification. Under current law, wetland mitigation consists of a project that restores, enhances, or creates (improves) a wetland in order to offset the adverse impacts to other wetlands or a project that involves the purchase of credits from a wetlands mitigation bank. A wetlands mitigation bank is a system of accounting for wetland loss that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to offset adverse impact to other wetlands. Mitigation is based on a ratio of acres improved compared to the number of acres that will suffer an adverse impact.

Current law requires that the ratio of acres for purposes of mitigation be 1.5 acres of improved wetlands for each acre that will suffer an adverse impact, with a limited exception allowing the ratio to be one acre to one acre. Current law prohibits DNR from considering wetland mitigation in deciding whether to authorize an activity that would adversely affect an ASNRI wetland or an ASNRI in general. Current law requires that mitigation occur within one–half mile of the wetland that will suffer an impact unless DNR determines that it is not practicable or ecologically preferable that the mitigation occur within the one–half mile limitation.

This bill makes various changes to the current law described above. These changes include the following:

1. The bill substitutes the term "wetland permit" for "water quality certification," and specifies that the issuance of a wetland permit by DNR takes the place of a water quality certification required by federal law.

2. The bill requires that DNR issue certain wetland general permits (project permits) that are in addition to the required general certifications under current law. These include general permits for discharges 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. The bill authorizes DNR to issue additional wetland general permits. The bill authorizes DNR to establish different requirements, conditions, and exceptions in general permits to ensure that the discharges will cause only minimal adverse environmental effects. The bill also authorizes DNR to prohibit discharges into certain types of wetlands identified by DNR. These include coastal plain marshes and calcareous fens.

3. The bill creates requirements for giving public notice of DNR's intent to issue general permits.

4. The bill 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 general waters. Under this procedure, a person must file an application to proceed under the general permit not less than 30 days before commencing the discharge. If, within 30 days after the application, DNR does not inform the applicant that a

wetland individual permit will be required, the discharge is considered to be authorized under the wetland general permit. The bill authorizes DNR to require a person to apply 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 the bill, a general permit, other than a project permit, may include a waiver of the requirement that specific authorization be obtained for a wetland discharge.

5. The bill changes the standards for reviewing applications for wetland individual permits.

Under the bill, DNR reviews the practicable alternatives presented in the application for the wetland individual permit. DNR must limit its review of these alternatives to those that are located at the site of the discharge and those adjacent to the site if the applicant has demonstrated that the proposed project that will cause the discharge will have a demonstrable economic benefit, that the proposed project is necessary for the expansion of an existing industrial or commercial facility, or that the proposed project will occur in an existing industrial park. Under the bill, the factors to be used in the review include direct impacts, potential secondary impacts, certain cumulative impacts, impacts from proposed mitigation, and the net positive or negative environmental impact of the project. Under the bill, DNR must find that the project complies with wetland quality standards if DNR 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 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.

6. The bill creates specific procedures and time limits for issuing wetland individual permits. Under the bill, DNR must hold a meeting with the applicant to discuss the details of the proposed discharge before the application is actually submitted. DNR must then review an application and within 30 days after submission shall determine either that the application is complete or that additional information is needed. The applicant may include in the application a request for a public informational hearing. If the application is incomplete, DNR may make only one additional request for information. Upon receipt of the information, DNR has ten days to notify the applicant whether the application is complete. The date on which the 30–day or ten–day notice is or should be sent triggers the time limits for the public hearing process and for receiving public comments. Under the bill, the term used for such a date that triggers the time limits is "date of closure." DNR may ask for information to supplement the one–time request for information, but such a request may not affect the date of closure.

Within 15 days after the date of closure, DNR must provide notice of the application to interested members of the public. If the application does not already contain a request for a public informational hearing, any person may request such a hearing. DNR on its own may decide to hold a hearing if it determines that there

is significant public interest. The bill authorizes any person to submit public comments in addition to any public hearing. Under the bill, if no hearing is held, DNR must render a decision on the application within 30 days after the period for public comment has ended. If a hearing is held, the period for public comment ends ten days after the date the hearing is completed, and DNR must render its decision within 20 days after the period for public comment ends.

The bill also creates requirements for giving public notice of pending applications and informational hearings.

7. The bill requires that mitigation be performed under each wetland individual permit that DNR issues, and removes the restriction that mitigation may not be considered in issuing permits for discharges into ASNRI wetlands or into ASNRI in general. Mitigation may be accomplished by completing a mitigation project within the same watershed or within one–half mile of the discharge site or by participating in the in lieu fee subprogram, if DNR establishes such a subprogram. The bill authorizes DNR to create the in lieu fee subprogram, in consultation with ACE. Under the subprogram, payments would be made to DNR or another entity for the purposes of improving or preserving wetlands or other water resource features. Under the subprogram, a wetland that benefits from the subprogram must be open to the public for hunting, fishing, trapping, cross–country skiing, and hiking. The in lieu fee subprogram must be consistent with federal regulations that apply to such a subprogram.

8. The bill increases the fee for a wetland individual permit. The bill also creates a fee for an application to proceed under a wetland general permit. Under current law, there is no such application fee to proceed under a general water quality certification.

9. The bill creates a surcharge that applies to certain applications to proceed under wetland general permits. These surcharge fees are to be used to create and restore wetlands and are subject to the public–access requirement for hunting and other activities as described above.

Other provisions

The bill makes changes relating to fees paid by persons submitting applications for individual permits to place structures or conduct other activities in or near navigable waters. Under current law, the amount of the fee for a permit relating to navigable waters is based on the estimated time DNR will spend reviewing and investigating the application and making determinations on the application. For an application to proceed under a general permit, there is no fee. This bill imposes a set fee for both types of applications.

The bill authorizes DNR to charge fees for identifying ordinary high–water marks, for making determinations of navigability, and for other determinations related to issuing permits for structures and activities in navigable waters.

Finally, the bill eliminates the requirement under current law that DNR review wetland maps and the accompanying fee.

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.** 20.370 (4) (bi) of the statutes is amended to read:

2 20.370 **(4)** (bi) *Water regulation and zoning — fees.* From the general fund, all
3 moneys received under ss. 23.32 (3), 23.321, 30.28, 31.39, and ~~281.22~~ 281.36 (12) for
4 activities relating to permits, contracts, authorizations, and other approvals issued
5 under s. 281.36 and chs. 30 and 31, for activities relating to water quality standards
6 under subch. II of ch. 281, and for wetland mapping under s. 23.32 and wetlands
7 services under s. 23.321.

8 **SECTION 2.** 20.370 (4) (bm) of the statutes is created to read:

9 20.370 **(4)** (bm) *Wetland restoration — fees; payments.* From the general fund,
10 all moneys received as surcharge fees under s. 281.36 (11) and all moneys received
11 under the in lieu fee subprogram under s. 281.36 (3r) (e) for the restoration or
12 creation of wetlands and for any other activities authorized under the in lieu fee
13 subprogram.

14 **SECTION 3.** 23.321 (title) of the statutes is amended to read:

15 **23.321** (title) **Wetland ~~map review,~~ identification, and confirmation.**

16 **SECTION 4.** 23.321 (1) (title) of the statutes is created to read:

17 23.321 **(1)** (title) DEFINITION.

18 **SECTION 5.** 23.321 (2) (title) of the statutes is created to read:

19 23.321 **(2)** (title) TYPES OF SERVICES.

20 **SECTION 6.** 23.321 (2) (a) of the statutes is repealed.

21 **SECTION 7.** 23.321 (2m) (title) of the statutes is created to read:

1 23.321 **(2m)** (title) MEMORANDUM OF AGREEMENT.

2 **SECTION 8.** 23.321 (3) (title) of the statutes is created to read:

3 23.321 **(3)** (title) FEES; GENERALLY.

4 **SECTION 9.** 23.321 (3) (a) of the statutes is repealed.

5 **SECTION 10.** 23.321 (3m) of the statutes is created to read:

6 23.321 **(3m)** FEES; EXPEDITED SERVICE. The department may charge a
7 supplemental fee for a type of service under sub. (2) that is in addition to the fee
8 charged under sub. (3) if all of the following apply:

9 (a) The applicant requests in writing that the service be provided within a time
10 period that is shorter than the time limit specified under sub. (4) for that type of
11 service.

12 (b) The department verifies that it will be able to comply with the request.

13 **SECTION 11.** 23.321 (4) (title) of the statutes is created to read:

14 23.321 **(4)** (title) TIME LIMITS.

15 **SECTION 12.** 23.321 (4) (a) 1. of the statutes is repealed.

16 **SECTION 13.** 23.321 (5) (title) of the statutes is created to read:

17 23.321 **(5)** (title) LENGTH OF VALIDITY.

18 **SECTION 14.** 23.321 (6) (title) of the statutes is created to read:

19 23.321 **(6)** (title) INCLUDED ON MAPS.

20 **SECTION 15.** 30.025 (1b) (b) of the statutes is amended to read:

21 30.025 **(1b)** (b) "Permit" means an individual permit, a general permit, an
22 approval, or a contract required under this subchapter or subch. II, a permit or an
23 approval required under ch. 31, a storm water discharge permit required under s.
24 283.33 (1) (a), or a ~~water quality certification~~ wetland general permit or wetland

individual permit required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a).

SECTION 16. 30.03 (4) (a) of the statutes is amended to read:

30.03 **(4)** (a) If the department learns of a possible violation of s. 281.36 or of the statutes relating to navigable waters or a possible infringement of the public rights relating to navigable waters, and the department determines that the public interest may not be adequately served by imposition of a penalty or forfeiture, the department may proceed as provided in this paragraph, either in lieu of or in addition to any other relief provided by law. The department may order a hearing under ch. 227 concerning the possible violation or infringement, and may request the hearing examiner to issue an order directing the responsible parties to perform or refrain from performing acts in order to comply with s. 281.36 or to fully protect the interests of the public in the navigable waters. If any person fails or neglects to obey an order, the department may request the attorney general to institute proceedings for the enforcement of the department's order in the name of the state. The proceedings shall be brought in the manner and with the effect of proceedings under s. 111.07 (7).

SECTION 17. 30.2022 (2) of the statutes is amended to read:

30.2022 **(2)** The exemption under sub. (1) does not apply unless the activity is accomplished in accordance with interdepartmental liaison procedures established by the department and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity. If the activity affects a wetland, as defined in s. 23.32 (1), the department of transportation shall conduct any required mitigation either by complying with the interdepartmental liaison procedures and any applicable interagency agreement on mitigation banks

that is approved by the department of natural resources or by using any of the methods specified in s. 281.36 (3r) (a) 1. to 3.

SECTION 18. 30.207 (7) (a) of the statutes is amended to read:

30.207 **(7)** (a) At least 15 days before beginning the activity that is authorized by a general permit under this section the person who wishes to conduct the activity shall submit a notice to the department and shall pay the fee specified in s. 30.28 ~~(2) (b) 2~~ (1) (d). The notice shall describe the activity, state the name of the person that will be conducting the activity and state the site where the activity will be conducted. The notice shall also contain a statement signed by the person conducting the activity that the person will act in conformance with the standards contained in the general permit.

SECTION 19. 30.28 (title) of the statutes is amended to read:

30.28 (title) **Fees for permits, other approvals, and determinations ~~and hearings~~.**

SECTION 20. 30.28 (1) of the statutes is renumbered 30.28 (1) (intro.) and amended to read:

30.28 **(1)** (intro.) The department shall charge a ~~permit or approval~~ fee for ~~carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and 30.21 to 30.27~~ reviewing, investigating, and making decisions on determinations and on whether to issue or grant permits, contracts, authorizations, or other approvals under this subchapter. The ~~permit or approval~~ required fee shall accompany the ~~permit~~ application~~, notice or request for approval~~ or other submitted documentation. The department shall set each type of fee in the amount that is necessary to meet the costs incurred by the department except as follows:

SECTION 21. 30.28 (1) (a) of the statutes is created to read:

1 30.28 **(1)** (a) For an individual permit issued under s. 30.208, the application
2 fee shall be $600.

3 **SECTION 22.** 30.28 (1) (b) of the statutes is created to read:

4 30.28 **(1)** (b) For authorization to proceed under a general permit issued under
5 s. 30.206, the application fee shall be $300.

6 **SECTION 23.** 30.28 (1m) of the statutes is created to read:

7 30.28 **(1m)** ADDITIONAL FEES. (a) In addition to the fees required under sub. (1),
8 the department may set and charge fees for making any of the following
9 determinations:

10 1. An identification of an ordinary high–water mark.

11 2. A determination of navigability.

12 3. Any other determination that is necessary for reviewing, investigating, or
13 making a decision on applications for permits, contracts, authorizations, or other
14 approvals under this chapter.

15 (b) The department shall set each fee authorized under this subsection in the
16 amount that is necessary to meet the costs incurred by the department.

17 **SECTION 24.** 30.28 (2) (title) of the statutes is repealed.

18 **SECTION 25.** 30.28 (2) (a) (intro.) of the statutes is repealed.

19 **SECTION 26.** 30.28 (2) (a) 1. of the statutes is repealed.

20 **SECTION 27.** 30.28 (2) (a) 2. of the statutes is repealed.

21 **SECTION 28.** 30.28 (2) (a) 3. of the statutes is repealed.

22 **SECTION 29.** 30.28 (2) (b) 1. of the statutes is renumbered 30.28 (1) (c).

23 **SECTION 30.** 30.28 (2) (b) 2. of the statutes is renumbered 30.28 (1) (d).

24 **SECTION 31.** 30.28 (2m) (a) of the statutes is amended to read:

30.28 **(2m)** (a) The department shall refund a ~~permit or approval~~ fee charged under sub. (1) (a) if the applicant requests a refund before the department determines that the application ~~for the permit or approval~~ is complete. Except as provided in par. (am), the department may not refund a ~~permit or approval~~ fee after the department determines that the application is complete unless required to do so under a rule promulgated under s. 299.05.

SECTION 32. 30.28 (2m) (am) of the statutes is amended to read:

30.28 **(2m)** (am) The department shall refund 50% of the fee specified in sub. ~~(2) (b) 1.~~ (1) (c) if the department denies an application for a general permit under s. 30.207 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

SECTION 33. 30.28 (2m) (b) of the statutes is amended to read:

30.28 **(2m)** (b) If ~~the applicant applies for a permit, requests an approval, or submits a notice under s. 30.207 (7)~~ a person applies for a permit or otherwise seeks authorization or gives notice for a project or activity after the project or activity is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

SECTION 34. 30.28 (2m) (c) of the statutes is repealed.

SECTION 35. 30.28 (2m) (d) of the statutes is amended to read:

30.28 **(2m)** (d) The department~~, by rule,~~ may increase any fee specified in sub. ~~(2) (a). The department, by rule, may increase a fee specified in sub. (2) (b)~~ (1) or (1m) only if the increase is necessary to meet the costs incurred by the department in ~~acting on general permits or on notices submitted under s. 30.207~~ performing the activities for which the fee is charged.

SECTION 36. 30.28 (2r) (a) (intro.) of the statutes is amended to read:

30.28 **(2r)** (a) (intro.) The department, by rule, may charge a supplemental fee for a permit ~~or~~, contract, authorization, other approval, or determination that is in addition to the fee charged under this section if all of the following apply:

SECTION 37. 30.28 (2r) (a) 1. of the statutes is amended to read:

30.28 **(2r)** (a) 1. The applicant requests in writing that the permit ~~or~~, approval authorization, or determination be issued or the contract be granted within a time period that is shorter than the time limit under the rule promulgated under par. (b) for that type of permit ~~or~~, contract, authorization, approval, or determination.

SECTION 38. 30.28 (2r) (b) of the statutes is amended to read:

30.28 **(2r)** (b) If the department promulgates a rule under par. (a), the rule shall contain a time limit for each type of permit ~~or~~, contract, authorization, approval ~~classified under sub. (2) (a) for determining whether the department will grant the permit or approval~~, or determination.

SECTION 39. 31.39 (2m) (c) of the statutes is repealed.

SECTION 40. 227.01 (13) (ru) of the statutes is created to read:

227.01 **(13)** (ru) Is a wetland general permit issued under s. 281.36 (3g).

SECTION 41. 281.165 (4) (a) 1m. of the statutes, as created by 2011 Wisconsin Act 6, is amended to read:

281.165 **(4)** (a) 1m. The wetland area is ~~a nonfederal wetland,as defined in s. 281.36 (1) (c)~~ not subject to federal jurisdiction under 33 USC 1344, and the activity will affect less than 3 acres of that wetland area.

SECTION 42. 281.17 (10) (c) of the statutes is created to read:

281.17 **(10)** (c) This subsection does not apply to discharges into wetlands that are subject to regulation under s. 281.36.

1 **SECTION 43.** 281.22 (title) of the statutes is renumbered 281.36 (12) (title) and
2 amended to read:
3 281.36 **(12)** (title) ~~FEES~~ APPLICATION FEES AND TIME LIMITS ~~FOR WATER QUALITY~~
4 ~~DETERMINATIONS FOR WETLANDS~~.
5 **SECTION 44.** 281.22 (1) of the statutes is repealed.
6 **SECTION 45.** 281.22 (2) (title) of the statutes is renumbered 281.36 (12) (c)
7 (title).
8 **SECTION 46.** 281.22 (2) (a) of the statutes is renumbered 281.36 (12) (c) 1. and
9 amended to read:
10 281.36 **(12)** (c) 1. The department shall refund ~~the~~ an application fee charged
11 for a wetland individual permit under par. (a) 1. if the applicant requests a refund
12 before the department determines that the application ~~for the determination~~ is
13 complete. The department may not refund a fee after the department determines
14 that the application is complete unless required to do so under a rule promulgated
15 under s. 299.05.
16 **SECTION 47.** 281.22 (2) (b) of the statutes is renumbered 281.36 (12) (c) 2. and
17 amended to read:
18 281.36 **(12)** (c) 2. If the applicant ~~applies for a permit after the project~~ submits
19 an application for authorization to proceed under a wetland general or a wetland
20 individual permit after the discharge is begun or after it is completed, the
21 department shall charge an amount equal to twice the amount of the fee that it would
22 have charged under this section.
23 **SECTION 48.** 281.22 (2) (c) of the statutes is repealed.
24 **SECTION 49.** 281.22 (2) (d) of the statutes is renumbered 281.36 (12) (c) 3. and
25 amended to read:

281.36 **(12)** (c) 3. The department~~, by rule,~~ may increase the fee specified in sub. (1) only if the increase is necessary to meet the costs of the department in performing the activities for which the fee is charged.

SECTION 50. 281.22 (2m) (title) of the statutes is renumbered 281.36 (12) (d) (title).

SECTION 51. 281.22 (2m) (a) (intro.) of the statutes is renumbered 281.36 (12) (d) 1. (intro.) and amended to read:

281.36 **(12)** (d) 1. (intro.) The department, by rule, may charge a supplemental fee ~~for a determination under sub. (1)~~ that is in addition to ~~the~~ a fee charged under ~~sub. (1)~~ this subsection if all of the following apply:

SECTION 52. 281.22 (2m) (a) 1. of the statutes is renumbered 281.36 (12) (d) 1. a. and amended to read:

281.36 **(12)** (d) 1. a. The applicant requests in writing that the ~~determination~~ decision on the application be issued within a time period that is shorter than the time limit promulgated under ~~par. (b)~~ subd. 2. for the ~~determination~~ decision.

SECTION 53. 281.22 (2m) (a) 2. of the statutes is renumbered 281.36 (12) (d) 1. b.

SECTION 54. 281.22 (2m) (b) of the statutes is renumbered 281.36 (12) (d) 2. and amended to read:

281.36 **(12)** (d) 2. If the department promulgates a rule under ~~par. (a)~~ subd. 1., the rule shall contain ~~for~~ a time limit for making ~~determinations under sub. (1)~~ decisions on the application.

SECTION 55. 281.22 (3) of the statutes is renumbered 281.36 (12) (e) and amended to read:

281.36 **(12)** (e) *Exemptions from fees.* ~~Subsections (1), (2) and (2m)~~ Paragraphs (a), (b), (c), and (d) do not apply to any federal agency or state agency.

SECTION 56. 281.22 (4) of the statutes is repealed.

SECTION 57. 281.36 (title) of the statutes is repealed and recreated to read:

281.36 (title) **Permits for discharges into wetlands; mitigation.**

SECTION 58. 281.36 (1) (am) of the statutes is repealed.

SECTION 59. 281.36 (1) (bd) of the statutes is created to read:

281.36 **(1)** (bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning exists on the effective date of this paragraph .... [LRB inserts date].

SECTION 60. 281.36 (1) (bg) of the statutes is repealed.

SECTION 61. 281.36 (1) (bj) of the statutes is created to read:

281.36 **(1)** (bj) "Mitigation" means the restoration, enhancement, or creation of wetlands to compensate for adverse impacts to other wetlands.

SECTION 62. 281.36 (1) (c) and (cm) of the statutes are repealed.

SECTION 63. 281.36 (1) (cp) of the statutes is created to read:

281.36 **(1)** (cp) "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project.

SECTION 64. 281.36 (1) (cr) of the statutes is repealed.

SECTION 65. 281.36 (1m) of the statutes is repealed.

SECTION 66. 281.36 (2) (title) of the statutes is repealed.

SECTION 67. 281.36 (2) (a) of the statutes is renumbered 281.36 (3b) (b) and amended to read:

281.36 **(3b)** (b) No person may discharge dredged material or fill material into a ~~nonfederal~~ wetland unless the discharge is authorized by a ~~water quality certification~~ wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4). No person may violate any condition ~~imposed by the department in a water quality certification~~ contained in a wetland general or individual permit issued by the department under this section. The department may not issue a ~~water quality certification~~ wetland general or individual permit under this section unless it determines that the discharge authorized pursuant to the wetland general or individual permit will comply with all applicable water quality standards.

SECTION 68. 281.36 (2) (b) of the statutes is repealed.

SECTION 69. 281.36 (3) of the statutes is renumbered 281.36 (2m) and amended to read:

281.36 **(2m)** DELINEATION PROCEDURES. For purposes of delineating the boundary of a ~~nonfederal~~ wetland~~, the department and the person who is applying for or who holds a water quality certification under this section shall use~~ under this section, the procedures contained in the wetlands delineation manual published by the U.S. army corps of engineers shall be used. The edition of the manual that shall be used shall be the 1987 edition of the manual and any document that the U.S. army corps of engineers issues interpreting that manual, unless the U.S. army corps of engineers publishes an edition of the manual after January 9, 2001, and the department ~~by rule~~ designates that edition as the one to be used under this subsection. ~~If the U.S. army corps of engineers issues a guidance document interpreting the edition of the wetlands delineation manual that the department is required to use under this subsection and if that guidance document is issued after~~

~~May 8, 2001, the department shall notify the appropriate standing committee of each house of the legislature, as determined by the speaker of the assembly and the president of the senate, of the issuance of the guidance document and whether the department intends to promulgate a rule incorporating the provisions of the guidance document.~~

SECTION 70. 281.36 (3b) (title) of the statutes is created to read:

281.36 **(3b)** (title) PERMIT REQUIRED.

SECTION 71. 281.36 (3b) (a) of the statutes is created to read:

281.36 **(3b)** (a) For purposes of this section, a wetland general or individual permit issued by the department constitutes water quality certification as required by 33 USC 1341 (a).

SECTION 72. 281.36 (3g) (title) of the statutes is created to read:

281.36 **(3g)** (title) WETLAND GENERAL PERMITS.

SECTION 73. 281.36 (3g) (a) of the statutes is created to read:

281.36 **(3g)** (a) *Required permits.* The department shall issue a wetland general permit for each of the following types of discharges:

1. A discharge that is necessary for the treatment or disposal of hazardous waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic pollutants and does not affect more than 2 acres of wetland.

2. A discharge that is necessary for temporary access and dewatering, if the discharge does not affect more than 2 acres of wetland.

3. A temporary or permanent discharge for routine utility construction and maintenance projects and activities.

4. A discharge that is part of a development for industrial purposes, if the discharge does not affect more than 10,000 square feet of wetland. For purposes of

1 this subdivision, the development of a waste disposal site is considered to be a
2 development for industrial purposes.
3 5. A discharge that is part of a development for commercial purposes, if the
4 discharge does not affect more than 10,000 square feet of wetland.
5 6. A discharge that is part of a development for residential purposes, if the
6 discharge does not affect more than 10,000 square feet of wetland.
7 7. A discharge that is part of a development for agricultural purposes, if the
8 discharge does not affect more than 10,000 square feet of wetland.
9 8. A discharge that is part of a development for municipal purposes, if the
10 discharge does not affect more than 10,000 square feet of wetland.
11 9. A discharge that is part of a development for recreational purposes, if the
12 discharge does not affect more than 10,000 square feet of wetland.
13 10. A discharge that is necessary for the construction, reconstruction, or
14 maintenance of a bridge or culvert that is part of a transportation project that is
15 being carried out under the direction and supervision of a city, village, town, or
16 county.
17 **SECTION 74.** 281.36 (3g) (c) of the statutes is created to read:
18 281.36 **(4)** (3g) (c) *Additional permits.* The department may issue wetland
19 general permits, in addition to those required under pars. (a) and (b), to regulate
20 other discharges that affect wetlands located in this state.
21 **SECTION 75.** 281.36 (3g) (d) of the statutes is created to read:
22 281.36 **(3g)** (d) *Requirements; conditions; restrictions.* In issuing wetland
23 general permits under this subsection, the department shall establish requirements,
24 conditions, and exceptions to ensure that the discharges will cause only minimal
25 adverse environmental effects. As part of a general permit, the department may

1 prohibit discharges into wetlands that are identified by the department as being one
2 of the following:
3 1. Great Lakes ridge and swale complexes.
4 2. Interdunal wetlands.
5 3. Coastal plain marshes.
6 4. Emergent marshes containing wild rice.
7 5. Ephemeral ponds in wooded settings.
8 6. Boreal rich fens.
9 7. Calcareous fens.
10 **SECTION 76.** 281.36 (3g) (e) of the statutes is created to read:
11 281.36 **(3g)** (e) *Period of validity; subsequent actions.* A wetland general permit
12 issued under this subsection is valid for a period of 5 years. Upon compliance with
13 the requirements under pars. (f) to (g), the department may renew, modify, or revoke
14 a wetland general permit issued under this subsection.
15 **SECTION 77.** 281.36 (3g) (f) of the statutes is created to read:
16 281.36 **(3g)** (f) *Public notice.* The department shall provide to interested
17 members of the public notices of its intention to issue, renew, modify, or revoke a
18 wetland general permit under this subsection. Procedures for providing public
19 notices shall include all of the following:
20 1. Publication of a class 1 notice under ch. 985.
21 2. Providing a copy of the notice to any person or group upon request of the
22 person or group.
23 3. Publication of the notice on the department's Internet Web site.
24 **SECTION 78.** 281.36 (3g) (fg) of the statutes is created to read:

1 281.36 **(3g)** (fg) *Date of notice.* For the purpose of determining the date on
2 which public notice is provided under this subsection, the date on which the
3 department first publishes the notice on its Internet Web site shall be considered the
4 date of public notice.

5 **SECTION 79.** 281.36 (3g) (fm) of the statutes is created to read:

6 281.36 **(3g)** (fm) *Written comments.* The department shall provide a period of
7 not less than 30 days after the date of the public notice during which time interested
8 persons may submit their written comments on the department's intention to issue,
9 renew, modify, or revoke a wetland general permit under this subsection. All written
10 comments submitted during the period for comment shall be retained by the
11 department and considered by the department in acting on the general permit.

12 **SECTION 80.** 281.36 (3g) (fr) of the statutes is created to read:

13 281.36 **(3g)** (fr) *Description in notice.* Every public notice provided by the
14 department under par. (f) shall include a description of the discharges to be
15 authorized under the wetland general permit.

16 **SECTION 81.** 281.36 (3g) (g) of the statutes is created to read:

17 281.36 **(3g)** (g) *Public informational hearing.* 1. The department shall provide
18 an opportunity for any interested state agency or federal agency or person or group
19 of persons to request a public informational hearing with respect to the department's
20 intention to issue, renew, modify, or revoke a wetland general permit under this
21 subsection. The request for the hearing shall be filed with the department within 30
22 days after the provision of the public notice under par. (f) and shall indicate the
23 interest of the party filing the request and the reasons why the hearing is warranted.

24 2. The department shall hold a public informational hearing upon a request
25 under subd. 1. if the department determines that there is a significant public interest

in holding such a hearing. Hearings held under this subsection are not contested cases under s. 227.01 (3).

3. Public notice of any hearing held under this subsection shall be circulated in accordance with the requirements under par. (f). The public notice shall include the time, date, and location of the hearing, a summary of the subject matter of the wetland general permit, and information indicating where additional information about the general permit may be viewed on the department's Internet Web site. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the general permit.

SECTION 82. 281.36 (3g) (h) of the statutes is created to read:

281.36 **(3g)** (h) *Authorizations for discharges under wetland general permits.* 1. A person wishing to proceed with a discharge that may be authorized under a wetland general permit shall apply to the department, with written notification of the person's wish to proceed, not less than 30 days before commencing the discharge authorized by the general permit unless subd. 4. applies. The application shall provide information describing the discharge in order to allow the department to determine whether the discharge is authorized by the wetland general permit and shall give the department consent to enter and inspect the site, subject to sub. (9). The application shall identify all activities affecting wetlands that will be conducted as part of the total project. The application shall include a detailed explanation of why the impact to the wetland cannot be avoided and how the impact to the wetland will be minimized to the greatest extent practicable. The application shall be accompanied by the fee specified in sub. (12) (a) 1. If the application is for authorization to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as

calculated under sub. (11). The department may make a request for additional information one time during this 30–day period.

2. If, within 30 days after an application under subd. 1. is received by the department, the department does not either request additional information or inform the applicant that a wetland individual permit will be required as provided in par. (i), the discharge shall be considered to be authorized under the wetland general permit and the applicant may proceed without further notice, hearing, permit, or approval if the discharge is carried out in compliance with all of the conditions of the general permit.

3. If the department requests additional information under subd. 1., the 30–day period is tolled from the date the person applying for authorization to proceed receives the request until the date on which the department receives all of the additional information.

4. As part of a wetland general permit issued under par. (b) or (c), the department may waive the requirement that a person wishing to proceed under the general permit apply to the department as required under this paragraph so that the person may proceed with the discharge without specific authorization from the department.

5. Authorization to proceed under a wetland general permit is valid for 5 years after the date on which the discharge is considered to be authorized.

SECTION 83. 281.36 (3g) (i) of the statutes is created to read:

281.36 **(3g)** (i) *Wetland individual permit in lieu of wetland general permit.* For a proposed discharge for which an application has been received by the department under par. (h), the department may decide to require that a person who submitted the application apply for a wetland individual permit if the department has

1 inspected the site as provided in par. (h) and has determined that conditions specific
2 to the site require additional restrictions on the discharge in order to provide
3 reasonable assurance that no significant adverse impacts to wetland functional
4 values will occur.

5 **SECTION 84.** 281.36 (3m) of the statutes is created to read:

6 281.36 **(3m)** WETLAND INDIVIDUAL PERMITS. (a) *When permit required.* Any
7 person wishing to proceed with a discharge into any wetland shall submit an
8 application for a wetland individual permit under this subsection unless the
9 discharge has been authorized under a wetland general permit as provided in sub.
10 (3g) or is exempt under sub. (4). Before submitting the application, the department
11 shall hold a meeting with the applicant to discuss the details of the proposed
12 discharge and the requirements for submitting the application and for delineating
13 the wetland. An applicant may include in the application a request for a public
14 informational hearing. The application shall be accompanied by the applicable fee
15 specified in sub. (11) or (12) (a) 1.

16 (b) *Analysis of practicable alternatives.* An applicant shall include in an
17 application submitted under par. (a) an analysis of the practicable alternatives that
18 will avoid and minimize the adverse impacts of the discharge on wetland functional
19 values and that will not result in any other significant adverse environmental
20 consequences.

21 (c) *Review; no additional information required.* In issuing wetland individual
22 permits under this section, the department shall review an application, and within
23 30 days after the application is submitted, the department shall determine that
24 either the application is complete or that additional information is needed. If the
25 department determines that the application is complete, the department shall notify

1 the applicant in writing of that fact within the 30–day period, and the date on which
2 the notice under this paragraph is sent shall be considered the date of closure for
3 purposes of par. (g) 1.

4 (d) *Additional information requested.* If the department determines that the
5 application is incomplete, the department shall notify the applicant in writing and
6 may make only one request for additional information during the 30–day period
7 specified in par. (c). Within 10 days after receiving all of the requested information
8 from the applicant, the department shall notify the applicant in writing as to
9 whether the application is complete. The date on which the 2nd notice under this
10 paragraph is sent shall be set as the date of closure for purposes of par. (g) 1. The
11 department may request additional information from the applicant to supplement
12 the application, but the department may not request items of information that are
13 outside the scope of the original request unless the applicant and the department
14 both agree. A request for any such additional information may not affect the date
15 of closure.

16 (e) *Specificity of notice; limits on information.* Any notice stating that an
17 application has been determined to be incomplete or any other request for
18 information that is sent under par. (d) shall state the reason for the determination
19 or request and the specific items of information that are still needed.

20 (f) *Failure to meet time limits.* If the department fails to meet the 30–day time
21 limit under par. (c) or 10–day time limit under par. (d), the application shall be
22 considered to have a date of closure that is the last day of that 30–day or 10–day time
23 period for purposes of par. (g) 1.

24 (g) *Notice of application.* 1. Within 15 days after the date of closure, as
25 determined under par. (c) or (d), the department shall provide notice of pending

application to interested members of the public. If the applicant has requested a public informational hearing as part of the submitted application, a notice of the public hearing shall be part of the notice of pending application.

2. If the notice of pending application does not contain a notice of public informational hearing, any person may request a public informational hearing in writing or the department may decide to hold a public informational hearing with or without a request being submitted if the department determines that there is a significant public interest in holding a hearing.

(h) *Request for hearing.* A request for a public informational hearing under par. (g) 2. must be submitted to the department or the department's decision to hold a public informational hearing must occur within 20 days after the department provides the notice of pending application. The department shall provide notice of public informational hearing within 15 days after the request for the public hearing is submitted or the department makes its decision to hold a public informational hearing.

(i) *Decision.* Within 20 days after the period for public comment under par. (j) has ended or if no public informational hearing is held, within 30 days after the 30–day comment period under par. (j) has ended, the department shall render a decision issuing or denying the wetland individual permit that is the subject of the application submitted under par. (a). If the decision issued by the department under this paragraph is a denial, the department shall include in the decision the specific grounds and reasons as to how the applicable provisions of this section were not met. If the denial is based on an incomplete application, the department shall inform the applicant of the areas of the application that were incomplete.

1 (j) *Public comment.* 1. The department shall provide a period for public
2 comment after the department has provided a notice of pending application under
3 par. (g) during which time any person may submit written comments with respect
4 to the application for a wetland individual permit. The department shall retain all
5 of the written comments submitted during this period and shall consider all of the
6 comments in rendering a decision on the application. The period for public comment
7 shall end on the 30th day following the date on which the department provides the
8 notice of pending application except as provided in subd. 2.

9 2. If a public informational hearing is held, the period for public comment shall
10 end on the 10th day following the date on which the hearing is completed.

11 **SECTION 85.** 281.36 (3n) of the statutes is created to read:

12 281.36 **(3n)** REVIEW BY DEPARTMENT. (a) *Review limits.* For the purpose of
13 issuing a wetland individual permit, during the period between the date on which
14 the application under sub. (3m) (a) is submitted and the date on which a decision
15 under sub. (3m) (i) is rendered, the department shall conduct its review under this
16 subsection. The department shall review the analysis of practicable alternatives
17 presented in the application under sub. (3m) (b). The department shall limit its
18 review to those practicable alternatives that are located at the site of the discharge
19 and that are located adjacent to that site if the applicant has demonstrated that the
20 proposed project causing the discharge will result in a demonstrable economic
21 benefit, that the proposed project is necessary for the expansion of an existing
22 industrial or commercial facility that is in existence at the time the application is
23 submitted, or that the proposed project will occur in an industrial park that is in
24 existence at the time the application is submitted.

1 (b) *Factors used in review.* In its review under par. (a), the department shall
2 consider all of the following factors when it assesses the impacts to wetland
3 functional values:

4 1. The direct impacts of the proposed project to wetland functional values.

5 2. The cumulative impacts attributable to the proposed project that may occur
6 to wetland functional values based on past impacts or reasonably anticipated
7 impacts caused by similar projects in the area affected by the project.

8 3. Potential secondary impacts of the proposed project to wetland functional
9 values.

10 4. The impact on functional values resulting from the mitigation that is
11 required under sub. (3r).

12 5. The net positive or negative environmental impact of the proposed project.

13 (c) *Standards for issuing permits.* The department shall make a finding that
14 a proposed project causing a discharge is in compliance with water quality standards
15 and that a wetland individual permit may be issued if the department determines
16 that all of the following apply:

17 1. The proposed project represents the least environmentally damaging
18 practicable alternative taking into consideration practicable alternatives that avoid
19 wetland impacts.

20 2. All practicable measures to minimize the adverse impacts to wetland
21 functional values will be taken.

22 3. The proposed project will not result in significant adverse impact to wetland
23 functional values, in significant adverse impact to water quality, or in other
24 significant adverse environmental consequences.

1 (d) *Mitigation required.* The department shall require mitigation under the
2 program established under sub. (3r) for wetland individual permits it issues under
3 this subsection.

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

5 281.36 **(3p)** NOTICE REQUIREMENTS; WETLAND INDIVIDUAL PERMITS. (a) The
6 department shall establish procedures for providing notices of pending applications
7 and notices of public informational hearings to be provided under sub. (3m). The
8 procedures shall require all of the following:

9 1. That the notice be published as a class 1 notice under ch. 985.

10 2. That the notice be mailed to any person or group upon request of the person
11 or group.

12 3. That the notice be published on the department's Internet Web site.

13 (b) The department shall prescribe the form and content of notices of pending
14 applications and notices of public informational hearings to be provided under sub.
15 (3m). Each notice shall include all of the following information:

16 1. The name and address of the applicant.

17 2. A brief description of the discharge that requires the permit and the project
18 that includes the discharge.

19 3. For a notice of a public informational hearing, the time, date, and location
20 of the hearing.

21 4. For a notice of pending application and a notice of a public informational
22 hearing, a brief, precise, easily understandable, plain–language description of the
23 discharge and information indicating where the pending application may be viewed
24 on the department's Internet Web site.

1 5. For a notice of complete application and a notice of a public informational
2 hearing, a statement of the tentative determination of the department on the permit.
3 6. For a notice of complete application and a notice of public informational
4 hearing, a brief description of the procedures for the formulation of final
5 determinations, including a description of the comment period required under sub.
6 (3m) (j).
7 (c) For the purpose of determining the date on which notice is provided under
8 this subsection, the date of the notice shall be the date on which the department first
9 publishes the notice on its Internet Web site, unless the department delegates to the
10 applicant under par. (d) the requirement to provide notice. If the department
11 delegates to the applicant the requirement to provide notice, the date of the notice
12 shall be the date on which the department first publishes the notice on its Internet
13 Web site or 10 days after the date on which the department receives satisfactory proof
14 of publication of a class 1 notice from the applicant, whichever is later.
15 (d) The department may delegate the department's requirement to provide
16 notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of
17 the following:
18 1. Requiring that the applicant for the permit provide by publication, mailing,
19 or other distribution one or more of the notices.
20 2. Requiring that the applicant for the permit pay for the publication, mailing,
21 or any other distribution costs of providing one or more of the notices.
22 **SECTION 87.** 281.36 (3r) of the statutes is created to read:
23 281.36 **(3r)** MITIGATION; IN LIEU FEE SUBPROGRAM. (a) The department shall
24 establish a mitigation program that applies only to the issuance of wetland

individual permits and that allows mitigation to be accomplished by any of the following methods:

1. Purchasing credits from a mitigation bank located in this state.

2. Participating in the in lieu fee subprogram, if such a subprogram is established under par. (e).

3. Completing mitigation within the same watershed or within one–half mile of the site of the discharge.

(b) Under the mitigation program, mitigation as specified in par. (a) 1. and participation in the in lieu fee subprogram, if established under par. (a) 2. shall be the preferred types of mitigation.

(c) The department shall establish a system of service areas for the mitigation banks under the mitigation program that is geographically based on the locations of the major watersheds in the state. The system shall be consistent with federal regulations.

(d) The department shall establish under the mitigation program mitigation ratios that are consistent with the federal regulations that apply to mitigation and mitigation banks but the minimum ratio shall be at least 1.2 acres for each acre affected by the discharge.

(e) As part of the mitigation program established under par. (a), the department may establish an in lieu fee subprogram, in consultation with the army corps of engineers, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. The department shall establish requirements for calculating the in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit from the program shall be open to the public for hunting, fishing, trapping,

cross–country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram shall be consistent with federal regulations.

SECTION 88. 281.36 (4) (intro.) of the statutes is amended to read:

281.36 **(4)** EXEMPTIONS. (intro.) Except as provided in sub. (5), the ~~certification~~ permitting requirement under sub. ~~(2)~~ (3b) does not apply to any discharge that is the result of any of the following activities:

SECTION 89. 281.36 (4) (b) of the statutes is amended to read:

281.36 **(4)** (b) Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a ~~nonfederal~~ wetland.

SECTION 90. 281.36 (4) (e) 1. of the statutes is amended to read:

281.36 **(4)** (e) 1. That the flow and circulation patterns and chemical and biological characteristics of the affected ~~nonfederal~~ wetland are not impaired.

SECTION 91. 281.36 (4) (e) 2. of the statutes is amended to read:

281.36 **(4)** (e) 2. That the reach of the affected ~~nonfederal~~ wetland is not reduced.

SECTION 92. 281.36 (4) (e) 3. of the statutes is amended to read:

281.36 **(4)** (e) 3. That any adverse effect on the aquatic environment of the affected ~~nonfederal~~ wetland is minimized to the degree required by the department.

SECTION 93. 281.36 (5) (intro.) of the statutes is amended to read:

281.36 **(5)** INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding sub. (4), a discharge that would be exempt under sub. (4) is subject to the ~~certification~~ permitting requirement under sub. ~~(2)~~ (3b) if the discharge is incidental to an activity that has as its purpose bringing a ~~nonfederal~~ wetland, or part of a ~~nonfederal~~

wetland, into a use for which it was not previously subject and if the activity may do any of the following:

SECTION 94. 281.36 (5) (a) of the statutes is amended to read:

281.36 **(5)** (a) Impair the flow or circulation of any ~~nonfederal~~ wetland.

SECTION 95. 281.36 (5) (b) of the statutes is amended to read:

281.36 **(5)** (b) Reduce the reach of any ~~nonfederal~~ wetland.

SECTION 96. 281.36 (6) (a) 1. of the statutes is amended to read:

281.36 **(6)** (a) 1. Make the rules consistent with existing federal law or interpretation.

SECTION 97. 281.36 (7) of the statutes is repealed.

SECTION 98. 281.36 (8) (title) of the statutes is repealed.

SECTION 99. 281.36 (8) (a) of the statutes is repealed.

SECTION 100. 281.36 (8) (b) of the statutes is repealed.

SECTION 101. 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (b) and amended to read:

281.36 **(3g)** (b) *Additional required permits.* ~~The~~ In addition to the wetland general permits required under par. (a), the department shall issue wetland general ~~water quality certifications~~ permits that are consistent with ~~all of the,~~ and correspond to, any general permits that are issued under 33 USC 1344 (e) ~~that applied on January 8, 2001, to nonfederal wetlands located in this state~~ and that regulate discharges other than those regulated under the required wetland general permits issued under par. (a).

SECTION 102. 281.36 (8) (bn) 2. of the statutes is repealed.

SECTION 103. 281.36 (8) (c) of the statutes is repealed.

SECTION 104. 281.36 (8) (d) of the statutes is repealed.

1 **SECTION 105.** 281.36 (8) (e) of the statutes is repealed.

2 **SECTION 106.** 281.36 (9) (a) (intro.) of the statutes is amended to read:

3 281.36 **(9)** (a) (intro.) For purposes of determining whether to issue a wetland
4 individual permit, whether authorization to proceed as authorized under a wetland
5 general permit is appropriate, or whether an exemption under sub. (4) is
6 appropriate, and for purposes of enforcing this section, any employee or other
7 representative of the department, upon presenting his or her credentials, may do any
8 of the following:

9 **SECTION 107.** 281.36 (9) (a) 1. of the statutes is amended to read:

10 281.36 **(9)** (a) 1. Enter and inspect any property on which is located a ~~nonfederal~~
11 wetland~~,~~ or part of a ~~nonfederal~~ wetland, for which an application ~~for a water quality~~
12 ~~certification~~ has been submitted ~~to the department~~ under sub. (3g) or (3m).

13 **SECTION 108.** 281.36 (9) (a) 2. of the statutes is amended to read:

14 281.36 **(9)** (a) 2. Enter and inspect any property on which is located a ~~nonfederal~~
15 wetland to investigate a discharge ~~of dredged or fill material~~ that the department has
16 reason to believe is in violation of this section.

17 **SECTION 109.** 281.36 (9) (a) 3. of the statutes is amended to read:

18 281.36 **(9)** (a) 3. Gain access to and inspect any records that ~~the department~~
19 ~~requires~~ a holder of a ~~water quality certification to~~ wetland individual permit or a
20 person acting under the authority of a wetland general permit is required by the
21 department to keep.

22 **SECTION 110.** 281.36 (9) (am) to (c) of the statutes are repealed.

23 **SECTION 111.** 281.36 (9) (d) and (e) of the statutes are created to read:

24 281.36 **(9)** (d) The department shall provide reasonable advance notice to the
25 property owner before entering and inspecting property as authorized under par (a).

(e) If the owner of the property refuses to give consent for the entry and inspection, the department may do any of the following:

1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.

2. Deny an application for a wetland individual permit or deny authorization to proceed under a wetland general permit.

SECTION 112. 281.36 (10) (intro.) and (a) of the statutes are consolidated, renumbered 281.36 (10) and amended to read:

281.36 **(10)** ~~OTHER~~ ADDITIONAL REQUIREMENTS. The requirement of being issued a wetland individual permit or proceeding under the authority of a wetland general permit under this section is in addition to any permit or other approval required by the department for a project or activity that involves a discharge into a wetland. This section does not affect the authority of the department to ~~do any of the following: (a) Regulate~~ otherwise regulate the discharge of dredged or fill material in a ~~nonfederal~~ wetland under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

SECTION 113. 281.36 (10) (b) of the statutes is repealed.

SECTION 114. 281.36 (11) of the statutes is created to read:

281.36 **(11)** RESTORATION; SURCHARGE FEE. (a) The department shall set a surcharge fee to be charged for each application to proceed under a wetland general permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis by the department and may not exceed more than 50 percent of the market price, as determined by the department, for the equivalent purchase of credits from a mitigation bank. These fees shall be credited to the appropriation account under s. 20.370 (4) (bm) for the restoration and creation of wetlands. The

1 department may enter into agreements with other entities for the restoration and
2 creation of such wetlands.

3 (b) Any wetland that is restored or created using funding from the
4 appropriation under s. 20.370 (4) (bm) shall be open to the public for hunting, fishing,
5 trapping, cross–country skiing, or hiking or any combination thereof, but the
6 department may establish reasonable restrictions on the use of the land by the public
7 in order to protect public safety or to protect a unique plant or animal community.

8 **SECTION 115.** 281.36 (12) (a) of the statutes is created to read:

9 281.36 **(12)** (a) *Fees required.* The department shall charge a fee for reviewing,
10 investigating, and making decisions on applications to proceed under wetland
11 general permits under sub. (3g) and on applications for wetland individual permits
12 under sub. (3m). For an authorization to proceed under a wetland general permit,
13 the application fee shall be $500. For a wetland individual permit, the application
14 fee shall be $800.

15 **SECTION 116.** 281.36 (12) (b) of the statutes is created to read:

16 281.36 **(12)** (b) *Additional fee.* The department may set and charge a fee in the
17 amount necessary to meet the costs incurred by the department in reviewing
18 mitigation that is conducted by mitigation banks.

19 **SECTION 117.** 281.36 (13) of the statutes is created to read:

20 281.36 **(13)** PARTIES TO A VIOLATION. (a) Whoever is concerned in the commission
21 of a violation of this section for which a forfeiture is imposed is a principal and may
22 be charged and found in violation although he or she did not directly commit the
23 violation and although the person who directly committed it has not been found in
24 violation.

1 (b) A person is concerned in the commission of the violation if the person does
2 any of the following:
3 1. Directly commits the violation.
4 2. Aids and abets the commission of the violation.
5 3. Is a party to a conspiracy with another to commit the violation or advises,
6 hires, counsels, or otherwise procures any person to commit it.
7 **SECTION 118.** 281.36 (14) of the statutes is created to read:
8 281.36 **(14)** PENALTIES. (a) Except as provided in par. (b), any person who
9 violates any provision of this section shall forfeit not less than $100 nor more than
10 $10,000 for the first offense and shall forfeit not less than $500 nor more than
11 $10,000 upon being found in violation of the same offense a 2nd or subsequent time.
12 (b) Any person who violates a wetland general permit issued under sub. (3g)
13 shall forfeit not less than $10 nor more than $500 for the first offense and shall forfeit
14 not less than $50 nor more than $500 upon being found in violation of the same
15 offense a 2nd or subsequent time.
16 (c) A violation of any condition contained in a wetland general permit issued
17 under sub. (3g) is a violation of the statute under which the general permit was
18 issued.
19 (d) In addition to the forfeitures specified under pars. (a) and (b), a court may
20 order a defendant to abate any nuisance, restore a natural resource, or take, or
21 refrain from taking, any other action as necessary to eliminate or minimize any
22 environmental damage caused by the defendant.
23 **SECTION 119.** 281.37 (title) of the statutes is repealed.
24 **SECTION 120.** 281.37 (1) (intro.) of the statutes is repealed.
25 **SECTION 121.** 281.37 (1) (a) of the statutes is repealed.

1 **SECTION 122.** 281.37 (1) (b) of the statutes is renumbered 281.36 (1) (bn) and
2 amended to read:

3 281.36 **(1)** (bn) "Mitigation project" means ~~the restoration, enhancement or~~
4 ~~creation of wetlands to compensate for adverse impacts to other wetlands.~~
5 ~~"Mitigation project" includes using credits from a wetlands mitigation bank~~
6 mitigation of the type specified in sub. (3r) (a) 3.

7 **SECTION 123.** 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (bL) and
8 amended to read:

9 281.36 **(1)** (bL) "~~Wetlands mitigation~~ Mitigation bank" means a system of
10 accounting for wetland loss and compensation that includes one or more sites where
11 wetlands are restored, enhanced or created to provide ~~transferable~~ credits to be
12 subsequently ~~applied~~ purchased to compensate for adverse impacts to other
13 wetlands.

14 **SECTION 124.** 281.37 (1) (e) of the statutes is repealed.

15 **SECTION 125.** 281.37 (1) (f) of the statutes is repealed.

16 **SECTION 126.** 281.37 (2) of the statutes is repealed.

17 **SECTION 127.** 281.37 (2m) of the statutes is renumbered 281.36 (8m), and
18 281.36 (8m) (a) 1. and 2. and (b) (intro.) and 2., as renumbered, are amended to read:

19 281.36 **(8m)** (a) 1. A person who is the holder of a wetland individual permit
20 ~~or other approval~~ that authorizes a mitigation project shall grant a conservation
21 easement under s. 700.40 to the department or shall execute a comparable legal
22 instrument to ensure that a wetland that is being restored, enhanced, or created will
23 not be destroyed or substantially degraded by any subsequent proprietor of or holder
24 of interest in the property on which the wetland is located. The department shall

revoke the wetland individual permit ~~or other approval~~ if the holder of the individual permit ~~or other approval~~ fails to take these measures.

2. A person who is restoring, enhancing, or creating a wetland to provide transferable credits as part of a wetlands mitigation bank shall grant a conservation easement under s. 700.40 to the department~~,~~ or shall execute a comparable legal instrument to ensure that the wetland will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located.

(b) (intro.) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a)~~,~~ or shall void a comparable legal instrument executed under par. (a) if all of the following apply:

2. The person who is required to grant the conservation easement or execute the legal instrument did not contribute to the loss of the wetland specified in subd. 1.

SECTION 128. 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t) (intro.) and amended to read:

281.36 **(3t)** RULES FOR MITIGATION. (intro.) The department shall promulgate rules to establish a process for ~~consideration of wetland compensatory mitigation under sub. (2). Upon promulgation, the rules shall apply to any application or other request for an initial determination for a permit or other authorization that is pending with the department on the date on which the rules take effect~~ the mitigation program under sub. (3r). The rules shall address all of the following:

SECTION 129. 281.37 (3) (a) of the statutes is renumbered 281.36 (3t) (a) and amended to read:

281.36 **(3t)** (a) Requirements for the ~~avoidance and minimization of adverse impacts to the wetland that will be affected by the permitted activity~~ analysis of practicable alternatives that is included in an application for a wetland individual permit under sub. (3m) (b).

SECTION 130. 281.37 (3) (b) of the statutes is renumbered 281.36 (3t) (b) and amended to read:

281.36 **(3t)** (b) The conditions under which credits ~~in a wetlands mitigation bank~~ may be ~~used for wetland compensatory mitigation~~ purchased from a mitigation bank to comply with the mitigation program under sub. (3r).

SECTION 131. 281.37 (3) (c) of the statutes is renumbered 281.36 (3t) (c) and amended to read:

281.36 **(3t)** (c) Enforcement of ~~a requirement to implement a mitigation project~~ requirements under the mitigation program under sub. (3r) that apply to mitigation projects and mitigation banks.

SECTION 132. 281.37 (3) (d) of the statutes is renumbered 281.36 (3t) (d) and amended to read:

281.36 **(3t)** (d) Baseline studies of ~~the wetland~~ wetlands that will be affected by the ~~permitted activity~~ discharges and of ~~the~~ sites for mitigation ~~project site~~ projects.

SECTION 133. 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and amended to read:

281.36 **(3t)** (e) Plan and ~~project~~ design requirements for ~~a~~ mitigation ~~project, which shall consider the relation of the project design~~ projects and mitigation bank sites, which shall include requirements for relating the design of a mitigation project

or a mitigation bank site to the hydrology of the watershed in which a mitigation project or mitigation bank site is located.

SECTION 134. 281.37 (3) (f) of the statutes is renumbered 281.36 (3t) (f), and 281.36 (3t) (f) (intro.), as renumbered, is amended to read:

281.36 **(3t)** (f) (intro.) ~~The comparability of a wetland~~ Standards for comparing wetlands that will be restored, enhanced, or created as a mitigation project or at a mitigation bank site to the ~~wetland~~ wetlands that will be adversely affected by ~~the permitted activity~~ discharges, including all of the following:

SECTION 135. 281.37 (3) (g) of the statutes is repealed.

SECTION 136. 281.37 (3) (h) of the statutes is renumbered 281.36 (3t) (h) and amended to read:

281.36 **(3t)** (h) Standards for measuring the short–term and long–term success of ~~a~~ mitigation ~~project~~ projects and mitigation bank sites and requirements for the short–term and long–term monitoring of ~~a~~ mitigation ~~project~~ projects and mitigation bank sites.

SECTION 137. 281.37 (3) (i) of the statutes is renumbered 281.36 (3t) (i) and amended to read:

281.36 **(3t)** (i) Remedial actions to be taken by ~~the applicant if a~~ holders of wetland individual permits for mitigation ~~project is~~ projects that are not successful and actions to be taken by ~~a wetlands~~ mitigation ~~bank if a~~ banks for mitigation ~~project on which mitigation credits are based is~~ projects performed by the mitigation banks that are not successful.

SECTION 138. 281.37 (3) (j) of the statutes is repealed.

SECTION 139. 281.37 (3m) of the statutes is repealed.

SECTION 140. 281.37 (4) of the statutes is repealed.

1 **SECTION 141.** 281.37 (5) of the statutes is renumbered 281.36 (14) and amended
2 to read:

3 281.36 **(14)** REPORT TO LEGISLATURE. No later than January 31, 2003, and no
4 later than January 31 of each subsequent odd–numbered year, the department shall
5 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the
6 impact of the implementation of ~~this section~~ mitigation on wetland resources and on
7 the issuance of permits or other approvals under ss. 59.692, 61.351, 62.231, 87.30,
8 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

9 **SECTION 142.** 281.98 (1) of the statutes is amended to read:

10 281.98 **(1)** Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a),
11 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any
12 rule promulgated or any plan approval, license, special order, or water quality
13 certification issued under this chapter shall forfeit not less than $10 nor more than
14 $5,000 for each violation. Each day of continued violation is a separate offense.
15 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

16 **SECTION 143.** 814.04 (intro.) of the statutes, as affected by 2011 Wisconsin Act
17 2, is amended to read:

18 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
19 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b)~~
20 ~~1.,~~ 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),
21 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
22 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

23 **SECTION 144. Nonstatutory provisions.**

24 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department
25 of natural resources are increased by 2.0 PR positions to be funded from the

appropriation under section 20.370 (4) (bi) of the statutes, to implement the mitigation program under section 281.36 (3r) of the statutes as created in this act.

(2) PROJECT POSITION CHANGES.

(a) The authorized FTE positions for the department of natural resources are decreased by 3.0 PR project positions funded from the appropriation under section 20.370 (4) (bi) of the statutes, for the purpose for which the appropriation is made.

(b) The authorized FTE positions for the department of natural resources are increased by 3.0 PR positions to be funded from the appropriation under section 20.370 (4) (bi) of the statutes, for the purpose of providing wetland identification and confirmation services under section 23.321 of the statutes, as affected by this act.

SECTION 145. Initial applicability.

(1) The treatment of section 30.28 (2m) (c), 31.39 (2m) (c), 281.22 (2) (c), and 281.36 (3m), (3n), (3p), (3r), and(12) (a) and (b) of the statutes, the renumbering of section 30.28 (1) of the statutes, and the creation of section 30.28 (1) (a) and (b) of the statutes first apply to applications that are submitted to the department of natural resources on the effective date of this subsection.

(2) The treatment of section 281.36 (14) of the statutes first applies to violations committed on the effective date of this subsection.

SECTION 146. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.

(END)

Godwin, Gigi

From: Gary, Tim
Sent: Tuesday, January 03, 2012 11:33 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-3704/1 Topic: Wetland regulation, mitigation, and fees for DNR permits

Please Jacket LRB 11-3704/1 for the ASSEMBLY.