

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P8dn
MGG:wlj:jm

December 29, 2011

1. I took out the words “and potentially interested” and “as determined by the department” from s. 281.36 (3m) (g) as well as from s. 281.36 (3g) (f). OK?
2. Regarding the new language in s. 281.36 (3n) (a), the requested language did not seem to read right. I think it should read “those practicable alternatives that have an impact on the site of the discharge...” or “those practicable alternatives that are located at the site of the discharge.” I chose the latter concept, but let me know if that is incorrect.
3. Regarding this same language in s. 281.36 (3n) (a), as drafters we try to avoid the use of “existing” in the statutes because it can cause ambiguities. In this case, it is unclear whether the existing facilities or industrial parks are those that are in existence when the bill becomes law or that are in existence at the time an application for an individual permit is submitted. Again, I chose the latter, but let me know if that is incorrect.
4. The language in s. 281.36 (3n) (b) 4. seemed cryptic and needed to be tied to s. 281.36 (3r), since this is the first mention of mitigation in the substantive portion of s. 281.36.
5. The word “may” was inadvertently omitted from the language in s. 281.36 (3n) (c) (intro.). I reviewed the drafting instructions for this provision and it is clear that “may” was to be included in the phrase. I apologize for this oversight.
6. In s. 281.36 (3n) (c) 1., I do not totally understand the intent of the suggested phrase “including alternatives that avoid wetland impacts.” I have rewritten it to, I hope, convey what is intended. If this is not acceptable, **please** call me to discuss this so I can understand the intent of the provision.
7. The moneys coming in from the two revenue-generating provisions in the draft, the in lieu fee program and the collection of surcharge fees, are all going into the same appropriation, with the in lieu fee program revenues going for restoring, enhancing, creating, and preserving wetlands and the surcharge fee revenues going only for restoring and creating wetlands. OK? Because these moneys are going into only one appropriation, DNR can expend the moneys for just one of these purposes and can split the revenues in any combination for both of these purposes. Is this the intent?
8. I changed the public access provisions regarding the surcharge fee provisions and the in lieu fee program to specify that DNR is the entity that may restrict access.

9. I did not make the change requested for s. 281.37 (2m) (a) 1., as renumbered in this draft, to include mitigation banks because that is covered in s. 281.37 (2m) (b) 1., as renumbered in this draft. Please note the other changes that were necessary in s. 281.37 (2m), as renumbered in this draft.

10. Regarding the repeal of s. 281.36 (10), this provision, as it exists in current law, is confusing and may be unnecessary. I have rewritten it in this draft to make it clearer. If you want any changes to this or insist on keeping the language as is, **please** have someone call to explain the intent of the current provision.

11. In reviewing this draft for preparing this redraft, I note that s. 281.37 (3) (d), as renumbered and treated in this draft, is limited to only actual individual mitigation projects as opposed to mitigation in general. See the definition of "mitigation project" in s. 281.37 (1) (b), as renumbered and treated in this draft.

12. I did not make the requested change in s. 281.98 (1) because the draft creates a separate parallel provision regarding penalties in s.281.36. See 281.36 (14). The reference to water quality certification in s. 281.98 (1) needs to remain so that the provision continues to cover water quality certifications that are not applicable to wetlands.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215