

State of Wisconsin
2011 - 2012 LEGISLATURE



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LRB-2803/P+P2

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Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 **AN ACT** *to repeal* 30.2065, 227.01 (13) (rt), 281.36 (1) (am), 281.36 (1) (bg), (c) and
2 (cm), 281.36 (1) (cr), 281.36 (1m), 281.36 (2) (title), 281.36 (2) (b), 281.36 (7),
3 281.36 (8) (title), 281.36 (8) (a), 281.36 (8) (b), 281.36 (8) (bn) 2., 281.36 (8) (c),
4 281.36 (8) (d), 281.36 (8) (e), 281.36 (9) (am) to (c), 281.36 (10), 281.37 (title),
5 281.37 (1) (intro.), 281.37 (1) (a), 281.37 (1) (b), 281.37 (1) (e), 281.37 (1) (f),
6 281.37 (2), 281.37 (3), 281.37 (3m), 281.37 (4) and 281.37 (5); **to renumber and**
7 **amend** 281.36 (2) (a), 281.36 (3), 281.36 (8) (bn) 1., 281.37 (1) (d) and 281.37
8 (2m); **to amend** 30.025 (1b) (b), 30.298 (3), 281.165 (4) (a) 1m., 281.22 (4),
9 281.36 (4) (intro.), 281.36 (4) (b), 281.36 (4) (e) 1., 281.36 (4) (e) 2., 281.36 (4) (e)
10 3., 281.36 (5) (intro.), 281.36 (5) (a), 281.36 (5) (b), 281.36 (6) (title), 281.36 (6)
11 (a) 1., 281.36 (9) (a) (intro.), 281.36 (9) (a) 1., 281.36 (9) (a) 2., 281.36 (9) (a) 3.
12 and 814.04 (intro.); **to repeal and recreate** 281.36 (title); and **to create** 227.01
13 (13) (ru), 281.36 (1) (cp), 281.36 (3g) (title), 281.36 (3g) (b), 281.36 (3g) (c), 281.36
14 (3g) (d), 281.36 (3g) (e), 281.36 (3g) (f), 281.36 (3g) (g), 281.36 (3m), 281.36 (3r),
15 281.36 (3t) and 281.36 (9) (d) and (e) of the statutes; **relating to:** permits for

mapping and delineation
 wetland delineation
 INS REL
 and providing penalties
 and making an appropriation

1 discharges into wetlands, wetland mitigation, and granting rule-making
 2 authority

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

INS 2-3

3 SECTION 1. 30.025 (1b) (b) of the statutes is amended to read:

or individual

4 30.025 (1b) (b) "Permit" means an individual permit, a general permit, an
 5 approval, or a contract required under this subchapter or subch. II, a permit or an
 6 approval required under ch. 31, a storm water discharge permit required under s.
 7 283.33 (1) (a), or ^{plain} ~~water quality certification~~ ~~an individual or general state wetland~~
 8 permit required under s. 281.36 or under rules promulgated under subch. II of ch.
 9 281 to implement 33 USC 1341 (a).

INS 2-9

10 SECTION 2. 30.2065 of the statutes is repealed.

****NOTE: I repealed s. 30.2065. You may well wish to otherwise treat this section but it must be reconciled with the new provisions in s. 281.36. If you do not want to repeal it, please review s. 30.2065 and let me know what provisions you want to retain.

INS 2-10

11 SECTION 3. 30.298 (3) of the statutes is amended to read:

12 30.298 (3) Any person who violates a general permit under s. 30.206 or 30.2065
 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 conviction of the same offense a 2nd or
 15 subsequent time.

INSERT 2-15

16 SECTION 4. 227.01 (13) (rt) of the statutes is repealed.

17 SECTION 5. 227.01 (13) (ru) of the statutes is created to read:

18 227.01 (13) (ru) Is a general ~~state~~ wetland permit issued under s. 281.36

(3g)

1 SECTION 6. 281.165 (4) (a) 1m. of the statutes, as created by 2011 Wisconsin Act
2 6, is amended to read:

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

INSERT 3-5

6 SECTION 7. 281.22 (4) of the statutes is ~~amended to read.~~ ~~(repealed)~~

Please
Fix Comp.

7 281.22 (4) TIME LIMITS. The department shall promulgate a rule to establish
8 time limits for the steps involved in processing, approving, and denying applications
9 for determinations that the department makes as to whether projects comply with
10 the standards of water quality established by rules promulgated under s. 281.15 that
11 are applicable to wetlands ~~other than nonfederal wetlands, as defined in s. 281.36~~
12 (1) (e) that are subject to federal jurisdiction under 33 USC 1344. Upon referral of
13 any proposed rule under this subsection to the presiding officer of each house of the
14 legislature under s. 227.19 (2), the presiding officers shall refer the proposed rule to
15 a senate committee and an assembly committee concerned with the environment.

****NOTE: I realize that the drafting instructions state that s. 281.22 (4) will be repealed. However, until that repeal is included in a later version of this draft, I am just amending s. 281.22 (4) to make it consistent with the rest of this current version of the draft.

16 SECTION 8. 281.36 (title) of the statutes is repealed and recreated to read:

17 **281.36 (title) Permits for discharges into wetlands; wetland mitigation.**

18 SECTION 9. 281.36 (1) (am) of the statutes is repealed.

19 SECTION 10. 281.36 (1) (bg) ~~(b) and (c)~~ ^{is repealed} of the statutes are repealed.

20 SECTION 11. 281.36 (1) (cp) of the statutes is created to read:

INSERT 3-19

21 281.36 (1) (cp) "Practicable alternatives" means alternatives that are available
22 and capable of being implemented after taking into consideration ^e cost, available
23 technology, logistics, siting, and the overall purpose of ^{e the} a discharge.

proximity to the discharge,

1 SECTION 12. 281.36 (1) (cr) of the statutes is repealed.

2 SECTION 13. 281.36 (1m) of the statutes is repealed.

3 SECTION 14. 281.36 (2) (title) of the statutes is repealed.

4 SECTION 15. 281.36 (2) (a) of the statutes is renumbered 281.36 (3b) (b) and

5 amended to read:

or the discharge is exempt under Sub. (4) ✓

6 281.36 (3b) ~~REQUIREMENTS~~ (b) No person may discharge dredged or fill material

7 into a ~~nonfederal~~ wetland unless the discharge is authorized by a ~~water quality~~

8 ~~certification general or individual~~ ~~state~~ wetland permit issued by the department

9 under this section. No person may violate any condition imposed by the department

10 ~~in a water quality certification contained in a general or individual~~ ~~state~~ wetland

11 ~~permit issued by the department~~ under this section. The department may not issue

12 a ~~water quality certification general or individual~~ ~~state~~ wetland permit under this

13 section unless it determines that the discharge authorized pursuant to the general

14 or individual ~~permit~~ ^{wetland} will comply with all applicable water quality standards.

15 SECTION 16. 281.36 (2) (b) of the statutes is repealed.

16 SECTION 17. 281.36 (3) of the statutes is renumbered 281.36 (2m) and amended

17 to read:

18 281.36 (2m) DELINEATION PROCEDURES. For purposes of delineating the

19 boundary of a ~~nonfederal~~ wetland, ~~the department and the person who is applying~~

20 ~~for or who holds a water quality certification under this section shall use~~ for purposes

21 of this section, the procedures contained in the wetlands delineation manual

22 published by the U.S. army corps of engineers shall be used. The edition of the

23 manual that shall be used shall be the 1987 edition of the manual and any document

24 that the U.S. army corps of engineers issues interpreting that manual, unless the

25 U.S. army corps of engineers publishes an edition of the manual after

1 January 9, 2001, and the department by rule designates that edition as the one to
 2 be used under this subsection. If the U.S. army corps of engineers issues a guidance
 3 document interpreting the edition of the wetlands delineation manual that the
 4 department is required to use under this subsection and if that guidance document
 5 is issued after May 8, 2001, the department shall notify the appropriate standing
 6 committee of each house of the legislature, as determined by the speaker of the
 7 assembly and the president of the senate, of the issuance of the guidance document
 8 and whether the department intends to promulgate a rule incorporating the
 9 provisions of the guidance document.

← INS 5-9 ✓

SECTION 18. 281.36 (3g) (title) of the statutes is created to read:

281.36 (3g) (title) GENERAL ⁸ ~~(STATE)~~ WETLAND PERMITS.

INS 5-11A
Com p. 12 + 13

SECTION 19. 281.36 (3g) ^(c) ~~(b)~~ of the statutes is created to read:

281.36 (4) (3g) ^(c) ~~(b)~~ *Additional permits.* The department may issue general ^(c) ~~(b)~~ state
 wetland permits, in addition to those required under ^(c) ~~(a)~~ par. (a), to regulate other
 discharges that affect wetlands located in this state.

SECTION 20. 281.36 (3g) ^(d) ~~(c)~~ of the statutes is created to read:

281.36 (3g) ^(d) ~~(c)~~ *Period of validity; subsequent actions.* A general state wetland
 permit issued under ^(d) ~~(a)~~ par. (a) or (b) ^e ~~(b)~~ *this subsection* is valid for a period of 5 years, and any discharge
 that the department determines is authorized by the general state wetland permit
 remains authorized under that general permit until the discharge is completed
 regardless of whether the general permit expired before the discharge is completed.

The department may renew, modify, or revoke a general ^(d) ~~(c)~~ state wetland permit issued
 under ^(d) ~~(a)~~ ~~(b)~~ *this subsection* upon compliance with the requirements under pars. (d) and (e);
 and until such renewal, modification, or revocation, the general ^(d) ~~(c)~~ permit shall remain
 in effect.

Not Upon compliance with the requirements under pars. ^(d) ~~(e)~~ and (f), the

←

(e)

1 SECTION 21. 281.36 (3g) (d) of the statutes is created to read:

2 281.36 (3g) ^(e) ~~(d)~~ Notice of intent to issue. The department shall circulate to
3 interested and potentially interested members of the public notices of its intention
4 to issue a general ^e state wetland permit under ~~par. (a) or (b)~~ ^e Procedures for providing
5 public notices shall include all of the following: this subsection

6 1. A procedure for publishing a class 1 notice under ch. 985 or ~~circulating the~~ ^e
7 ~~publishing a notice on the department's Internet Web site~~
8 ~~notice by use of an electronic notification system established by the department.~~

9 2. A procedure under which a copy of the notice is provided to any person or
10 group upon request of the person or group.

(f)

11 SECTION 22. 281.36 (3g) (e) of the statutes is created to read:

12 281.36 (3g) ^(f) ~~(e)~~ Request for public hearing. ⁴⁰ The department shall provide an
13 opportunity for any interested state agency or federal agency or person or group of
14 persons to request a public hearing with respect to the department's intention to
15 issue a general ^e state wetland permit under ~~sub (1) (a) or (b)~~ ^e this subsection. Such request for a
16 public hearing shall be filed with the department within 30 days after the circulation
17 of the public notice under par. ~~(d)~~ ^e

****NOTE: The above notice and hearing procedures differ somewhat from those found in ASA 1 to 2011 AB 177. Please review and let me know if you want any changes. Note that the 30-day limit in par. (e) is a time limit for requesting a hearing and not a limit upon when the hearing must be held. OK? Ch. 227 procedures will apply to the hearing process. OK?

INS
6-16

(g)

18 SECTION 23. 281.36 (3g) (f) of the statutes is created to read:

19 281.36 (3g) ^(g) ~~(f)~~ ^(g) Authorizations ⁽¹⁾ ← → wetland ^e Procedures for discharges under general state permits. 1. A
20 person wishing to proceed with a discharge that may be authorized under a general
21 state wetland permit shall apply to the department, with written notification of the
22 person's wish to proceed, not less than 30 days before commencing the discharge
authorized by the general permit. The application shall provide information

← unless subd 5 applies

*** NOTE: Does subd. 4 achieve the desired intent? specified in sub. (11) (a) 10

1 describing the discharge in order to allow the department to determine whether the
2 discharge is authorized by the general state wetland permit and shall give the
3 department consent to enter and inspect the site, subject to sub. (9). The application
4 shall be accompanied by the fee set under ~~sub. (9)~~ ^{INS 7-4} The department may make a request
5 for additional information one time during this 30-day period.

INS 7-3

****NOTE: I did not include the language regarding category-specific alternatives. I did not see how this could be applicable. This language seems more appropriate for individual permits. If you do want to specify what types of information are required to be submitted to assist DNR in determining whether the discharge is covered by a general permit, let me know.

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

13 3. If the department requests additional information under subd. 1., the
14 30-day period is tolled from the date the person applying for authorization to proceed
15 receives the request until the date on which the department receives the additional
16 information.

INSERT 7-16

17 SECTION 24. 281.36 (3g) (h) of the statutes is created to read:
18 281.36 (3g) (g) Individual permit in lieu of general permit. For a proposed
19 discharge for which an application has been submitted under par. (h), the department
20 may decide to require that a person who submitted the application apply for an
21 individual state wetland permit if the department has inspected the site as provided
22 in par. (g) and has determined that conditions specific to the site require additional

(f) 50 Authorization to proceed under a general wetland permit is valid for 5 years after the date on which the discharge is considered to be authorized.

1 restrictions on the discharge in order to provide reasonable assurance that no
2 significant adverse impacts to the functional values of the wetland will occur.

****NOTE: Do you want a provision similar to s. 30.206 (3r), which authorizes a person to apply for an individual permit instead of seeking authorization under a general permit?

I did not change discharge to activity in the above provision because only discharges are regulated under s. 281.36

SECTION 25. 281.36 (3m) of the statutes is created to read:

INS 8-9

(3) WETLAND

4 281.36 (3m) INDIVIDUAL PERMITS. (a) When permit required. Any person

5 wishing to proceed with a discharge into any wetland in this state shall submit an

6 application for an individual state wetland permit under this subsection unless the

7 discharge has been authorized under a general state wetland permit as provided in

8 sub. (3g) or is exempt under sub. (3t) or (4). Before submitting the application, the

9 applicant shall ~~submit~~ ^{discuss and} the department to determine whether an individual state

10 wetland permit is required, whether the discharge may be authorized under a

11 general state wetland permit, or whether the discharge may be exempt under sub.

12 (3t) or (4). An applicant may include in the application a request for a public hearing

13 on the application. The application shall be accompanied by the fee set ^{specified in} under ~~the~~

****NOTE: As drafted, a person will need an individual state permit for a discharge into a "federal wetland" that is subject to a general federal permit. Is that the intent?

****NOTE: I did not know what was the purpose of the preapplication meeting so I took a guess. The statutes need to specify the meeting's purpose.

****NOTE: I did not draft anything about wetland delineation in this provision. Please review the language in s. 281.36 (3), as renumbered in this draft, and let me know if you want anything additional.

sub. (11)
(a)
1

14 (b) Procedure for completing applications. 1. In issuing an individual state

15 wetland permit under this subsection, the department shall initially determine

16 whether a complete application for the individual permit has been submitted and,

17 no later than 30 days after the application is submitted, provide a notice to the

18 applicant in writing about the initial determination of completeness. If the

1 department determines that the application is complete, the department shall issue
2 a notice of complete application within the 30-day period. (INS 9-11)

3 2. If the department determines that the application is incomplete, the
4 department may make one request for additional information within the 30-day
5 period specified under subd. 1. The request shall state the reason for determining
6 the application to be incomplete and the specific items of information necessary to
7 make the application complete. Within 10 days after the receipt of the additional
8 information, the department shall make a determination as to whether the
9 application is complete and shall inform the applicant of that determination. If the
10 application is determined to be incomplete, the department may not act on the
11 application.

****NOTE: The last sentence is necessary to cover the scenario when the application is still not complete after DNR receives the information in response to the one-time request. If the intent is to say the application is considered complete after the submission of the information (and DNR will rely on only the information that has been submitted), this needs to be redrafted.

12 3. Any rules promulgated under s. 299.05 that apply to this subsection apply
13 only to applications for individual (state) wetland permits that the department has
14 determined to be complete. ^{need to be redrafted} by publishing a class 1
notice under ch. 985

15 (c) Notice of complete application. Upon determination by the department that
16 an application submitted under par. (b) is complete, the department shall provide
17 notice of complete application ~~via~~ an electronic notification system established by the
18 ~~department~~ Before providing this notice, the department shall determine whether
19 there is a significant public interest in holding a hearing if the applicant has not
20 requested a public hearing in the application submitted under par. (a). If a public
21 hearing will be held, the notice of complete application shall contain a notice of public
22 hearing and the date of the public hearing. The notice of complete application shall

or by publishing a notice on the department's Internet web site

1 also state that there is a 30-day public comment period as provided in par. (d). The
2 department shall provide the notice within 15 days after making the determination
3 that the application is complete.

****NOTE: Limiting the notice only to an electronic notification system may not be adequate due process. You may wish to model the manner in which notice will be given after the language in ASA 1 to 2011 AB 177.

4 (d) *Public comment.* The department shall provide a period for public comment
5 after the department has provided a notice of complete application under par. (b)(c)
6 during which time any person may submit written comments with respect to the
7 application for an individual state wetland permit. The department shall retain all
8 of the written comments submitted during this period and shall consider all of the
9 comments in rendering a decision on the application. The period for public comment
10 shall end on the 30th day following the date on which the department provides the
11 notice of complete application.

Subsection (3m) (a) to (e)

12 (e) *Decision.* The department shall render a decision on the application within
13 30 days after the date the period for public comment under par. (d) ends unless a
14 public hearing is held. If a hearing is held, the department shall render the decision
15 within 30 days after the date the public hearing is concluded.

MGG: This must be revised to conform it to with s 30.208(4) e
****NOTE: Under s. 30.208 (4) (b) the public comment period goes on after the date the hearing is concluded. The above language differs; OK?

****NOTE: Please review s. 30.208 (4) (d) and the requirements for notices under s. 30.208 (5) (b) and let me know if you want any similar provisions in this bill.

16 (f) *Review for practicable alternatives.* An applicant shall include in an
17 application submitted under par. (1) an analysis a description of practicable alternatives that
18 will minimize and avoid the significant adverse impacts the discharge may cause to
19 the wetland, and to its functional values, and that will not result in any significant
20 adverse environmental consequences. The types of the significant adverse impacts

Not

The alternative analysis shall consider

to be addressed in the application shall consist of primary, secondary, and cumulative impacts to the functional value of the wetlands

the significant

shall

(g) Scope of analysis. The department may limit its analysis of the practicable alternatives presented in the application under par. (f) to those that will have an impact on the site of the discharge and areas that are adjacent to the site if the department determines that all of the following apply:

1. The ~~project~~^{proposed} of which the discharge is a part will result in a demonstrable economic benefit to the public.
2. The wetland is not a rare type of wetland.
3. The wetland is degraded to a great degree.

****NOTE: The fourth point in the instructions seemed circular so I did not include it.

****NOTE: The concept of "adjacent parcels" could be subject to various meanings. "Areas adjacent to the site" is vague, but DNR appears to use this notion of "being adjacent" in NR 103 and 150.

INS 11-11

(h) Requirements for issuance. 1. After conducting its analysis of practicable alternatives, the department shall issue an individual ~~state~~^{state} wetland permit if it determines that the discharge will comply with all of the applicable water quality standards. In determining whether the discharge complies with all of these water quality standards, the department shall ~~consider~~^{require} mitigation under the program established under sub. (3r) for individual ~~state~~^{state} wetland permits it issues under this subsection ~~for discharges into wetlands that are other than those wetlands that are subject to general state wetland permits or to federal general permits issued under 33 USC 1344 (e) that are applicable to wetlands.~~

****NOTE: It is my understanding the federal general permits have their own mitigation requirement. Therefore, although a person must get an individual state wetland permit for a discharge into a "federal wetland" that is subject to a federal general permit (see above), a state mitigation program would be inapplicable because the federal general wetland permit would already require mitigation. Is that correct?

Performing mitigation

1 SECTION 26. 281.36 (3r) of the statutes is created to read:

2 281.36 (3r) MITIGATION. (a) The department shall establish a mitigation ^{Wetland}
3 program ^{that applies only to the issuance of individual permits} that allows mitigation to be accomplished by any of the following: ^{and}

4 ² ~~1~~ Payment of a fee to the department to be used for creating or restoring
5 wetlands, in amount equal to the amount that would be necessary to purchase the
6 required amounts of credits from a wetland ^s mitigation bank. ^{Methods}

7 ¹ ~~2~~ Purchasing credits from a wetlands mitigation bank.

8 ~~3. Restoring or creating wetlands to compensate for adverse impacts to other~~
9 ~~wetlands~~ ^{within 1/2 mile of the site of the discharge}
^{one-half}

10 (b) Under the program, the types of mitigation specified in par. (a) 1. and 2.
11 shall be the preferred types of mitigation. The type of mitigation specified in par. (a)

12 ~~3. shall be limited to on-site creation or restoration of a wetland.~~ ²⁰

13 (c) Under the program, the mitigation procedure specified in par. (a) ~~1~~ shall
14 be approved by the U.S. army corps of engineers.

15 (d) The department shall establish under the program mitigation ratios that
16 are consistent with federal guidelines for wetland mitigation and wetland ^s mitigation
17 banks developed jointly by the department and the U.S. army corps of engineers, but
18 the minimum ratio shall be at least 1.2 acres for each acre affected by the discharge.

19 SECTION 27. 281.36 (3t) of the statutes is created to read:

20 281.36 (3t) STATE EXEMPTIONS. (a) *Applicability.* The permitting requirement
21 under sub. (3b) does not apply if a discharge is into a wetland that is not subject to
22 federal jurisdiction under 33 USC 1344 and if the discharge is part of any of the
23 following:

SECTION # CR; 281.36 (3g) (a)

281.36 (3g) (a) ¹ Required permit ^{Wetland} The department shall issue a general permit for each of the following types of discharges ²

Insert 5-11A begins

This goes top. 5 ->

No. 11 For purposes of this subdivision, the development of a waste disposal site is considered to be a development for industrial purposes.

INS
5-11 A
cont

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

***NOTE: Does this achieve the desired intent? I have omitted discharges that contain hazardous wastes or toxic pollutants.

***NOTE: I changed the wording to make it more consistent with the language found in other state environmental laws. Do you want to incorporate the definition of "hazardous waste" found in s. 289.01 (12) or the definition of "toxic pollutant" found in s. 283.01 (17)?

4 2. A discharge that is temporary in nature, that is part of a construction project,
5 and that is necessary for access to the project and for dewatering at the project, if the
6 discharge does not affect more than 2 acres of wetland.

7 3. A permanent discharge that is part of a utility line project, if the discharge
8 does not affect more than 10,000 square feet of wetland.

9 4. A temporary discharge that is part of a utility line project, if the discharge
10 does not affect more than 2 acres of wetland.

11 5. A discharge that involves the placement of a utility pole, bridge support,
12 ramp surface, or retaining wall, if the discharge does not affect more than 10,000
13 square feet of wetland.

14 6. A discharge that is part of a development for commercial, residential, industrial, agricultural, waste
15 disposal, municipal, or recreational purposes, if the discharge does not affect more
16 than 10,000 square feet of wetland.

End of
INS 5-11 A

17 ~~7. Any other discharge the department exempts by rule.~~

~~***NOTE: For subd. 7 above, do you want any size limit?~~

~~***NOTE: I did not include "renewal of an expired wetland water quality certification" because I could not understand how an exemption would apply to an "expired wetland water quality certification." If you think some language is necessary, please call me to discuss this.~~

18 (b) Exemption determinations. 1. A person may submit to the department a
19 written statement requesting that the department determine whether a proposed

1 discharge is exempt under par. (a). The statement shall contain a description of the
2 proposed discharge and site and shall give the department consent to enter and
3 inspect the site.

4 2. The department shall do all of the following within 15 days after receipt of
5 a statement under subd. 1.:

6 a. Enter and inspect the site on which the discharge is located, subject to sub.
7 (9), if the department determines such an inspection is necessary.

8 b. Make a determination as to whether the discharge is exempt under par. (a).

9 c. Notify in writing the person submitting the statement which general state
10 wetland permit is applicable or whether an individual state wetland permit will be
11 required for the discharge, if the department determines that the discharge is not
12 exempt under par. (a).

13 3. If the department does not take action under subd. 2. within the 15-day
14 limit, the department may not require at any time that the person proposing to
15 engage in the discharge apply for an individual state wetland permit or seek
16 authorization under a general state wetland permit unless required to do so by a
17 court or hearing examiner.

18 4. If a statement under subd. 1. does not give consent to inspect, the 15-day
19 limit under subd. 2. does not apply.

20 (c) *General or individual permit in lieu of exemption.* For a proposed discharge
21 for which a statement has been submitted under par. (b), the department may decide
22 to require that a person who submitted the statement seek authorization under a
23 general state wetland permit or apply for an individual state wetland permit if the
24 department has inspected the site as provided in par. (b) and has determined that
25 conditions specific to the site require additional restrictions on the discharge in order

1 to provide reasonable assurance that no significant adverse impacts to the functional
2 values of the wetland will occur.

3 SECTION 28. 281.36 (4) (intro.) of the statutes is amended to read:

PLAIN

4 281.36 (4) ~~EXEMPTIONS~~ FEDERAL EXEMPTIONS. (intro.) Except as provided in sub.

5 (5), the ~~certification~~ permitting requirement under sub. (2) (3b) does not apply to any

6 discharge into a wetland that is not subject to federal jurisdiction under 33 USC 1344

7 that is the result of any of the following activities:

8 SECTION 29. 281.36 (4) (b) of the statutes is amended to read:

9 281.36 (4) (b) Maintenance, emergency repair, or reconstruction of damaged
10 parts of structures that are in use in a ~~nonfederal~~ wetland.

11 SECTION 30. 281.36 (4) (e) 1. of the statutes is amended to read:

12 281.36 (4) (e) 1. That the flow and circulation patterns and chemical and
13 biological characteristics of the affected ~~nonfederal~~ wetland are not impaired.

14 SECTION 31. 281.36 (4) (e) 2. of the statutes is amended to read:

15 281.36 (4) (e) 2. That the reach of the affected ~~nonfederal~~ wetland is not
16 reduced.

17 SECTION 32. 281.36 (4) (e) 3. of the statutes is amended to read:

18 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the
19 affected ~~nonfederal~~ wetland is minimized to the degree required by the department.

20 SECTION 33. 281.36 (5) (intro.) of the statutes is amended to read:

21 281.36 (5) INAPPLICABILITY OF ~~FEDERAL~~ EXEMPTIONS. (intro.) Notwithstanding
22 sub. (4), a discharge that would be exempt under sub. (4) is subject to the ~~certification~~
23 permitting requirement under sub. (2) (3b) if the discharge is incidental to an activity
24 that has as its purpose bringing a ~~nonfederal~~ wetland, or part of a ~~nonfederal~~

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

3 SECTION 34. 281.36 (5) (a) of the statutes is amended to read:

4 281.36 (5) (a) Impair the flow or circulation of any ~~nonfederal~~ wetland.

5 SECTION 35. 281.36 (5) (b) of the statutes is amended to read:

6 281.36 (5) (b) Reduce the reach of any ~~nonfederal~~ wetland.

7 SECTION 36. 281.36 (6) (title) of the statutes is amended to read:

8 281.36 (6) (title) RULES FOR ~~FEDERAL~~ EXEMPTIONS.

9 SECTION 37. 281.36 (6) (a) 1. of the statutes is amended to read:

10 281.36 (6) (a) 1. Make the rules consistent with existing federal law or
11 interpretation.

12 SECTION 38. 281.36 (7) of the statutes is repealed.

13 SECTION 39. 281.36 (8) (title) of the statutes is repealed.

14 SECTION 40. 281.36 (8) (a) of the statutes is repealed.

15 SECTION 41. 281.36 (8) (b) of the statutes is repealed.

16 SECTION 42. 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (a) and
17 amended to read:

18 281.36 (3g) (a) Required permits. The department shall issue general water
19 quality certifications state wetland permits that are consistent and correspond with
20 all of the federal general permits issued under 33 USC 1344 (e) that applied on
21 January 8, 2001 to nonfederal apply to any of the wetlands located in this state that
22 are subject to federal jurisdiction under 33 USC 1344.

23 SECTION 43. 281.36 (8) (bn) 2. of the statutes is repealed.

24 SECTION 44. 281.36 (8) (c) of the statutes is repealed.

25 SECTION 45. 281.36 (8) (d) of the statutes is repealed.

← INSERT ↓
16-22

1 **SECTION 46.** 281.36 (8) (e) of the statutes is repealed.

2 **SECTION 47.** 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 an
4 individual ~~state~~ wetland permit, whether authorization to proceed as authorized
5 under a general ~~state~~ wetland permit is appropriate, or whether an exemption under
6 sub. ~~(3)~~ or (4) is appropriate, and for purposes of enforcing this section, any employee
7 or other representative of the department, upon presenting his or her credentials,
8 may do any of the following:

9 **SECTION 48.** 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.~~

13 **SECTION 49.** 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 50.** 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 an individual ~~state~~ wetland~~
20 permit or a person acting under the authority of a general ~~state~~ wetland permit is
21 required by the department to keep.

22 **SECTION 51.** 281.36 (9) (am) to (c) of the statutes are repealed.

23 **SECTION 52.** 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. If the entry or inspection involves a general ~~state~~ wetland permit, deny authorization to proceed under the general permit as provided in sub (3g).

****NOTE: Regarding inspection authority under current law, please review the changes in this draft to s. 281.36 (9) and the incorporation of the provisions from s. 30.291.

SECTION 53. 281.36 (10) of the statutes is repealed.

SECTION 54. 281.37 (title) of the statutes is repealed.

SECTION 55. 281.37 (1) (intro.) of the statutes is repealed.

SECTION 56. 281.37 (1) (a) of the statutes is repealed.

~~SECTION 57. 281.37 (1) (b) of the statutes is repealed.~~

SECTION 58. 281.37 (1) (d) of the statutes is renumbered 281.36 (1) ~~(e)~~ and amended to read:

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

SECTION 59. 281.37 (1) (e) of the statutes is repealed.

**** NOTE : This definition is duplicative of the definition found in s. 281.36

SECTION 60. 281.37 (1) (f) of the statutes is repealed.

SECTION 61. 281.37 (2) of the statutes is repealed.

SECTION 62. 281.37 (2m) of the statutes is renumbered 281.36 (8m), and 281.36 (8m) (a) 1. and 2. and (b) 1, as renumbered, ~~and~~ amended to read:

281.36 (8m) (a) 1. A person who is the holder of a an individual state wetland permit or other approval that authorizes a mitigation project of the type specified



INSERT 18-5

INS 18-10

(1)(d)

use 1x → PLAIN

1 ~~under sub (3)(a) 3,~~ shall grant a conservation easement under s. 700.40 to the
2 department to ensure that a wetland that is being restored, enhanced, or created will
3 not be destroyed or substantially degraded by any subsequent proprietor of or holder
4 of interest in the property on which the wetland is located. The department shall
5 revoke the permit ~~or other approval~~ if the holder of the individual permit ~~or other~~
6 ~~approval~~ fails to take these measures.

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

12 (b) 1. The department determines that part or all of the restored, enhanced or
13 created wetland ceases to be a wetland.

INSERT 19-4 ↓

14 SECTION 63. 281.37 (3) ^(j) of the statutes is repealed.

****NOTE: Please review the topics for rules under s. 281.37 (3) and let me know if you want any of this language included.

15 SECTION 64. 281.37 (3m) ↓ of the statutes is repealed.

16 SECTION 65. 281.37 (4) ↓ of the statutes is repealed.

17 ~~SECTION 66. 281.37 (5) of the statutes is repealed.~~

← INS 19-17 ✓

18 SECTION 67. 814.04 (intro.) of the statutes is amended to read:

19 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)

20 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)

21 ~~1,~~ 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),

1 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
2 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

3

(END)

INSERT

20-2

1 23.321 (3) (title) FEES; GENERALLY.

2 SECTION ~~#~~ 23.321 (3) (a) of the statutes is repealed.

3 SECTION ~~#~~ 23.321 (3m) of the statutes is created to read:

4 23.321 (3m) FEES; EXPEDITED SERVICE. The department may charge a

5 supplemental fee for a type of service under sub. (2) that is in addition to the fee

6 charged under sub. (3) if all of the following apply:

7 (a) The applicant requests in writing that the service be provided within a time

8 ~~period~~ ^{STET} that is shorter than the ~~time period~~ ^{limit} specified under sub. (4) for that type of
9 service. ^{STET}

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

11 SECTION ~~#~~ 23.321 (4) (title) of the statutes is created to read:

~~SECTION 23.321(4)(a) is repealed.~~
23.321 (4) (title) TIME LIMITS.

NO B

13 SECTION ~~#~~ 23.321 (5) (title) of the statutes is created to read:

14 23.321 (5) (title) LENGTH OF VALIDITY.

15 SECTION ~~#~~ 23.321 (6) (title) of the statutes is created to read:

16 23.321 (6) (title) INCLUDED ON MAPS.

17 **Insert 2-9**

18 SECTION ~~#~~ 30.2022 (4) of the statutes is amended to read:

19 30.2022 (4) (a) The department of transportation and the department shall
20 exchange information and cooperate in the planning and carrying out of such
21 activities in order to alleviate, to the extent practical under the circumstances, any
22 potential detrimental encroachment on the waters of the state. If such an activity
23 affects a wetland, as defined in s. 23.32 (1), and if the department determines that
24 mitigation is required in order to comply with the environmental protection

1 requirements developed under sub. (3), the department of transportation may
2 accomplish mitigation by any of the methods specified in s. 281.36(a) 1. to 3. (3r) (a)

****NOTE: Please review ^othe all of s. 30.2022 to make sure ~~was~~ the underscored language achieves the desired intent.

3 **Insert 2-10**

4 **SECTION ~~14~~ 30.207 (7) (a)** of the statutes is amended to read:

5 **30.207 (7) (a)** At least 15 days before beginning the activity that is authorized
6 by a general permit under this section the person who wishes to conduct the activity
7 shall submit a notice to the department and shall pay the fee specified in s. 30.28 (2)
8 ~~(b) 2~~ (1) (d). The notice shall describe the activity, state the name of the person that
9 will be conducting the activity and state the site where the activity will be conducted.
10 The notice shall also contain a statement signed by the person conducting the
11 activity that the person will act in conformance with the standards contained in the
12 general permit.

History: 1997 a. 174; 2001 a. 16, 101; 2003 a. 118; 2005 a. 253.

13 **SECTION ~~15~~ 30.28** (title) of the statutes is amended to read:

14 **30.28** (title) **Fees for permits, approvals, and determinations and**
15 **hearings.**

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

16 **SECTION ~~16~~ 30.28** (1) of the statutes is renumbered 30.28 (1) (intro.) and
17 amended to read:

18 **30.28 (1)** ^o(intro.) The department shall charge a ~~permit or approval~~ fee for
19 ~~carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and~~
20 ~~30.21 to 30.27 reviewing, investigating, and making decisions on determinations and~~
21 ~~on whether to issue or grant permits, contracts, or other approvals under this~~
22 ~~subchapter.~~ The ~~permit or approval~~ required fee shall accompany the permit

plain

1 application, ~~notice or request for approval~~ or other submitted documentation. The
2 department shall set these fees by rule except as follows:

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

****NOTE: Broadening of the cross-reference is necessary to include a cross-reference to the general permitting provisions under s. 30.207. However, there may be sections in such. II of ch. 30 that involve the issuance of "approvals" to which you do not want s. 30.28 to apply. If that is the case, this will need redrafting.

3 SECTION ~~17~~. 30.28 (1) (a) of the statutes is created to read:

4 30.28 (1) (a) For an individual permit, the application fee shall be \$600.

5 SECTION ~~18~~. 30.28 (1) (b) of the statutes is created to read:

6 30.28 (1) (b) For authorization to proceed under a general permit issued under
7 s. 30.206, the application fee shall be \$300.

8 SECTION ~~19~~. 30.28 (1m) of the statutes is created to read:

9 30.28 (1m) ADDITIONAL FEES. (a) In addition to the fees required under sub. (1),
10 the department may, by rule, set fees for making any of the following determinations:

11 (a) (1) An identification of an ordinary high-water mark.

12 (b) (2) A determination of navigability.

13 (c) (3) Any other determination that is necessary for reviewing, investigating, ~~or~~
14 making a decision on applications for permits, contracts, or other approvals under
15 this chapter.

16 SECTION ~~20~~. 30.28 (2) (title) of the statutes is repealed.

17 SECTION ~~21~~. 30.28 (2) (a) (intro.) of the statutes is repealed.

18 SECTION ~~22~~. 30.28 (2) (a) 1. of the statutes is repealed.

19 SECTION ~~23~~. 30.28 (2) (a) 2. of the statutes is repealed.

20 SECTION ~~24~~. 30.28 (2) (a) 3. of the statutes is repealed.

21 SECTION ~~25~~. 30.28 (2) (b) 1. of the statutes is renumbered 30.28 (1) (c).

22 SECTION ~~26~~. 30.28 (2) (b) 2. of the statutes is renumbered 30.28 (1) (d).

1 SECTION ~~30.28~~ 30.28 (2m) (a) of the statutes is amended to read:

2 30.28 (2m) (a) The department shall refund a ~~permit or approval fee charged~~
3 under sub. (1) if the applicant requests a refund before the department determines
4 that the application for the permit or approval is complete. ~~Except as provided in par.~~
5 ~~(am), the department may not refund a permit or approval fee after the department~~
6 ~~determines that the application is complete.~~

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

****NOTE: I have stricken the last sentence in s. 30.28 (2m) (a) because it conflicts with s. 299.05, as it stands in current law.

****NOTE: Note that, as drafted, the refund provision in s. 30.28 (2m) (a) does not apply to any fees that may ^{be} set ^{for} determinations under ^{s.} 30.28 (1m). *

7 SECTION ~~30.28~~ 30.28 (2m) (am) of the statutes is amended to read:

8 30.28 (2m) (am) The department shall refund 50% of the fee specified in sub.
9 ~~(2) (b) 1.~~ (1) (c) if the department denies an application for a general permit under
10 s. 30.207 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

11 SECTION ~~30.28~~ 30.28 (2m) (b) of the statutes is amended to read:

12 30.28 (2m) (b) ~~If the applicant applies for a permit, requests an approval, or~~
13 ~~submits a notice under s. 30.207 (7) a person applies for a permit or otherwise seeks~~
14 authorization or gives notice for a project or activity after the project the project or
15 activity is begun or after it is completed, the department shall charge an amount
16 equal to twice the amount of the fee that it would have charged under this section.

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

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

18 SECTION ~~30.28~~ 30.28 (2m) (d) of the statutes is amended to read:

19 30.28 (2m) (d) The department, by rule, may increase any fee specified in sub.
20 (2) (a) that is set by rule under sub. (1) or (1m). The department, by rule, may
21 increase a fee specified in sub. (2) (b) (1) (c) or (d) only if the increase is necessary to

1 meet the costs incurred by the department in acting on general permits or on notices
2 submitted under s. 30.207.

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

****NOTE: ^{The} ~~Note that~~ the authority to increase fees does not apply to the fees
statutorily set under s. 30.28 (1g) (a) and (b).

****NOTE: ^{The} ~~Note~~ provision in s. 30.28 (2m) (d) applies to any fees that may set for
determinations under s. 30.28 (1m). ^{be}
₁

3 ~~SECTION 32~~ 30.28 (2r) (a) (intro.) of the statutes is amended to read:
4 30.28 (2r) (a) (intro.) The department, by rule, may charge a supplemental fee
5 for a permit ~~or, contract, other approval, or determination~~ that is in addition to the
6 fee charged under this section if all of the following apply:

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

7 ~~SECTION 33~~ 30.28 (2r) (a) 1. of the statutes is amended to read:
8 30.28 (2r) (a) 1. The applicant requests in writing that the permit ~~or, approval~~
9 or determination be issued or the contract be granted within a time ^{↓ ↓} ~~period~~ that is
10 shorter than the time limit under the rule promulgated under par. (b) for that type
11 of permit ~~or, contract, approval, or determination~~.

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

12 ~~SECTION 34~~ 30.28 (2r) (b) of the statutes is amended to read:
13 30.28 (2r) (b) If the department promulgates a rule under par. (a), the rule shall
14 contain a time limit for each type of permit ~~or, contract, approval classified under sub-~~
15 (2) (a) [↓] ~~for determining whether the department will grant the permit or approval or~~
16 determination. [↑]

History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

17 **Insert 2-15**
18 ~~SECTION 35~~ 31.39 (2m) (c) [✓] of the statutes is repealed.
19 **Inset 3-5**
20 ~~SECTION 36~~ 281.17 (10) (c) of the statutes is created to read:

1 281.17 (10) (c) This subsection does not apply to discharges of dredged or fill
2 material into wetlands.

 ↓ ****NOTE: The prohibitions found in s. 281.17 (10) (a) and (b) are found in s. 281.36
(3b) (b), as renumbered in this draft. Therefore, the language in s. 281.17 (10) (a) and ((b)
must be treated so that the same prohibitions are not in two places in ch. 281 and subject
to separate penalties.

3 ~~SECTION 31~~ 281.22 (title) of the statutes is renumbered 281.36 (11) (title) and
4 amended to read:

5 281.36 (11) (title) ~~FEES~~ APPLICATION FEES AND TIME LIMITS FOR WATER QUALITY
6 DETERMINATIONS FOR WETLANDS.

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

7 ~~SECTION 33~~ 281.22 (1) of the statutes is repealed.

8 ~~SECTION 34~~ 281.22 (2) (title) of the statutes is renumbered 281.36 (11) (b)
9 (title). ✓

10 ~~SECTION 40~~ 281.22 (2) (a) of the statutes is renumbered 281.36 (11) (b) 1. and
11 amended to read:

12 281.36 (11) (b) 1. The department shall refund the an application fee charged
13 under par. (a) 1. ✓ if the applicant requests a refund before the department determines
14 that the application for the determination is complete. The department may not
15 refund a fee after the department determines that the application is complete.

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

16 ~~SECTION 41~~ 281.22 (2) (b) of the statutes is renumbered 281.36 (11) (b) 2. and
17 amended to read:

18 281.36 (11) (b) 2. If the applicant applies for a permit after the project submits
19 an application for authorization to proceed or for an individual wetland permit after
20 the discharge is begun or after it is completed, the department shall charge an

1 amount equal to twice the amount of the fee that it would have charged under this
2 section.

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

3 SECTION ~~47~~ 281.22 (2) (c) of the statutes is repealed.

4 SECTION ~~48~~ 281.22 (2) (d) of the statutes is repealed.

****NOTE: Since the only wetland application fees are now set by statute, the draft
repeals s. 281.22 (2) (d). OK?

5 SECTION ~~49~~ 281.22 (2m) (title) of the statutes is renumbered 281.36 (11) (c)
6 (title).✓

7 SECTION ~~49~~ 281.22 (2m) (a) (intro.) of the statutes is renumbered 281.36 (11)

8 (c) 1. (intro.) and amended to read:

9 281.36 (11) (c) 1. (intro.) The department, by rule, may charge a supplemental
10 fee for a determination under sub. (1) that is in addition to the fee charged under sub.
11 (1) if all of the following apply:
PAR. (a) - for an individual wetland permit

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

12 SECTION ~~49~~ 281.22 (2m) (a) 1. of the statutes is renumbered 281.36 (11) (c) 1.

13 a. and amended to read:

14 281.36 (11) (c) 1. a. The applicant requests in writing that the determination
15 decision on the application be issued within a time period that is shorter than the
16 time limit promulgated under par. (b) for the determination decision.
Subd. 2.

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

17 SECTION ~~47~~ 281.22 (2m) (a) 2. of the statutes is renumbered 281.36 (11) (c) 1.

18 b. ✓

19 SECTION ~~48~~ 281.22 (2m) (b) of the statutes is renumbered 281.36 (11) (c) 2. and

20 amended to read:

1

281.36 (11) (c) 2. If the department promulgates a rule under ~~par. (a)~~ ^{the} ~~the rule~~ ^{under sub. (1)} ~~the rule~~ ^{Subd. 1.}

2

shall contain ^{subject to} for a time limit for making determinations ~~each type of decision~~ ^(a) under

3

~~sub. (1)~~ on an application for an individual permit

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

4

~~SECTION 31~~ 281.22 (3) of the statutes is renumbered 281.36 (11) (d) and

5

amended to read:

6

281.36 (11) (d) ^{(I) / (No CS)} EXEMPTIONS FROM FEES. Subsections (1), (2) and (2m)

7

Paragraphs (a), (b), and (c) do not apply to any federal agency or state agency.

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

8

Inset 3-19

9

~~SECTION 31~~ 281.36 (1) (bj) of the statutes is created to read:

10

281.36 (1) (bj) "Mitigation" means the restoration, enhancement, or creation

11

of wetlands to compensate for adverse impacts to other wetlands.

12

~~SECTION 31~~ 281.36 (1) (c) and (cm) of the statutes are repealed.

13

Inset 5-9

14

~~SECTION 32~~ 281.36 (3b) (title) of the statutes is created to read:

15

281.36 (3b) (title) PERMIT REQUIRED.

16

~~SECTION 33~~ 281.36 (3b) (a) of the statutes is created to read:

17

281.36 (3b) (a) For purposes of this section, a general or individual wetland

18

permit issued by the department constitutes water quality certification as required

19

by 33 USC 1341 (a).

20

Inset 6-16

21

^(Not) and shall indicate the interest of the party filing the request and the reasons

22

why a hearing is warranted.

23

2. The department shall hold a public hearing upon a request under subd. 1.

24

if the department determines ~~that~~ there is a significant public interest in holding

*** NOTE: The expected service fee only applies to individual permits OK?

1 such a hearing. Hearings held under this ^{Subsection}~~section~~ are not contested cases under s.
2 227.01 (3). ✓

3 3. Public notice of any hearing held under this subsection shall be circulated
4 in accordance with the requirements under par. ^(e)~~(b)~~.

5 **Insert 7-3**

6 ^{Not} The application shall include a detailed explanation of why the impact to the
7 wetland cannot be avoided and how the impact to the wetland will be minimized to
8 the greatest extent possible.

9 **Insert 7-4**

10 ^{Not} If the application is for authorization to proceed under a general ^{Wetland} permit with
11 a discharge that is part of a development for commercial, residential, or industrial
12 purposes, the application shall be accompanied by a restoration surcharge, as
13 calculated under sub. (11) (a) 2. ✓

****NOTE: MGG Awaiting word as to ^{whether} surcharge is submitted with every application
or only required when authorization will be granted.

14 **Insert 7-16**

15 4. As part of a general ^{an additional} wetland permit issued under par. (c), the department
16 may waive the requirement that a person wishing to proceed under the general
17 permit apply to the department as required under this paragraph so that the person
18 may proceed with the discharge without specific authorization from the
19 department. ✓

20 **Insert 8-4**

21 ^{Not} the applicant and the department shall discuss details ^{the} ^{of} the proposed discharge
22 and the requirements for submitting the application and for delineating the wetland.

23 **Insert 9-11**

NOA

1 An applicant may supplement and resubmit an application that the
2 department has determined to be incomplete. There is no limit on the number of
3 times that an applicant may resubmit an application that the department has
4 determined to be incomplete, but the department may not request items of
5 information that are outside the scope of the original request unless the applicant
6 and the department both agree.

7 **Insert 11-11**

8 1. The proposed project of which the discharge will be a part will result in a
9 demonstrable economic benefit to the public.

***NOTE: I left in the phrase "of which the discharge will be a part" because the project needs to be linked to the discharge for which the alternative analysis is being done.

10 2. The wetland to be affected is not rare, uncommon, or imperiled.

11 3. The wetland to be affected is highly disturbed and degraded.

12 **Insert 16-22**

13 SECTION ~~44~~ 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (b) and
14 amended to read:

15 281.36 (3g) (b) Additional required permits. The In addition to the general
16 Wetland permits required under par. (a), the department shall issue general water quality
17 certifications ^{wetland} permits that are consistent with, and correspond to, all of the any
18 general permits that are issued under 33 USC 1344 (e) that applied on
19 January 8, 2001, to nonfederal wetlands located in this state and that regulate
20 discharges other than those regulated under the general ^{required wetland} permits issued under par.
21 (a).

History: 2001 a. 6; 2005 a. 253; s. 35.17 correction in (5) (intro.).

22 **Insert 18-15**

23 SECTION ~~44~~ 281.36 (11) (a) of the statutes is created to read:

1 281.36 (11) (a) *Fees required.* 1. The department shall charge a fee for
 2 reviewing, investigating, and making decisions on applications to proceed under
 3 general wetland permits under sub. (3g) and on applications for individual wetland
 4 permits under sub. (3m). For an authorization to proceed under a general wetland
 5 permit, the application fee shall be \$500. For an individual wetland permit, the
 6 application fee shall be \$800.

7 2. The department shall set a surcharge fee to be charged for each application
 8 to proceed under a general wetland permit that is issued under sub. (3g)(a)1. The surcharge
 9 fee shall be set on an annual basis by the department and may not exceed more than
 10 50 percent of the market price, as determined by the department, for the purchase
 11 of one credit from a wetlands mitigation bank.

***NOTE: MGG need to restructure sub. (3g) (a) 1. general permits

***NOTE: MGG Awaiting word as to surcharge is submitted with every application
 or only required when authorization will be granted.

12 SECTION ~~12~~ 281.36 (12) of the statutes is created to read:

13 281.36 (12) NUISANCES; ABATEMENT. Every violation of this section is declared
 14 to be a public nuisance and may be prohibited by injunction and may be abated by
 15 a legal action brought by any person.

16 SECTION ~~13~~ 281.36 (13) of the statutes is created to read:

17 281.36 (13) PENALTIES. (a) Except as provided in par. (b), any person who
 18 violates any provision of this section shall forfeit not less than \$100 nor more than
 19 \$10,000 for the first offense and shall forfeit not less than \$500 nor more than
 20 \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

21 (b) Any person who violates a general permit issued under sub. (3g) shall forfeit
 22 not less than \$10 nor more than \$500 for the first offense and shall forfeit not less

1 than \$50 nor more than \$500 upon being found in violation of the same offense a 2nd
2 or subsequent time.

3 (c) A violation of any condition contained in a general permit issued under
4 ~~the~~ ^{Sub. (3g)} ~~section~~ is a violation of the statute under which the permit was issued.

5 (d) In addition to the forfeitures specified under pars. (a) and (b), a court may
6 order a defendant to abate any nuisance, restore a natural resource or take, or refrain
7 from taking, any other action as necessary to eliminate or minimize any
8 environmental damage caused by the defendant.

9 **Insert 18-10**

10 SECTION ~~18~~ 281.37 (1) (b) of the statutes is amended to read:

11 281.37 (1) (b) "Mitigation project" means the restoration, enhancement or
12 creation of wetlands to compensate for adverse impacts to other wetlands.

13 "Mitigation project" includes using credits from a wetlands mitigation bank

14 mitigation of the type specified in sub. (3r) (a) 3g.

renumbered 281.36(4)

s. 281.36

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

15 **Insert 19-4**

16 SECTION ~~19~~ 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t) (intro.)

17 and amended to read:

18 281.36 (3t) RULES. (intro.) The department shall promulgate rules to establish

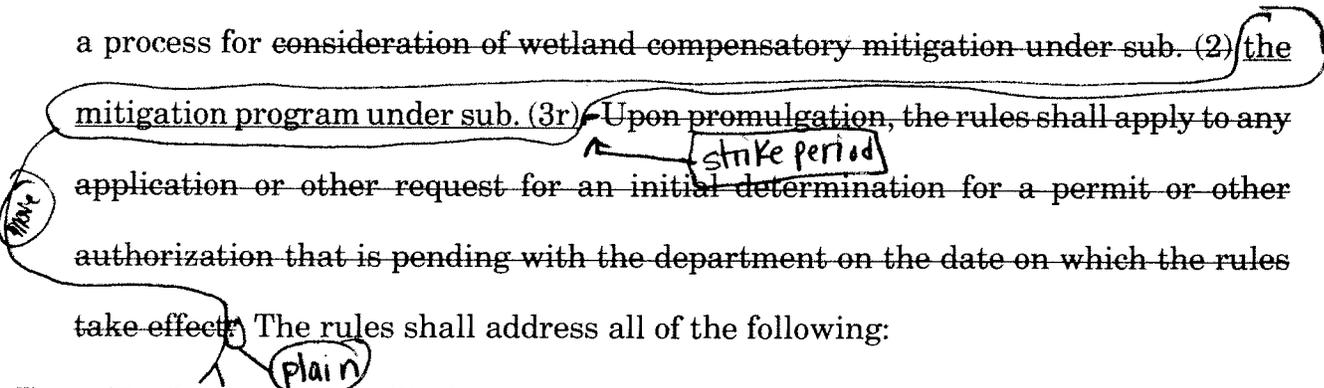
19 a process for consideration of wetland compensatory mitigation under sub. (2) the

20 mitigation program under sub. (3r). Upon promulgation, the rules shall apply to any

21 application or other request for an initial determination for a permit or other

22 authorization that is pending with the department on the date on which the rules

23 take effect. The rules shall address all of the following:



History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

3+

1 SECTION ~~60~~ 281.37 (3) (a) of the statutes is renumbered 281.36 (3⁺) (a) and
2 amended to read:

3 281.36 (3⁺) (a) Requirements for the avoidance and minimization of adverse
4 impacts to the wetland that will be affected by the permitted activity analysis of
5 practicable alternatives that is included in an application for an individual permit
6 under sub.(3m) (f). ^{Wetland}

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

7 SECTION ~~61~~ 281.37 (3) (b) of the statutes is renumbered 281.36 (3t) (b) and
8 amended to read:

9 281.36 (3t) (b) The conditions under which credits in a wetlands mitigation
10 bank may be used for wetland compensatory mitigation purchased to comply with
11 the mitigation program under sub. (3r).

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

12 SECTION ~~62~~ 281.37 (3) (c) of the statutes is renumbered 281.36 (3t) (c) and
13 amended to read:

14 281.36 (3t) (c) Enforcement of a requirement to implement a mitigation project
15 requirements under the mitigation program under sub. (3r). ^{strike extra space}

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

16 SECTION ~~63~~ 281.37 (3) (d) of the statutes is renumbered 281.36 (3t) (d) and
17 amended to read:

18 281.36 (3t) (d) Baseline studies of the wetland wetlands that will be affected
19 by the permitted activity discharges and of the sites for mitigation project site
20 projects. ^{plan}

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

21 SECTION ~~64~~ 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and
22 amended to read:

strike extra spaces

1 281.36 (3t) (e) Plan and project design requirements for a mitigation project
2 projects, which shall consider the relation of the project design to the hydrology of
3 the watershed in which a mitigation project is projects are located.

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

****NOTE: In reviewing s. 281.36 (3t) (d) and (e), not^e that "mitigation project" is
* defined to~~only~~ be mitigation that is not an in lieu fee or a purchase of mitigation credits.

4 SECTION ~~37~~ 281.37 (3) (f) (intro.) of the statutes is renumbered 281.36 (3t) (f)
5 (intro.) and amended to read:

6 281.36 (3t) (f) (intro.) ~~The comparability of a wetland~~ Standards for comparing
7 wetlands that will be restored, enhanced or created to the wetland wetlands that will
8 be adversely affected by the permitted activity discharges, including all of the
9 following:

SECTION AN § 281.37 (3) (f) 1 and 2. ; 281.36 (3t) (f) 1 and 2.

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

10 SECTION ~~37~~ 281.37 (3) (g) of the statutes is repealed.

****NOTE: I repealed this provision because it conflicts with s. 281.36 (3r) (d), which
is created in this draft.

11 SECTION ~~37~~ 281.37 (3) (h) of the statutes is renumbered 281.36 (3t) (h) and
12 amended to read:

13 281.36 (3t) (h) Standards for measuring the short-term and long-term success
14 of a mitigation project projects and requirements for the short-term and long-term
15 monitoring of a mitigation project projects.

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

16 SECTION ~~37~~ 281.37 (3) (i) of the statutes is renumbered 281.36 (3t) (i) and
17 amended to read:

18 281.36 (3t) (i) Remedial actions to be taken by the applicant if a holders of
19 individual wetland permits for mitigation project is projects that are not successful
20 and actions to be taken by a wetlands mitigation bank if a banks for mitigation

strike extra space

strike extra space

1 project on which mitigation credits are based is performed by the mitigation banks
2 ^{are} that not successful.

3 History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

~~SECTION 281.37~~ (j) of the statutes is repealed.

4 **Insert 19-17**

5 ~~SECTION 281.37~~ (5) of the statutes is renumbered 281.36 (14) and amended
6 to read:

7 281.36 (14) REPORT TO LEGISLATURE. No later than January 31, 2003, and no
8 later than January 31 of each subsequent odd-numbered year, the department shall
9 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the
10 impact of the implementation of this section mitigation on wetland resources and on
11 the issuance of permits or other approvals under ss. 59.692, 61.351, 62.231, 87.30,
12 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

13 History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

~~SECTION 281.98~~ (1) of the statutes is amended to read:

14 281.98 (1) Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a),
15 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any
16 rule promulgated or any plan approval, license, special order, or water quality
17 certification issued under this chapter shall forfeit not less than \$10 nor more than
18 \$5,000 for each violation. Each day of continued violation is a separate offense.

19 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

INSERT 20-2

20 History: 1995 a. 227; 1997 a. 27; 1999 a. 147; 2001 a. 6, 109; 2003 a. 309; 2007 a. 227.

~~SECTION 20.37~~ **Nonstatutory provisions.**

21 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department
22 of natural resources are increased by 2.0 PR positions to be funded from the
23 appropriation under section 20.370 (4) (bi) of the statutes ^{for the purpose of providing}

1 ~~for the purpose of implementing~~ ^{to implement} the ~~(compensatory)~~ wetland mitigation program
 2 under ~~s~~ ^{3r of the statutes} 281.36 ~~(*)~~ ^{as} created in this act.

3 Section (2) PROJECT POSITION CHANGES.

4 (a) The authorized FTE positions for the department of natural resources are
 5 decreased by 3.0 ^S PR project position ^A funded from the appropriation under section
 6 20.370 (4) (bi) of the statutes, for the purpose of ~~providing wetland identification and~~ ^{for which the appropriation is made}
 7 ~~confirmation services under section 23.321 of the statutes, as affected by this act.~~

8 (b) The authorized FTE positions for the department of natural resources are
 9 increased by 3.0 PR positions to be funded from the appropriation under section
 10 20.370 (4) (bi) of the statutes, ^{for the purpose of providing} wetland identification and confirmation services under
 11 section 23.321 of the statutes, as affected by this act.

12 SECTION ~~13~~ Effective date.

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