



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2803/P2/P3

MGG:wlj/f

D-Note

Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Handwritten notes:*  
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**AN ACT** *to repeal* 23.321 (2) (a), 23.321 (3) (a), 30.2065, 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), 227.01 (13) (rt), 281.22 (1), 281.22 (2) (c), 281.22 (2) (d), 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), 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 (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) (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) (intro.), 281.37 (3) (h), 281.37 (3) (i) and 281.37 (5); **to amend** 20.370 (4) (bi), 23.321 (title),

1 30.025 (1b) (b), 30.2022 (4), 30.207 (7) (a), 30.28 (title), 30.28 (2m) (a), 30.28 (2m)  
 2 (am), 30.28 (2m) (b), 30.28 (2m) (d), 30.28 (2r) (a) (intro.), 30.28 (2r) (a) 1., 30.28  
 3 (2r) (b), 30.298 (3), 281.165 (4) (a) 1m., 281.36 (4) (intro.), 281.36 (4) (b), 281.36  
 4 (4) (e) 1., 281.36 (4) (e) 2., 281.36 (4) (e) 3., 281.36 (5) (intro.), 281.36 (5) (a),  
 5 281.36 (5) (b), 281.36 (6) (a) 1., 281.36 (9) (a) (intro.), 281.36 (9) (a) 1., 281.36 (9)  
 6 (a) 2., 281.36 (9) (a) 3., 281.37 (1) (b), 281.98 (1) and 814.04 (intro.); **to repeal**  
 7 **and recreate** 281.36 (title); and **to create** 23.321 (1) (title), 23.321 (2) (title),  
 8 23.321 (2m) (title), 23.321 (3) (title), 23.321 (3m), 23.321 (4) (title), 23.321 (5)  
 9 (title), 23.321 (6) (title), 30.28 (1) (a), 30.28 (1) (b), 30.28 (1m), 227.01 (13) (ru),  
 10 281.17 (10) (c), 281.36 (1) (bj), 281.36 (1) (cp), 281.36 (3b) (title), 281.36 (3b) (a),  
 11 281.36 (3g) (title), 281.36 (3g) (a), 281.36 (3g) (c), 281.36 (3g) (d), 281.36 (3g) (e),  
 12 281.36 (3g) (f), 281.36 (3g) (g), 281.36 (3g) (h), 281.36 (3m), 281.36 (3r), 281.36  
 13 (9) (d) and (e), 281.36 (11) (a), 281.36 (12) and 281.36 (13) of the statutes;  
 14 **relating to:** permits for discharges into wetlands; ~~wetland~~ <sup>W</sup>mitigation; wetland  
 15 mapping and delineation; fees for permits and other authorizations or  
 16 determinations by the Department of Natural Resources relating to structures,  
 17 deposits, and other activities in or near navigable waters; granting  
 18 rule-making authority; ~~and~~ making an appropriation <sup>and providing</sup> penalties

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***Analysis by the Legislative Reference Bureau***

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

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

19 **SECTION 1.** 20.370 (4) (bi) of the statutes is amended to read:

1           20.370 (4) (bi) *Water regulation and zoning — fees.* From the general fund, all  
 2           moneys received under ss. 23.32 (3), 23.321, 30.28, 31.39, and ~~281.22~~ 281.36 (11) for  
 3           activities relating to permits and <sup>other</sup> approvals issued under s. 281.36 and chs. 30 and  
 4           31, <sup>activities relating to</sup> for water quality standards under subch. II of ch. 281, and for wetland mapping  
 5           under s. 23.32 and wetlands services under s. 23.321.

6           **SECTION 2.** 23.321 (title) of the statutes is amended to read:

7           **23.321 (title) Wetland map review, identification, and confirmation.**

8           **SECTION 3.** 23.321 (1) (title) of the statutes is created to read:

9           23.321 (1) (title) DEFINITION.

10          **SECTION 4.** 23.321 (2) (title) of the statutes is created to read:

11          23.321 (2) (title) TYPES OF SERVICES.

12          **SECTION 5.** 23.321 (2) (a) of the statutes is repealed.

13          **SECTION 6.** 23.321 (2m) (title) of the statutes is created to read:

14          23.321 (2m) (title) MEMORANDUM OF AGREEMENT.

15          **SECTION 7.** 23.321 (3) (title) of the statutes is created to read:

16          23.321 (3) (title) FEES; GENERALLY.

17          **SECTION 8.** 23.321 (3) (a) of the statutes is repealed.

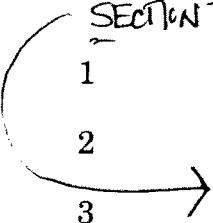
18          **SECTION 9.** 23.321 (3m) of the statutes is created to read:

19          23.321 (3m) FEES; EXPEDITED SERVICE. The department may charge a  
 20          supplemental fee for a type of service under sub. (2) that is in addition to the fee  
 21          charged under sub. (3) if all of the following apply:

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

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

SECTION # RP; 23.321 (4) (a) 1.



1 SECTION 10. 23.321 (4) (title) of the statutes is created to read:

2 23.321 (4) (title) TIME LIMITS.

3 SECTION 11. 23.321 (5) (title) of the statutes is created to read:

4 23.321 (5) (title) LENGTH OF VALIDITY.

5 SECTION 12. 23.321 (6) (title) of the statutes is created to read:

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

7 SECTION 13. 30.025 (1b) (b) of the statutes is amended to read:

8 30.025 (1b) (b) "Permit" means an individual permit, a general permit, an  
9 approval, or a contract required under this subchapter or subch. II, a permit or an  
10 approval required under ch. 31, a storm water discharge permit required under s.  
11 283.33 (1) (a), or a ~~water quality certification~~ general or individual wetland permit  
12 required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to  
13 implement 33 USC 1341 (a).

14 SECTION 14. 30.2022 (4) of the statutes is amended to read:

15 30.2022 (4) (a) The department of transportation and the department shall  
16 exchange information and cooperate in the planning and carrying out of such  
17 activities in order to alleviate, to the extent practical under the circumstances, any  
18 potential detrimental encroachment on the waters of the state. If such an activity  
19 affects a wetland, as defined in s. 23.32 (1), and if the department determines that  
20 mitigation is required in order to comply with the environmental protection  
21 requirements developed under sub. (3), the department of transportation may  
22 accomplish mitigation by any of the methods specified in s. 281.36 (3r) (a) 1. to 3.

\*\*\*\*NOTE: Please review all of s. 30.2022 to make sure the underscored language achieves the desired intent.

23 SECTION 15. 30.2065 of the statutes is repealed.

1 SECTION 16. 30.207 (7) (a) of the statutes is amended to read:

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

10 SECTION 17. 30.28 (title) of the statutes is amended to read:

11 30.28 (title) Fees for permits, <sup>(B) → other</sup> approvals, and determinations and  
12 hearings.

13 SECTION 18. 30.28 (1) of the statutes is renumbered 30.28 (1) (intro.) and  
14 amended to read:

15 30.28 (1) (intro.) The department shall charge a ~~permit or approval~~ fee for  
16 ~~carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and~~  
17 ~~30.21 to 30.27 reviewing, investigating, and making decisions on determinations and~~  
18 ~~on whether to issue or grant permits, contracts,~~ <sup>authorizations</sup> ~~or other approvals under this~~  
19 ~~subchapter.~~ The ~~permit or approval~~ required fee shall accompany the ~~permit~~  
20 ~~application, notice or request for approval or other submitted documentation.~~ The  
21 department shall set these fees by rule except as follows:

\*\*\*NOTE: Broadening of the cross-reference is <sup>30.206</sup> 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.

22 SECTION 19. 30.28 (1) (a) of the statutes is created to read:

23 30.28 (1) (a) For an individual permit, the application fee shall be \$600.

<sup>under s. 30.208</sup>  
issued

1 SECTION 20. 30.28 (1) (b) of the statutes is created to read:

2 30.28 (1) (b) For authorization to proceed under a general permit issued under  
3 s. 30.206, the application fee shall be \$300.

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

5 30.28 (1m) ADDITIONAL FEES. In addition to the fees required under sub. (1), the  
6 department may, by rule, set fees for making any of the following determinations:

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

8 (b) A determination of navigability.

*authorizations, ^*

9 (c) Any other determination that is necessary for reviewing, investigating, or  
10 making a decision on applications for permits, contracts, or other approvals under  
11 this chapter.

12 SECTION 22. 30.28 (2) (title) of the statutes is repealed.

13 SECTION 23. 30.28 (2) (a) (intro.) of the statutes is repealed.

14 SECTION 24. 30.28 (2) (a) 1. of the statutes is repealed.

15 SECTION 25. 30.28 (2) (a) 2. of the statutes is repealed.

16 SECTION 26. 30.28 (2) (a) 3. of the statutes is repealed.

17 SECTION 27. 30.28 (2) (b) ~~1~~ of the statutes is renumbered 30.28 (1) (c).

18 SECTION 28. 30.28 (2) (b) 2. of the statutes is renumbered 30.28 (1) (d).

19 SECTION 29. 30.28 (2m) (a) of the statutes is amended to read:

20 30.28 (2m) (a) The department shall refund a ~~permit or approval fee~~ charged  
21 under sub. (1) if the applicant requests a refund before the department determines  
22 that the application for the permit or approval is complete. Except as provided in par.

23 (am), the department may not refund a permit or approval fee after the department  
24 determines that the application is complete. *ST*

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~~\*\*\*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).

*or to the general permit fee under s. 30.28(1)(b)*

1       **SECTION 30.** 30.28 (2m) (am) of the statutes is amended to read:  
2       30.28 **(2m)** (am) The department shall refund 50% of the fee specified in sub.  
3       (2) ~~(b)~~ 1. (1) (c) if the department denies an application for a general permit under  
4       s. 30.207 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

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

6       30.28 **(2m)** (b) ~~If the applicant applies for a permit, requests an approval, or~~  
7       ~~submits a notice under s. 30.207 (7) a person applies for a permit or otherwise seeks~~  
8       authorization or gives notice for a project or activity after the project or activity is  
9       begun or after it is completed, the department shall charge an amount equal to twice  
10      the amount of the fee that it would have charged under this section.

11      **SECTION 32.** 30.28 (2m) (c) of the statutes is repealed.

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

13      30.28 **(2m)** (d) The department, by rule, may increase any fee ~~specified in sub.~~  
14      ~~(2) (a)~~ that is set by rule under sub. (1) or (1m). The department, by rule, may  
15      increase a fee specified in sub. ~~(2) (b)~~ (1) (c) or (d) only if the increase is necessary to  
16      meet the costs incurred by the department in acting on general permits or on notices  
17      submitted under s. 30.207.

\*\*\*\*NOTE: The authority to increase fees does not apply to the fees statutorily set under s. 30.28 (1m) (a) and (b).

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

18      **SECTION 34.** 30.28 (2r) (a) (intro.) of the statutes is amended to read:

authorization

1 30.28 (2r) (a) (intro.) The department, by rule, may charge a supplemental fee  
2 for a permit ~~or, contract, other approval, or determination~~ that is in addition to the  
3 fee charged under this section if all of the following apply:

4 SECTION 35. 30.28 (2r) (a) 1. of the statutes is amended to read:

5 30.28 (2r) (a) 1. The applicant requests in writing that the permit ~~or, approval~~  
6 authorization ~~or determination~~ be issued ~~or the contract be granted~~ within a time period that is  
7 shorter than the time limit under the rule promulgated under par. (b) for that type  
8 of permit ~~or, contract, approval, or determination~~. authorization

plain text

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

10 30.28 (2r) (b) If the department promulgates a rule under par. (a), the rule shall  
11 contain a time limit for each type of permit ~~or, contract, approval~~ authorization classified under sub.  
12 (2) (a) for determining whether the department will grant the permit ~~or approval, or~~  
13 determination.

14 SECTION 37. 30.298 (3) of the statutes is amended to read:

15 30.298 (3) Any person who violates a general permit under s. 30.206 ~~or 30.2065~~  
16 shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit  
17 not less than \$50 nor more than \$500 upon conviction of the same offense a 2nd or  
18 subsequent time.

19 SECTION 38. 31.39 (2m) (c) of the statutes is repealed.

20 SECTION 39. 227.01 (13) (rt) of the statutes is repealed.

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

22 227.01 (13) (ru) Is a general wetland permit issued under s. 281.36 (3g).

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



1           281.165 (4) (a) 1m. The wetland area is ~~a nonfederal wetland, as defined in s.~~  
2           ~~281.36 (1) (e)~~ not subject to federal jurisdiction under 33 USC 1344, and the activity  
3           will affect less than 3 acres of that wetland area.

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

5           281.17 (10) (c) This subsection does not apply to discharges of dredged or fill  
6           material into wetlands.

*under current law*

      \*\*\*\*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.

7           **SECTION 43.** 281.22 (title) of the statutes is renumbered 281.36 (11) (title) and  
8           amended to read:

9           281.36 (11) (title) ~~FEES APPLICATION FEES AND TIME LIMITS FOR WATER QUALITY~~  
10          ~~DETERMINATIONS FOR WETLANDS.~~

*unless required to do so under  
a rule promulgated under s. 299.05*

11          **SECTION 44.** 281.22 (1) of the statutes is repealed.

12          **SECTION 45.** 281.22 (2) (title) of the statutes is renumbered 281.36 (11) (b)  
13          (title).

14          **SECTION 46.** 281.22 (2) (a) of the statutes is renumbered 281.36 (11) (b) 1. and  
15          amended to read:

16          281.36 (11) (b) 1. The department shall refund ~~the~~ an application fee charged  
17          *for an individual wetland permit*  
18          under par. (a) 1. if the applicant requests a refund before the department determines  
19          that the application ~~for the determination~~ is complete. The department may not  
20          refund a fee after the department determines that the application is complete.

21          **SECTION 47.** 281.22 (2) (b) of the statutes is renumbered 281.36 (11) (b) 2. and  
22          amended to read:

23          281.36 (11) (b) 2. If the applicant ~~applies for a permit after the project~~ submits  
an application for authorization to proceed or for an individual wetland permit after

      \*\*\* NOTE: As drafted, s. 281.36(11)(b)1, applies  
only to individual permits.

1 the discharge is begun or after it is completed, the department shall charge an  
2 amount equal to twice the amount of the fee that it would have charged under this  
3 section.

4 **SECTION 48.** 281.22 (2) (c) of the statutes is repealed.

5 **SECTION 49.** 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?

6 **SECTION 50.** 281.22 (2m) (title) of the statutes is renumbered 281.36 (11) (c)  
7 (title).

8 **SECTION 51.** 281.22 (2m) (a) (intro.) of the statutes is renumbered 281.36 (11)  
9 (c) 1. (intro.) and amended to read:

10 281.36 (11) (c) 1. (intro.) The department, by rule, may charge a supplemental

11 fee for a determination under sub. (1) that is in addition to the <sup>a</sup> fee charged under sub. ~~7~~ \*

12 ~~(1)~~ <sup>↓</sup> ~~if~~ if all of the following apply:

13 **SECTION 52.** 281.22 (2m) (a) 1. of the statutes is renumbered 281.36 (11) (c) 1.

14 a. and amended to read:

15 281.36 (11) (c) 1. a. The applicant requests in writing that the determination  
16 decision on the application be issued within a time period <sup>plan</sup> that is shorter than the  
17 time limit promulgated under ~~par. (b)~~ subd. 2. for the determination decision.

18 **SECTION 53.** 281.22 (2m) (a) 2. of the statutes is renumbered 281.36 (11) (c) 1.

19 b.

20 **SECTION 54.** 281.22 (2m) (b) of the statutes is renumbered 281.36 (11) (c) 2. and  
21 amended to read:

1           281.36 (11) (c) 2. If the department promulgates a rule under par. (a) subd. 1.,  
2           the rule shall contain for a time limit for making determinations each type of decision  
3           under sub. (1). decisions subject to the fee

4           **SECTION 55.** 281.22 (3) of the statutes is renumbered 281.36 (11) (d) and  
5           amended to read:

6           281.36 (11) (d) *Exemptions from fees.* Subsections (1), (2) and (2m) Paragraphs  
7           (a), (b), and (c) do not apply to any federal agency or state agency.

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

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

10          **281.36 (title) Permits for discharges into wetlands; wetland mitigation.**

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

12          **SECTION 59.** 281.36 (1) (bg) of the statutes is repealed.

13          **SECTION 60.** 281.36 (1) (bj) of the statutes is created to read:

14          281.36 (1) (bj) "Mitigation" means the restoration, enhancement, or creation  
15          of wetlands to compensate for adverse impacts to other wetlands.

16          **SECTION 61.** 281.36 (1) (c) and (cm) of the statutes are repealed.

17          **SECTION 62.** 281.36 (1) (cp) of the statutes is created to read:

18          281.36 (1) (cp) "Practicable alternatives" means alternatives that are available  
19          and capable of being implemented after taking into consideration cost, available  
20          technology, logistics, proximity to the discharge, and the overall purpose of the  
21          discharge.

22          **SECTION 63.** 281.36 (1) (cr) of the statutes is repealed.

23          **SECTION 64.** 281.36 (1m) of the statutes is repealed.

24          **SECTION 65.** 281.36 (2) (title) of the statutes is repealed.

1           **SECTION 66.** 281.36 (2) (a) of the statutes is renumbered 281.36 (3b) (b) and  
2 amended to read:

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

13           **SECTION 67.** 281.36 (2) (b) of the statutes is repealed.

14           **SECTION 68.** 281.36 (3) of the statutes is renumbered 281.36 (2m) and amended  
15 to read:

16           281.36 **(2m)** DELINEATION PROCEDURES. For purposes of delineating the  
17 boundary of a ~~nonfederal~~ wetland, ~~the department and the person who is applying~~  
18 ~~for or who holds a water quality certification under this section shall use for purposes~~  
19 of this section, the procedures contained in the wetlands delineation manual  
20 published by the U.S. army corps of engineers shall be used. The edition of the  
21 manual that shall be used shall be the 1987 edition of the manual and any document  
22 that the U.S. army corps of engineers issues interpreting that manual, unless the  
23 U.S. army corps of engineers publishes an edition of the manual after  
24 January 9, 2001, and the department by rule designates that edition as the one to  
25 be used under this subsection. If the U.S. army corps of engineers issues a guidance

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

8 **SECTION 69.** 281.36 (3b) (title) of the statutes is created to read:

9 281.36 (3b) (title) PERMIT REQUIRED.

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

11 281.36 (3b) (a) For purposes of this section, a general or individual wetland  
12 permit issued by the department constitutes water quality certification as required  
13 by 33 USC 1341 (a).

14 **SECTION 71.** 281.36 (3g) (title) of the statutes is created to read:

15 281.36 (3g) (title) GENERAL WETLAND PERMITS.

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

17 281.36 (3g) (a) *Required permits.* The department shall issue a general  
18 wetland permit for each of the following types of discharges:

19 1. A discharge that is necessary for the treatment or disposal of hazardous  
20 waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic  
21 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)?

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

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

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

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

11 6. A discharge that is part of a development for commercial, residential,  
12 <sup>or</sup> industrial, agricultural, municipal, or recreational purposes, if the discharge does  
13 not affect more than 10,000 square feet of wetland. For purposes of this subdivision,  
14 the development of a waste disposal site is considered to be a development for  
15 individual purposes.

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

17 281.36 (4) (3g) (c) *Additional permits.* The department may issue general  
18 wetland permits, in addition to those required under pars. (a) and (b), to regulate  
19 other discharges that affect wetlands located in this state.

20 SECTION 74. 281.36 (3g) (d) of the statutes is created to read:

21 281.36 (3g) (d) *Period of validity; subsequent actions.* A general wetland permit  
22 issued under this subsection is valid for a period of 5 years. Upon compliance with  
23 the requirements under pars. (e) and (f), the department may renew, modify, or  
24 revoke a general wetland permit issued under this subsection, and until such  
25 renewal, modification, or revocation, the general permit shall remain in effect.

feet of wetlands

Ⓣ To A discharge that is part of a development for agricultural, municipal, or recreational purposes, if the discharge does not affect more than 10,000 square

1           **SECTION 75.** 281.36 (3g) (e) of the statutes is created to read:

2           281.36 **(3g)** (e) *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 wetland permit under this subsection. Procedures for providing  
5 public notices shall include all of the following:

6           1. A procedure for publishing a class 1 notice under ch. 985 or publishing a  
7 notice on the department's Internet Web site.

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

10          **SECTION 76.** 281.36 (3g) (f) of the statutes is created to read:

11          281.36 **(3g)** (f) *Public hearing.* 1. The department shall provide an opportunity  
12 for any interested state agency or federal agency or person or group of persons to  
13 request a public hearing with respect to the department's intention to issue a general  
14 wetland permit under this subsection. Such request for a public hearing shall be  
15 filed with the department within 30 days after the circulation of the public notice  
16 under par. (e) and shall indicate the interest of the party filing the request and the  
17 reasons why a hearing is warranted.

18          2. The department shall hold a public hearing upon a request under subd. 1.  
19 if the department determines that there is a significant public interest in holding  
20 such a hearing. Hearings held under this subsection are not contested cases under  
21 s. 227.01 (3).

22          3. Public notice of any hearing held under this subsection shall be circulated  
23 in accordance with the requirements under par. (e).

24          **SECTION 77.** 281.36 (3g) (g) of the statutes is created to read:

1           281.36 (3g) (g) *Authorizations for discharges under general wetland permits.*

2           1. A person wishing to proceed with a discharge that may be authorized under a  
3           general wetland permit shall apply to the department, with written notification of  
4           the person's wish to proceed, not less than 30 days before commencing the discharge  
5           authorized by the general permit unless subd. 5. applies. The application shall  
6           provide information describing the discharge in order to allow the department to  
7           determine whether the discharge is authorized by the general wetland permit and  
8           shall give the department consent to enter and inspect the site, subject to sub. (9).  
9           The application shall include a detailed explanation of why the impact to the wetland  
10          cannot be avoided and how the impact to the wetland will be minimized to the  
11          greatest extent possible. The application shall be accompanied by the fee specified  
12          in sub. (11) (a) 1. If the application is for authorization to proceed under a general  
13          wetland permit with a discharge that is part of a development for commercial,  
14          residential, or industrial purposes, the application shall be accompanied by a  
15          restoration surcharge, as calculated under sub. (11) (a) 2. The department may make  
16          a request for additional information one time during this 30-day period.

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

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



1           3. If the department requests additional information under subd. 1., the  
2 30-day period is tolled from the date the person applying for authorization to proceed  
3 receives the request until the date on which the department receives the additional  
4 information.

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

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

\*\*\*\*NOTE: Does subd. 5. achieve the desired intent?

12           **SECTION 78.** 281.36 (3g) (h) of the statutes is created to read:

13           281.36 (3g) (h) *Individual wetland permit in lieu of general wetland permit.*

14 For a proposed discharge for which an application has been submitted under par. (g),  
15 the department may decide to require that a person who submitted the application  
16 apply for an individual wetland permit if the department has inspected the site as  
17 provided in par. (g) and has determined that conditions specific to the site require  
18 additional restrictions on the discharge in order to provide reasonable assurance  
19 that no significant adverse impacts to the functional values of the wetland will occur.

Keep this Note → [ \*\*\*\*NOTE: I did not change "discharge" to "activity" in the above provision because only discharges are regulated under s. 281.36.

20           **SECTION 79.** 281.36 (3m) of the statutes is created to read:

21           281.36 (3m) **INDIVIDUAL WETLAND PERMITS.** (a) *When permit required.* Any  
22 person wishing to proceed with a discharge into any wetland shall submit an  
23 application for an individual wetland permit under this subsection unless the

1 discharge has been authorized under a general wetland permit as provided in sub.  
2 (3g) or is exempt under sub. (4). Before submitting the application, the applicant and  
3 the department shall discuss the details of the proposed discharge and the  
4 requirements for submitting the application and for delineating the wetland. An  
5 applicant may include in the application a request for a public hearing. The  
6 application shall be accompanied by the <sup>applicable</sup> fee specified in sub. (11) (a) ~~1~~

7 (b) *Procedure for completing applications.* 1. In issuing an individual wetland  
8 permit under this subsection, the department shall initially determine whether a  
9 complete application for the individual permit has been submitted and, no later than  
10 30 days after the application is submitted, provide a notice to the applicant in writing  
11 about the initial determination of completeness. If the department determines that  
12 the application is complete, the department shall issue a notice of complete  
13 application within the 30-day period.

14 2. If the department determines that the application is incomplete, the  
15 department may make one request for additional information within the 30-day  
16 period specified under subd. 1. The request shall state the reason for determining  
17 the application to be incomplete and the specific items of information necessary to  
18 make the application complete. Within 10 days after the receipt of the additional  
19 information, the department shall make a determination as to whether the  
20 application is complete and shall inform the applicant of that determination. An  
21 applicant may supplement and resubmit an application that the department has  
22 determined to be incomplete. There is no limit on the number of times that an  
23 applicant may resubmit an application that the department has determined to be  
24 incomplete, but the department may not request items of information that are

1 outside the scope of the original request unless the applicant and the department  
2 both agree.

3 3. Any rules promulgated under s. 299.05 that apply to this subsection apply  
4 only to applications for individual wetland permits that the department has  
5 determined to be complete.

\*\*\*\*NOTE: MGG: Subd. 3. needs to be revisited.

6 (c) *Notice of complete application.* Upon determination by the department that  
7 an application submitted under par. (b) is complete, the department shall provide  
8 notice of complete application by publishing a Class I notice under ch. 985 or by  
9 publishing a notice on the department's Internet Web site. Before providing this  
10 notice, the department shall determine whether there is a significant public interest  
11 in holding a hearing if the applicant has not requested a public hearing in the  
12 application submitted under par. (a). If a public hearing will be held, the notice of  
13 complete application shall contain a notice of public hearing and the date of the  
14 public hearing. The notice of complete application shall also state that there is a  
15 30-day public comment period as provided in par. (d). The department shall provide  
16 the notice within 15 days after making the determination that the application is  
17 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.

18 (d) *Public comment.* The department shall provide a period for public comment  
19 after the department has provided a notice of complete application under par. (c)  
20 during which time any person may submit written comments with respect to the  
21 application for an individual wetland permit. The department shall retain all of the  
22 written comments submitted during this period and shall consider all of the

1 comments in rendering a decision on the application. The period for public comment  
2 shall end on the 30th day following the date on which the department provides the  
3 notice of complete application.

4 (e) *Decision.* The department shall render a decision on the application within  
5 30 days after the date the period for public comment under par. (d) ends unless a  
6 public hearing is held. If a hearing is held, the department shall render the decision  
7 within 30 days after the date the public hearing is concluded.

\*\*\*\*NOTE: MGG: Subsection (3m) (a) to (e) must be revised to conform it to s. 30.208  
(4).

8

I → of

9

10

(f) *Review for practicable alternatives.* An applicant shall include in an  
application submitted <sup>or resubmitted</sup> (under ~~par. (d)~~) an analysis of the practicable alternatives that  
<sup>(this subsection)</sup> will minimize and avoid the significant adverse impacts <sup>to</sup> the functional values of  
the wetland, and that will not result in any significant adverse environmental  
consequences. The alternative analysis shall consider the significant primary,  
secondary, and cumulative impacts to the functional value of the wetlands.

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

18 1. The proposed project of which the discharge will be a part will result in a  
19 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.

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

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

1 (h) *Requirements for issuance.* 1. After conducting its analysis of practicable  
2 alternatives, the department shall issue an individual wetland permit if it  
3 determines that the discharge will comply with all of the applicable water quality  
4 standards. In determining whether the discharge complies with all of these water  
5 quality standards, the department shall require mitigation under the program  
6 established under sub. (3r) for individual wetland permits it issues under this  
7 subsection.

8 **SECTION 80.** 281.36 (3r) of the statutes is created to read:

9 281.36 (3r) MITIGATION. (a) The department shall establish a mitigation  
10 program that applies only to the issuance of individual wetland permits and that  
11 allows mitigation to be accomplished by any of the following methods:

- 12 1. Purchasing credits from a wetlands mitigation bank.
- 13 2. Payment of a fee to the department to be used for creating or restoring  
14 wetlands, in amount equal to the amount that would be necessary to purchase the  
15 required amounts of credits from a wetlands mitigation bank.
- 16 3. Performing mitigation within one-half mile of the site of the discharge.

17 (b) Under the program, the types of mitigation specified in par. (a) 1. and 2.  
18 shall be the preferred types of mitigation.

19 (d) Under the program, the <sup>type of</sup> mitigation procedure specified in par. (a) 2. shall  
20 be approved by the U.S. army corps of engineers.

21 (e) The department shall establish under the program mitigation ratios that  
22 are consistent with federal guidelines for wetlands mitigation and wetlands  
23 mitigation banks developed jointly by the department and the U.S. army corps of  
24 engineers, but the minimum ratio shall be at least 1.2 acres for each acre affected by  
25 the discharge.

*under an  
in lieu fee  
program estab-  
-  
by the  
depart-  
ment*

*INSERT 21-18 ✓*

1           **SECTION 81.** 281.36 (4) (intro.) of the statutes is amended to read:

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

5           **SECTION 82.** 281.36 (4) (b) of the statutes is amended to read:

6           281.36 (4) (b) Maintenance, emergency repair, or reconstruction of damaged  
7 parts of structures that are in use in a ~~nonfederal~~ wetland.

8           **SECTION 83.** 281.36 (4) (e) 1. of the statutes is amended to read:

9           281.36 (4) (e) 1. That the flow and circulation patterns and chemical and  
10 biological characteristics of the affected ~~nonfederal~~ wetland are not impaired.

11           **SECTION 84.** 281.36 (4) (e) 2. of the statutes is amended to read:

12           281.36 (4) (e) 2. That the reach of the affected ~~nonfederal~~ wetland is not  
13 reduced.

14           **SECTION 85.** 281.36 (4) (e) 3. of the statutes is amended to read:

15           281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the  
16 affected ~~nonfederal~~ wetland is minimized to the degree required by the department.

17           **SECTION 86.** 281.36 (5) (intro.) of the statutes is amended to read:

18           281.36 (5) **INAPPLICABILITY OF EXEMPTIONS.** (intro.) Notwithstanding sub. (4),  
19 a discharge that would be exempt under sub. (4) is subject to the certification  
20 permitting requirement under sub. ~~(2)~~ (3b) if the discharge is incidental to an activity  
21 that has as its purpose bringing a ~~nonfederal~~ wetland, or part of a ~~nonfederal~~  
22 wetland, into a use for which it was not previously subject and if the activity may do  
23 any of the following:

24           **SECTION 87.** 281.36 (5) (a) of the statutes is amended to read:

25           281.36 (5) (a) Impair the flow or circulation of any ~~nonfederal~~ wetland.

1 SECTION 88. 281.36 (5) (b) of the statutes is amended to read:

2 281.36 (5) (b) Reduce the reach of any ~~nonfederal~~ wetland.

3 SECTION 89. 281.36 (6) (a) 1. of the statutes is amended to read:

4 281.36 (6) (a) 1. Make the rules consistent with existing federal law or  
5 interpretation.

6 SECTION 90. 281.36 (7) of the statutes is repealed.

7 SECTION 91. 281.36 (8) (title) of the statutes is repealed.

8 SECTION 92. 281.36 (8) (a) of the statutes is repealed.

9 SECTION 93. 281.36 (8) (b) of the statutes is repealed.

10 SECTION 94. 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (b) and  
11 amended to read:

12 281.36 (3g) (b) Additional required permits. The In addition to the general  
13 wetland permits required under par. (a), the department shall issue general water  
14 quality certifications <sup>wetland</sup> permits that are consistent with all of the, and correspond  
15 to any general permits that are issued under 33 USC 1344 (e) that applied on  
16 January 8, 2001, to nonfederal wetlands located in this state and that regulate  
17 discharges other than those regulated under the required general permits issued  
18 under par. (a).

19 SECTION 95. 281.36 (8) (bn) 2. of the statutes is repealed.

20 SECTION 96. 281.36 (8) (c) of the statutes is repealed.

21 SECTION 97. 281.36 (8) (d) of the statutes is repealed.

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

23 SECTION 99. 281.36 (9) (a) (intro.) of the statutes is amended to read:

24 281.36 (9) (a) (intro.) For purposes of determining whether to issue an  
25 individual wetland permit, whether authorization to proceed as authorized under a

1 general wetland permit is appropriate, or whether an exemption under sub. (4) is  
 2 appropriate, and for purposes of enforcing this section, any employee or other  
 3 representative of the department, upon presenting his or her credentials, may do any  
 4 of the following:

5 **SECTION 100.** 281.36 (9) (a) 1. of the statutes is amended to read:

6 281.36 (9) (a) 1. Enter and inspect any property on which is located a ~~nonfederal~~  
 7 wetland, or part of a ~~nonfederal~~ wetland, <sup>plain</sup> for which an application for a water quality  
 8 certification <sup>plain</sup> has been submitted to the department, ~~for which an application~~  
 9 ~~has been submitted under~~ <sup>for which an application</sup>  
 10 <sup>has been submitted under</sup>  
 11 <sup>sub(3g) or (3m)</sup>

12 **SECTION 101.** 281.36 (9) (a) 2. of the statutes is amended to read:

13 281.36 (9) (a) 2. Enter and inspect any property on which is located a ~~nonfederal~~  
 14 wetland to investigate a discharge of ~~dredged or fill material~~ that the department has  
 15 reason to believe is in violation of this section.

16 **SECTION 102.** 281.36 (9) (a) 3. of the statutes is amended to read:

17 281.36 (9) (a) 3. Gain access to and inspect any records that ~~the department~~  
 18 requires a holder of ~~a water quality certification to~~ an individual wetland permit or  
 19 a person acting under the authority of a general wetland permit is required by the  
 20 department to keep.

21 **SECTION 103.** 281.36 (9) (am) to (c) of the statutes are repealed.

22 **SECTION 104.** 281.36 (9) (d) and (e) of the statutes are created to read:

23 281.36 (9) (d) The department shall provide reasonable advance notice to the  
 24 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.



*Deny an application for an individual permit or deny*

2. ~~If the entry or inspection involves a general wetland permit, deny~~  
authorization to proceed under <sup>a</sup> ~~the~~ general permit as provided in sub (3g).

**SECTION 105.** 281.36 (10) of the statutes is repealed.

**SECTION 106.** 281.36 (11) (a) of the statutes is created to read:

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

2. The department shall set a surcharge fee to be charged for each application to proceed under a general wetland permit that is issued under sub. (3g) (a). <sup>60</sup> 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 purchase 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 whether surcharge is submitted with every application or only required when authorization will be granted.

**SECTION 107.** 281.36 (12) of the statutes is created to read:

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

**SECTION 108.** 281.36 (13) of the statutes is created to read:

281.36 (13) PENALTIES. (a) Except as provided in par. (b), any person who violates any provision of this section shall forfeit not less than \$100 nor more than

\*\*\*\* NOTE: I have made some substantive changes in s. 281.36 (9) since the 1/21 version. Please review

1 \$10,000 for the first offense and shall forfeit not less than \$500 nor more than  
2 \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

3 (b) Any person who violates a general wetland permit issued under sub. (3g)  
4 shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit  
5 not less than \$50 nor more than \$500 upon being found in violation of the same  
6 offense a 2nd or subsequent time.

7 (c) A violation of any condition contained in a general <sup>wetland</sup> permit issued under sub.  
8 (3g) is a violation of the statute under which the permit was issued.

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

13 SECTION 109. 281.37 (title) of the statutes is repealed.

*renumbered*  
281.36 (1)(bn)  
and

14 SECTION 110. 281.37 (1) (intro.) of the statutes is repealed.

15 SECTION 111. 281.37 (1) (a) of the statutes is repealed.

16 SECTION 112. 281.37 (1) (b) of the statutes is amended to read:

17 <sup>Please Fix comp.</sup> ~~281.37 (1) (b)~~ "Mitigation project" means the restoration, enhancement or  
18 creation of wetlands to compensate for adverse impacts to other wetlands.

19 "Mitigation project" includes using credits from a wetlands mitigation bank  
20 <sup>Sub.</sup> mitigation of the type specified in ~~§ 281.37~~ (3r) (a) 3.

21 SECTION 113. 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (bL) and  
22 amended to read:

23 281.36 (1) (bL) "Wetlands mitigation Mitigation bank" means a system of  
24 accounting for wetland loss and compensation that includes one or more sites where  
25 wetlands are restored, enhanced or created to provide transferable credits to be

1 subsequently ~~applied~~ purchased to compensate for adverse impacts to other  
2 wetlands.

3 SECTION 114. 281.37 (1) (e) of the statutes is repealed.

\*\*\*\*NOTE: This definition is duplicative of the definition found in s. 281.36 (1) (d)

4 SECTION 115. 281.37 (1) (f) of the statutes is repealed.

*and is therefore  
being repealed  
instead of being  
renumbered to*

5 SECTION 116. 281.37 (2) of the statutes is repealed.

6 SECTION 117. 281.37 (2m) of the statutes is renumbered 281.36 (8m), and

7 281.36 (8m) (a) 1., as renumbered, is amended to read:

*s. 281.  
36*

8 281.36 (8m) (a) 1. A person who is the holder of ~~a~~ an individual wetland permit  
9 ~~or other approval~~ that authorizes a mitigation project shall grant a conservation  
10 easement under s. 700.40 to the department to ensure that a wetland that is being  
11 restored, enhanced, or created will not be destroyed or substantially degraded by any  
12 subsequent proprietor of or holder of interest in the property on which the wetland  
13 is located. The department shall revoke the individual wetland ~~permit or other approval~~  
14 of the individual permit ~~or other approval~~ fails to take these measures.

15 SECTION 118. 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t)  
16 (intro.) and amended to read:

17 281.36 (3t) RULES. (intro.) The department shall promulgate rules to establish  
18 a process for ~~consideration of wetland compensatory mitigation under sub. (2).~~ Upon  
19 ~~promulgation, the rules shall apply to any application or other request for an initial~~  
20 ~~determination for a permit or other authorization that is pending with the~~  
21 ~~department on the date on which the rules take effect~~ the mitigation program under  
22 sub. (3r). The rules shall address all of the following:

23 SECTION 119. 281.37 (3) (a) of the statutes is renumbered 281.36 (3t) (a) and  
24 amended to read:

1           281.36 (3t) (a) Requirements for the ~~avoidance and minimization of adverse~~  
2 ~~impacts to the wetland that will be affected by the permitted activity~~ analysis of  
3 practicable alternatives that is included in an application for an individual wetland  
4 permit under sub.(3m) (f).

5           **SECTION 120.** 281.37 (3) (b) of the statutes is renumbered 281.36 (3t) (b) and  
6 amended to read:

7           281.36 (3t) (b) The conditions under which credits ~~in a wetlands mitigation~~  
8 ~~bank~~ may be used for wetland compensatory mitigation purchased to comply with  
9 the mitigation program under sub. (3r).

10          **SECTION 121.** 281.37 (3) (c) of the statutes is renumbered 281.36 (3t) (c) and  
11 amended to read:

12          281.36 (3t) (c) Enforcement of ~~a requirement to implement a mitigation project~~  
13 requirements under the mitigation program under sub. (3r).

14          **SECTION 122.** 281.37 (3) (d) of the statutes is renumbered 281.36 (3t) (d) and  
15 amended to read:

16          281.36 (3t) (d) Baseline studies of ~~the wetland~~ wetlands that will be affected  
17 by the ~~permitted activity~~ discharges and of ~~the sites for~~ mitigation project site  
18 projects.

19          **SECTION 123.** 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and  
20 amended to read:

21          281.36 (3t) (e) Plan and project design requirements for ~~a~~ mitigation project  
22 projects, which shall consider the relation of the project design to the hydrology of  
23 the watershed in which ~~a~~ mitigation project is projects are located.

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

1 **SECTION 124.** 281.37 (3) (f) <sup>fix</sup> (intro.) of the statutes is renumbered 281.36 (3t) (f)  
2 <sup>Comp.</sup> (intro.), and ~~281.36 (3t) (f) (intro.)~~, as renumbered, is  
3 (intro.) and amended to read:

4 281.36 (3t) (f) (intro.) ~~The comparability of a wetland~~ Standards for comparing  
5 wetlands that will be restored, enhanced, or created to ~~the wetland~~ wetlands that  
6 will be adversely affected by ~~the permitted activity~~ discharges, including all of the  
7 following:

8 **SECTION 125.** 281.37 (3) (g) of the statutes is repealed.

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

11 **SECTION 126.** 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.

16 **SECTION 127.** 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  
21 project on which mitigation credits are based is performed by the mitigation banks  
22 that are not successful.

23 **SECTION 128.** 281.37 (3) (j) of the statutes is repealed.

24 **SECTION 129.** 281.37 (3m) of the statutes is repealed.

25 **SECTION 130.** 281.37 (4) of the statutes is repealed.

1           **SECTION 131.** 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 132.** 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 133.** 814.04 (intro.) of the statutes is amended to read:

17           **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)  
18 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b)~~  
19 ~~1,~~ 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),  
20 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51  
21 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

22           **SECTION 134. Nonstatutory provisions.**

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

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

3 (2) PROJECT POSITION CHANGES.

4 (a) The authorized FTE positions for the department of natural resources are  
5 decreased by 3.0 PR project positions funded from the appropriation under section  
6 20.370 (4) (bi) of the statutes, for the purpose for which the appropriation is made.

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

11 **SECTION 135. Effective date.**

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

14 (END)

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P3ins  
MGG:.....

1           **Insert 6-24**

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

3           30.28 (2m) (a) The department shall refund a permit or approval fee <sup>plain</sup> charged  
4           under sub. (1) <sup>(a)</sup> if the applicant requests a refund before the department determines  
5           that the application for the ~~permit or approval~~ is complete. Except as provided in par.  
6           (am), the department may not refund a ~~permit or approval~~ fee after the department  
7           determines that the application is complete unless required to do so under a rule  
8           promulgated under s. 299.05.

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.

9           **Insert 21-18**

10          (c) For each mitigation bank in the state, the department shall determine the  
11          areas of the state <sup>that</sup> ~~the~~ each mitigation bank covers. In making these determinations,  
12          the department shall give priority to including wetlands that are in the same  
13          watershed or watersheds and shall consider the different levels of demand that exist  
14          across the state for the purchase of wetland credits.



DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P3dn

MGG:.....

WJ

LPS: Please  
check spaces.

Date

The following comments are in response to the DNR Comments dated 9/30/11:

1. First page, comment for page 3, line 17: I have not included the word "compensatory" for two reasons: first, it is not used often or consistently under s. 281.36 and 281.37. Secondly, it seems redundant. Thirdly, I have now defined "mitigation" in s. 281.36 and if you want to use the term "compensatory mitigation", it will have to be the defined term and will need to appear consistently throughout the draft.

2. First page, comment for page 5, line 11: I know the federal term is "wetland general permit" but this sounds awkward, at least to me. Also, when the draft talks about both individual and general permits, it would need to read "wetland individual and general permits", which also sounds awkward.

3. First page, comment <sup>for</sup> regarding insert 281.36 (3g) (a)-(d): We did not get a chance to discuss this in our meeting. I have included some of this language in the draft. It seems to be addressing two items; what is required to be included in the general permit and what is required to be included in an application to proceed under a general permit. You will find my attempts to draft language as to what is to be in the application in s. 281.36 (3) (g). As to what is to be contained in the general permit, I think it is clear that a general permit may contain conditions. See s. 281.36 (3b) (b). As to "eligibility standards", would those be the basic requirements contained in a general permit? As to "exclusions", I gather that the exemptions will not be limited to those in the statutes but that there can be "conditional exemptions". I need to talk to someone in order to get further clarification before I can draft anything regarding "conditional exemptions."

The following comment is in response to the DNR Comments dated 10/7/11:

Comment for page 17, lines 10-12: I did not make this change because it seems to make sense to me to allow DNR to inspect property where an exempt discharge may be occurring. However, if you want to limit the inspection authority to discharges under individual and general wetland permits, let me know.

Do you want a delayed effective date? Do you want an initial applicability provision so that the bill is limited to applications that are submitted after the effective date?

3g

5 as  
renumber

?

There are also embedded notes in the draft to assist you in your review.

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

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2803/P3dn  
MGG:wlj:rs

October 24, 2011

The following comments are in response to the DNR Comments dated 9/30/11:

1. First page, comment for page 3, line 17: I have not included the word "compensatory" for three reasons: first, it is not used often or consistently under ss. 281.36 and 281.37. Second, it seems redundant. Third, I have now defined "mitigation" in s. 281.36 and if you want to use the term "compensatory mitigation," it will have be the defined term and will need to appear consistently throughout the draft.
2. First page, comment for page 5, line 11: I know the federal term is "wetland general permit" but this sounds awkward, at least to me. Also, when the draft talks about both individual and general permits, it would need to read "wetland individual and general permits," which also sounds awkward.
3. First page, comment for insert 281.36 (3g) (a)-(d): We did not get a chance to discuss this in our meeting. I have included some of this language in the draft. It seems to be addressing two items: what is required to be included in the general permit and what is required to be included in an application to proceed under a general permit. You will find my attempts to draft language as to what is to be in the application in s. 281.36 (3g) (g). As to what is to be contained in the general permit, I think it is clear that a general permit may contain conditions. See s. 281.36 (3b) (b), as renumbered. As to "eligibility standards," would those be the basic requirements contained in a general permit? As to "exclusions," I gather that the exemptions will not be limited to those in the statutes but that there can be "conditional exemptions." I need to talk to someone in order to get further clarification before I can draft anything regarding "conditional exemptions."

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Do you want an initial applicability provision so that the bill is limited to applications that are submitted after the effective date?

There are also embedded notes in the draft to assist you in your review.

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

*— next version*

*instructions for P4 + P5*

**DNR Comments on LRB-2803/P3**

**Response to LRB Drafter's Notes**

*change* DNR recommends using the phrases “wetland general permit” and “wetland individual permit” throughout, to be consistent with federal terminology. If bill sponsor prefers, the simpler term “permit” can be used throughout section 281.36, since the section title references wetlands. ✓

*wants* DNR recommends an initial applicability provision as the drafter suggests, so that the bill is limited to permit applications received after the bill's effective date.

**Comments on LRB-2803/P3**

**Page/Line**

3/1 to 6 The construction of the appropriation does not lend itself to placing the GP surcharge for wetland restoration with a third party. It places it in appropriation 430 with the rest of the fees and could / would be used for structural deficit and lapse relief rather than wetland restoration. We suggest establishing a separate appropriation to accept the surcharge and payment-in-lieu fee under s. 281.36(11(a) 2) and s. 281.36 (3r)(a) 2. ??  
Authorize the department to use the moneys received for wetland restoration projects and that the department may transfer the funds to a third party to be used for wetland restoration projects. ]

*[by rule] not reasonable cost to cover costs*

4/20 to 24 We suggest the following language be added to 30.2022 (2) instead of proposed amendment: If such an activity affects a wetland, as defined in s. 23.32 (1), the department of transportation shall accomplish any required mitigation in accordance with the interdepartmental liaison procedures and consistent with department approved interagency wetland banking agreements or methods specified in s. 281.36 (3r) (a) 1. to 3.

✓ 5/22 Suggest delete “by rule”

✓ 6/9 Suggest replace line 9 with the following: “department may set reasonable fees necessary to meet the costs incurred by the department for making any of the following determinations:”

7/19 and 20 Suggest delete “by rule” in 3 places

INS 21-30  
✓ 8/Note 1 DNR suggests that the authority to increase fees should also apply to the fees statutorily set in 30.28(1m)(a) and (b) – see comment on 10/11 below

10/6 appears to be some words missing – suggest inserting after “proceed” the phrase “under a general permit”

10/11 suggest moving this provision to 281.36 rather than deleting, in order to retain DNR authority to increase fees

11/23 to 25 After “taking into consideration”, suggest revising end of sentence to read: “reasonable cost, site availability, available technology, logistics, and proximity to the proposed site, in light of overall project purpose.”

12/1 After this line, suggest adding a definition of “fill material” to be consistent with federal definition in CFR 323.2, and provide clarity for implementation.

*incorporated by CFR by date*

281.36 (bd) “Fill material” means material placed in wetlands where the material has the effect of:

- (i) Replacing any portion of a wetland with dry land; or
- (ii) Changing the bottom elevation of any portion of a wetland.

Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in wetlands. The term fill material does not include trash or garbage.

13/2 and 9 Army Corps occasionally issues updates their wetland delineation manual. Requiring DNR to designate these updates by rule results in a 2-3 year delay in their applicability, and inconsistency between state and federal delineations. Suggest deleting the “by rule” requirement to authorize the department to designate the updated editions of the manual, and inform the appropriate standing committees of the designation.

DNR



13/17 After this subsection, suggest adding a provision stating that the department shall establish eligibility standards, conditions and exclusions for specific wetland types including rare and imperiled wetlands, for each general permit. This will clarify that each GP will have specific standards and conditions, and also identify that projects in high quality wetlands will receive a higher level of review through the IP process. *for every general permit*

*in the general permits*



PNR

30 2065

13/21 Suggest adding three other items to the list of required general permits, to clarify the intent to continue/create GPs for these activities:

“A discharge that is part of a wetland restoration activity that is sponsored by a federal agency”

• “Temporary or permanent discharges associated with the reconstruction or maintenance of municipal roads.”

• “A discharge that was previously authorized under an expired individual permit.”

SB 24- municipal

14/1 to 2 Suggest revising for consistency with federal permit to read: “2. A discharge that is necessary for temporary access and dewatering, if the”

*extend expiration*

**14/4 to 10** DNR intends to develop a single GP that will address these utility-related activities. Suggest combining 3., 4. and 5. into a single item that reads: "A temporary or permanent discharge for routine utility construction and maintenance projects and activities."

**14/11 to 17** DNR intends to develop separate GPs for the 6 different categories that are identified in 6. and 7. Suggest splitting these two paragraphs into six items, one for each category – commercial, residential, industrial, agricultural, municipal, recreational.

✓ **14/14** Typo: "individual" should be "industrial"

✓ **16/16** Replace "possible" with "practicable" for consistency with federal requirements

✓ **16/22** Replace "submitted to" with "received by"

✓ **17/Note at line 14** Yes, DNR agrees with this language.

**17/Note at line 22** OK  
17 indiv. in lieu of indiv. → stacking DNR

**18/1 through 20/2** The intent is for IP procedures in s. 281.36 to mirror the IP procedures in s. 30.208 as amended by Senate Bill 24, with the exceptions that a wetland IP requires a pre-application meeting, and there is no presumptive approval for wetland IPs. The procedures on these pages do not appear to match the chapter 30 IP procedures as proposed in SB 24.

✓ **18/6** After "the department shall", suggest inserting "hold a meeting to", to reflect intent to have a pre-application meeting for every individual permit.

✓ **18/8** Insert "informational" between "public" and "hearing"

✓ **18/13** Replace "submitted" with "received"

**19/8, 19/16 and 20/2** "Notice of complete application" should be "notice of pending application" in all three lines

**20/2** Public informational hearing provisions appear to be missing. The intent is to have public informational hearing provisions, mirroring the provisions in 30.208(3) as amended by Senate Bill 24.

✓ **20/8 to 13** For clarity, suggest replacing the proposed provision with the following:

(f) *Review of practicable alternatives.* An applicant shall include in an application submitted or resubmitted under this subsection an analysis of the practicable alternatives that will avoid and minimize adverse impacts to wetland functional values, and that will not result in other significant adverse environmental consequences.

103.08 (A)

20/18 to 19 Awkward language. Suggest replace with the following: "1. The proposed project causing the discharge will result in a demonstrable economic benefit to the public."

20/Note at line 19 OK

20/20 Suggest revising to read: "2. The wetland to be affected is not a rare or imperiled wetland type, as identified in the Wisconsin Natural Heritage Inventory." We also suggest the following note:

DNR

Note: The definitions and scientific protocols for wetland community types, along with the state and global ranking criteria and results, are found in the Wisconsin Ecological Landscapes Handbook available at <http://dnr.wi.gov/org/land/er/communities> or by contacting the DNR Bureau of Endangered Resources.

20/22 to 21/5 Section 80 needs an additional step regarding a determination of no significant impacts. For clarity, we suggest that sub. (h) have three steps: 1.) Shall require mitigation, 2) Determination that activity meets water quality standards, and 3) considering net impacts of the proposal and mitigation, make a determination of no significant impact to wetland functional values. To accomplish this, we suggest that (h) read as follows:

(h) Requirements for issuance. 1. The department shall require mitigation under the program established under sub. (3r) for individual permits it issues under this subsection.

net gain

2. After conducting its analysis of practicable alternatives, the department shall issue an individual permit if it determines that the discharge will meet all of the applicable water quality standards.

3. After considering the net environmental impacts of the proposal and mitigation, the department shall determine that the activity will not result in significant adverse impacts to wetland function values, significant adverse impacts to water quality or other significant adverse environmental consequences."

A finding no net loss?

Project proposal

21/10 To ensure the use of in-state banks, suggest adding "located in Wisconsin" to the end of the sentence

21/12 Recommend simpler language and modified fee language to avoid competing with banks. After "to be used for", suggest replacing rest of line with "restoring, enhancing, creating, and preserving wetlands and other important water resource features, in amount not less than the amount that"

instead of line 12

21/15 For clarity, suggest replacing language with "3. Completing a mitigation project within the same sub-watershed or within one-half mile of the site of the discharge."

21/18 to 22 For consistency with federal approach, suggest the following language instead of current (c): "The program shall establish service areas for mitigation banks in a

manner consistent with federal guidelines and rules and based on the major watersheds of the state." *regulations*

✓ **21/24** Suggest deleting "approved by the US army corps of engineers" and replacing with "consistent with federal guidelines and rules."

✓ **22/2 to 3** Suggest deleting: "developed jointly by the department and the U.S. army corps of engineers"

✓ **25/13** Suggest adding the following sentence to allow DNR to charge a fee for review of on-site mitigation projects: "The department may also set reasonable fees necessary to meet the costs incurred by the department for review of mitigation projects." *conducted by mitigation banks*

✓ **25/18** Suggest replacing this line with "equivalent purchase of mitigation bank credits."

*30.03  
10/27/11*

✓ **25/20 to 22** This language declares any violation a public nuisance and allows any citizen to sue for abatement. Suggest legislature clarify if this is their intent, or if they prefer to limit citizen suits, and eliminate this provision altogether.

✓ **After 25/22** Intent is to incorporate comparable enforcement provisions to chapter 30. Suggest adding equivalent provisions to ss. 30.03 (contested case hearing) and 30.292 (parties to a violation) to 281.36. *attorney general / A.G. + contested case hearing*

✓ **27/Note at line 6** OK

**29/Note at line 3** Many of these provisions apply to both mitigation projects (e.g. on-site mitigation) as well as bank sites. Suggest these changes:

*INS  
29-3*

29/2: "...projects and bank sites, which shall...in which mitigation projects or bank sites are located."

29/13: 281.36 **(3f)** (h) Standards for measuring the short-term and long-term success of mitigation projects and bank sites and requirements for the short-term and long-term monitoring of mitigation projects and bank sites.

✓ **29/Note at line 10** OK



**DNR Follow-up on LRB-2803/P3**

1P4 & 1P5

The following information and suggestions are topics that were assigned for DNR follow-up at the November 8 meeting. All page and line references are to the P3 draft.

**Page/Line**

**Public Access**

3/1 to 6 Senator Kedzie previously decided to establish a separate appropriation to accept the General Permit surcharge and in-lieu fee payments, and that this appropriation would authorize the department to use the moneys received for wetland restoration projects or contract with a third party. We recommend that the desired requirement for providing public access to wetland restoration sites be incorporated into the appropriation, and that the following language be used (which is consistent with the Stewardship program):

(X) Requirement of access. All wetlands created or restored under this appropriation shall be open to the public for hunting, fishing, trapping, cross country skiing and hiking. The owner of any such wetlands may establish reasonable restrictions on the use of the land by the public in order to protect public safety or unique plant and animal communities.

**Wetland Restoration GP**

in other (30.2065) (30.206)

5/1 Rather than repeal 30.2065, we recommend that 30.2065(1) and (2) be retained, to preserve the definition, authorities and standards for this General Permit. We recommend that 30.2065(3) through (9) be repealed, and replaced with a cross-reference to the procedural steps outlined in 30.206 (using the amended language proposed for SB 24).

**Wetland Delineation Manual**

✓

13/2 and 9 We consulted with the US Army Corps of Engineers (Corps), and they confirmed that the manual name and references are correct. They also indicated that the second part of existing 281.36 (2m) was likely unnecessary as they occasionally issue supplements interpreting the manual, but not guidance. Based on the Corps' feedback, and to maintain consistency with the federal technical manual without the need for rulemaking, we recommend that the phrase "by rule" be deleted from line 2, and that the last sentence of the existing law be deleted (middle of line 3 through line 10)

**General Permit standards**

✓

13/17 We have developed some modified language to address rare and imperiled wetland types in response to the drafter's concerns. So our modified suggestion is to create a "Standards for permit issuance" provision in 281.36(3g), with two standards: The first would state that at the department shall establish eligibility standards, conditions and exclusions for specific wetland types, for each general permit. This will clarify that each GP will have specific standards and conditions, and also identify that projects in high quality wetlands will receive a higher level of review through the IP process. The second would be specific to rare and imperiled wetlands, and would read:

"Projects that involve impacts to rare and imperiled wetland types, as defined by criteria set for the National Heritage Inventory, established pursuant to s. 23.27(3), are not eligible for wetland general permits."

**General Permit "stacking"**

✓ **16/6** To address the stakeholder concern that a permit applicant not be allowed to apply for multiple General Permits when an Individual Permit should be required, we consulted with the Corps to find out how they address it. The Corps' General Permit GP-002-WI requires the application to identify all activities that are part of a "single and complete project", and then defines the term. We suggest the following provision be added to 281.36(3g)(g) to provide the legislative intent, which would allow DNR to incorporate the definition and implementation details into each state General Permit.

"The application shall identify all activities that will affect wetlands that are part of a single and complete project."

**Rare and Imperiled Wetland Type – in Scope of Analysis provision**

✓ **20/20** In response to the drafter's concerns, we have developed some modified language to address rare and imperiled types in this part of the bill. In the proposed 281.36(3m)(g), we suggest revising item 2 to read:

✓ "2. The wetland to be affected is not a rare or imperiled wetland type, as defined by criteria set for the National Heritage Inventory, established pursuant to s. 23.27(3)."

☑ **Individual Permit Standards**

**20/22 to 21/5** We developed some alternative language to our previous suggestion, to address drafter concerns regarding standards versus requirements, and to more clearly identify that the department will consider positive project impacts in assessing overall impacts. This suggested language below also incorporates the concept of "least environmentally damaging practicable alternative" from federal law, for greater consistency. We suggest replacing the proposed 281.36(3g)(h) with the following three items:

*(h) Mitigation required*

The department shall require mitigation under the program established under sub. (3r).

*(i) Factors for assessing impacts.* The department shall consider the following factors when assessing the impacts to wetland functional values for each individual permit application:

1. direct impacts of the proposed discharge on wetlands;
2. cumulative impacts attributable to the proposed activity which may occur based upon past or reasonable anticipated impacts on wetland functional values of similar activities in the affected area;
3. potential secondary impacts to wetland functional values from the proposed activity;
4. the net positive and negative environmental impacts of the proposed activity.

(j) *Standards for permit issuance.* The department shall make a finding that an activity is in compliance with wetland water quality standards and that an individual permit may be granted if the Department determines that all of the following have been met:

1. The proposal represents the least environmentally damaging practicable alternative including practicable alternatives that would avoid impacts to wetland functional values;
2. All practicable measures to minimize adverse impacts to the functional values of the affected wetlands have been taken; and
3. The activity will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality, or other significant adverse environmental consequences.

**Enforcement**

✓ **After 25/22** The intent is to have enforcement provisions in 281.36 that are comparable to those in chapter 30 (with the exception of public nuisance declaration). This includes enforcement of forfeitures [like 30.03 with the exception of 30.03(4)(am)], inspections [like 30.291], parties to a violation [like 30.292], and penalties [like 30.298]. The P3 draft already includes provisions for Inspection and for Penalties, so we suggest that Enforcement of Forfeitures and Parties to a Violation be added.

*done*

**Gibson-Glass, Mary**

**From:** Johnson, Dan  
**Sent:** Monday, November 14, 2011 4:26 PM  
**To:** Gibson-Glass, Mary  
**Subject:** FW: In lieu fee program

put in @ 185

Hi Mary,

I hope you can make sense of all of this. Basically, a new account for the receipt of the General Permit surcharge and potential in-lieu fees needs to be created in the bill. That account would fund wetland creation and restoration projects and would be administered by the DNR. However, the bill should also authorize the Department to transfer such funds to a third party for the purpose of wetland creation and restoration projects. While the GP surcharge money would be placed there immediately, the in-lieu fee program would need to be created by the Department in consultation with the Corps before it can accept fees.

To repeat my note below, the bill should probably just direct the DNR to establish an in-lieu fee program for the wetland mitigation program in consultation with the Corps for the purposes of determining an appropriate fee, how funds would be used, who would manage such funds, and other conditions for the use of such funds, such as access for nature-based activities. Thus, the provision under the mitigation program on page 21 of the P3 should probably be revised to reflect that direction, and moved out of Section 81 of the bill. In short, direct the Department to create the program, but do not make the "payment of an in-lieu fee" a component of mitigation at this time.

Dan Johnson

**State Senator Neal Kedzie**

11<sup>th</sup> Senate District  
 608.266.2635

---

**From:** Lehmann Kerler, Liesa K - DNR [mailto:Liesa.LehmannKerler@Wisconsin.gov]  
**Sent:** Monday, November 14, 2011 3:49 PM  
**To:** Johnson, Dan; Siebert, David R - DNR  
**Cc:** Bruhn, Michael L - DNR; Rasmussen, Russell A - DNR  
**Subject:** RE: In lieu fee program

Yes, you are correct on both questions Dan. Our previous comment document from 10/27 provided the suggestion for a "nonraidable" account - Russ is our expert on this from his days at DOA, and I had the sense that Mary understood his suggestion when we met last Tuesday. If she has further questions, perhaps she could call Russ directly, if that's OK with you...

~Liesa

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**From:** Johnson, Dan [mailto:Dan.Johnson@legis.wisconsin.gov]

11/18/2011

**Sent:** Monday, November 14, 2011 11:14 AM

**To:** Siebert, David R - DNR

**Cc:** Bruhn, Michael L - DNR; Lehmann Kerler, Liesa K - DNR; Rasmussen, Russell A - DNR

**Subject:** RE: In lieu fee program

Okay, just so I'm clear on all of this, under the P3 draft, an applicant is required to pay a surcharge along with their application fee to the DNR for residential, commercial and industrial General Permits. The department would set that fee on an annual basis using mitigation credit market prices. It's not clear to me where that money is deposited or how it is protected, but I believe you're saying the Department wants a segregated account created for this particular fee which the Department would be able to manage and eventually use for wetland creation and restoration projects. In addition, any such wetland project funded by this account would have to be open to the five nature-based activities, unless the owner places reasonable restrictions on such access. There is no involvement of a third party such as the Natural Resources Foundation for this particular fee and account. **It that correct?**

Second, under the P3 draft, an applicant may pay a fee to an in-lieu fee program established by the Department and used for wetland creation and restoration projects. This option would be available to an applicant to satisfy the mitigation requirements for Individual Permits issued. This appears under Section 81 on page 21 of the P3 draft.

However, since there is no clear understanding of how much the fee would be, where the fee would go, and how it would be managed, it's probably not appropriate to use this language at this time. Instead, the bill should probably just direct the DNR to establish an in-lieu fee program for the wetland mitigation program in consultation with the Corps for the purposes of determining an appropriate fee, how funds would be used, who would manage such funds, and other conditions for the use of such funds, such as access for nature-based activities. Thus, the provision under the mitigation program on page 21 of the P3 should probably be revised to reflect that direction, and moved out of Section 81 of the bill. **Is that correct?**

I've looked over the DNR's comments and don't see any suggestions of how to make the segregated account for the General Permit surcharge "non-raidable". If you could give me some direction on that, I'd appreciate it. Thanks!

Dan Johnson

**State Senator Neal Kedzie**

11<sup>th</sup> Senate District

608.266.2635

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**From:** Siebert, David R - DNR [mailto:David.Siebert@Wisconsin.gov]

**Sent:** Monday, November 14, 2011 10:07 AM

**To:** Johnson, Dan

**Cc:** Bruhn, Michael L - DNR; Lehmann Kerler, Liesa K - DNR; Rasmussen, Russell A - DNR

**Subject:** RE: In lieu fee program

Dan-- Here is my take on this.

I think that there is much that needs to be done before we can establish an in lieu fee (ILF) program. This

will have to be a negotiation with the Corps. As such our comments on draft P3 suggested that the bill simply allow ILF as an option for mitigation in WI, and then direct us to work with the Corps to develop an ILF program that is consistent with federal law.

I think it is premature to determine who would get the \$, where the \$ go, and how exactly the \$ would be used. The NRF would be a good option, but I don't think we should decide that now. If we need to establish something new under Chapter 20 for our ILF program, I propose we do that as a separate JFC matter when we have a program that the Corps agrees with.

**The surcharge fund is a separate matter from ILF.** For that pot of \$, our comments on the draft bill looked at ways to have it be a "non-raidable" account.

In the future we **may** have an ILF program developed that **could** be set up to use the same account as the surcharge funds. But again, we do not know exactly what the ILF program will look like.

Hope that helps.

Dave

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Johnson, Dan [<mailto:Dan.Johnson@legis.wisconsin.gov>]

Sent: Monday, November 14, 2011 9:48 AM

To: Mary - LEGIS

From: Michael L - DNR; Siebert, David R - DNR; Lehmann Kerler, Liesa K - DNR; Rasmussen, Russell A - DNR

RE: In lieu fee program

Mary,

I believe the original instructions were to have both the General Permit surcharge and the in-lieu program fee placed into a newly-created segregated Wetland and Habitat Restoration Account, which then the Department would manage and use for wetlands restoration projects. However, a concern was raised that such an account could be raided by future Governors and Legislatures.

Thus, an idea was floated that such fees would instead go to a third-party (such as the Natural Resources Foundation) to manage and use such funds. I'm not certain if the applicant would pay the fees directly to the DNR, who then in turn would remit the fees to the third party, or if the fees would go directly to the third party. I'm struggling a bit to connect the dots myself so I'm copying DNR staff on this in the hopes we can devise a clearer instruction for you.

Dan Johnson

**State Senator Neal Kedzie**

11<sup>th</sup> Senate District

608.266.2635

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**From:** Gibson-Glass, Mary

**Sent:** Monday, November 14, 2011 9:19 AM

**To:** Johnson, Dan

**Subject:** In lieu fee program

Dan,

I have received conflicting drafting instructions about the in lieu fee program. I was asked to take out the language stating the the in lieu fee payments were to be paid to DNR. It was my understanding in a follow up conversation that the payments go to third party entities who collect the "fees" to be used in the future for wetland mitigation. However, in the last 2 written documents from DNR, they state that the payments are going to DNR to be appropriated for wetland restoration.

Please let me know how you want this drafted.

Mary Gibson-Glass  
Senior Legislative Attorney  
Legislative Reference Bureau  
608 267 3215

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2803/P4dn  
MGG:wlj:rs

November 22, 2011

not submitted

P4 draft

+ 0 Note

not submitted

1. This redraft contains all of the changes requested as of November 15 except for the changes in the procedure for issuing individual permits and the initial applicability provisions. Section 30.2065 is being treated in the substitute amendment to SB 24.
2. In making changes in ss. 30.28, 281.22, and 281.36 (11), I eliminated the requirement that fees be set by rule except for the fees for expedited service under s. 30.28 (2r), 2009 stats., and 281.22 (2m), 2009 stats. Also, whenever a fee is not set by rule, I included a requirement that the fee be set as necessary to meet DNR's costs.
3. I used the concept of "informational hearing" throughout s. 281.36. OK?

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