



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2803/P7 | p 8  
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT** *to repeal* 23.321 (2) (a), 23.321 (3) (a), 23.321 (4) (a) 1., 30.28 (2) (title),  
2 30.28 (2) (a) (intro.), 30.28 (2) (a) 1., 30.28 (2) (a) 2., 30.28 (2) (a) 3., 30.28 (2m)  
3 (c), 31.39 (2m) (c), 281.22 (1), 281.22 (2) (c), 281.22 (4), 281.36 (1) (am), 281.36  
4 (1) (bg), 281.36 (1) (c) and (cm), 281.36 (1) (cr), 281.36 (1m), 281.36 (2) (title),  
5 281.36 (2) (b), 281.36 (7), 281.36 (8) (title), 281.36 (8) (a), 281.36 (8) (b), 281.36  
6 (8) (bn) 2., 281.36 (8) (c), 281.36 (8) (d), 281.36 (8) (e), 281.36 (9) (am) to (c),  
7 281.36 (10), 281.37 (title), 281.37 (1) (intro.), 281.37 (1) (a), 281.37 (1) (e), 281.37  
8 (1) (f), 281.37 (2), 281.37 (3) (g), 281.37 (3) (j), 281.37 (3m) and 281.37 (4); **to**  
9 **renumber** 30.28 (2) (b) 1., 30.28 (2) (b) 2., 281.22 (2) (title), 281.22 (2m) (title)  
10 and 281.22 (2m) (a) 2.; **to renumber and amend** 30.28 (1), 281.22 (title),  
11 281.22 (2) (a), 281.22 (2) (b), 281.22 (2) (d), 281.22 (2m) (a) (intro.), 281.22 (2m)  
12 (a) 1., 281.22 (2m) (b), 281.22 (3), 281.36 (2) (a), 281.36 (3), 281.36 (8) (bn) 1.,  
13 281.37 (1) (b), 281.37 (1) (d), 281.37 (2m), 281.37 (3) (intro.), 281.37 (3) (a),  
14 281.37 (3) (b), 281.37 (3) (c), 281.37 (3) (d), 281.37 (3) (e), 281.37 (3) (f), 281.37  
15 (3) (h), 281.37 (3) (i) and 281.37 (5); **to amend** 20.370 (4) (bi), 23.321 (title),

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

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

#### ***Wetland permitting and mitigation***

Under current law, there are two permitting procedures for discharging dredged or fill material into a wetland depending on whether the wetland is subject to federal jurisdiction. Under federal law, activities involving the discharge of dredged or fill material into wetlands subject to federal jurisdiction (federal

wetlands) must comply with certain guidelines contained in regulations promulgated by the U.S. Army Corps of Engineers (ACE). Wetlands that are exempt from federal jurisdiction are those that are nonnavigable and that are isolated, intrastate wetlands. Current state law regulates discharges in these wetlands (nonfederal wetlands).

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

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

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

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

to ensure that the discharges will cause only minimal adverse environmental effects

(specific project permits)

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

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

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

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

2. The bill requires that DNR issue certain wetland general permits that are in addition to the required general <sup>certification</sup> permits under current law. These include general permits for discharges that are necessary for the treatment or disposal of hazardous waste or toxic pollutants if not more than two acres of wetlands are affected, and discharges for commercial, residential, or agricultural purposes if not more than 10,000 square feet of wetlands <sup>are</sup> affected. The bill authorizes DNR to issue additional wetland general permits.

~~For general permits the bill eliminates the requirement under current law that the discharges subject to general permits will cause only minimal adverse environmental effects. The bill authorizes DNR to establish different requirements, conditions, and exceptions in general permits for discharges into different types of wetlands. The bill prohibits DNR from authorizing in a general permit discharges into a type of wetland that is classified as being rare or imperiled under the natural heritage inventory prepared by DNR (classified wetlands). The natural heritage inventory program inventories and monitors natural areas and endangered animals and plants.~~

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

4. The bill establishes a procedure for obtaining authorization to proceed under a wetland general permit that is similar to the procedure for obtaining authorization under general permits that authorize structures and other activities in or near general waters. Under this procedure, a person must file an application to proceed under the general permit not less than 30 days before commencing the discharge.

② impacts from proposed mitigation,

(other than a specific project permit)

If, within 30 days after the application, DNR does not inform the applicant that a wetland individual permit will be required, the discharge is considered to be authorized under the wetland general permit. The bill authorizes DNR to require a person to apply and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to the functional values of the wetland will occur. Under the bill, a general permit may include a waiver of the requirement that specific authorization be obtained for a wetland discharge.

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

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Under the bill, DNR reviews the practicable alternatives presented in the application for the wetland individual permit. DNR must limit its review of these alternatives to those that will have an impact on the discharge site and areas adjacent to the site if DNR determines that the project causing the discharge will result in a demonstrable economic benefit to the state, the wetland to be affected is not a classified wetland, and the wetland is highly disturbed and degraded. Under the bill, the factors to be used in the review include direct impacts, potential secondary impacts, certain cumulative impacts, and the net positive or negative environmental impact of the project. Under the bill, DNR must find that the project complies with wetland quality standards if DNR determines that the proposed project represents the least environmentally damaging practicable alternative, all practicable measures to minimize the adverse impact to wetland functional values will be taken, and the discharge will not result in significant adverse impacts to wetland functional values or to water quality or in any other significant adverse environmental consequences. Upon making such a finding, DNR is authorized, but is not required, to issue a wetland individual permit.

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

Within 15 days after the date of closure, DNR must provide notice of the application to interested members of the public. If the application does not already

contain a request for a public informational hearing any person may request such a hearing. DNR on its own may decide to hold a hearing if it determines that there is significant public interest. The bill authorizes any person to submit public comments in addition to any public hearing. Under the bill, if no hearing is held, DNR must render a decision on the application within 30 days after the period for public comment has ended. If a hearing is held, the period for public comment ends ten days after the date the hearing is completed, and DNR must render its decision within 20 days after the period for public comment ends.

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

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

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**Other provisions**

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

Under current law, the amount of the fee for an individual wetland certification is a set fee. There is no fee for an application to proceed under a general permit. This bill increases the fee for an wetland individual permit and creates a fee for an application to proceed under a wetland general permit. The bill also creates a surcharge that is applicable to certain applications to proceed under wetland general permits.

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

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

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

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

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

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

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

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

\*\*\*\*NOTE: For clarity, I have used the term "subprogram" to describe the in lieu fee program since it will be part of the overall mitigation program.

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

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

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

17           23.321 (1) (title) DEFINITION.

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

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

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

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

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

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

4           23.321 (**3**) (title) FEES; GENERALLY.

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

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

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

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

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

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

15           23.321 (**4**) (title) TIME LIMITS.

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

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

18           23.321 (**5**) (title) LENGTH OF VALIDITY.

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

20           23.321 (**6**) (title) INCLUDED ON MAPS.

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

22           30.025 (**1b**) (b) "Permit" means an individual permit, a general permit, an  
23 approval, or a contract required under this subchapter or subch. II, a permit or an  
24 approval required under ch. 31, a storm water discharge permit required under s.  
25 283.33 (1) (a), or a ~~water quality certification~~ wetland general permit or wetland



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

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

4 30.03 (4) (a) If the department learns of a possible violation of s. 281.36 or of  
5 the statutes relating to navigable waters or a possible infringement of the public  
6 rights relating to navigable waters, and the department determines that the public  
7 interest may not be adequately served by imposition of a penalty or forfeiture, the  
8 department may proceed as provided in this paragraph, either in lieu of or in addition  
9 to any other relief provided by law. The department may order a hearing under ch.  
10 227 concerning the possible violation or infringement, and may request the hearing  
11 examiner to issue an order directing the responsible parties to perform or refrain  
12 from performing acts in order to comply with s. 281.36 or to fully protect the interests  
13 of the public in the navigable waters. If any person fails or neglects to obey an order,  
14 the department may request the attorney general to institute proceedings for the  
15 enforcement of the department's order in the name of the state. The proceedings  
16 shall be brought in the manner and with the effect of proceedings under s. 111.07 (7).

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

18 30.2022 (2) The exemption under sub. (1) does not apply unless the activity is  
19 accomplished in accordance with interdepartmental liaison procedures established  
20 by the department and the department of transportation for the purpose of  
21 minimizing the adverse environmental impact, if any, of the activity. If the activity  
22 affects a wetland, as defined in s. 23.32 (1), the department of transportation shall  
23 conduct any required mitigation either by complying with the interdepartmental  
24 liaison procedures and any applicable interagency agreement on mitigation banks

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

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

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

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

13 **30.28 (title) Fees for permits, other approvals, and determinations and**  
14 **hearings.**

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

17 30.28 (1) (intro.) The department shall charge a ~~permit or approval~~ fee for  
18 ~~carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and~~  
19 ~~30.21 to 30.27~~ reviewing, investigating, and making decisions on determinations and  
20 on whether to issue or grant permits, contracts, authorizations, or other approvals  
21 under this subchapter. The ~~permit or approval~~ required fee shall accompany the  
22 ~~permit application, notice or request for approval or other submitted documentation.~~  
23 The department shall set each type of fee in the amount that is necessary to meet the  
24 costs incurred by the department except as follows:

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

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

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

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

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

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

- 10           1. An identification of an ordinary high-water mark.
- 11           2. A determination of navigability.
- 12           3. Any other determination that is necessary for reviewing, investigating, or  
13 making a decision on applications for permits, contracts, authorizations, or other  
14 approvals under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19          30.28 (2m) (d) The department, ~~by rule,~~ may increase any fee specified in sub.  
20 ~~(2) (a).~~ The department, by rule, may increase a fee specified in sub. (2) (b) (1) or (1m)  
21 only if the increase is necessary to meet the costs incurred by the department in  
22 acting on general permits or on notices submitted under s. 30.207 performing the  
23 activities for which the fee is charged.

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

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

4           **SECTION 37.** 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  
7 period that is shorter than the time limit under the rule promulgated under par. (b)  
8 for that type of permit ~~or, contract, authorization, approval, or determination~~.

9           **SECTION 38.** 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, authorization, approval~~  
12 ~~classified under sub. (2) (a) for determining whether the department will grant the~~  
13 permit or approval, or determination.

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

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

16          227.01 (13) (ru) Is a wetland general permit issued under s. 281.36 (3g).

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

19          281.165 (4) (a) 1m. The wetland area is ~~a nonfederal wetland, as defined in s.~~  
20 281.36 (1) (e) not subject to federal jurisdiction under 33 USC 1344, and the activity  
21 will affect less than 3 acres of that wetland area.

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

23          281.17 (10) (c) This subsection does not apply to discharges into wetlands that  
24 are subject to regulation under s. 281.36.

1           **SECTION 43.** 281.22 (title) of the statutes is renumbered 281.36 (12) (title) and  
2 amended to read:

3           281.36 (12) (title) ~~FEES APPLICATION FEES AND TIME LIMITS FOR WATER QUALITY~~  
4 ~~DETERMINATIONS FOR WETLANDS.~~

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

6           **SECTION 45.** 281.22 (2) (title) of the statutes is renumbered 281.36 (12) (c)  
7 (title).

8           **SECTION 46.** 281.22 (2) (a) of the statutes is renumbered 281.36 (12) (c) 1. and  
9 amended to read:

10           281.36 (12) (c) 1. The department shall refund ~~the~~ an application fee charged  
11 for a wetland individual permit under par. (a) 1. if the applicant requests a refund  
12 before the department determines that the application ~~for the determination~~ is  
13 complete. The department may not refund a fee after the department determines  
14 that the application is complete unless required to do so under a rule promulgated  
15 under s. 299.05.

16           **SECTION 47.** 281.22 (2) (b) of the statutes is renumbered 281.36 (12) (c) 2. and  
17 amended to read:

18           281.36 (12) (c) 2. If the applicant ~~applies for a permit after the project submits~~  
19 an application for authorization to proceed under a wetland general or a wetland  
20 individual permit after the discharge is begun or after it is completed, the  
21 department shall charge an amount equal to twice the amount of the fee that it would  
22 have charged under this section.

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

24           **SECTION 49.** 281.22 (2) (d) of the statutes is renumbered 281.36 (12) (c) 3. and  
25 amended to read:

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

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

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

8           281.36 (12) (d) 1. (intro.) The department, by rule, may charge a supplemental  
9           fee ~~for a determination under sub. (1)~~ that is in addition to the a fee charged under  
10          ~~sub. (1)~~ this subsection if all of the following apply:

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

13          281.36 (12) (d) 1. a. The applicant requests in writing that the ~~determination~~  
14          decision on the application be issued within a time period that is shorter than the  
15          time limit promulgated under ~~par. (b)~~ subd. 2. for the ~~determination~~ decision.

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

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

20          281.36 (12) (d) 2. If the department promulgates a rule under ~~par. (a)~~ subd. 1.,  
21          the rule shall contain ~~for~~ a time limit for making ~~determinations under sub. (1)~~  
22          decisions on the application.

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

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

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

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

5           **281.36 (title) Permits for discharges into wetlands; mitigation.**

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

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

8           281.36 (1) (bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as  
9 the meaning exists on the effective date of this paragraph .... [LRB inserts date].

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

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

12          281.36 (1) (bj) "Mitigation" means the restoration, enhancement, or creation  
13 of wetlands to compensate for adverse impacts to other wetlands.

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

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

16          281.36 (1) (cp) "Practicable" means reasonably available and capable of being  
17 implemented after taking into consideration cost, site availability, available  
18 technology, logistics, and proximity to the proposed project site, in light of the overall  
19 purpose <sup>and scope</sup> of the project.

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

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

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

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



1           281.36 **(3b)** (b) No person may discharge dredged material or fill material into  
2 a ~~nonfederal~~ wetland unless the discharge is authorized by a ~~water quality~~  
3 ~~certification~~ wetland general permit or individual permit issued by the department  
4 under this section or the discharge is exempt under sub. (4). No person may violate  
5 any condition ~~imposed by the department in a water quality certification~~ contained  
6 in a wetland general or individual permit issued by the department under this  
7 section. The department may not issue a ~~water quality certification~~ wetland general  
8 or individual permit under this section unless it determines that the discharge  
9 authorized pursuant to the wetland general or individual permit will comply with all  
10 applicable water quality standards.

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

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

14           281.36 **(2m)** DELINEATION PROCEDURES. For purposes of delineating the  
15 boundary of a ~~nonfederal~~ wetland, ~~the department and the person who is applying~~  
16 ~~for or who holds a water quality certification under this section shall use~~ under this  
17 section, the procedures contained in the wetlands delineation manual published by  
18 the U.S. army corps of engineers shall be used. The edition of the manual that shall  
19 be used shall be the 1987 edition of the manual and any document that the U.S. army  
20 corps of engineers issues interpreting that manual, unless the U.S. army corps of  
21 engineers publishes an edition of the manual after January 9, 2001, and the  
22 department ~~by rule~~ designates that edition as the one to be used under this  
23 subsection. ~~If the U.S. army corps of engineers issues a guidance document~~  
24 ~~interpreting the edition of the wetlands delineation manual that the department is~~  
25 ~~required to use under this subsection and if that guidance document is issued after~~

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

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

7 281.36 **(3b)** (title) PERMIT REQUIRED.

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

9 281.36 **(3b)** (a) For purposes of this section, a wetland general or individual  
10 permit issued by the department constitutes water quality certification as required  
11 by 33 USC 1341 (a).

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

13 281.36 **(3g)** (title) WETLAND GENERAL PERMITS.

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

15 281.36 **(3g)** (a) *Required permits.* The department shall issue a wetland  
16 general permit for each of the following types of discharges:

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

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

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

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

1 this subdivision, the development of a waste disposal site is considered to be a  
2 development for industrial purposes.

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

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

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

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

11 9. A discharge that is part of a development for recreational purposes, if the  
12 discharge does not affect more than 10,000 square feet of wetland.

13 10. A discharge that is necessary for the construction, reconstruction, or  
14 maintenance of a bridge or culvert that is part of a transportation project that is  
15 being carried out under the direction and supervision of a city, village, town, or  
16 county.

17 **SECTION 74.** 281.36 (3g) (c) of the statutes is created to read:

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

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

22 281.36 (3g) (d) *Standards for wetland types.* In issuing general permits under  
23 this subsection, the department shall establish different requirements, conditions,  
24 and exceptions for discharges into different types of wetlands. A general permit may  
25 not authorize a discharge into a type of wetland that is classified as being rare or

1 imperiled under the natural heritage inventory prepared by the department under  
2 s. 23.27 (3).

← INSERT 20-2 ✓

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

4 281.36 (3g) (e) *Period of validity; subsequent actions.* A wetland general permit  
5 issued under this subsection is valid for a period of 5 years. Upon compliance with  
6 the requirements under pars. (f) to (g), the department may renew, modify, or revoke  
7 a wetland general permit issued under this subsection.

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

9 281.36 (3g) (f) *Public notice.* The department shall provide to interested (and  
10 potentially interested) members of the public, as determined by the department,  
11 notices of its intention to issue, renew, modify, or revoke a wetland general permit  
12 under this subsection. Procedures for providing public notices shall include all of the  
13 following:

14 1. Publication of a class 1 notice under ch. 985.

15 2. Providing a copy of the notice to any person or group upon request of the  
16 person or group.

17 3. Publication of the notice on the department's Internet Web site.

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

19 281.36 (3g) (fg) *Date of notice.* For the purpose of determining the date on  
20 which public notice is provided under this subsection, the date on which the  
21 department first publishes the notice on its Internet Web site shall be considered the  
22 date of public notice.

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

24 281.36 (3g) (fm) *Written comments.* The department shall provide a period of  
25 not less than 30 days after the date of the public notice during which time interested

1 persons may submit their written comments on the department's intention to issue,  
2 renew, modify, or revoke a wetland general permit under this subsection. All written  
3 comments submitted during the period for comment shall be retained by the  
4 department and considered by the department in acting on the general permit.

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

6 281.36 (3g) (fr) *Description in notice.* Every public notice provided by the  
7 department under par. (f) shall include a description of the discharges to be  
8 authorized under the wetland general permit.

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

10 281.36 (3g) (g) *Public informational hearing.* 1. The department shall provide  
11 an opportunity for any interested state agency or federal agency or person or group  
12 of persons to request a public informational hearing with respect to the department's  
13 intention to issue, renew, modify, or revoke a wetland general permit under this  
14 subsection. The request for the hearing shall be filed with the department within 30  
15 days after the provision of the public notice under par. (f) and shall indicate the  
16 interest of the party filing the request and the reasons why the hearing is warranted.

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

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

1 summary shall contain a brief, precise, easily understandable, plain language  
2 description of the subject matter of the general permit.

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

4 281.36 (3g) (h) *Authorizations for discharges under wetland general permits.*

5 1. A person wishing to proceed with a discharge that may be authorized under a  
6 wetland general permit shall apply to the department, with written notification of  
7 the person's wish to proceed, not less than 30 days before commencing the discharge  
8 authorized by the general permit unless subd. 4. applies. The application shall  
9 provide information describing the discharge in order to allow the department to  
10 determine whether the discharge is authorized by the wetland general permit and  
11 shall give the department consent to enter and inspect the site, subject to sub. (9).  
12 The application shall identify all activities affecting wetlands that will be conducted  
13 as part of the total project. The application shall include a detailed explanation of  
14 why the impact to the wetland cannot be avoided and how the impact to the wetland  
15 will be minimized to the greatest extent practicable. The application shall be  
16 accompanied by the fee specified in sub. (12) (a) 1. If the application is for  
17 authorization to proceed under a wetland general permit that is issued under sub.  
18 (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as  
19 calculated under sub. (11). The department may make a request for additional  
20 information one time during this 30-day period.

\*\*\*\*NOTE: As I have tried to explain, legislation is drafted for a broader audience than just the administrators of that legislation. The phrase "single and complete project," without a definition, could be open to many interpretations. It is my understanding that you do not want to incorporate the federal definition, but courts may well turn to that definition in trying to understand this phrase. I looked at the definition under federal law, which uses the term "total project." I think that is a much more descriptive term and have therefore included it in this provision.

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

8           3. If the department requests additional information under subd. 1., the  
9 30-day period is tolled from the date the person applying for authorization to proceed  
10 receives the request until the date on which the department receives <sup>all of</sup> the additional  
11 information.

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

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

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

19           281.36 (3g) (i) *Wetland individual permit in lieu of wetland general permit.* For  
20 a proposed discharge for which an application has been received by the department  
21 under par. (h), the department may decide to require that a person who submitted  
22 the application apply for a wetland individual permit if the department has  
23 inspected the site as provided in par. (h) and has determined that conditions specific  
24 to the site require additional restrictions on the discharge in order to provide

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

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

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

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

19 (c) *Review; no additional information required.* In issuing wetland individual  
20 permits under this section, the department shall review an application, and within  
21 30 days after the application is submitted, the department shall determine that  
22 either the application is complete or that additional information is needed. If the  
23 department determines that the application is complete, the department shall notify  
24 the applicant in writing of that fact within the 30-day period, and the date on which



1 the notice under this paragraph is sent shall be considered the date of closure for  
2 purposes of par. (g) 1.

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

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

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

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

1 determined by the department. If the applicant has requested a public informational  
2 hearing as part of the submitted application, a notice of the public hearing shall be  
3 part of the notice of pending application.

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

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

16 (i) *Decision.* Within 20 days after the period for public comment under par. (j)  
17 has ended or if no public informational hearing is held, within 30 days after the  
18 30-day comment period under par. (j) has ended, the department shall render a  
19 decision issuing or denying the wetland individual permit that is the subject of the  
20 application submitted under par. (a). If the decision issued by the department under  
21 this paragraph is a denial, the department shall include in the decision the specific  
22 grounds and reasons as to how the applicable provisions of this section were not met.  
23 If the denial is based on an incomplete application, the department shall inform the  
24 applicant of the areas of the application that were incomplete.

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

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

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

12 281.36 (3n) REVIEW BY DEPARTMENT. (a) *Review limits.* For the purpose of  
13 issuing a wetland individual permit, during the period between the date on which  
14 the application under sub. (3m) (a) is submitted and the date on which a decision  
15 under sub. (3m) (i) is rendered, the department shall conduct its review under this  
16 subsection. The department shall review the analysis of practicable alternatives  
17 presented in the application under sub. (3m) (b) <sup>STH</sup> The department shall limit its  
18 review of analysis to those practicable alternatives that will have an impact on the  
19 site of the discharge and on those areas that are adjacent to the site if the department  
20 determines that all of the following apply:

21 1. The proposed project causing the discharge will result in a demonstrable  
22 economic benefit to the public.

\*\*\*\*NOTE: It is confusing to use the term "discharge" in one provision and then in  
the next provision switch to "project." I have used the phrase "project causing the  
discharge" in the above provision to show the interrelationship between the two terms.

1           2. The wetland to be affected is not a type of wetland that is classified as being  
 2 rare or imperiled under the natural heritage inventory prepared by the department  
 3 under s. 23.27 (3).

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

✓  
 INSERT  
 28-4

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

- 8           1. The direct impacts of the proposed project to wetland functional values,  
 9           2. The cumulative impacts attributable to the proposed project that may occur  
 10 to wetland functional values based on past impacts or reasonably anticipated  
 11 impacts caused by similar projects in the area affected by the project.

12           3. Potential secondary impacts of the proposed project to wetland functional  
 13 values.

14           4. The net positive or negative environmental impact of the proposed project. <sup>the</sup> ~~the~~ <sup>impact on</sup> ~~the~~ <sup>functional values</sup> ~~the~~ <sup>resulting from</sup> ~~the~~ <sup>mitigation</sup> ~~that is required~~ <sup>under</sup> ~~the~~ <sup>subp</sup> ~~(3r)~~ <sup>0</sup>

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

19           1. The proposed project represents the least environmentally damaging  
 20 practicable alternatives <sup>taking into</sup> ~~the~~ <sup>alternatives that avoid</sup> ~~the~~ <sup>wetland impacts</sup> ~~of~~

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

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

\*\*\*\*\*NOTE: Again, note that DNR may, but does not have to, issue the permit. OK?

1 (d) *Alternatives that avoid impacts.* In determining what is the least  
2 environmentally damaging practicable alternative for purposes of par. (c) 1., the  
3 department shall include in its analysis practicable alternatives that avoid impacts  
4 to wetland functional values.

5 (d) ~~(e)~~ *Mitigation required.* The department shall require mitigation under the  
6 program established under sub. (3r) for wetland individual permits it issues under  
7 this subsection.

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

9 281.36 (3p) NOTICE REQUIREMENTS; WETLAND INDIVIDUAL PERMITS. (a) The  
10 department shall establish procedures for providing notices of pending applications  
11 and notices of public informational hearings to be provided under sub. (3m). The  
12 procedures shall require all of the following:

- 13 1. That the notice be published as a class 1 notice under ch. 985.  
14 2. That the notice be mailed to any person or group upon request of the person  
15 or group.  
16 3. That the notice be published on the department's Internet Web site.

17 (b) The department shall prescribe the form and content of notices of pending  
18 applications and notices of public informational hearings to be provided under sub.  
19 (3m). Each notice shall include all of the following information:

- 20 1. The name and address of the applicant.  
21 2. A brief description of the discharge that requires the permit and the project  
22 that includes the discharge.  
23 3. For a notice of a public informational hearing, the time, date, and location  
24 of the hearing.

1           4. For a notice of pending application and a notice of a public informational  
2 hearing, a brief, precise, easily understandable, plain-language description of the  
3 discharge and information indicating where the pending application may be viewed  
4 on the department's Internet Web site.

5           5. For a notice of complete application and a notice of a public informational  
6 hearing, a statement of the tentative determination of the department on the permit.

7           6. For a notice of complete application and a notice of public informational  
8 hearing, a brief description of the procedures for the formulation of final  
9 determinations, including a description of the comment period required under sub.  
10 (3m) (j).

11           (c) For the purpose of determining the date on which notice is provided under  
12 this subsection, the date of the notice shall be the date on which the department first  
13 publishes the notice on its Internet Web site, unless the department delegates to the  
14 applicant under par. (d) the requirement to provide notice. If the department  
15 delegates to the applicant the requirement to provide notice, the date of the notice  
16 shall be the date on which the department first publishes the notice on its Internet  
17 Web site or 10 days after the date on which the department receives satisfactory proof  
18 of publication of a class 1 notice from the applicant, whichever is later.

19           (d) The department may delegate the department's requirement to provide  
20 notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of  
21 the following:

22           1. Requiring that the applicant for the permit provide by publication, mailing,  
23 or other distribution one or more of the notices.

24           2. Requiring that the applicant for the permit pay for the publication, mailing,  
25 or any other distribution costs of providing one or more of the notices.

1           **SECTION 87.** 281.36 (3r) of the statutes is created to read:

2           281.36 **(3r)** MITIGATION; IN LIEU FEE SUBPROGRAM. (a) The department shall  
3 establish a mitigation program that applies only to the issuance of wetland  
4 individual permits and that allows mitigation to be accomplished by any of the  
5 following methods:

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

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

9           3. Completing mitigation within the same watershed or within one-half mile  
10 of the site of the discharge.

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

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

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

22           (e) As part of the mitigation program established under par. (a), the department  
23 may establish an in lieu fee subprogram, in consultation with the army corps of  
24 engineers, under which payments are made to the department or another entity for  
25 the purposes of restoring, enhancing, creating, or preserving wetlands or other water

1 resource features. The department shall establish requirements for calculating the  
 2 in lieu fee payments. Under the in lieu fee subprogram, ~~the department may require~~  
 3 the wetlands that benefit from the program <sup>shall</sup> be open to the public for hunting, fishing,  
 4 trapping, cross-country skiing, or hiking or any combination thereof. The  
 5 subprogram shall be consistent with federal regulations.

~~the department may require~~ shall

Insert  
32-5

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

7 281.36 (4) EXEMPTIONS. (intro.) Except as provided in sub. (5), the certification  
 8 permitting requirement under sub. (2) (3b) does not apply to any discharge that is  
 9 the result of any of the following activities:

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

11 281.36 (4) (b) Maintenance, emergency repair, or reconstruction of damaged  
 12 parts of structures that are in use in a ~~nonfederal~~ wetland.

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

14 281.36 (4) (e) 1. That the flow and circulation patterns and chemical and  
 15 biological characteristics of the affected ~~nonfederal~~ wetland are not impaired.

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

17 281.36 (4) (e) 2. That the reach of the affected ~~nonfederal~~ wetland is not  
 18 reduced.

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

20 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the  
 21 affected ~~nonfederal~~ wetland is minimized to the degree required by the department.

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

23 281.36 (5) INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding sub. (4),  
 24 a discharge that would be exempt under sub. (4) is subject to the certification  
 25 permitting requirement under sub. (2) (3b) if the discharge is incidental to an activity



1 that has as its purpose bringing a ~~nonfederal~~ wetland, or part of a ~~nonfederal~~  
2 wetland, into a use for which it was not previously subject and if the activity may do  
3 any of the following:

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

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

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

7 281.36 (5) (b) Reduce the reach of any ~~nonfederal~~ wetland.

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

9 281.36 (6) (a) 1. Make the rules consistent with existing federal law or  
10 interpretation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           281.36 (9) (d) The department shall provide reasonable advance notice to the  
2 property owner before entering and inspecting property as authorized under par (a).

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

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

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

8           ~~SECTION 112. 281.36 (10) of the statutes is repealed.~~

INSERT 35-8

9           SECTION 113. 281.36 (11) of the statutes is created to read:

10           281.36 (11) RESTORATION; SURCHARGE FEE. (a) The department shall set a  
11 surcharge fee to be charged for each application to proceed under a wetland general  
12 permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set  
13 on an annual basis by the department and may not exceed more than 50 percent of  
14 the market price, as determined by the department, for the equivalent purchase of  
15 credits from a mitigation bank. These fees shall be credited to the appropriation  
16 account under s. 20.370 (4) (bm) for the restoration and creation of wetlands. The  
17 department may enter into agreements with other entities for the restoration and  
18 creation of such wetlands.

19           (b) Any wetland that is restored or created using funding from the  
20 appropriation under s. 20.370 (4) (bm) shall be open to the public for hunting, fishing,  
21 trapping, cross-country skiing, ~~and~~ <sup>or</sup> hiking. ~~The owner of the wetland~~ <sup>or any combination thereof, but</sup> may establish  
22 reasonable restrictions on the use of the land by the public in order to protect public  
23 safety or to protect a unique plant or animal community.

24           SECTION 114. 281.36 (12) (a) of the statutes is created to read:

1           281.36 (12) (a) *Fees required.* The department shall charge a fee for reviewing,  
 2 investigating, and making decisions on applications to proceed under wetland  
 3 general permits under sub. (3g) and on applications for wetland individual permits  
 4 under sub. (3m). For an authorization to proceed under a wetland general permit,  
 5 the application fee shall be \$500. For a wetland individual permit, the application  
 6 fee shall be \$800.

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

8           281.36 (12) (b) *Additional fee.* The department may set and charge a fee in the  
 9 amount necessary to meet the costs incurred by the department in reviewing  
 10 mitigation ~~projects~~ <sup>is</sup> that are conducted by mitigation banks.

11           **SECTION 116.** 281.36 (13) of the statutes is created to read:

12           281.36 (13) PARTIES TO A VIOLATION. (a) Whoever is concerned in the commission  
 13 of a violation of this section for which a forfeiture is imposed is a principal and may  
 14 be charged and found in violation although he or she did not directly commit the  
 15 violation and although the person who directly committed it has not been found in  
 16 violation.

17           (b) A person is concerned in the commission of the violation if the person does  
 18 any of the following:

- 19           1. Directly commits the violation.
- 20           2. Aids and abets the commission of the violation.
- 21           3. Is a party to a conspiracy with another to commit the violation or advises,  
 22 hires, counsels, or otherwise procures any person to commit it.

23           **SECTION 117.** 281.36 (14) of the statutes is created to read:

24           281.36 (14) PENALTIES. (a) Except as provided in par. (b), any person who  
 25 violates any provision of this section shall forfeit not less than \$100 nor more than

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 wetland general 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 wetland general permit issued  
8 under sub. (3g) is a violation of the statute under which the general permit was  
9 issued.

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

14 **SECTION 118.** 281.37 (title) of the statutes is repealed.

15 **SECTION 119.** 281.37 (1) (intro.) of the statutes is repealed.

16 **SECTION 120.** 281.37 (1) (a) of the statutes is repealed.

17 **SECTION 121.** 281.37 (1) (b) of the statutes is renumbered 281.36 (1) (bn) and  
18 amended to read:

19 281.36 (1) (bn) “Mitigation project” means ~~the restoration, enhancement or~~  
20 ~~creation of wetlands to compensate for adverse impacts to other wetlands.~~  
21 ~~“Mitigation project” includes using credits from a wetlands mitigation bank~~  
22 mitigation of the type specified in sub. (3r) (a) 3.

23 **SECTION 122.** 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (bL) and  
24 amended to read:

or shall execute a comparable legal instrument

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

6 SECTION 123. 281.37 (1) (e) of the statutes is repealed.

7 SECTION 124. 281.37 (1) (f) of the statutes is repealed.

8 SECTION 125. 281.37 (2) of the statutes is repealed.

9 SECTION 126. 281.37 (2m) of the statutes is renumbered 281.36 (8m), and

10 281.36 (8m) (a) 1, <sup>and 2, and (b) (intro.) and 2.</sup> as renumbered, <sup>is</sup> amended to read:  
<sub>are</sub>

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

← INSERT 38-18

19 SECTION 127. 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t)  
20 (intro.) and amended to read:

21 281.36 (3t) RULES FOR MITIGATION. (intro.) The department shall promulgate  
22 rules to establish a process for ~~consideration of wetland compensatory mitigation~~  
23 ~~under sub. (2)~~. Upon promulgation, the rules shall apply to any application or other  
24 request for an initial determination for a permit or other authorization that is

1 ~~pending with the department on the date on which the rules take effect the~~  
2 mitigation program under sub. (3r). The rules shall address all of the following:

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

5 281.36 (3t) (a) Requirements for the ~~avoidance and minimization of adverse~~  
6 ~~impacts to the wetland that will be affected by the permitted activity~~ analysis of  
7 practicable alternatives that is included in an application for a wetland individual  
8 permit under sub. (3m) (b).

9 **SECTION 129.** 281.37 (3) (b) of the statutes is renumbered 281.36 (3t) (b) and  
10 amended to read:

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

14 **SECTION 130.** 281.37 (3) (c) of the statutes is renumbered 281.36 (3t) (c) and  
15 amended to read:

16 281.36 (3t) (c) Enforcement of ~~a requirement to implement a mitigation project~~  
17 requirements under the mitigation program under sub. (3r) that apply to mitigation  
18 projects and mitigation banks.

19 **SECTION 131.** 281.37 (3) (d) of the statutes is renumbered 281.36 (3t) (d) and  
20 amended to read:

21 281.36 (3t) (d) Baseline studies of ~~the wetland~~ wetlands that will be affected  
22 by the ~~permitted activity~~ discharges and of the sites for mitigation project site  
23 projects.

24 **SECTION 132.** 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and  
25 amended to read:

1           281.36 (3t) (e) Plan and ~~project~~ design requirements for ~~a~~ mitigation ~~project~~,  
2 ~~which shall consider the relation of the project design projects and mitigation bank~~  
3 ~~sites, which shall include requirements for relating the design of a mitigation project~~  
4 ~~or a mitigation bank site~~ to the hydrology of the watershed in which a mitigation  
5 ~~project or mitigation bank site~~ is located.

6           **SECTION 133.** 281.37 (3) (f) of the statutes is renumbered 281.36 (3t) (f), and  
7 281.36 (3t) (f) (intro.), as renumbered, is amended to read:

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

12           **SECTION 134.** 281.37 (3) (g) of the statutes is repealed.

13           **SECTION 135.** 281.37 (3) (h) of the statutes is renumbered 281.36 (3t) (h) and  
14 amended to read:

15           281.36 (3t) (h) Standards for measuring the short-term and long-term success  
16 of ~~a~~ mitigation ~~project~~ projects and mitigation bank sites and requirements for the  
17 short-term and long-term monitoring of ~~a~~ mitigation ~~project~~ projects and  
18 mitigation bank sites.

19           **SECTION 136.** 281.37 (3) (i) of the statutes is renumbered 281.36 (3t) (i) and  
20 amended to read:

21           281.36 (3t) (i) Remedial actions to be taken by ~~the applicant if a~~ holders of  
22 wetland individual permits for mitigation project ~~is~~ projects that are not successful  
23 and actions to be taken by ~~a wetlands~~ mitigation bank ~~if a~~ banks for mitigation  
24 ~~project on which mitigation credits are based is~~ projects performed by the mitigation  
25 banks that are not successful.



1           **SECTION 137.** 281.37 (3) (j) of the statutes is repealed.

2           **SECTION 138.** 281.37 (3m) of the statutes is repealed.

3           **SECTION 139.** 281.37 (4) of the statutes is repealed.

4           **SECTION 140.** 281.37 (5) of the statutes is renumbered 281.36 (14) and amended  
5 to read:

6           281.36 (14) REPORT TO LEGISLATURE. No later than January 31, 2003, and no  
7 later than January 31 of each subsequent odd-numbered year, the department shall  
8 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the  
9 impact of the implementation of ~~this section~~ mitigation on wetland resources and on  
10 the issuance of permits or other approvals under ss. 59.692, 61.351, 62.231, 87.30,  
11 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

12           **SECTION 141.** 281.98 (1) of the statutes is amended to read:

13           281.98 (1) Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a),  
14 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any  
15 rule promulgated or any plan approval, license, special order, or water quality  
16 certification issued under this chapter shall forfeit not less than \$10 nor more than  
17 \$5,000 for each violation. Each day of continued violation is a separate offense.  
18 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

19           **SECTION 142.** 814.04 (intro.) of the statutes, as affected by 2011 Wisconsin Act  
20 2, is amended to read:

21           **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)  
22 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b)~~  
23 ~~1~~, 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),  
24 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51  
25 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

**SECTION 143. Nonstatutory provisions.**

(1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department of natural resources are increased by 2.0 PR positions to be funded from the appropriation under section 20.370 (4) (bi) of the statutes, to implement the mitigation program under section 281.36 (3r) of the statutes as created in this act.

**(2) PROJECT POSITION CHANGES.**

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

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

**SECTION 144. Initial applicability.**

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

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

**SECTION 145. Effective date.**

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

**(END)**

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P8ins  
MGG:.....

LPS:  
Please check  
extra  
spaces.

also  
coastal  
(Voff) → 5. The bill authorizes DNR to prohibit discharges into certain types of wetlands identified by DNR. These include coastal plain marshes and calcareous fens.

(NoF) 6. DNR must limit its review of these alternatives to those that are located at the site of the discharge and those adjacent to the site if the applicant has demonstrated that the proposed project that will cause the discharge will have a demonstrable economic benefit to the state, that the proposed project is necessary for the expansion of an existing industrial or commercial facility, or that the proposed will occur in an existing industrial park.

Ins ANL 3

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

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

Insert 20-2

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

281.36 (3g) (d) Requirements; conditions; restrictions. In issuing <sup>Wetland</sup> general permits under this subsection, the department shall establish requirements, conditions, and exceptions to ensure that the discharges will cause only minimal adverse environmental effects. As part of a general permit, the department may prohibit discharges into wetlands that are identified by the department as being one of the following:

1. Great Lakes ridge and swale complexes.
2. Interdunal wetlands.
3. Coastal plain marshes.
4. Emergent marshes containing wild rice.
5. Ephemeral ponds in wooded settings.
6. Boreal rich fens.

general water quality  
certifications

1 7. Calcareous fens.

2 **Insert 28-4**

3 **Not**

3 The department shall limit its review to those practicable alternatives that are  
4 located at the site of the discharge and that are located adjacent to that site if the  
5 applicant has demonstrated that the proposed project causing the discharge will  
6 result in a demonstrable economic benefit to the public, that the proposed project is  
7 necessary for the expansion of an existing industrial or commercial facility that is in  
8 existence at the time the application is submitted, or that the proposed project will  
9 occur in an industrial park that is in existence at the time the application is  
10 submitted.

state

11 **Insert 32-5**

12 **Not**

12 , but the department may establish reasonable restrictions on the use of the  
13 land by the public in order to protect public safety or to protect a unique plant or  
14 animal community.

15 **Insert 35-8**

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

18 281.36 (10) OTHER ADDITIONAL REQUIREMENTS. The requirement of being issued  
19 a wetland individual permit or proceeding under the authority of a wetland general  
20 permit under this section is in addition to any permit or other approval required by  
21 the department for a project or activity that involves a discharge into a wetland. This  
22 section does not affect the authority of the department to do any of the following: (a)  
23 Regulate otherwise regulate the discharge of dredged or fill material in a nonfederal  
24 wetland under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.35, 281.41 to 281.47,  
25 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

1           SECTION ~~#~~ 281.36 (10) (b) of the statutes is repealed.

2           **Insert 38-18**

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

9           ↓ (b) (intro.) Notwithstanding par. (a), the department shall modify or release a  
10 conservation easement granted under par. (a), <sup>↓</sup> or shall void a comparable legal  
11 instrument executed under par. (a) if all of the following apply:

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

14           1.

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P8dn  
MGG:/...

WJ

LPS: Please  
check  
extra  
spaces.

Date

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

- 8. 9. I changed the public access provisions regarding the surcharge fee provisions and the in lieu fee program to specify that DNR is the entity that may restrict access.
- 9. 10. I did not make the change requested for s. 281.37 (2m) (a) 1., as renumbered in this draft, to include mitigation banks because that is covered in s. 281.37 (2m) (b) 1., as renumbered in this draft. Please note the other changes that were necessary in s. 281.37 (2m), as renumbered in this draft.
- 10. 11. Regarding the repeal of s. 281.36 (10), this provision, as it exists in current law, is confusing and may be unnecessary. I have rewritten it in this draft to make it clearer. If you want any changes to this or insist on keeping the language as is, **please** have someone to explain the intent of the current provision.
- 11. 12. In reviewing this draft for preparing this redraft, I note that s. 281.37 (3) (d), as renumbered and treated in this draft, is limited to only actual individual mitigation projects as opposed to mitigation in general. See the definition of "mitigation project" in s. 281.37 (1) (b), as renumbered and treated in this draft.

Call

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

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

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

LRB-2803/P8dn  
MGG:wlj:jm

December 29, 2011

1. I took out the words "and potentially interested" and "as determined by the department" from s. 281.36 (3m) (g) as well as from s. 281.36 (3g) (f). OK?
2. Regarding the new language in s. 281.36 (3n) (a), the requested language did not seem to read right. I think it should read "those practicable alternatives that have an impact on the site of the discharge..." or "those practicable alternatives that are located at the site of the discharge." I chose the latter concept, but let me know if that is incorrect.
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Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

## **Gibson-Glass, Mary**

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**From:** Johnson, Dan  
**Sent:** Thursday, December 29, 2011 3:38 PM  
**To:** Gibson-Glass, Mary  
**Subject:** RE: LRB 2803

Mary,

I've had a chance to look through the draft and your notes, discuss them with the Department, and provide the following responses:

- Note #1: Okay.
- Note #2: The language you chose is acceptable.
- Note #3: The language regarding "existing facilities" is acceptable.
- Note #4: Okay.
- Note #5: Okay.
- Note #6: The language used meets our intent.
- Note #7: The language is acceptable and meets our intent.
- Note #8: The language is acceptable.
- Note #9: Okay.
- Note #10: The clarifying language is acceptable.
- Note #11: Okay.
- Note #12: Okay.

With that, we would like to request that LRB 2803/P8 move to an introducible /1 as soon as possible, unless there is something I may have missed in the notes. We also grant permission to the office of Representative Jeff Mursau to make request for a companion bill to LRB 2803, if requested. Thank you very much for all your assistance!

Dan Johnson  
Chief of Staff  
**State Senator Neal Kedzie**  
11<sup>th</sup> Senate District  
608.266.2635

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**From:** Gibson-Glass, Mary  
**Sent:** Thursday, December 29, 2011 10:49 AM  
**To:** Johnson, Dan  
**Subject:** LRB 2803

Dan,

You will be getting the -2803 today. Please do not be dismayed by the long drafter's note..... Hopefully, all of my comments and questions will be easily resolved.

Mary

Mary Gibson-Glass  
Senior Legislative Attorney

Legislative Reference Bureau  
608 267 3215