

## 2011 DRAFTING REQUEST

### Senate Amendment (SA-SB368)

Received: 01/12/2012

Received By: mglass

Wanted: As time permits

Companion to LRB:

For: Neal Kedzie (608) 266-2635

By/Representing: Dan Johson

May Contact:

Drafter: mglass

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

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kedzie@legis.wisconsin.gov

Carbon copy (CC:) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Changes to wetland bill, administrative review of individual permits

---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	mglass 01/13/2012	wjackson 01/13/2012	phenry 01/13/2012	_____	ggodwin 01/13/2012		
/P2	mglass 01/14/2012	jdyer 01/16/2012	jmurphy 01/16/2012	_____	chanaman 01/16/2012		
	mglass 01/16/2012	jdyer 01/16/2012	jmurphy 01/16/2012	_____			
/1	mglass 01/17/2012	jdyer 01/17/2012	phenry 01/17/2012	_____	sbasford 01/17/2012	sbasford 01/17/2012	

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

<END>

**2011 DRAFTING REQUEST**

**Senate Amendment (SA-SB368)**

Received: 01/12/2012

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Neal Kedzie (608) 266-2635**

By/Representing: **Dan Johson**

May Contact:

Drafter: **mglass**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kedzie@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Changes to wetland bill, administrative review of individual permits

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?		1/17 jld					
/P1	mglass 01/13/2012	wjackson 01/13/2012	phenry 01/13/2012	_____	ggodwin 01/13/2012		
/P2	mglass 01/14/2012	jdyer 01/16/2012	jmurphy 01/16/2012	_____	chanaman 01/16/2012		
	mglass 01/16/2012	jdyer 01/16/2012	jmurphy 01/16/2012	_____			

FE Sent For:

1/17  
ph

**2011 DRAFTING REQUEST**

**Senate Amendment (SA-SB368)**

Received: 01/12/2012

Received By: mglass

Wanted: As time permits

Companion to LRB:

For: Neal Kedzie (608) 266-2635

By/Representing: Dan Johson

May Contact:

Drafter: mglass

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

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kedzie@legis.wisconsin.gov

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Changes to wetland bill, administrative review of individual permits

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?		P2 1/16 jld	phenry 1/16/12	JM 1/16	ggodwin		
/P1	mglass 01/13/2012	wjackson 01/13/2012	phenry 01/13/2012	JM 1/16	ggodwin 01/13/2012		

FE Sent For:

<END>

**2011 DRAFTING REQUEST**

**Senate Amendment (SA-SB368)**

Received: **01/12/2012**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Neal Kedzie (608) 266-2635**

By/Representing: **Dan Johson**

May Contact:

Drafter: **mglass**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kedzie@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Changes to wetland bill, administrative review of individual permits

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	mglass	/pl WLJ 1/13	1/13 ph	Qem ph			
----	--------	--------------	------------	-----------	--	--	--

FE Sent For:

<END>

## **Gibson-Glass, Mary**

---

**From:** Johnson, Dan  
**Sent:** Wednesday, January 11, 2012 9:40 AM  
**To:** Gibson-Glass, Mary  
**Subject:** SB 368 amendment request

**Attachments:** Senate Bill 368 - simple amendment request.doc

Hi Mary,

Senator Kedzie would like to request a simple amendment to Senate Bill 368, the wetlands regulation bill. It is Senator Kedzie's intent to act on this bill and amendment a week from tomorrow, thus we would need to have this amendment in hand by next Tuesday. There may be additional changes coming, which I would submit to you no later than this Friday. But I wanted to get this going today in order to expedite the process, and knowing that Monday is a holiday.

This should be pretty straight-forward, but please let me know of any questions or concerns you have. Thank you!

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



Senate Bill 368 -  
simple amend...

**Senate Bill 368 – Simple Amendment Request**  
**Senator Neal Kedzie**

Issue

DN

SB 368 does not contain language which supersedes the appeals language in Wis. Admin. Code NR 299. That language, specifically found in NR 299.05(5) provides that any person whose substantial interest may be affected by the department's determination may request a contested case hearing under Chapter 227.

No distinction is made regarding general or individual permits. 227.42 provides a catch all that generally assumes a right to a contested case hearing of all final department actions or inactions. In order to limit contested case hearings for wetlands **to only individual permit decisions**, specific statutory language that DNR could rely upon to deny a contested case hearing is required.

Specifically, tracking the portion of s. 30.209 found in (1m) is critical for DNR to have the ability to deny hearing requests for general permits. Language would include the following concept:

Request for Administrative Review. Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any individual permit issued or contract entered into under this subchapter.
2. The imposition of, or failure to impose, a term or condition on any individual permit issued or contract entered into under this subchapter.

Solution

Request language in the amendment which essentially mirrors the provisions found under Wis. Stats. s. 30.209(1m) specific to individual wetlands permit decisions.

bottom line per Dom:  
just 30.209 lang.  
DNR may be interpreting  
this to be only adm.  
review under ch. 30. for  
proceeding under general  
permits

### **Issue**

SB 368 eliminates language under current law which states an applicant is not entitled to a permit or other approval in exchange for conducting a mitigation project. {281.37(2)(a)}

### **Solution**

Request language in the amendment which restores such language, specifically, This subsection does not entitle an applicant to a permit or other approval in exchange for conducting a mitigation project.

### **Issue**

SB 368 repeals 281.37 (3m) entirely, which is fine, but in doing so, it removes language regarding exemptions from timelines due to weather conditions:

*“The department is exempt from the time limit under par. (a) if the department determines that weather conditions prevent the department from making a determination within 60 working days after the receipt of the complete application.”*

### **Solution**

Reinsert the language, but have it only apply to timelines for individual permits. Also, the department and applicant would have to agree to this exemption, and we would prefer “calendar days” to “working days”; thus, add the following language to the amendment:

The department is exempt from the time limit for individual permit applications if the department and the applicant agree that weather conditions prevent the department from making a determination within 60 days after the receipt of the complete application.



have this amendment in hand by next Tuesday. There may be additional changes coming, which I would submit to you no later than this Friday. But I wanted to get this going today in order to expedite the process, and knowing that Monday is a holiday.

This should be pretty straight-forward, but please let me know of any questions or concerns you have. Thank you!

Dan Johnson

**State Senator Neal Kedzie**

11<sup>th</sup> Senate District

608.266.2635

<< File: Senate Bill 368 - simple amendment request.doc >>

## Gibson-Glass, Mary

---

**From:** Johnson, Dan  
**Sent:** Thursday, January 12, 2012 11:31 AM  
**To:** Gibson-Glass, Mary  
**Subject:** RE: SB 368 amendment request

Hi Mary,

These are our additional request for the amendment to Senate Bill 368. Call or write with any questions, however I will be committee today after 1:00.

Thank you!!

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

### Additional requests as of Thursday, January 11, 2012

✓ Amend 23.321(4)(a)2. and 23.321(4)(a)3. to reflect that wetland identification may be provided not later than 60 days rather than 30 days.

✓ Page 16, lines 12-13 – replace “or creation” with “creation, or preservation” *DN*

✓ Page 19, line 25 – After “adverse environmental effects”, insert, “and a general permit may only apply to a single and complete project.”

✓ Page 22, line 20 – replace “as part of the total project” with “as part of a single and complete project.”

*do not do per DS*  
✓ Page 23, line 14 – Between (b) or (c), replace “or” with “and”

✓ Page 23, line 20 – After “authorized”, insert “or until the activity is completed, whichever occurs first.” *DN*

✓ Page 28, Line 1 – Replace “(a)” with “(c)3”. *DN*

✓ P. 29, line 10 – Replace “mailed” with “provided”

---

**From:** Johnson, Dan  
**Sent:** Wednesday, January 11, 2012 9:40 AM  
**To:** Gibson-Glass, Mary  
**Subject:** SB 368 amendment request

Hi Mary,

Senator Kedzie would like to request a simple amendment to Senate Bill 368, the wetlands regulation bill. It is Senator Kedzie's intent to act on this bill and amendment a week from tomorrow, thus we would need to

**Gibson-Glass, Mary**

---

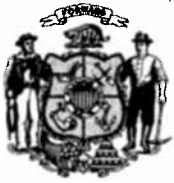
**From:** Johnson, Dan  
**Sent:** Friday, January 13, 2012 9:18 AM  
**To:** Gibson-Glass, Mary  
**Subject:** SB 368 amendement

Hi Mary,

✓ I don't recall if I requested this change or not, but just to be sure, the amendment for SB 368 you're working on should include expansion of "agricultural facilities" on Page 27, line 22. If I already made that request, my apologies for the duplication.

Thank you!

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



P1

DN  
Now

Wlj

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT,**  
**TO 2011 SENATE BILL 368**

LPS: Please check spacing.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 8, line 5: after that line insert:

3 "SECTION 12m. 23.321 (4) (a) 2. and 3. of the statutes are amended to read:

4 23.321 (4) (a) 2. Provide a wetland identification not later than 30 <sup>✓</sup>60 days after  
5 a person files a request, in the manner and form required by the department, for a  
6 wetland identification.

7 3. Provide a wetland confirmation not later than 30 <sup>✓</sup>60 days after a person files  
8 a request, in the manner and form required by the department, for a wetland  
9 confirmation."

History: 2009 a. 373.

10

2. Page 16, line 12: substitute "enhancement, creation, or preservation" for  
"enhancement or creation".  
↓  
9

11

1        ↓ **3.** Page 19, line 25: after "effects" insert ", and a general permit may only apply /  
2        to a single and complete project".

3        ✓ **4.** Page 22, line 20: substitute "single and complete" for "total".

4        ↓ **5.** Page 23, line 20: after "authorized" insert "or until the discharge is  
5        completed, whichever occurs first".

6        Fix Comp. **6.** Page 27, line 22: <sup>delete</sup> ~~after~~ "industrial or commercial" <sup>and substitute</sup> ~~insert~~ "industrial,  
7        commercial, <sup>or</sup> agricultural". <sup>^</sup>

8        ↓ **7.** Page 27, line 24: after that line insert:  
9        "(am) *Standards for issuing permits.* The department shall make a finding that  
10       a proposed project causing a discharge is in compliance with water quality standards  
11       and that a wetland individual permit may be issued if the department determines  
12       that all of the following apply:

13       1. The proposed project represents the least environmentally damaging  
14       practicable alternative taking into consideration practicable alternatives that avoid  
15       wetland impacts.

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

18       3. The proposed project will not result in significant adverse impact to wetland  
19       functional values, in significant adverse impact to water quality, or in other  
20       significant adverse environmental consequences."

21       ✓ **8.** Page 28, line 1: delete that line and substitute:

22       (b) *Factors to be used.* In making a determination that the requirement under  
23       par. (am) 3. is met, the department shall".

24       ✓ **9.** Page 28, line 13: delete lines 13 to 24.

1        ✓ 10. Page 28, line 16: delete "~~and the following~~ apply" and substitute "~~all~~  
2        ~~the following~~ requirements are met".

3        ✓ 11. Page 29, line 7: after "(3m)" insert "and notices of administrative hearings  
4        under sub. (3q)".

5        ✓ 12. Page 29, line 10: substitute "provided" for "mailed".

6        ✓ 13. Page 29, line 15: after "(3m)" insert "and notices of administrative  
7        hearings under sub. (3q)".

8        ✓ 14. Page 30, line 21: after that line insert:

9        "SECTION 86m. 281.36 (3q) of the statutes is created to read:

10        281.36 (3q) ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this  
11        subsection, "applicant" means any person applying <sup>to</sup> for a wetland individual  
12        permit under this section or any person who has been issued such a <sup>e</sup> permit under  
13        this section.

14        (b) *Request for administrative review.* Any interested person may file a petition  
15        with the department for administrative review within 30 days after any of the  
16        following decisions <sup>is</sup> given by the department: ~~the decisions of the department~~

17        1. The issuance, denial, or modification of any wetland individual permit issued  
18        under this section

19        2. The imposition of, or failure to impose, a condition on any wetland individual  
20        permit issued under this section.

21        (c) *Content of the petition.* If the petitioner <sup>is</sup> not the applicant, the petition  
22        shall describe the petitioner's objection to the wetland individual permit <sup>e</sup> and shall  
23        contain all of the following:

1           1. A description of the objection that is sufficiently specific to allow the  
2 department to determine which provisions of this <sup>Section</sup>~~subsection~~ may be violated if the  
3 proposed discharge under the wetland individual permit <sup>is</sup>~~is~~ allowed to proceed.

4           2. A description of the facts supporting the petition that is sufficiently specific  
5 to determine how the petitioner believes the discharge, as proposed, may result in  
6 a violation of the provisions of this section.

7           3. A commitment by the petitioner to appear at the administrative hearing and  
8 present information supporting the petitioner's objection.

9           (d) *Stays*. 1. The discharge shall be stayed pending an administrative hearing  
10 under this <sup>Subsection</sup>~~section~~ if the petition contains a request for the stay showing that a stay  
11 is necessary to prevent significant adverse impacts or irreversible harm to the  
12 environment.

13           2. If a stay is requested under subd. 1., the stay shall be in effect until either  
14 the department denies the request for an administrative hearing or the hearing  
15 examiner determines that the stay is not necessary.

16           (e) *Filings*. The petitioner shall file a copy of the petition with the department.  
17 If the petitioner is not the applicant, the petitioner shall simultaneously provide a  
18 copy of the petition to the applicant. The applicant may file a response to the petition  
19 with the department. If the applicant files a response under this paragraph, it shall  
20 be filed within 15 days after the petition is filed.

21           (f) *Action on petition*. The department shall grant or deny the petition within  
22 30 days after the petition is filed. The failure of the department to dispose of the  
23 petition within this 30-day period is a denial. The department shall deny the  
24 petition if any of the following applies:





1 one-time extension for the completion of the hearing of up to 60 days on the motion  
2 of any party and a showing of good cause demonstrating extraordinary  
3 circumstances justifying an extension.

4 4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the  
5 administrative hearing at least 30 days before the date of the hearing to all of the  
6 following:

- 7 a. The applicant.
- 8 b. Each petitioner, if other than the applicant.
- 9 c. Any other persons required to receive notice as provided under sub. (3p).<sup>x</sup>

10 5. In an administrative hearing under this subsection, the petitioner shall  
11 proceed first with the presentation of evidence and shall have the burden of proof.

12 (h) *Judicial review.* 1. Any person whose substantial interest is affected by a  
13 decision of the department under par. (b) 1. or 2. may commence an action in circuit  
14 court to review that decision.

15 2. Any party aggrieved by a decision of <sup>the</sup> a hearing examiner under par. (g) may  
16 commence an action in circuit court to review that decision.”

17 ✓ **15.** Page 38, line 11: delete “enhanced or created” and substitute “enhanced  
18 or created, or preserved”.

19 ✓ **16.** Page 39, line 3: delete “enhancing or creating” and substitute “enhancing  
20 or creating, or preserving”.

21 ✓ **17.** Page 41, line ~~10~~<sup>6</sup>: delete “~~enhanced~~ or created” and substitute “~~enhanced~~  
22 or created, or preserved”.

23 ✓ **18.** Page 43, line 13: after “(3p),” insert “(3q),”.

(END)

# Page 38, line 22: delete “or created” and substitute  
“or created, or preserved”.

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBa2089?dn  
MGG:.....

WJ

LPS: Please  
check spaces.

Date

✓ 1. Under the bill, the surcharge may be used only for restoring and creating wetlands. I did not make any changes in this regard. This amendment changes the bill so that the concept of "preservation" is a mitigation activity <sup>for</sup> purposes of mitigation performed by mitigation banks and as mitigation projects. As to the in lieu fee subprogram, the bill already <sup>authorizes</sup> ~~authorized~~ preservation as an activity under the subprogram.

✓ 2. Regarding the change on page 23, line 20, I substitute "discharge" for "activity" since under s. 281.36 "discharges", and not "activities", are authorized under <sup>general</sup> ~~general~~ wetland permits.

general 3. I moved the order of the paragraphs under s. 281.36 (3n) due to the change requested in the cross-reference language found on page 28, line 1, of the bill. Otherwording in s. 281.36 (3n) <sup>needed</sup> ~~needed~~ to be changed to be consistent with the language found on page 28, lines 22 to 24. \*

4. Please review the language created in the amendment for administrative and judicial review. The amendment contains no language exempting authorizations to proceed under general permits from the administrative hearing requirements under ch. 227. The language in this amendment is based on all of s. 30.209, not just <sup>s.</sup> ~~30.209~~ (1m).

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

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

LRBa2089/P1dn  
MGG:wlj:ph

January 13, 2012

1. Under the bill, the surcharge may be used only for restoring and creating wetlands. I did not make any changes in this regard. This amendment changes the bill so that the concept of "preservation" is a mitigation activity for purposes of mitigation performed by mitigation banks and as mitigation projects. As to the in lieu fee subprogram, the bill already authorizes preservation as an activity under the subprogram.
2. Regarding the change on page 23, line 20, I substituted "discharge" for "activity" since under s. 281.36 "discharges," and not "activities," are authorized under wetland general permits.
3. I moved the order of the paragraphs under s. 281.36 (3n) due to the change requested in the cross-reference language found on page 28, line 1, of the bill. Other wording in s. 281.36 (3n) needed to be changed to be consistent with the language found on page 28, lines 22 to 24.
4. Please review the language created in the amendment for administrative and judicial review. The amendment contains no language exempting authorizations to proceed under general permits from the administrative hearing requirements under ch. 227. The language in this amendment is based on all of s. 30.209, not just s. 30.209 (1m).

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

For P2

**Gibson-Glass, Mary**

---

**From:** Johnson, Dan  
**Sent:** Friday, January 13, 2012 11:01 AM  
**To:** Gibson-Glass, Mary  
**Subject:** RE: SB 368 amendment request

Mary,

In their notes to me, the DNR referred to this as "technical fix" to reflect that general permits are being issued under (b) and (c). But I see what you're saying, and thus would agree to leave it as is.

Thanks...

Dan

---

**From:** Gibson-Glass, Mary  
**Sent:** Friday, January 13, 2012 10:49 AM  
**To:** Johnson, Dan  
**Subject:** RE: SB 368 amendment request

Dan

For the item on page 23, line 14: I don't understand why they want to insert "and". A general wetland permit cannot be issued under both (b) and (c); (b) permits are those that correspond to federal law and DNR is required to issue them. (c) permits are the ones DNR **may** issue in addition to those required under par. (a). I cannot draft this part until I understand what is intended.

---

**From:** Johnson, Dan  
**Sent:** Thursday, January 12, 2012 11:31 AM  
**To:** Gibson-Glass, Mary  
**Subject:** RE: SB 368 amendment request

Hi Mary,

These are our additional request for the amendment to Senate Bill 368. Call or write with any questions, however I will be committee today after 1:00.

Thank you!!

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

**Additional requests as of Thursday, January 11, 2012**

Amend 23.321(4)(a)2. and 23.321(4)(a)3. to reflect that wetland identification may be provided not later than 60 days rather than 30 days.

**Gibson-Glass, Mary**

---

**From:** Johnson, Dan  
**Sent:** Friday, January 13, 2012 9:18 AM  
**To:** Gibson-Glass, Mary  
**Subject:** SB 368 amendement

Hi Mary,

I don't recall if I requested this change or not, but just to be sure, the amendment for SB 368 you're working on should include expansion of "agricultural facilities" on Page 27, line 22. If I already made that request, my apologies for the duplication.

Thank you!

Dan Johnson

**State Senator Neal Kedzie**

11<sup>th</sup> Senate District

608.266.2635

**Gibson-Glass, Mary**

---

**From:** Johnson, Dan  
**Sent:** Friday, January 13, 2012 3:16 PM  
**To:** Gibson-Glass, Mary  
**Subject:** SB 368 amendment

Hi Mary,

My apologies, I do need to make one additional request on the amendment for SB 368. It is as follows:

On Page 20, line 7: Replace "Ephemeral ponds in wooded settings", with "Sphagnum bogs south of Highway 21"

Thank you!!

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



State of Wisconsin  
2011 - 2012 LEGISLATURE

*DK*

Mon ASAP  
~~ASAP~~



LRBa2089/P2  
MGG:wlj:ph

*L + jld*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT ,**  
**TO 2011 SENATE BILL 368**

1 At the locations indicated, amend the bill as follows:

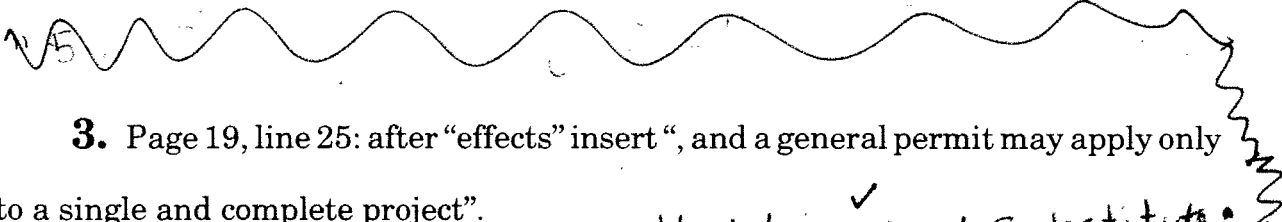
2 **1.** Page 8, line 5: after that line insert:

3 **"SECTION 12m.** 23.321 (4) (a) 2. and 3. of the statutes are amended to read:

4 23.321 (4) (a) 2. Provide a wetland identification not later than ~~30~~ 60 days after  
5 a person files a request, in the manner and form required by the department, for a  
6 wetland identification.

7 3. Provide a wetland confirmation not later than ~~30~~ 60 days after a person files  
8 a request, in the manner and form required by the department, for a wetland  
9 confirmation."

10 **2.** Page 16, line 12: substitute "enhancement, creation, or preservation" for  
11 "enhancement, or creation".



1           **3.** Page 19, line 25: after "effects" insert ", and a general permit may apply only  
2 to a single and complete project".

→ #, Page 20, line 7: delete that line and substitute: ✓

3           **4.** Page 22, line 20: substitute "single and complete" for "total".

INS  
A

4           **5.** Page 23, line 20: after "authorized" insert "or until the discharge is  
5 completed, whichever occurs first".

6           **6.** Page 27, line 22: delete "industrial or commercial" and substitute  
7 "industrial, commercial, or agricultural".

8           **7.** Page 27, line 24: after that line insert:

9           "(am) *Standards for issuing permits.* The department shall make a finding that  
10 a proposed project causing a discharge is in compliance with water quality standards  
11 and that a wetland individual permit may be issued if the department determines  
12 that all of the following ~~apply~~ <sup>requirements are met</sup> ✓

12

13           1. The proposed project represents the least environmentally damaging  
14 practicable alternative taking into consideration practicable alternatives that avoid  
15 wetland impacts.

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

18           3. The proposed project will not result in significant adverse impact to wetland  
19 functional values, in significant adverse impact to water quality, or in other  
20 significant adverse environmental consequences."

move

21           **8.** Page 28, line 1: delete that line and substitute:

22           (horizontal) "(b) *Factors to be used.* In making a determination that the requirement under  
23 par. (am) 3. is met, the department shall".

24           **9.** Page 28, line 13: delete lines 13 to 24.

text: treat # "5m. Sphagnum bogs that are located in the area located south of a line drawn across the state based on the routes of STH 16 and STH 21 west of Lake Winnebago and on USH 151 east of Lake Winnebago."



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**10.** Page 28, line 16: delete “apply” and substitute “requirements are met”.

**11.** Page 29, line 7: after “(3m)” insert “and notices of administrative hearings under sub. (3q)”.

*MDUC*  
✓  
~~XXXXXXXXXX~~ INSERT **B**

**12.** Page 29, line 10: substitute “provided” for “mailed”.

**13.** Page 29, line 15: after “(3m)” insert “and notices of administrative hearings under sub. (3q)”.

**14.** Page 30, line 21: after that line insert:

“**SECTION 86m.** 281.36 (3q) of the statutes is created to read:

281.36 **(3q)** ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this subsection, “applicant” means any person applying for a wetland individual permit under this section or any person who has been issued such a permit under this section.

(b) *Request for administrative review.* Any interested person may file a petition with the department for administrative review within 30 days after any of the following decisions given by the department:

1. The issuance, denial, or modification of any wetland individual permit issued under this section

2. The imposition of, or failure to impose, a condition on any wetland individual permit issued under this section.

(c) *Content of the petition.* If the petitioner is not the applicant, the petition shall describe the petitioner’s objection to the wetland individual permit and shall contain all of the following:

1           1. A description of the objection that is sufficiently specific to allow the  
2 department to determine which provisions of this section may be violated if the  
3 proposed discharge under the wetland individual permit is allowed to proceed.

4           2. A description of the facts supporting the petition that is sufficiently specific  
5 to determine how the petitioner believes the discharge, as proposed, may result in  
6 a violation of the provisions of this section.

7           3. A commitment by the petitioner to appear at the administrative hearing and  
8 present information supporting the petitioner's objection.

9           (d) *Stays*. 1. The discharge shall be stayed pending an administrative hearing  
10 under this subsection if the petition contains a request for the stay showing that a  
11 stay is necessary to prevent significant adverse impacts or irreversible harm to the  
12 environment.

13           2. If a stay is requested under subd. 1., the stay shall be in effect until either  
14 the department denies the request for an administrative hearing or the hearing  
15 examiner determines that the stay is not necessary.

16           (e) *Filings*. The petitioner shall file a copy of the petition with the department.  
17 If the petitioner is not the applicant, the petitioner shall simultaneously provide a  
18 copy of the petition to the applicant. The applicant may file a response to the petition  
19 with the department. If the applicant files a response under this paragraph, it shall  
20 be filed within 15 days after the petition is filed.

21           (f) *Action on petition*. The department shall grant or deny the petition within  
22 30 days after the petition is filed. The failure of the department to dispose of the  
23 petition within this 30-day period is a denial. The department shall deny the  
24 petition if any of the following applies:

1           1. The petitioner is not the applicant, and the petition does not comply with the  
2 requirements of par. (c).

3           2. The objection contained in the petition is not substantive. The department  
4 shall determine that an objection is substantive if the supporting facts contained in  
5 the objection appear to be substantially true and raise reasonable grounds to believe  
6 that the provisions of this section may be violated if the activity or project is  
7 undertaken.

8           3. If the department denies the petition, the department shall send the  
9 petitioner the denial in writing, stating the reasons for the denial.

10          4. If the department grants a petition under this subsection, the department  
11 shall refer the matter to the division of hearings and appeals in the department of  
12 administration within 15 days after granting the petition unless the petitioner and  
13 the applicant agree to an extension.

14          (g) *Administrative hearing.* 1. An administrative hearing under this  
15 subsection shall be treated as a contested case under ch. 227.

16          2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30  
17 days after receipt of the referral under par. (f) 4., determine whether continuation  
18 of the stay is necessary to prevent significant adverse impacts or irreversible harm  
19 to the environment pending completion of the administrative hearing. The hearing  
20 examiner shall make the determination based on the request under par. (d) 1., any  
21 response from the applicant under par. (e), and any testimony at a public hearing or  
22 any public comments. The determination shall be made without a hearing.

23          3. An administrative hearing under this subsection shall be completed within  
24 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties  
25 agree to an extension of that period. In addition, a hearing examiner may grant a

1 one-time extension for the completion of the hearing of up to 60 days on the motion  
2 of any party and a showing of good cause demonstrating extraordinary  
3 circumstances justifying an extension.

4 4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the  
5 administrative hearing at least 30 days before the date of the hearing to all of the  
6 following:

7 a. The applicant.

8 b. Each petitioner, if other than the applicant.

9 c. Any other persons required to receive notice as provided under sub. (3p).

10 5. In an administrative hearing under this subsection, the petitioner shall  
11 proceed first with the presentation of evidence and shall have the burden of proof.

12 (h) *Judicial review.* 1. Any person whose substantial interest is affected by a  
13 decision of the department under par. (b) 1. or 2. may commence an action in circuit  
14 court to review that decision.

15 2. Any party aggrieved by a decision of the hearing examiner under par. (g) may  
16 commence an action in circuit court to review that decision.”

17 **15.** Page 38, line 11: delete “enhanced or created” and substitute “ enhanced  
18 ~~or, created, or preserved~~”.

19 **16.** Page 38, line 22: delete “or created” and substitute “~~or created, or~~  
20 preserved”.

21 **17.** Page 39, line 3: delete “enhancing, or creating” and substitute “enhancing  
22 ~~, or creating, or preserving~~”.

23 **18.** Page 41, line 6: delete “or created” and substitute “~~or created, or~~  
24 preserved”.



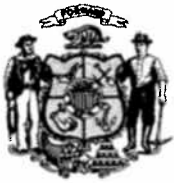
2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBa2089/P2ins  
MGG:....

1 **Insert A**

2 1. Page 23, line 9: after that line insert:

3 "2. If adverse weather conditions prevent the department from conducting an  
4 accurate on-site inspection ✓ during this ✓ 30-day period specified in ✓ subd. 1., the  
5 department shall give notice to the person wishing to proceed with the discharge that  
6 adverse weather conditions will prevent the department from complying with the  
7 30-<sup>days</sup> deadline and shall complete the inspection as soon as weather conditions  
8 permit."



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY AMENDMENT,  
TO 2011 ASSEMBLY BILL 463**

INS  
B

g

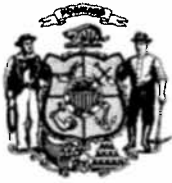
1  
2  
3  
4  
5  
6

At the locations indicated, amend the bill as follows:

1. Page 28, line 16: after "following" insert "conditions".
2. Page 29, line 3: after "subsection." insert "This subsection does not entitle an applicant to a wetland individual permit or any other approval in exchange for conducting mitigation." ✓

~~(END)~~

(end ins B)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa2089/P2  
MGG:wlj&jld:jm

NOW

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE AMENDMENT ,**  
**TO 2011 SENATE BILL 368**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 8, line 5: after that line insert:

3 **"SECTION 12m.** 23.321 (4) (a) 2. and 3. of the statutes are amended to read:

4 23.321 (4) (a) 2. Provide a wetland identification not later than ~~30~~ 60 days after  
5 a person files a request, in the manner and form required by the department, for a  
6 wetland identification.

7 3. Provide a wetland confirmation not later than ~~30~~ 60 days after a person files  
8 a request, in the manner and form required by the department, for a wetland  
9 confirmation."

10 **2.** Page 16, line 12: substitute "enhancement, creation, or preservation" for  
11 "enhancement, or creation".



1           **3.** Page 19, line 25: after “effects” insert “, and a general permit may apply only  
2 to a single and complete project”.

3           **4.** Page 20, line 7: delete that line and substitute:

4           “5m. Sphagnum bogs that are located in the area located south of a horizontal  
5 line drawn across the state based on ~~the~~ routes of STH 16 and STH 21 west of Lake  
6 Winnebago and on USH 151 east of Lake Winnebago.”

7           **5.** Page 22, line 20: substitute “single and complete” for “total”.

8           **6.** Page 23, line 9: after that line insert:

9           “2m. If adverse weather conditions prevent the department from conducting  
10 an accurate on-site inspection during this 30-day period specified in subd. 1., the  
11 department shall give notice to the person wishing to proceed with the discharge that  
12 adverse weather conditions will prevent the department from complying with the  
13 30-day deadline and shall complete the inspection as soon as weather conditions  
14 permit.”.

15           **7.** Page 23, line 20: after “authorized” insert “or until the discharge is  
16 completed, whichever occurs first”.

17           **8.** Page 27, line 22: delete “industrial or commercial” and substitute  
18 “industrial, commercial, or agricultural”.

19           **9.** Page 27, line 24: after that line insert:

20           “(am) *Standards for issuing permits.* The department shall make a finding that  
21 a proposed project causing a discharge is in compliance with water quality standards  
22 and that a wetland individual permit may be issued if the department determines  
23 that all of the following requirements are met:

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

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

6 3. The proposed project will not result in significant adverse impact to wetland  
7 functional values, in significant adverse impact to water quality, or in other  
8 significant adverse environmental consequences.”

9 **10.** Page 28, line 1: delete that line and substitute:

10 “(b) *Factors to be used.* In making a determination that the requirement under  
11 par. (am) 3 is met, the department shall”

12 **11.** Page 28, line 13: delete lines 13 to 24.

13 **12.** Page 29, line 3: after “subsection.” insert “This subsection does not entitle  
14 an applicant to a wetland individual permit or any other approval in exchange for  
15 conducting mitigation.”

16 **13.** Page 29, line 7: after “(3m)” insert “and notices of administrative hearings  
17 under sub. (3q)”.

18 **14.** Page 29, line 10: substitute “provided” for “mailed”.

19 **15.** Page 29, line 15: after “(3m)” insert “and notices of administrative  
20 hearings under sub. (3q)”.

21 **16.** Page 30, line 21: after that line insert:

22 “**SECTION 86m.** 281.36 (3q) of the statutes is created to read:

1           281.36 (3q) ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this  
2 subsection, “applicant” means any person applying for a wetland individual permit  
3 under this section or any person who has been issued such a permit under this  
4 section.

5           (b) *Request for administrative review.* Any interested person may file a petition  
6 with the department for administrative review within 30 days after any of the  
7 following decisions given by the department:

8           1. The issuance, denial, or modification of any wetland individual permit issued  
9 under this section

10          2. The imposition of, or failure to impose, a condition on any wetland individual  
11 permit issued under this section.

12          (c) *Content of the petition.* If the petitioner is not the applicant, the petition  
13 shall describe the petitioner’s objection to the wetland individual permit and shall  
14 contain all of the following:

15          1. A description of the objection that is sufficiently specific to allow the  
16 department to determine which provisions of this section may be violated if the  
17 proposed discharge under the wetland individual permit is allowed to proceed.

18          2. A description of the facts supporting the petition that is sufficiently specific  
19 to determine how the petitioner believes the discharge, as proposed, may result in  
20 a violation of the provisions of this section.

21          3. A commitment by the petitioner to appear at the administrative hearing and  
22 present information supporting the petitioner’s objection.

23          (d) *Stays.* 1. The discharge shall be stayed pending an administrative hearing  
24 under this subsection if the petition contains a request for the stay showing that a

1 stay is necessary to prevent significant adverse impacts or irreversible harm to the  
2 environment.

3 2. If a stay is requested under subd. 1., the stay shall be in effect until either  
4 the department denies the request for an administrative hearing or the hearing  
5 examiner determines that the stay is not necessary.

6 (e) *Filings*. The petitioner shall file a copy of the petition with the department.  
7 If the petitioner is not the applicant, the petitioner shall simultaneously provide a  
8 copy of the petition to the applicant. The applicant may file a response to the petition  
9 with the department. If the applicant files a response under this paragraph, it shall  
10 be filed within 15 days after the petition is filed.

11 (f) *Action on petition*. The department shall grant or deny the petition within  
12 30 days after the petition is filed. The failure of the department to dispose of the  
13 petition within this 30-day period is a denial. The department shall deny the  
14 petition if any of the following applies:

15 1. The petitioner is not the applicant, and the petition does not comply with the  
16 requirements of par. (c).

17 2. The objection contained in the petition is not substantive. The department  
18 shall determine that an objection is substantive if the supporting facts contained in  
19 the objection appear to be substantially true and raise reasonable grounds to believe  
20 that the provisions of this section may be violated if the activity or project is  
21 undertaken.

22 3. If the department denies the petition, the department shall send the  
23 petitioner the denial in writing, stating the reasons for the denial.

24 4. If the department grants a petition under this subsection, the department  
25 shall refer the matter to the division of hearings and appeals in the department of

1 administration within 15 days after granting the petition unless the petitioner and  
2 the applicant agree to an extension.

3 (g) *Administrative hearing.* 1. An administrative hearing under this  
4 subsection shall be treated as a contested case under ch. 227.

5 2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30  
6 days after receipt of the referral under par. (f) 4., determine whether continuation  
7 of the stay is necessary to prevent significant adverse impacts or irreversible harm  
8 to the environment pending completion of the administrative hearing. The hearing  
9 examiner shall make the determination based on the request under par. (d) 1., any  
10 response from the applicant under par. (e), and any testimony at a public hearing or  
11 any public comments. The determination shall be made without a hearing.

12 3. An administrative hearing under this subsection shall be completed within  
13 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties  
14 agree to an extension of that period. In addition, a hearing examiner may grant a  
15 one-time extension for the completion of the hearing of up to 60 days on the motion  
16 of any party and a showing of good cause demonstrating extraordinary  
17 circumstances justifying an extension.

18 4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the  
19 administrative hearing at least 30 days before the date of the hearing to all of the  
20 following:

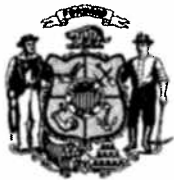
21 a. The applicant.

22 b. Each petitioner, if other than the applicant.

23 c. Any other persons required to receive notice as provided under sub. (3p).

24 5. In an administrative hearing under this subsection, the petitioner shall  
25 proceed first with the presentation of evidence and shall have the burden of proof.





State of Wisconsin  
2011 - 2012 LEGISLATURE



RMR

LRBa2089/P2 L  
MGG:wlj&jld:jm

NOW

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SENATE AMENDMENT,  
TO 2011 SENATE BILL 368

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 8, line 15: after that line insert:

3 **"SECTION 12m.** 23.321 (4) (a) 2. and 3. of the statutes are amended to read:

4 23.321 (4) (a) 2. Provide a wetland identification not later than ~~30~~ 60 days after  
5 a person files a request, in the manner and form required by the department, for a  
6 wetland identification.

7 3. Provide a wetland confirmation not later than ~~30~~ 60 days after a person files  
8 a request, in the manner and form required by the department, for a wetland  
9 confirmation."

10 **2.** Page 16, line 12: substitute "enhancement, creation, or preservation" for  
11 "enhancement, or creation".

1           **3.** Page 19, line 25: after “effects” insert “, and a general permit may apply only  
2 to a single and complete project”.

3           **4.** Page 20, line 7: delete that line and substitute:

4           “5m. Sphagnum bogs that are located in the area located south of a horizontal  
5 line drawn across the state based on the routes of STH 16 and STH 21 west of Lake  
6 Winnebago and on USH 151 east of Lake Winnebago.”.

7           **5.** Page 22, line 20: substitute “single and complete” for “total”.

8           **6.** Page 23, line 9: after that line insert:

9           “2m. If adverse weather conditions prevent the department from conducting  
10 an accurate on-site inspection during this 30-day period specified in subd. 1., the  
11 department shall give notice to the person wishing to proceed with the discharge that  
12 adverse weather conditions will prevent the department from complying with the  
13 30-day deadline and shall complete the inspection as soon as weather conditions  
14 permit.”.

15           **7.** Page 23, line 20: after “authorized” insert “or until the discharge is  
16 completed, whichever occurs first”.

17           **8.** Page 27, line 22: delete “industrial or commercial” and substitute  
18 “industrial, commercial, or agricultural”.

19           **9.** Page 29, line 3: after “subsection.” insert “This subsection does not entitle  
20 an applicant to a wetland individual permit or any other approval in exchange for  
21 conducting mitigation.”.

22           **10.** Page 29, line 7: after “(3m)” insert “and notices of administrative hearings  
23 under sub. (3q)”.



1           **11.** Page 29, line 10: substitute “provided” for “mailed”.

2           **12.** Page 29, line 15: after “(3m)” insert “and notices of administrative  
3 hearings under sub. (3q)”.

4           **13.** Page 30, line 21: after that line insert:

5           “**SECTION 86m.** 281.36 (3q) of the statutes is created to read:

6           281.36 **(3q)** ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this  
7 subsection, “applicant” means any person applying for a wetland individual permit  
8 under this section or any person who has been issued such a permit under this  
9 section.

10           (b) *Request for administrative review.* Any interested person may file a petition  
11 with the department for administrative review within 30 days after any of the  
12 following decisions given by the department:

13           1. The issuance, denial, or modification of any wetland individual permit issued  
14 under this section

15           2. The imposition of, or failure to impose, a condition on any wetland individual  
16 permit issued under this section.

17           (c) *Content of the petition.* If the petitioner is not the applicant, the petition  
18 shall describe the petitioner’s objection to the wetland individual permit and shall  
19 contain all of the following:

20           1. A description of the objection that is sufficiently specific to allow the  
21 department to determine which provisions of this section may be violated if the  
22 proposed discharge under the wetland individual permit is allowed to proceed.

1           2. A description of the facts supporting the petition that is sufficiently specific  
2 to determine how the petitioner believes the discharge, as proposed, may result in  
3 a violation of the provisions of this section.

4           3. A commitment by the petitioner to appear at the administrative hearing and  
5 present information supporting the petitioner's objection.

6           (d) *Stays*. 1. The discharge shall be stayed pending an administrative hearing  
7 under this subsection if the petition contains a request for the stay showing that a  
8 stay is necessary to prevent significant adverse impacts or irreversible harm to the  
9 environment.

10           2. If a stay is requested under subd. 1., the stay shall be in effect until either  
11 the department denies the request for an administrative hearing or the hearing  
12 examiner determines that the stay is not necessary.

13           (e) *Filings*. The petitioner shall file a copy of the petition with the department.  
14 If the petitioner is not the applicant, the petitioner shall simultaneously provide a  
15 copy of the petition to the applicant. The applicant may file a response to the petition  
16 with the department. If the applicant files a response under this paragraph, it shall  
17 be filed within 15 days after the petition is filed.

18           (f) *Action on petition*. The department shall grant or deny the petition within  
19 30 days after the petition is filed. The failure of the department to dispose of the  
20 petition within this 30-day period is a denial. The department shall deny the  
21 petition if any of the following applies:

22           1. The petitioner is not the applicant, and the petition does not comply with the  
23 requirements of par. (c).

24           2. The objection contained in the petition is not substantive. The department  
25 shall determine that an objection is substantive if the supporting facts contained in

1 the objection appear to be substantially true and raise reasonable grounds to believe  
2 that the provisions of this section may be violated if the activity or project is  
3 undertaken.

4 3. If the department denies the petition, the department shall send the  
5 petitioner the denial in writing, stating the reasons for the denial.

6 4. If the department grants a petition under this subsection, the department  
7 shall refer the matter to the division of hearings and appeals in the department of  
8 administration within 15 days after granting the petition unless the petitioner and  
9 the applicant agree to an extension.

10 (g) *Administrative hearing.* 1. An administrative hearing under this  
11 subsection shall be treated as a contested case under ch. 227.

12 2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30  
13 days after receipt of the referral under par. (f) 4., determine whether continuation  
14 of the stay is necessary to prevent significant adverse impacts or irreversible harm  
15 to the environment pending completion of the administrative hearing. The hearing  
16 examiner shall make the determination based on the request under par. (d) 1., any  
17 response from the applicant under par. (e), and any testimony at a public hearing or  
18 any public comments. The determination shall be made without a hearing.

19 3. An administrative hearing under this subsection shall be completed within  
20 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties  
21 agree to an extension of that period. In addition, a hearing examiner may grant a  
22 one-time extension for the completion of the hearing of up to 60 days on the motion  
23 of any party and a showing of good cause demonstrating extraordinary  
24 circumstances justifying an extension.

