

2011 DRAFTING REQUEST

Senate Amendment (SA-SB368)

Received: 02/13/2012

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Mark Miller (608) 266-9170**

By/Representing: **Beth Bier**

May Contact:

Drafter: **mglass**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Wetland individual permits, mitigation, report

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>
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FE Sent For:

<END>

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FE Sent For:

1. Amend Section 84 (pg 24) lines 6-20 to read as follows:

281.36 (3m) WETLAND INDIVIDUAL PERMITS. (a) When permit required. Any person wishing to proceed with a discharge into any wetland shall submit an application for a wetland individual permit under this subsection unless the discharge has been authorized under a wetland general permit as provided in sub. (3g) or is exempt under sub. (4). ~~Before submitting the application, The department shall hold a pre-application meeting with the potential applicants to discuss the details of the proposed discharge and the requirements for submitting the application and for delineating the wetland. As part of the pre-application meeting, the department shall identify and document the scope of practicable alternatives analysis required.~~ An applicant may include in the application a request for a public informational hearing. The application shall be accompanied by the applicable fee specified in sub. (11) or (12) (a) 1.

(b) Analysis of practicable alternatives. An applicant shall include in an application submitted under par. (a) ~~an analysis explanation of the practicable alternatives that will were considered to first avoid and then minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences, and a description of the proposed method of mitigation.~~

2. Amend Section 85 (pg 27) lines 12-24 to read as follows:

281.36 (3n) (a) Review limits. For the purpose of issuing a wetland individual permit, during the period between the date on which the application under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m) (i) is rendered, the department shall conduct its review under this subsection. The department shall review the ~~analysis~~ analysis of practicable alternatives presented in the application under sub. (3m) (b). The department shall establish the required scope of alternatives and determine practicability under sub.(3m)(a), in a manner that is consistent with the federal memorandum of agreement on the appropriate level of analysis required for an alternatives analysis that is in place at the time this statute is enacted.¹ To be considered practicable, off-site alternatives not presently owned by the applicant must be reasonably available for the applicant to obtain, expand, or manage in order to fulfill the basic purpose of the proposed activity. The department shall also limit its review to those practicable alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated that the proposed project causing the discharge ~~will result in a demonstrable economic benefit,~~ is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, or that the proposed project will occur in an industrial park that is in existence at the time the application is submitted.

1 Memorandum of Agreement between the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers on the *Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements*. <http://water.epa.gov/lawsregs/guidance/wetlands/flexible.cfm>

3. Amend Section 85 (pg 28) as follows:

Move lines 1-12 to follow Section c and amend as follows:

(b) Factors used in review. In its review under par. ~~(a)-(c)~~(3), the department shall consider all of the following factors ~~when it assesses the impacts to wetland functional values:~~

1. The direct impacts of the proposed project to wetland functional values.
2. The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.
3. Potential secondary impacts of the proposed project to wetland functional values.
4. The impact on wetland functional values in the watershed where the impact occurs resulting from the mitigation that is required under sub. (3r).
5. The net positive or negative environmental impact of the proposed project in the watershed where the impact occurs.

4. Amend Section 87 (pg 31) as follows:

Insert this sentence after the end of the text on line 18:

Ratios shall be established to provide incentives for mitigation that replaces the wetland types and functions most needed within the watershed where the authorized impact occurs.

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Note: The proposed amendments recommended above address the priorities identified by WWA and partner organizations. We offer one additional recommendation for your consideration as a means to help policy makers, regulated interests, and the public evaluate whether the objectives of the legislation and the mitigation program are being fully met.

Section 141 Report to the Legislature (pg 42) add the following language after line 8:

The report shall include at least the following:

1. A summary of the number of pre-application meetings held ³ and a quantifiable report on meeting outcomes. ^{during}
2. A summary of approved fill and associated mitigation by wetland type, location, class of activity, and type of permit.
3. A summary of permit denials and reasons for denial.
4. A mitigation status update including: a summary of mitigation projects approved, built, and monitored during the reporting period, a statement of deposits, expenditures, and remaining balances in the wetland restoration account, and an assessment of how well mitigation projects are meeting performance standards.



three waiting for this PM

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE AMENDMENT,

TO 2011 SENATE BILL 368

TODAY
AM

Bhv

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

2 1. Page 24, line 10: delete "Before submitting the application, the" and
3 substitute "The".

4 2. Page 24, line 11: before "meeting" insert "preapplication".

5 3. Page 24, line 11: delete "applicant" and substitute "potential applicants".

6 4. Page 24, line 13: after "wetland" insert "As part of the preapplication
7 meeting, the department shall identify and establish the scope of the analysis of

8 practicable alternatives that will be required." ~~to~~ ~~and substitute "practicable"~~

9 5. Page 24, line 17: substitute "explanation" for "analysis".

10 delete "of" and substitute "explaining".

11 6. Page 24, line 18: delete "will avoid and minimize" and substitute "were
considered to first avoid and then minimize".

Page 24, line 17: delete "an" and substitute "a proposed".

Page 27, line 16 substitute
"explanation" for "analysis"

10 7. Page 24 line 20: after "consequence" insert "The application shall also
2 include a description of the proposed mitigation method as required under sub. (3r)".

3 8. Page 27, line 17: after "sub. (3m) (b)" insert "The department shall limit the
4 scope of the practicable alternatives that will be considered and shall determine
5 which possible alternatives are practicable in a manner that is consistent with the
6 memorandum of understanding entered into between the U.S. Environmental
7 Protection Agency and the U.S. Army Corps of Engineers relating to the level of
8 analysis required for evaluating compliance with 1333 USC 1344b that is in effect on
9 the effective date of this paragraph [LRB inserts date]. In order for an
10 alternative that would be implemented at a site that is not owned by the applicant
11 at the time the application is submitted and that would be located more than
12 one-half mile from the discharge to be considered practicable, the applicant must be
13 reasonably able to acquire, expand into, or otherwise manage the site in a manner
14 that will fulfill the basic purpose of the proposed discharge or the proposed project
15 of which the proposed discharge would be a part."

16 9. Page 27, line 17: after "department" insert "also".

17 10. Page 27, line 20: delete that line.

18 11. Page 27, line 21: delete "benefit, that the".

19 12. Page 27, line 22: delete "industrial or commercial" and substitute
20 "industrial, commercial or agricultural".

21 13. Page 27, line 24: after that line insert:

22 "(am) *Standards for issuing permits.* The department shall make a finding that
23 a proposed project causing a discharge is in compliance with water quality standards

1 and that a wetland individual permit may be issued if the department determines
2 that all of the following requirements are met:

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

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

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

11 **14.** Page 28, line 1: delete lines 1 to ^{e 3}2 and substitute:

12 “(b) *Factors to be used.* In making a determination that the requirement under
13 par. (am) 3. is met, the department shall consider all of the following factors:”.

14 **15.** Page 28, line 10: delete lines 10 to 12 and substitute:

15 “4m. The impact that any mitigation required under sub. (3r) will cause to the
16 functional values of the wetlands that are located in the watershed in which the
17 discharge will occur.

18 ^{g or} 5m. The net positive or negative environmental impact of the proposed project
19 to the watershed in which the discharge will occur.”.

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

21 **17.** Page 31, line 18: after “discharge.” insert “[^]The ratios shall include
22 incentives for mitigation that will be located in the same watershed in which the
23 discharge will occur or ^{e that}which will replace the wetland types and functions that are
24 most needed in the watershed in which the discharge will occur”.

Page 40, line 2: substitute “explanation” for “analysis”

Page 42, line 1: before that line insert:
"SECTION 140m. 281.37 (S) (title) of the statutes is renumbered 281.36 (14) (title)."

1 18. Page 42, line 1: after "(14)" insert "(a)".

2 19. Page 42, line 3: after "LEGISLATURE" insert "(a)".
REPORT TO
and substitute
delete

see
clean
copy

3 20. Page 42, line 6: delete "this section mitigation" and substitute "this
4 section".

5 21. Page 42, line 8: after that line insert:
SECTION 141m. 281.36 (14)(b) of the statutes *is* created to read:
6 (b) The report under par. (a) shall include all of the following:
and (c)
are

7 281.36 (14) 1. The number of preapplication meetings held during the previous 2-year
8 period and a report on the results of these meetings.

9 2. A summary of the types of discharges that were approved during the
10 previous 2-year period. The summary shall specify the locations of the discharges
11 and the types of projects involved.

12 3. A summary of the mitigation performed during the previous 2-year period.
13 The summary shall include a description of mitigation projects approved,
14 accomplished and monitored during the 2-year period.

15 4. The number of wetland individual permits denied in the previous 2-year
16 period and a summary of the reasons for the denials.

17 5. An accounting covering the previous 2-year period showing the amounts
18 credited to, the amounts appropriated from, and the balance in the appropriation
19 under s. 20.370 (4) (bm).

20 (c) In the report required to be submitted no later than January 31, ~~2014~~ ²⁰¹⁵, the
21 information required under par. (b) 1. to ~~5~~ shall cover the period beginning on the
22 effective date of this paragraph ... [LRB inserts date] and ending on December 31,
23 ~~2014~~ ²⁰¹⁵.

24 (c) The information ~~required~~ ^(END) under par. (b) 1. to 5.
will be required beginning with the report that is
due no later than January 31, 2015.

Page 42, line 2: delete lines 2 to 8.

1 **19.** Page 42, line 1: before that line insert:

2 “**SECTION 140m.** 281.37 (5) (title) of the statutes is renumbered 281.36 (14)
3 (title).”.

4 **20.** Page 42, line 1: after “(14)” insert “(a)”.
Page 42, line 1: delete “and amended”.

5 **21.** Page 42, line 3: after “LEGISLATURE.” insert “(a)”.

6 **22.** Page 42, line 6: delete “this section mitigation” and substitute “this
7 section”.

8 **23.** Page 42, line 8: after that line insert:

9 “**SECTION 141m.** 281.36 (14) (b) and (c) of the statutes are created to read:

10 281.36 (14) (b) The report under par. (a) shall include all of the following:

11 1. The number of preapplication meetings held during the previous 2-year
12 period and a report on the results of these meetings.

13 2. A summary of the types of discharges that were approved during the
14 previous 2-year period. The summary shall specify the locations of the discharges
15 and the types of projects involved.

16 3. A summary of the mitigation performed during the previous 2-year period.
17 The summary shall include a description of mitigation projects approved,
18 accomplished, and monitored during the 2-year period.

19 4. The number of wetland individual permits denied in the previous 2-year
20 period and a summary of the reasons for the denials.

21 5. An accounting covering the previous 2-year period showing the amounts
22 credited to, the amounts appropriated from, and the balance in the appropriation
23 under s. 20.370 (4) (bm).