

**2019 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB169)**

For: **Van Wanggaard (608) 266-1832** Drafter: **eshea**  
 By: **Eric** Secondary Drafters:  
 Date: **5/28/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Sen.Wanggaard@legis.wisconsin.gov**  
 Carbon copy (CC) to: **elisabeth.shea@legis.wisconsin.gov**  
**zachary.wyatt@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Wetland mitigation requirements; mitigation bank requirements

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	eshea 5/28/2019	csicilia 5/29/2019			
/P1	eshea 7/3/2019	csicilia 7/8/2019	lparisi 5/29/2019		
/P2	eshea 7/22/2019	anienaja 7/22/2019	mbarman 7/8/2019		
/P3			dwalker 7/22/2019		
/1				lparisi	

Vers.    Drafted

Reviewed

Submitted

Jacketed  
8/1/2019

Required

FE Sent For:

<END>

## Shea, Elisabeth

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**From:** Barbour, Eric  
**Sent:** Tuesday, May 28, 2019 10:42 AM  
**To:** Shea, Elisabeth  
**Subject:** RE: Update to LRB-1017/1 - Wetland Mitigation Banking

Lis,

Yes, you are correct, that means the mitigation type is less prone to risk.

Thank you,

Eric S. Barbour  
Office of Senator Wanggaard  
21<sup>st</sup> Senate District  
(608) 266-1832

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**From:** Shea, Elisabeth <Elisabeth.Shea@legis.wisconsin.gov>  
**Sent:** Tuesday, May 28, 2019 10:39 AM  
**To:** Barbour, Eric <Eric.Barbour@legis.wisconsin.gov>  
**Subject:** RE: Update to LRB-1017/1 - Wetland Mitigation Banking

Hi Eric,

One question: on item 13, I'm not sure I understand what is meant by "risk adverse" in the phrase "or the mitigation type being provided in the bank is more risk adverse such as wetland preservation or enhancement." Does this mean that the mitigation type is less prone to risk?

Lis

**Elisabeth H. Shea**  
Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
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*The information contained in this communication may be confidential and protected by the attorney-client privilege.*

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**From:** Barbour, Eric <Eric.Barbour@legis.wisconsin.gov>  
**Sent:** Wednesday, May 22, 2019 4:31 PM  
**To:** Shea, Elisabeth <Elisabeth.Shea@legis.wisconsin.gov>  
**Subject:** Update to LRB-1017/1 - Wetland Mitigation Banking

Elisabeth,

Senator Wanggaard's office is hoping to have a substitute amendment drafted on our SB 169 (LRB-1017/1). Please find the attached word document with the changes we would like to see made to LRB-1017/1.

Please let me know if you have any questions regarding these changes.

Thank you,

Eric S. Barbour  
Office of Senator Wanggaard  
21<sup>st</sup> Senate District  
(608) 266-1832

## **SB 169 – Wetland Mitigation Banking – Drafting Instructions for Senate Substitute Amendment**

- ✓ 1. Add new section to amend 281.36(3r)(e) related to the In-Lieu Fee Subprogram- As part of the mitigation program established under par. (a), the department ~~may~~ shall establish an in lieu fee subprogram, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features...
- ✓ 2. Section 1 – Remove portion of line 3 and line 4 – remove “except that this definition does not apply to par. (be). We can remove this clause because we are removing the definition of GMU in Section 3.
- ✓ 3. Section 2 – Remove the definition of “Compensation Search Area”
- ✓ 4. Section 3 – Remove the definition of “Geographic Management Unit”
- ✓ 5. Add definition for “HUC 8” means watersheds delineated by USGS using a nationwide system based on surface hydrologic features at the 8-digit sub-basin scale.
- ✓ 6. Add definition for “Bank Service Areas – (BSAs) means the geographic area within which impacts can be mitigated at a specific mitigation bank or in-lieu fee program as determined in an agreement between the department and the U.S. Army Corps of Engineers and referenced in a mitigation banking instrument or an in-lieu fee program instrument.”
- ✓ 7. Section 4 - Amend to remove reference to the CSA and include the HUC 8 instead of the CSA as the first tier of mitigation.
- ✓ 8. Section 5 in (3r)(1)(b) – Amend to remove reference to 50 miles and add the Bank Service Area instead of the 50 miles.
- ✓ 9. Section 5 in (3r)(1)(d) – Remove this section. We will end the hierarch with tier 3 in (3r)(1)(c) and remove reference to the option of purchasing credits from banks located anywhere entire state to more closely align with hydrologic impacts. .
- ✓ 10. Somewhere in or after Sections 4-5 regarding the hierarchy for selecting a wetland mitigation bank, add language providing the department the flexibility to stay within a level and use ILF even if a bank wasn't available or go outside a level due to the impacted wetland type and mitigated wetland type being similar – For example, please include language along these lines – “The Department may, in consultation with the Army Corps of Engineers, use discretion and require that mitigation is done through the In-Lieu Fee Subprogram under s. 281.36(3r)(e) or in a differing bank tier if the Department determines it is in the best interest for natural resource considerations, including flood water retention, habitat, or to more closely match the impacted wetland type.”
- ✓ 11. Section 6 – Remove Section – we are not using the definition of compensation search area anymore and the department will be updating rules.
- ✓ 12. Section 8 – Please change the definition for “bank document” throughout section 8 of the bill related to the release schedule to “Mitigation Banking Instrument” defined as “The legal document for the establishment, operation, and use of a mitigation bank.”
- ✓ 13. Section 8 – on line 18 change this section (c) to (d) and add a new section (c) to do the following: “The department, at their discretion, may provide for a more rapid release schedule should an additional level of financial assurance be provided, or the mitigation type being provided in the bank is more risk adverse such as wetland preservation or enhancement.”
- ✓ 14. Section 9 – Can we add a nonstatutory provision to allow additional extensions of the emergency rule on financial assurance just in case a permanent rule is not completed in the 270 days allotted (150 original emergency rule and two 60 day JCRAR extensions). The concern is that mitigation banking instruments will be created with the new financial assurance requirements and then if a permanent rule is not in effect when the emergency rule lapses we go back to current law and there aren't administrative rules on financial assurance which could put contracts, banks and permittees at risk.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-(017/1) 50045  
EHS:amn&cjs

~~gjs~~  
gjs

In 5/28  
Due 5/29

**2019 SENATE BILL 169**

April 18, 2019 - Introduced by Senators WANGGAARD, COWLES, WIRCH and OLSEN, cosponsored by Representatives TUSLER, OHNSTAD, SINICKI, KERKMAN and MURSAU. Referred to Committee on Natural Resources and Energy.

bill  
stat  
comp

1 **AN ACT to renumber and amend** 281.36 (3r) (a) 1.; **to amend** 281.36 (3r) (am);  
2 and **to create** 281.36 (1) (ae), 281.36 (1) (ag), 281.36 (1) (be), 281.36 (3r) (a) 1.  
3 b., c. and d., 281.36 (3t) (g) and 281.36 (3w) of the statutes; **relating to:** wetland  
4 mitigation banks, providing an exemption from emergency rule procedures,  
5 providing an exemption from rule-making procedures, and requiring the  
6 exercise of rule-making authority.

*substitute amendment*

**Analysis by the Legislative Reference Bureau**

This bill makes changes to requirements for wetland mitigation banks.

Under current law, the Department of Natural Resources must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may require a person to apply for 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 wetland functional values will occur. Under current law, before DNR may issue a wetland individual permit, it must require the restoration, enhancement, creation, or preservation of other wetlands to compensate for adverse impacts to a wetland resulting from the discharge, also known as mitigation.

Under current law, there are three methods by which wetland mitigation may be accomplished: 1) purchasing credits from a mitigation bank located in this state; 2) participating in the in lieu fee subprogram; or 3) completing mitigation within the

**SENATE BILL 169**

same watershed or within one-half mile of the site of the discharge. A mitigation bank is a system of accounting for wetland loss and compensation in which sites where wetlands are restored, enhanced, created, or preserved generate credits that may be applied or purchased in order to compensate for adverse impacts to other wetlands. Under current law, DNR must approve the establishment of a mitigation bank.

INS. A1

This bill changes the first method of wetland mitigation by limiting credit purchases to only a mitigation bank located in the same compensation search area as the wetland impacted by the discharge, if available. Under the bill, a compensation search area is an area that includes the geographic management unit of a wetland impacted by a discharge, the county of the impacted wetland, and the area within a 20-mile radius from the impacted wetland. Under the bill, a geographic management unit is one of the 22 statewide management units established by DNR based on the major river basins of the state. If no available mitigation bank is located in the same compensation search area as the wetland impacted by the discharge, the bill allows credit purchases to be made from a mitigation bank located within 50 miles of the wetland impacted by the discharge. If no available mitigation bank is located within 50 miles of the impacted wetland, the bill allows credit purchases to be made from a mitigation bank in the same basin as the wetland impacted by the discharge, meaning the Lake Michigan Basin, the Lake Superior Basin, or the Mississippi River Basin. If no available mitigation bank is located in the same basin as the wetland impacted by the discharge, the bill allows credit purchases to be made from a mitigation bank anywhere in the state.

This bill requires DNR to establish by rule financial assurance requirements for the construction of mitigation projects by mitigation banks. The bill also establishes the means by which a mitigation bank that has not yet completed construction of a mitigation project and has not been approved by DNR (developing mitigation bank) may sell the credits that the mitigation bank estimates it will have once the mitigation project is complete. Under the bill, a developing mitigation bank may sell these credits if it is in compliance with DNR's financial assurance requirements and if it follows a specific schedule for release of the credits that is established in the bill.

~~Substitute amendment~~

INS. A2

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

INS. 2-1

1           **SECTION 1.** 281.36 (1) (ae) of the statutes is created to read:

2           281.36 (1) (ae) "Basin" means the Lake Michigan basin, the Lake Superior  
3 basin, or the Mississippi River basin, except that this definition does not apply to par.

4           **(be).**

5           **SECTION 2.** 281.36 (1) (ag) of the statutes is created to read:

SENATE BILL 169

1 281.36 (1) (ag) "Compensation search area" means an area that includes the  
2 geographic management unit of a wetland impacted by a discharge, the county of the  
3 impacted wetland, and the area within a 20-mile radius from the impacted wetland.

4 SECTION 3. 281.36 (1) (be) of the statutes is created to read:

5 281.36 (1) (be) "Geographic management unit" means one of the 22 statewide  
6 management units established by the department based on the major river basins  
7 of the state.

8 SECTION 4. 281.36 (3r) (a) 1. of the statutes is renumbered 281.36 (3r) (a) 1. a.  
9 and amended to read:

10 281.36 (3r) (a) 1. a. ~~Purchasing~~ Except as provided in subd. 1. b. <sup>and par. (ag)</sup> purchasing  
11 credits from a mitigation bank located in this state the same compensation search  
12 area <sup>HUC 8</sup> as the wetland impacted by the discharge.

13 SECTION 5. 281.36 (3r) (a) 1. b. <sup>and</sup> c. and d. of the statutes are created to read:

14 281.36 (3r) (a) 1. b. Except as provided in subd. 1. c. <sup>and par. (ag)</sup> if credits are not available  
15 to be purchased as provided under subd. 1. a., credits may be purchased from a  
16 mitigation bank within 50 miles of <sup>the same bank service area as</sup> the wetland impacted by the discharge, as  
17 measured between the closest outer boundary of the impacted wetland and the  
18 closest outer boundary of the mitigation bank.

19 c. <sup>and par. (ag)</sup> Except as provided in subd. 1. d. if credits are not available to be purchased  
20 as provided under subd. 1. b., credits may be purchased from a mitigation bank in  
21 the same basin as the wetland impacted by the discharge.

22 d. If credits are not available to be purchased as provided under subd. 1. c.,  
23 credits may be purchased from a mitigation bank anywhere in this state.

24 SECTION 6. 281.36 (3r) (am) of the statutes is amended to read:

INS  
3-8

INS. 3-22



**SENATE BILL 169**

1           281.36 (3r) (am) For a discharge that is exempt from permitting requirements  
 2 under sub. (4n) (b) or (c), any off-site mitigation, including any mitigation conducted  
 3 by a mitigation bank or under the in lieu fee subprogram, shall be completed within  
 4 the same compensation search area, as defined by the department by rule, as the  
 5 discharge.

6           **SECTION 7.** 281.36 (3t) (g) of the statutes is created to read:

7           281.36 (3t) (g) Financial assurance requirements for the construction of  
 8 mitigation projects by mitigation banks.

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

10          281.36 (3w) **RELEASE OF CREDITS.** (a) In this subsection:

11           1. "Applicant" means the applicant for a wetland individual permit for which  
 12 wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland  
 13 mitigation project required under sub. (3n) (d).

14           2. "Bank document" means a document that contains specifications pertaining  
 15 to the establishment, operation, and maintenance of a mitigation bank and any other  
 16 items required by the department by rule.

17           2. ~~β~~. "Bank sponsor" means any public or private entity financially responsible  
 18 for establishing or operating a mitigation bank.

19           3. ~~γ~~. "Compensation site plan" means a comprehensive document prepared by an  
 20 applicant or bank sponsor that provides a thorough description of a proposed wetland  
 21 mitigation project.

22           4. ~~δ~~. "Developing mitigation bank" means a mitigation bank that has not  
 23 completed its mitigation project and that has not yet been established under an  
 24 agreement between the bank sponsor and the department or otherwise approved by  
 25 the department.

SENATE BILL 169

INS.  
5-13

1 5. 6. "Estimated credits" means the total number of credits that a developing  
2 mitigation bank estimates it will have once its mitigation project is constructed.

3 (b) A developing mitigation bank may sell its estimated credits under the  
4 mitigation program under sub. (3r) only if the mitigation bank has met the financial  
5 assurance requirements established by the department under sub. (3t) (g) and <sup>except as provided under</sup> ~~only~~ <sup>par. (c)</sup>,  
6 in accordance with the following schedule:

7 1. No more than 20 percent of the estimated credits after the department  
8 approves and executes <sup>mitigation banking instrument</sup> the ~~bank document~~.

9 2. No more than 65 percent of the estimated credits after the department issues  
10 a letter of compliance stating that construction and all corrective actions are  
11 complete.

12 3. No more than 85 percent of the estimated credits after the department  
13 approves a monitoring report for the mitigation bank or after 2 years have passed  
14 after construction of the mitigation project is completed, whichever is later.

15 4. One hundred percent of the estimated credits after the department approves  
16 the final monitoring report for the mitigation bank and determines that all  
17 performance standards identified in the compensation site plan are met.

INS.  
5-18

18 (d) ~~(c)~~ After the department approves and executes a mitigation bank <sup>ing</sup> ~~document~~ <sup>instrument</sup>  
19 establishing the specifications for a developing mitigation bank, the sponsor of the  
20 bank may not change the mitigation bank <sup>ing</sup> ~~document~~ <sup>instrument</sup> without the approval of the  
21 department. After the sponsor of a developing mitigation bank submits to the  
22 department a proposed change to the mitigation bank <sup>ing</sup> ~~document~~ <sup>instrument</sup> for review, the  
23 mitigation bank may not sell any estimated credits under par. (b) until all of the  
24 following occur:

25 1. The department approves the change to the mitigation bank <sup>ing</sup> ~~document~~ <sup>instrument</sup>.

**SENATE BILL 169**

1           2. The mitigation bank sponsor and the department adjust the estimated  
 2 credits and make any necessary adjustments to the credit release schedule under  
 3 par. (b), if the department believes these adjustments are necessary based on the  
 4 change to the mitigation bank <sup>ing</sup> ~~document~~ <sup>o</sup> instrument

**SECTION 9. Nonstatutory provisions.**

6           (1) Using the procedure under s. 227.24, the department of natural resources  
 7 may promulgate the rules necessary to implement s. 281.36 (3t) (g) as emergency  
 8 rules. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department of natural  
 9 resources is not required to provide evidence that promulgating a rule under this  
 10 subsection as an emergency rule is necessary for the preservation of the public peace,  
 11 health, safety, or welfare and is not required to provide a finding of emergency for a  
 12 rule promulgated under this subsection.

13           (2) Notwithstanding s. 227.135 (2), the department of natural resources is not  
 14 required to present the statement of scope of the rules necessary to implement s.  
 15 281.36 (3t) (g) to the department of administration for review by the department of  
 16 administration and approval by the governor. Notwithstanding s. 227.135 (2), the  
 17 department of natural resources is not required to present the statement of scope,  
 18 as provided in s. 227.135 (2), to the natural resources board for approval. *INS. 6-18*

**SECTION 10. Effective date.**

20           (1) This act takes effect on the 90th day after the day of publication.

(END)

*except Section 9*



\*\*\*\*NOTE: I did not include the language regarding the in lieu fee subprogram in the definition of "bank service area" as requested because this term is only used in reference to purchasing credits from a mitigation bank, and not with respect to the in lieu fee subprogram.

1           **INSERT 3-8**

2           **SECTION 2.** 281.36 (1) (be) of the statutes is created to read:

3           281.36 (1) (bf) "Hydrologic unit code 8" or "HUC 8" means a watershed  
4 delineated by the U.S. geological survey using a nationwide system based on surface  
5 hydrologic features at the 8-digit subbasin scale.

6           **INSERT 3-22**

7           **SECTION 3.** 281.36 (3r) (a) 2. of the statutes is amended to read:

8           281.36 (3r) (a) 2. Participating in the in lieu fee subprogram, ~~if such a~~  
9 subprogram is established under par. (e).

History: 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112.

Cross-reference: See also ch. NR 300, 351, 352, and 353, Wis. adm. code.

10           **SECTION 4.** 281.36 (3r) (ag) of the statutes is created to read:

11           281.36 (3r) (ag) The department may, in consultation with the U.S. army corps  
12 of engineers, allow credits to be purchased from a different mitigation bank than the  
13 one prescribed under par. (a) 1. if the department determines it would better serve  
14 natural resource goals, such as retaining flood water, improving or restoring wildlife  
15 habitat, or more closely matching the impacted wetland type.

\*\*\*\*NOTE: I did not include the language regarding the in lieu fee subprogram in par. (ag) as requested because participating in the in lieu fee subprogram is already an option under s. 281.36 (3r) (a) 2. Subdivision 1., on the other hand, is limited to the option of purchasing credits from a mitigation bank.

16           **SECTION 5.** 281.36 (3r) (e) of the statutes is amended to read:

17           281.36 (3r) (e) As part of the mitigation program established under par. (a), the  
18 department may shall establish an in lieu fee subprogram, under which payments  
19 are made to the department or another entity for the purposes of restoring,

1 enhancing, creating, or preserving wetlands or other water resource features. The  
 2 subprogram must be approved by the U.S. army corps of engineers. The department  
 3 shall establish requirements for calculating the in lieu fee payments. Under the in  
 4 lieu fee subprogram, the wetlands that benefit from the subprogram shall be open  
 5 to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any  
 6 combination thereof, but the department may establish reasonable restrictions on  
 7 the use of the land by the public in order to protect public safety or to protect a unique  
 8 plant or animal community. The subprogram shall be consistent with federal  
 9 regulations.

**History:** 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112.

**Cross-reference:** See also ch. NR 300, 351, 352, and 353, Wis. adm. code.

10 **INSERT 5-3**

11 6. "Mitigation banking instrument" means the legal document that governs the  
 12 establishment, operation, and use of a mitigation bank.

13 **INSERT 5-18**

14 (c) The department may authorize a developing mitigation bank to sell its  
 15 estimated credits at a faster rate than the schedule under par. (b) allows if the bank  
 16 provides an additional level of financial assurance or if the mitigation is of a type that  
 17 is less prone to risk, such as wetland preservation or enhancement.

18 **INSERT 6-18**

19 Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this  
 20 subsection remain in effect until January 1, 2021, or the date on which permanent  
 21 rules take effect, whichever is sooner.

\*\*\*\*NOTE: Let me know if January 1, 2021, does not give a sufficient amount of time for the promulgation of permanent rules. Alternatively, the draft could state a certain time period (for example, 2 years after the emergency rule's promulgation).

failure

AR  
sub(1)

1           **SECTION 6. Effective dates.** This act takes effect on the 90th day after the day  
2 of publication, except as follows:

3           (1) The treatment of SECTION <sup>AR</sup>9 of the act takes effect on the day after  
4 publication.

## Shea, Elisabeth

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**From:** Barbour, Eric  
**Sent:** Wednesday, June 19, 2019 11:47 AM  
**To:** Shea, Elisabeth  
**Subject:** Changes to LRBs0045/P1  
**Attachments:** Suggestions for Sub Am Draft 1 Changes (002).docx

Lis,

Please find the attached document with a few final changes we would like to make to the Senate Sub Amendment to SB 169, LRBs0045/P1.

Please let me know if you have any questions regarding the requested changes.

Thank you,

Eric S. Barbour  
Office of Senator Wanggaard  
21<sup>st</sup> Senate District  
(608) 266-1832



## Suggestions for Changes to Substitute Amendment P1 Draft

### Page 3:

- Lines 1 to 5: Add to the existing language that the BSA is mirroring the HUC 6
- Lines 7 to 8: Add to the existing language that the Basin is mirroring the HUC 2

### Page 4:

- Lines 11 to 16 and Note: While the DNR/discharge permittee does already have the authority to choose between mitigation types, we are looking for language that allows the DNR and ACoE to use their discretion in transferring a permittee from banking to ILF. It appears, based on meetings, that the DNR may direct a permittee to banking, and they specifically asked for the clarification to allow this transfer if an appropriate bank with available credits isn't available. We included the following on the last set of drafting instructions, and would be looking for something similar if possible: "The Department may, in consultation with the Army Corps of Engineers, use discretion and require that mitigation is done through the in the lieu of fee program or in a differing bank tier if the Department determines it is in the best interest for natural resource considerations, including flood water retention, habitat, or to more closely match wetland type."
- Line 17: Add a section to strike the following from s. 281.36 (3r) (b) → Under the mitigation program, mitigation as specified in par. (a) 1. and participation in the in lieu fee subprogram, ~~if established under par. (a) 2.~~ shall be the preferred types of mitigation.

### Page 6 and 7:

- Lines 22 to 25 and 1 to 8: Upon further reading of this language, we're concerned that it appears the DNR does not have 'an out' if they don't want to accept changes on the mitigation banking instrument. We were thinking of something along these lines, but any similar changes should work:
  - ... for review, the mitigation bank may not sell any estimated credits under par. (b) until ~~all~~ one of the following occurs:
    - The department approves mitigation banking instrument changes and the mitigation bank sponsor and the department adjust the estimated credits and make any necessary adjustments to the credit release schedule under par. (b), if the department believes these adjustments are necessary based on the change to the mitigation banking instrument.
    - The department rejects changes submitted by the mitigation bank sponsor, and the existing mitigation bank instrument remains effective.

### Page 8:

- Note: We like the 2 years after promulgation for the time period on the emergency rules
- Lines 3 to 4: I think we should add Section 9 along with Section 11 for taking effect on the day after publication so the s. 281.36 (3t) (g) reference in the emergency rules is in statute when they begin promulgation



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT ,**  
**TO SENATE BILL 169**

In 7/3  
Due 7/8 (not a hard deadline)

Bill Minster  
SA ✓  
+ reb comp ✓  
start comp ✓

Go Cut

1  
2  
3  
4  
5  
6

**AN ACT to renumber and amend 281.36 (3r) (a) 1.; to amend 281.36 (3r) (a) 2.**  
and 281.36 (3r) (e); and **to create** 281.36 (1) (ad), 281.36 (1) (ae), 281.36 (1) (be),  
281.36 (3r) (a) 1. b. and c., 281.36 (3r) (ag), 281.36 (3t) (g) and 281.36 (3w) of the  
statutes; **relating to:** wetland mitigation banks, providing an exemption from  
emergency rule procedures, providing an exemption from rule-making  
procedures, and requiring the exercise of rule-making authority.

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

This bill makes changes to requirements for wetland mitigation banks.

Under current law, the Department of Natural Resources must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may require a person to apply for 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 wetland functional values will occur. Under current law, before DNR may issue a wetland individual permit, it must require the restoration, enhancement,

creation, or preservation of other wetlands to compensate for adverse impacts to a wetland resulting from the discharge, also known as mitigation.

Under current law, there are three methods by which wetland mitigation may be accomplished: 1) purchasing credits from a mitigation bank located in this state; 2) participating in the in lieu fee subprogram; or 3) completing mitigation within the same watershed or within one-half mile of the site of the discharge. A mitigation bank is a system of accounting for wetland loss and compensation in which sites where wetlands are restored, enhanced, created, or preserved generate credits that may be applied or purchased in order to compensate for adverse impacts to other wetlands. Under current law, DNR must approve the establishment of a mitigation bank.

This bill changes the first method of wetland mitigation by limiting credit purchases to only a mitigation bank located in the same hydrologic unit code<sup>an e</sup> as the wetland impacted by the discharge, if available. Under the bill, a hydrologic unit code<sup>(HUC)</sup> is a watershed delineated by the U.S. Geological Survey using a nationwide system based on surface hydrologic features at the 8-digit subbasin scale. If no available mitigation bank is located in the same hydrologic unit code<sup>e HUC</sup> as the wetland impacted by the discharge, the bill allows credit purchases to be made from a mitigation bank located within the same bank service area as the wetland impacted by the discharge. Under the bill, a bank service area is the geographic area within which impacts to a wetland from a discharge can be mitigated at a specific mitigation bank as determined in an agreement between DNR and the U.S. Army Corps of Engineers and referenced in a mitigation banking instrument. If no available mitigation bank is located in the same bank service area as the impacted wetland, the bill allows credit purchases to be made from a mitigation bank in the same basin as the wetland impacted by the discharge, meaning the Lake Michigan Basin, the Lake Superior Basin, or the Mississippi River Basin. <sup>(INS. A2a)</sup> <sup>(INS. A2b)</sup> <sup>(INS. A2c)</sup>

However, despite these limitations on the location of a mitigation bank, the bill allows DNR, in consultation with the U.S. Army Corps of Engineers, to allow credits to be purchased from a different mitigation bank than the one prescribed if DNR determines it would better serve natural resource goals, such as retaining flood water, improving or restoring wildlife habitat, or more closely matching the impacted wetland type. <sup>require</sup> <sup>(INS. A2d)</sup>

This bill requires DNR to establish by rule financial assurance requirements for the construction of mitigation projects by mitigation banks. The bill also establishes the means by which a mitigation bank that has not yet completed construction of a mitigation project and has not been approved by DNR (developing mitigation bank) may sell the credits that the mitigation bank estimates it will have once the mitigation project is complete. Under the bill, a developing mitigation bank may sell these credits if it is in compliance with DNR's financial assurance requirements and if it follows a specific schedule for release of the credits that is established in the bill. The bill allows DNR to authorize a developing mitigation bank to sell its estimated credits at a faster rate than the schedule allows if the bank

provides an additional level of financial assurance or if the mitigation is of a type that is less prone to failure, such as wetland preservation or enhancement.

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

1           **SECTION 1.** 281.36 (1) (ad) of the statutes is created to read:

*corresponding to the HUC 6*

2           281.36 (1) (ad) "Bank service area" means the geographic area within which  
3 impacts to a wetland from a discharge can be mitigated at a specific mitigation bank  
4 as determined in an agreement between the department and the U.S. army corps of  
5 engineers and referenced in a mitigation banking instrument under sub. (3w).

\*\*\*\*NOTE: I did not include the language regarding the in lieu fee subprogram in the definition of "bank service area" as requested because this term is only used in reference to purchasing credits from a mitigation bank, and not with respect to the in lieu fee subprogram.

6           **SECTION 2.** 281.36 (1) (ae) of the statutes is created to read:

7           281.36 (1) (ae) "Basin" means the Lake Michigan basin, the Lake Superior  
8 basin, or the Mississippi River basin.

*that corresponds with the HUC 2*

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

*INS 3-10*

10          281.36 (1) (be) "Hydrologic unit code 8" or "HUC 8" means a watershed  
11 delineated by the U.S. geological survey using a nationwide system based on surface  
12 hydrologic features at the 8-digit subbasin scale.

*the hydrologic unit code 8*

*(the hydrologic unit code 8)*

13          **SECTION 4.** 281.36 (3r) (a) 1. of the statutes is renumbered 281.36 (3r) (a) 1. a.  
14 and amended to read:

15          281.36 (3r) (a) 1. a. Purchasing Except as provided in subd. 1. b. and par. (ag),  
16 purchasing credits from a mitigation bank located in this state the same HUC 8 as  
17 the wetland impacted by the discharge.

18          **SECTION 5.** 281.36 (3r) (a) 1. b. and c. of the statutes are created to read:

1           281.36 (3r) (a) 1. b. Except as provided in subd. 1. c. and par. (ag), if credits are  
2 not available to be purchased as provided under subd. 1. a., credits may be purchased  
3 from a mitigation bank within the same bank service area as the wetland impacted  
4 by the discharge.

5           c. Except as provided in par. (ag), if credits are not available to be purchased  
6 as provided under subd. 1. b., credits may be purchased from a mitigation bank in  
7 the same basin as the wetland impacted by the discharge.

8           **SECTION 6.** 281.36 (3r) (a) 2. of the statutes is amended to read:

9           281.36 (3r) (a) 2. Participating in the in lieu fee subprogram, ~~if such a~~  
10 ~~subprogram is established~~ under par. (e).

11           **SECTION 7.** 281.36 (3r) (ag) of the statutes is created to read:

12           281.36 (3r) (ag) The department may, in consultation with the U.S. army corps  
13 of engineers, <sup>require</sup> allow credits to be purchased from a different mitigation bank than the  
14 one prescribed under par. (a) 1. <sup>or require mitigation to be done through the in lieu fee</sup> if the department determines it would better serve <sup>subprogram</sup> rather  
15 natural resource goals, such as retaining flood water, improving or restoring wildlife <sup>than by</sup> purchasing  
16 habitat, or more closely matching the impacted wetland type. <sup>credits from a mitigation bank</sup>

INS. 4-17  
→

\*\*\*\*NOTE: I did not include the language regarding the in lieu fee subprogram in par. (ag) as requested because participating in the in lieu fee subprogram is already an option under s. 281.36 (3r) (a) 2. Subdivision 1., on the other hand, is limited to the option of purchasing credits from a mitigation bank.

17           **SECTION 8.** 281.36 (3r) (e) of the statutes is amended to read:

18           281.36 (3r) (e) As part of the mitigation program established under par. (a), the  
19 department ~~may~~ shall establish an in lieu fee subprogram, under which payments  
20 are made to the department or another entity for the purposes of restoring,  
21 enhancing, creating, or preserving wetlands or other water resource features. The  
22 subprogram must be approved by the U.S. army corps of engineers. The department  
23 shall establish requirements for calculating the in lieu fee payments. Under the in

1 lieu fee subprogram, the wetlands that benefit from the subprogram shall be open  
2 to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any  
3 combination thereof, but the department may establish reasonable restrictions on  
4 the use of the land by the public in order to protect public safety or to protect a unique  
5 plant or animal community. The subprogram shall be consistent with federal  
6 regulations.

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

8 281.36 **(3t)** (g) Financial assurance requirements for the construction of  
9 mitigation projects by mitigation banks.

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

11 281.36 **(3w)** RELEASE OF CREDITS. (a) In this subsection:

12 1. "Applicant" means the applicant for a wetland individual permit for which  
13 wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland  
14 mitigation project required under sub. (3n) (d).

15 2. "Bank sponsor" means any public or private entity financially responsible  
16 for establishing or operating a mitigation bank.

17 3. "Compensation site plan" means a comprehensive document prepared by an  
18 applicant or bank sponsor that provides a thorough description of a proposed wetland  
19 mitigation project.

20 4. "Developing mitigation bank" means a mitigation bank that has not  
21 completed its mitigation project and that has not yet been established under an  
22 agreement between the bank sponsor and the department or otherwise approved by  
23 the department.

24 5. "Estimated credits" means the total number of credits that a developing  
25 mitigation bank estimates it will have once its mitigation project is constructed.

1           6. “Mitigation banking instrument” means the legal document that governs the  
2 establishment, operation, and use of a mitigation bank.

3           (b) A developing mitigation bank may sell its estimated credits under the  
4 mitigation program under sub. (3r) only if the mitigation bank has met the financial  
5 assurance requirements established by the department under sub. (3t) (g) and,  
6 except as provided under par. (c), only in accordance with the following schedule:

7           1. No more than 20 percent of the estimated credits after the department  
8 approves and executes the mitigation banking instrument.

9           2. No more than 65 percent of the estimated credits after the department issues  
10 a letter of compliance stating that construction and all corrective actions are  
11 complete.

12           3. No more than 85 percent of the estimated credits after the department  
13 approves a monitoring report for the mitigation bank or after 2 years have passed  
14 after construction of the mitigation project is completed, whichever is later.

15           4. One hundred percent of the estimated credits after the department approves  
16 the final monitoring report for the mitigation bank and determines that all  
17 performance standards identified in the compensation site plan are met.

18           (c) The department may authorize a developing mitigation bank to sell its  
19 estimated credits at a faster rate than the schedule under par. (b) allows if the bank  
20 provides an additional level of financial assurance or if the mitigation is of a type that  
21 is less prone to failure, such as wetland preservation or enhancement.

22           (d) After the department approves and executes a mitigation banking  
23 instrument establishing the specifications for a developing mitigation bank, the  
24 sponsor of the bank may not change the mitigation banking instrument without the  
25 approval of the department. After the sponsor of a developing mitigation bank

1 submits to the department a proposed change to the mitigation banking instrument  
 2 for review, the mitigation bank may not sell any estimated credits under par. (b) until  
 3 all of the following occur:  
 4 1. The department approves the change to the mitigation banking instrument.  
 5 2. The mitigation bank sponsor and the department adjust the estimated  
 6 credits and make any necessary adjustments to the credit release schedule under  
 7 par. (b), if the department believes these adjustments are necessary based on the  
 8 change to the mitigation banking instrument.

9 **SECTION 11. Nonstatutory provisions.**

10 (1) Using the procedure under s. 227.24, the department of natural resources  
 11 may promulgate the rules necessary to implement s. 281.36 (3t) (g) as emergency  
 12 rules. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department of natural  
 13 resources is not required to provide evidence that promulgating a rule under this  
 14 subsection as an emergency rule is necessary for the preservation of the public peace,  
 15 health, safety, or welfare and is not required to provide a finding of emergency for a  
 16 rule promulgated under this subsection.

17 (2) Notwithstanding s. 227.135 (2), the department of natural resources is not  
 18 required to present the statement of scope of the rules necessary to implement s.  
 19 281.36 (3t) (g) to the department of administration for review by the department of  
 20 administration and approval by the governor. Notwithstanding s. 227.135 (2), the  
 21 department of natural resources is not required to present the statement of scope,  
 22 as provided in s. 227.135 (2), to the natural resources board for approval.

23 Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under sub  
 24 (1) remain in effect until January 1, 2021, or the date on which permanent rules take  
 25 effect, whichever is sooner.

INS  
7-9

INS X

for 2 years after promulgation

until the date that is 2 years after the  
date of promulgation or until





2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0045(P)ins  
EHS:cjs

**INSERT A2a**  
corresponding to the HUC 6

**INSERT A2b**  
Under the bill, HUC 6 is a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features and the 6-digit basin scale.

**INSERT A2c**  
that corresponds to the HUC 2. Under the bill, HUC 2 is a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features and the 2-digit region scale.

**INSERT A2d**  
or require mitigation to be done through the in lieu fee subprogram rather than by purchasing credits from a mitigation bank.

**INSERT 3-10**

“HUC 2” means the hydrologic unit code 2, a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features and the 2-digit region scale.

(bf) “HUC 6” means the hydrologic unit code 6, a watershed delineated by the U.S. geological survey using a nationwide system based on surface hydrologic features and the 6-digit basin scale.

(bg)

**INSERT 4-17**

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

281.36 (3r) (b) Under the mitigation program, mitigation as specified in par.

(a) 1. and participation in the in lieu fee subprogram, if established under par. (a) 2. shall be the preferred types of mitigation.

**History:** 2001 a. 6; 2005 a. 253; 2011 a. 118, ss. 43, 45 to 47, 49 to 55, 57 to 118, 122, 123, 127 to 137, 141; 2013 a. 1, 20, 69, 80; 2013 a. 151 s. 27; 2013 a. 166 s. 77; 2013 a. 168, 173; 2015 a. 387; 2017 a. 21, 58, 59, 115, 118, 183; 2017 a. 365 s. 112.

**Cross-reference:** See also ch. NR 300, 351, 352, and 353, Wis. adm. code.

1           **INSERT 7-9**

2           2. The department rejects the changes submitted by the mitigation bank  
3 sponsor and the existing mitigation bank<sup>ing</sup> instrument remains effective.

*In which case*

INS X

AM

295.60(8)(dm)4.

4. Participation in the in lieu fee subprogram, ~~if such a subprogram is established~~ under s. 281.36 (3r) (e).



→ P3



-S0045

7/22/19 Eric-Sen. Wanzgaard

p 4 lines 22/23 require → allow



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT ,**  
**TO SENATE BILL 169**

SA  
In 7/22  
Due today

Regen

1 **AN ACT to renumber and amend** 281.36 (3r) (a) 1.; **to amend** 281.36 (3r) (a) 2.,  
2 281.36 (3r) (b), 281.36 (3r) (e) and 295.60 (8) (dm) 4.; and **to create** 281.36 (1)  
3 (ad), 281.36 (1) (ae), 281.36 (1) (be), (bf) and (bg), 281.36 (3r) (a) 1. b. and c.,  
4 281.36 (3r) (ag), 281.36 (3t) (g) and 281.36 (3w) of the statutes; **relating to:**  
5 wetland mitigation banks, providing an exemption from emergency rule  
6 procedures, providing an exemption from rule-making procedures, and  
7 requiring the exercise of rule-making authority.

---

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

This bill makes changes to requirements for wetland mitigation banks.

Under current law, the Department of Natural Resources must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may require a person to apply for 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 wetland functional values will occur. Under current law, before DNR may issue a wetland individual permit, it must require the restoration, enhancement, creation, or preservation of other wetlands to compensate for adverse impacts to a wetland resulting from the discharge, also known as mitigation.

Under current law, there are three methods by which wetland mitigation may be accomplished: 1) purchasing credits from a mitigation bank located in this state; 2) participating in the in lieu fee subprogram; or 3) completing mitigation within the same watershed or within one-half mile of the site of the discharge. A mitigation bank is a system of accounting for wetland loss and compensation in which sites where wetlands are restored, enhanced, created, or preserved generate credits that may be applied or purchased in order to compensate for adverse impacts to other wetlands. Under current law, DNR must approve the establishment of a mitigation bank.

This bill changes the first method of wetland mitigation by limiting credit purchases to only a mitigation bank located in the same hydrologic unit code (HUC) 8 as the wetland impacted by the discharge, if available. Under the bill, an HUC 8 is a watershed delineated by the U.S. Geological Survey using a nationwide system based on surface hydrologic features at the 8-digit subbasin scale. If no available mitigation bank is located in the same HUC 8 as the wetland impacted by the discharge, the bill allows credit purchases to be made from a mitigation bank located within the same bank service area as the wetland impacted by the discharge. Under the bill, a bank service area is the geographic area corresponding to the HUC 6 within which impacts to a wetland from a discharge can be mitigated at a specific mitigation bank as determined in an agreement between DNR and the U.S. Army Corps of Engineers and referenced in a mitigation banking instrument. Under the bill, an HUC 6 is a watershed delineated by the U.S. Geological Survey using a nationwide system based on surface hydrologic features at the 6-digit basin scale. If no available mitigation bank is located in the same bank service area as the impacted wetland, the bill allows credit purchases to be made from a mitigation bank in the same basin as the wetland impacted by the discharge, meaning the Lake Michigan, Lake Superior, or Mississippi River basin that corresponds to the HUC 2. Under the bill, an HUC 2 is a watershed delineated by the U.S. Geological Survey using a nationwide system based on surface hydrologic features at the 2-digit region scale.

However, despite these limitations on the location of a mitigation bank, the bill allows DNR, in consultation with the U.S. Army Corps of Engineers, to require <sup>allow</sup> credits to be purchased from a different mitigation bank than the one prescribed or require <sup>allow</sup> mitigation to be done through the in lieu fee subprogram rather than by purchasing credits from a mitigation bank if DNR determines it would better serve natural resource goals, such as retaining flood water, improving or restoring wildlife habitat, or more closely matching the impacted wetland type.

This bill requires DNR to establish by rule financial assurance requirements for the construction of mitigation projects by mitigation banks. The bill also establishes the means by which a mitigation bank that has not yet completed construction of a mitigation project and has not been approved by DNR (developing mitigation bank) may sell the credits that the mitigation bank estimates it will have

once the mitigation project is complete. Under the bill, a developing mitigation bank may sell these credits if it is in compliance with DNR's financial assurance requirements and if it follows a specific schedule for release of the credits that is established in the bill. The bill allows DNR to authorize a developing mitigation bank to sell its estimated credits at a faster rate than the schedule allows if the bank provides an additional level of financial assurance or if the mitigation is of a type that is less prone to failure, such as wetland preservation or enhancement.

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

1           **SECTION 1.** 281.36 (1) (ad) of the statutes is created to read:

2           281.36 (1) (ad) "Bank service area" means the geographic area corresponding  
3 to the HUC 6 within which impacts to a wetland from a discharge can be mitigated  
4 at a specific mitigation bank as determined in an agreement between the department  
5 and the U.S. army corps of engineers and referenced in a mitigation banking  
6 instrument under sub. (3w).

7           **SECTION 2.** 281.36 (1) (ae) of the statutes is created to read:

8           281.36 (1) (ae) "Basin" means the Lake Michigan, Lake Superior, or Mississippi  
9 River basin that corresponds to the HUC 2.

10          **SECTION 3.** 281.36 (1) (be), (bf) and (bg) of the statutes are created to read:

11          281.36 (1) (be) "HUC 2" means a watershed delineated by the U.S. geological  
12 survey using a nationwide system based on surface hydrologic features at the 2-digit  
13 region scale (the hydrologic unit code 2).

14          (bf) "HUC 6" means a watershed delineated by the U.S. geological survey using  
15 a nationwide system based on surface hydrologic features at the 6-digit basin scale  
16 (the hydrologic unit code 6).



1 (bg) "HUC 8" means a watershed delineated by the U.S. geological survey using  
2 a nationwide system based on surface hydrologic features at the 8-digit subbasin  
3 scale (the hydrologic unit code 8).

4 **SECTION 4.** 281.36 (3r) (a) 1. of the statutes is renumbered 281.36 (3r) (a) 1. a.  
5 and amended to read:

6 281.36 (3r) (a) 1. a. ~~Purchasing~~ Except as provided in subd. 1. b. and par. (ag),  
7 purchasing credits from a mitigation bank located in this state the same HUC 8 as  
8 the wetland impacted by the discharge.

9 **SECTION 5.** 281.36 (3r) (a) 1. b. and c. of the statutes are created to read:

10 281.36 (3r) (a) 1. b. Except as provided in subd. 1. c. and par. (ag), if credits are  
11 not available to be purchased as provided under subd. 1. a., credits may be purchased  
12 from a mitigation bank within the same bank service area as the wetland impacted  
13 by the discharge.

14 c. Except as provided in par. (ag), if credits are not available to be purchased  
15 as provided under subd. 1. b., credits may be purchased from a mitigation bank in  
16 the same basin as the wetland impacted by the discharge.

17 **SECTION 6.** 281.36 (3r) (a) 2. of the statutes is amended to read:

18 281.36 (3r) (a) 2. Participating in the in lieu fee subprogram, ~~if such a~~  
19 ~~subprogram is established under par. (e).~~

20 **SECTION 7.** 281.36 (3r) (ag) of the statutes is created to read:

21 281.36 (3r) (ag) The department may, in consultation with the U.S. army corps  
22 of engineers, ~~require~~ <sup>allow</sup> credits to be purchased from a different mitigation bank than  
23 the one prescribed under par. (a) 1. or ~~require~~ <sup>allow</sup> mitigation to be done through the in  
24 lieu fee subprogram rather than by purchasing credits from a mitigation bank if the  
25 department determines it would better serve natural resource goals, such as

1 retaining flood water, improving or restoring wildlife habitat, or more closely  
2 matching the impacted wetland type.

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

4 281.36 (3r) (b) Under the mitigation program, mitigation as specified in par.  
5 (a) 1. and participation in the in lieu fee subprogram, ~~if established under par. (a) 2.~~  
6 shall be the preferred types of mitigation.

7 **SECTION 9.** 281.36 (3r) (e) of the statutes is amended to read:

8 281.36 (3r) (e) As part of the mitigation program established under par. (a), the  
9 department ~~may~~ shall establish an in lieu fee subprogram, under which payments  
10 are made to the department or another entity for the purposes of restoring,  
11 enhancing, creating, or preserving wetlands or other water resource features. The  
12 subprogram must be approved by the U.S. army corps of engineers. The department  
13 shall establish requirements for calculating the in lieu fee payments. Under the in  
14 lieu fee subprogram, the wetlands that benefit from the subprogram shall be open  
15 to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any  
16 combination thereof, but the department may establish reasonable restrictions on  
17 the use of the land by the public in order to protect public safety or to protect a unique  
18 plant or animal community. The subprogram shall be consistent with federal  
19 regulations.

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

21 281.36 (3t) (g) Financial assurance requirements for the construction of  
22 mitigation projects by mitigation banks.

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

24 281.36 (3w) RELEASE OF CREDITS. (a) In this subsection:

1           1. “Applicant” means the applicant for a wetland individual permit for which  
2 wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland  
3 mitigation project required under sub. (3n) (d).

4           2. “Bank sponsor” means any public or private entity financially responsible  
5 for establishing or operating a mitigation bank.

6           3. “Compensation site plan” means a comprehensive document prepared by an  
7 applicant or bank sponsor that provides a thorough description of a proposed wetland  
8 mitigation project.

9           4. “Developing mitigation bank” means a mitigation bank that has not  
10 completed its mitigation project and that has not yet been established under an  
11 agreement between the bank sponsor and the department or otherwise approved by  
12 the department.

13           5. “Estimated credits” means the total number of credits that a developing  
14 mitigation bank estimates it will have once its mitigation project is constructed.

15           6. “Mitigation banking instrument” means the legal document that governs the  
16 establishment, operation, and use of a mitigation bank.

17           (b) A developing mitigation bank may sell its estimated credits under the  
18 mitigation program under sub. (3r) only if the mitigation bank has met the financial  
19 assurance requirements established by the department under sub. (3t) (g) and,  
20 except as provided under par. (c), only in accordance with the following schedule:

21           1. No more than 20 percent of the estimated credits after the department  
22 approves and executes the mitigation banking instrument.

23           2. No more than 65 percent of the estimated credits after the department issues  
24 a letter of compliance stating that construction and all corrective actions are  
25 complete.

1           3. No more than 85 percent of the estimated credits after the department  
2 approves a monitoring report for the mitigation bank or after 2 years have passed  
3 after construction of the mitigation project is completed, whichever is later.

4           4. One hundred percent of the estimated credits after the department approves  
5 the final monitoring report for the mitigation bank and determines that all  
6 performance standards identified in the compensation site plan are met.

7           (c) The department may authorize a developing mitigation bank to sell its  
8 estimated credits at a faster rate than the schedule under par. (b) allows if the bank  
9 provides an additional level of financial assurance or if the mitigation is of a type that  
10 is less prone to failure, such as wetland preservation or enhancement.

11           (d) After the department approves and executes a mitigation banking  
12 instrument establishing the specifications for a developing mitigation bank, the  
13 sponsor of the bank may not change the mitigation banking instrument without the  
14 approval of the department. After the sponsor of a developing mitigation bank  
15 submits to the department a proposed change to the mitigation banking instrument  
16 for review, the mitigation bank may not sell any estimated credits under par. (b) until  
17 one of the following occurs:

18           1. The department approves the change to the mitigation banking instrument,  
19 and the mitigation bank sponsor and the department adjust the estimated credits  
20 and make any necessary adjustments to the credit release schedule under par. (b),  
21 if the department believes these adjustments are necessary based on the change to  
22 the mitigation banking instrument.

23           2. The department rejects the changes submitted by the mitigation bank  
24 sponsor, in which case the existing mitigation banking instrument remains effective.

25           **SECTION 12.** 295.60 (8) (dm) 4. of the statutes is amended to read:





State of Wisconsin  
2019 - 2020 LEGISLATURE

LRBs0045/P3  
EHS:cjs&amn

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT ,**  
**TO SENATE BILL 169**

No  
changes

1 **AN ACT to renumber and amend** 281.36 (3r) (a) 1.; **to amend** 281.36 (3r) (a) 2.,  
2 281.36 (3r) (b), 281.36 (3r) (e) and 295.60 (8) (dm) 4.; and **to create** 281.36 (1)  
3 (ad), 281.36 (1) (ae), 281.36 (1) (be), (bf) and (bg), 281.36 (3r) (a) 1. b. and c.,  
4 281.36 (3r) (ag), 281.36 (3t) (g) and 281.36 (3w) of the statutes; **relating to:**  
5 wetland mitigation banks, providing an exemption from emergency rule  
6 procedures, providing an exemption from rule-making procedures, and  
7 requiring the exercise of rule-making authority.

---

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

This bill makes changes to requirements for wetland mitigation banks.

Under current law, the Department of Natural Resources must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may require a person to apply for 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

