

1999 DRAFTING REQUEST

Bill

Received: **09/20/1999**

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Sean**

This file may be shown to any legislator: **NO**

Drafter: **gibsom**

May Contact:

Alt. Drafters: **traderc**

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

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Wetlands mitigation

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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 traderc 2/29

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Instructions: 97-0727

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1 **AN ACT** to create 23.321, 281.17 (10) and 281.98 (3) of the statutes; relating to:
2 creating a wetlands mitigation program, the prohibition of certain unauthorized
3 activities in wetlands and granting rule-making authority.

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

LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: This draft combines the subjects of 1997 Assembly Bills 492, regarding wetland compensatory mitigation, and 201, regarding the prohibition of certain unauthorized activities in wetlands.

The draft authorizes the department of natural resources (DNR) to consider wetland compensatory mitigation in reviewing an application for a permit or other authorization for an activity that affects a wetland. It requires that the applicant take all appropriate and practicable measures to avoid and minimize adverse impacts to the wetland prior to consideration of mitigation and specifies that implementation of a mitigation project does not entitle an applicant to a permit or other authorization.

The draft defines "wetlands compensatory mitigation" as the restoration, creation or preservation of wetlands or using credits from a wetlands mitigation bank. It allows the DNR to treat the preservation of existing wetlands as mitigation only if the wetlands to be preserved perform significant physical or biological functions and are in danger of destruction or degradation and if the preservation activity will adequately protect the wetland.

The draft specifies that the DNR may not approve an activity in an "area of special natural resource interest", as defined by the draft, on the basis of wetland compensatory mitigation if the activity does not merit approval without consideration of mitigation.

The draft directs the DNR to promulgate rules to establish a process for consideration of wetland compensatory mitigation in permitting or otherwise authorizing activities that affect wetlands. It specifies several topics the rules must address and specifies that the rules will first apply to any applications that are pending at the time that the rules take effect.

The draft directs the DNR to initiate negotiations with the U.S. Army Corps of Engineers (ACE) to develop standards for wetland compensatory mitigation and wetland mitigation banks. It authorizes the DNR to impose conditions on permits or approvals that comply with these guidelines, if the ACE has not done so, but prohibits the DNR from requiring that an applicant implement a mitigation project that is larger (in acreage) than a mitigation project required by the guidelines.

The draft delays the DNR's new authority to consider mitigation in permitting or otherwise authorizing activities that affect wetlands by 15 months and requires that the DNR complete draft rules within 12 months.

Under the Federal Water Pollution Control Act, a person who applies for a federal license or permit for an activity that may result in a discharge into water (which includes the placement of fill in a wetland) is required to obtain a state certification that the discharge will comply with water quality standards. If the state issues the certification, it may include conditions necessary to ensure compliance with water quality standards. The DNR has promulgated rules for making water quality certification decisions. This draft prohibits a person from conducting an activity for which the DNR denies a water quality certification required under the Water Pollution Control Act. The draft also prohibits a person from violating a condition that the DNR includes in a water quality certification required under the Water Pollution Control Act.

Current law provides civil monetary penalties (forfeitures) for violating certain laws related to water quality. Under this draft, in addition to imposing forfeitures, a court may require a person who violates these laws, including the prohibitions created in the draft, to take any action necessary to eliminate or minimize any environmental damage caused by the person.

1 **SECTION 1.** 23.321 of the statutes is created to read:

2 **23.321 Compensatory mitigation of wetlands. (1)** In this section:

3 (a) "Area of special natural resource interest" means an area that possesses significant
4 ecological, cultural, aesthetic, educational, recreational or scientific values, including any of
5 the following:

6 1. A cold water community, as defined by the department, including a trout stream or
7 its tributary or a trout lake.

- 1 2. Lake Michigan, Lake Superior or the Mississippi River.
- 2 3. A wild and scenic river designated under 16 USC 1271 to 1287, a wild river
- 3 designated under s. 30.26, the lower Wisconsin state riverway or a scenic urban waterway
- 4 designated under s. 30.275.
- 5 4. An environmentally sensitive area or an environmental corridor identified in an
- 6 areawide water ^{treatment} ~~quality~~ management plan provided for under 33 USC 1288, a special area
- 7 management plan, as defined in 16 USC 1453 (17), a special wetland inventory study or
- 8 advanced delineation and identification study under 40 CFR 230.80 or an area designated by
- 9 the U.S. environmental protection agency under 33 USC 1344 (c).
- 10 5. A calcareous fen.
- 11 6. Habitat used by state or federally designated threatened or endangered species.
- 12 7. A state park, forest, trail or recreation area.
- 13 8. A state or federal fish and wildlife refuge or fish and wildlife management area.
- 14 9. A state or federal designated wilderness area.
- 15 10. A state natural area designated or dedicated under ss. 23.27 to 23.29.
- 16 11. Wild rice waters.
- 17 12. Surface waters identified by the department as outstanding or exceptional resource
- 18 waters under s. 281.15.
- 19 13. Any other area identified by the department by rule.

for coastal zone management under 16 USC 1451 to 1465

denial of disposal 9/15/99

NOTE: This definition is modeled on the definition of "areas of special natural resource interest", in s. NR 103.02 (1), Wis. Adm. Code, and the list of such areas in s. NR 103.04, Wis. Adm. Code.

20 (b) "Wetland" has the meaning given in s. 23.32 (1).

1 (c) "Wetland compensatory mitigation" means the restoration, creation or preservation
2 of wetlands to compensate for adverse impacts to other wetlands. "Wetland compensatory
3 mitigation" includes using credits from a wetlands mitigation bank.

4 (d) "Wetland in an area of special natural resource interest" means a wetland that is
5 within an area of special natural resource interest or that is in proximity to or has a direct
6 hydrologic connection to an area of special natural resource interest.

7 (e) "Wetland mitigation bank" means a system of accounting for wetland loss and
8 compensation that includes one or more sites where wetlands are restored or created to provide
9 transferable credits in advance of adverse impacts to other wetlands.

10 (2) (a) The department may consider wetland compensatory mitigation in reviewing
11 an application for a permit or other authorization for an activity that affects a wetland under
12 s. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289,
13 291, 292, 293, 295 or 299. The department may not consider wetland compensatory
14 mitigation unless the application demonstrates that all appropriate and practicable measures
15 will be taken to avoid and minimize adverse impacts on the wetland. This paragraph does not
16 entitle an applicant to a permit or other approval in exchange for conducting wetland
17 compensatory mitigation.

18 (b) If the conditions of a permit or other authorization issued by the U.S. army corps
19 of engineers for an activity that affects a wetland do not meet the minimum requirements of
20 the guidelines established in the memorandum of agreement under sub. (4), the department
21 may impose additional conditions to ensure that the requirements are met. The department
22 may not require that the acreage of a wetland compensatory mitigation project under par. (a)
23 exceed the acreage that is required for the project under the guidelines established in the
24 memorandum of agreement under sub. (4).

1 (c) If, without consideration of wetland compensatory mitigation, the department
2 would deny a permit or other approval for an activity that would affect a wetland in an area
3 of special natural resource interest, the department may not grant the permit or other approval
4 subject to the condition that the applicant conduct wetland compensatory mitigation.

5 (d) The department may consider preservation of an existing wetland to be mitigation
6 only in exceptional circumstances, as specified by the department by rule. The department
7 may not consider preservation to be mitigation unless all of the following apply:

8 1. The wetland to be preserved performs physical or biological functions that are
9 important to the region.

10 2. The wetland to be preserved is under demonstrable threat of destruction or substantial
11 degradation due to human activity that might not otherwise be expected to be restricted.

12 3. The preservation project will prevent the destruction or substantial degradation of
13 the wetland, including legal protection of the wetland and sufficient surrounding upland areas
14 to maintain the physical or biological functions that are performed by the wetland.

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

20 (a) Requirements for the avoidance and minimization of adverse impacts to the wetland
21 that will be affected by the permitted activity.

22 (b) The conditions under which credits in a mitigation bank may be used for wetland
23 compensatory mitigation.

24 (c) Enforcement of a requirement to implement a mitigation project.

1 (d) Baseline studies of the wetland that will be affected by the permitted activity and
2 of the mitigation site.

3 (e) Plan and project design requirements for a mitigation project, which shall consider
4 the relation of the project design to the hydrology of the watershed in which a mitigation
5 project is located.

6 (f) The comparability of a mitigation project to the wetland that will be affected by the
7 permitted activity, including consideration of the size, location, type and quality of the
8 wetlands and the functional values performed by the wetlands, and establishing a process for
9 determining the replacement ratio.

10 (g) Standards for measuring the short-term and long-term success of a mitigation
11 project and requirements for the short-term and long-term monitoring of a mitigation project.

12 (h) Remedial actions to be taken by the applicant if a mitigation project is not successful
13 and actions to be taken by a mitigation bank if a mitigation project on which mitigation credits
14 are based is not successful.

15 (4) The department shall initiate negotiations with the U.S. army corps of engineers to
16 develop a memorandum of agreement establishing standards for wetland compensatory
17 mitigation projects and wetland mitigation banks. The guidelines shall address all of the topics
18 described in sub. (3) (a) to (h).

19 SECTION 2. 281.17 (10) of the statutes is created to read:

20 281.17 (10) (a) No person may conduct an activity for which the department denies a
21 water quality certification required by rules promulgated under this subchapter to implement
22 33 USC 1341 (a).

1 (b) No person may violate a condition imposed by the department in a water quality
2 certification required by rules promulgated under this subchapter to implement 33 USC 1341
3 (a).

4 **SECTION 3.** 281.98 (3) of the statutes is created to read:

5 281.98 (3) In addition to the penalties under sub. (1), the court may order the defendant
6 to abate any nuisance, restore a natural resource or take, or refrain from taking, any other
7 action as necessary to eliminate or minimize any environmental damage caused by the
8 defendant.

9 **SECTION 4. Nonstatutory provisions.**

10 (1) **SUBMISSION OF PROPOSED RULES.** The department of natural resources shall submit
11 proposed rules required under section 23.321 (3) of the statutes, as created by this act, to the
12 legislative council staff for review under section 227.15 (1) of the statutes no later than the first
13 day of the 12th month beginning after publication.

14 **SECTION 5. Effective dates.** This act takes effect on the day after publication, except as
15 follows:

16 (1) The treatment of section 23.321 (2) of the statutes takes effect on the first day of the
17 15th month beginning after publication.

18 (END)

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very soon D-Note

1999 BILL

1 **AN ACT to create** 23.321 of the statutes; **relating to:** wetlands mitigation and
2 granting rule-making authority.

-regen
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Analysis by the Legislative Reference Bureau

Under federal law, projects involving the discharge of dredge or fill material into any body of water, including wetlands, must comply with certain guidelines contained in regulations promulgated by the federal environmental protection agency (EPA) in order for a permit to be issued by the U.S. Army Corps of Engineers (ACE). Under a memorandum of understanding entered into by EPA and ACE interpreting these guidelines, a project may comply with the guidelines, although it involves an adverse impact on an existing wetland, if compensatory action is taken, such as restoring another wetland that has already been degraded. However, before ACE may issue a permit, the department of natural resources (DNR) must determine that the project complies with state water quality standards, including those for wetlands.

Under current law, DNR has no specific authority to allow compensatory mitigation of wetlands under its statutory authority to promulgate state water quality standards. DNR does allow compensatory mitigation for certain metallic mining activities and for highway construction and repair activities that are conducted by the department of transportation.

This bill creates a wetland mitigation program. It requires that DNR consider wetland mitigation in determining whether to grant a permit or other approval (approval) for an activity that will have an adverse affect on the wetland, if the applicant for the approval requests that DNR do so.

Handwritten notes:
a process and requirements for DNR to use in allowing wetland mitigation work
The bill allows to
DNR may not consider mitigation unless the applicant demonstrates that all the practicable and achievable measures will be used to avoid and minimize the adverse impacts on the wetland

BILL

INS ANL

after 4...
...project also is one...

Under the bill, a wetland mitigation project is a project that reestablishes, restores, preserves, ~~enhances~~ or creates (improves) a wetland to compensate for adverse impacts to other wetlands ~~or~~ that uses credits from a "wetlands mitigation bank". A wetlands mitigation bank is a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to compensate for adverse impacts to other wetlands. DNR may also approve the preservation of a wetland as a mitigation project if the wetland the project is preserving performs significant physical or biological functions and is danger of destruction or degradation and if the preservation activity will adequately protect the wetland.

by humans that may not be otherwise restricted

The bill requires that DNR initiate negotiations with ACE to establish ~~uniform~~ guidelines, including minimum standards, to be followed under state and federal law in issuing approvals for activities that affect wetlands. The bill specifically authorizes DNR to impose additional conditions on an approval it issues so that the approval complies with any guidelines that are established if ACE has not already required such compliance. Also, the bill specifically prohibits DNR from requiring that a mitigation project be larger in acreage than the minimum standards required by the guidelines.

The draft requires that DNR promulgate rules to regulate mitigation projects and the operation of a wetland mitigation bank. The rules must address several topics, including the comparability in size and location of the wetland to be improved and the wetland adversely affected and standards for measuring the success of mitigation projects.

INS RCT

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

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

1 SECTION 1. 23.321 of the statutes is created to read:

2 **23.321 Compensatory mitigation of wetlands.** (1) DEFINITIONS. In this
3 section:

← INS 2-3

4 (b) ~~the~~ "Mitigation project" means the reestablishment, preservation, restoration,
5 enhancement or creation of wetlands to compensate for adverse impacts to other
6 wetlands ~~that remain after all appropriate and practicable measures to avoid and~~
7 ~~minimize those adverse impacts have been undertaken.~~ "Mitigation project"
8 includes using credits from a wetlands mitigation bank.

BILL

1 (c) ~~(b)~~ "Wetland" has the meaning given in s. 23.32 (1). INS 3-2

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

6 (f) ~~(d)~~ "Wetland water quality standards" means water quality standards
7 promulgated under s. 281.15 (1) that affect wetlands.

8 ^{ISSUING PERMITS (a)} ~~(2) APPLICATION~~ Upon the request of an applicant, ^{may} the department shall
9 consider a mitigation project as a means for complying with any wetland water
10 quality standards in determining whether to issue a permit for, or to otherwise
11 approve, an activity that affects a wetland under ss. 59.692, 61.351, 62.231, 87.30,
12 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295 or 299.

13 This subsection does not entitle an applicant to a permit or other approval in
14 exchange for conducting a mitigation project, except as provided under sub. (3) (a) INS 3-14

15 ~~(d) (3) If the department determines that the conditions of a permit or other~~
16 ~~authorization issued by the U.S. Army Corps of Engineers for an activity that affects~~
17 ~~a wetland do not meet the minimum requirements of any guidelines established in~~
18 ~~the memorandum of agreement under sub. (5) (a) the department may impose~~
19 ~~additional conditions to ensure that the requirements are met. The department may~~
20 ~~not require that the acreage of a mitigation project considered under sub. (2) exceed~~

21 (d) ~~(b)~~ If the department determines that the conditions of a permit or other
22 authorization issued by the U.S. Army Corps of Engineers for an activity that affects
23 a wetland do not meet the minimum requirements of any guidelines established in
24 the memorandum of agreement under sub. ⁽⁴⁾ ~~(5)~~ (a) the department may impose
25 additional conditions to ensure that the requirements are met. The department may
26 not require that the acreage of a mitigation project considered under ^{par(a)} ~~sub. (2)~~ exceed

(9) (c) The department may not consider a ~~wetlands~~ mitigation project in reviewing ~~an~~ an application under ^{par. (a)} if any of the wetlands involved is a wetland in or near an area of special natural resource interest.

BILL

1 the acreage that is required for the project under the guidelines established in the
2 memorandum of agreement under sub. ⁽⁴⁾~~(5)~~

3 ~~(2)~~ ~~The department may consider preservation of an existing wetland to be a~~
4 ~~mitigation project if all of the following requirements apply:~~ INS

5 1. The wetland to be preserved performs physical or biological functions that 4-4
6 are important to the region.

7 ~~2. The wetland to be preserved is under demonstrable threat of destruction or~~
8 ~~substantial degradation due to human activity.~~

9 3. The mitigation project will prevent the destruction or substantial 4-8
10 degradation of the wetland to be preserved, including protection of the wetland and
11 sufficient surrounding upland areas to maintain the physical or biological functions
12 that are performed by the wetland.

13 ~~(3)~~ ~~RULES. The department shall promulgate rules governing mitigation~~
14 ~~projects under sub. (2) and the operation of a wetland mitigation bank under sub. (2).~~
15 Upon promulgation, the rules shall apply to any application or other request for an
16 initial determination for a permit or other approval that is pending with the
17 department on the date on which the rules take effect. The rules shall address all
18 of the following:

19 (a) Baseline studies of the wetland that will be affected by the permitted
20 activity and of the mitigation project site.

21 (b) Plan and project design requirements for a mitigation project, which shall
22 consider the relation of the project design to the hydrology of the watershed in which
23 a mitigation project is located.

INSER-4
-23

BILL

1 (f) ~~(c)~~ The comparability of a wetland that is the subject of the mitigation project
2 to the wetland that will be affected by the permitted activity, including all of the
3 following:

4 1. Consideration of the size, location, type and quality of the wetlands.

5 2. Consideration of the functional values performed by the wetlands.

6 3. Establishment of ^{a process for determining} ~~appropriate~~ replacement ratios.

7 ~~(d)~~ Enforcement of a requirement to implement a mitigation project.

8 (g) ~~(e)~~ Standards for measuring the short-term and long-term success of a
9 mitigation project and requirements for the short-term and long-term monitoring
10 of a mitigation project.

11 (h) ~~(f)~~ Remedial actions to be taken by the applicant if a mitigation project is not
12 successful and actions to be taken by a wetlands mitigation bank if a mitigation
13 project on which mitigation credits are based is not successful.

14 (5) MEMORANDUM OF UNDERSTANDING. The department shall initiate
15 negotiations with the U.S. Army Corps of Engineers to develop a memorandum of
16 agreement establishing uniform guidelines to be followed under 33 USC 1344 and
17 under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch.
18 30, 31, 283, 289, 291, 292, 293, 295 or 299 in issuing permits for, or otherwise
19 approving, activities that affect wetlands. The guidelines shall include minimum
20 standards for mitigation projects.

INSERT 5-21

21 **SECTION 2. Nonstatutory provisions.**

22 (1) SUBMISSION OF PROPOSED RULES. The department of natural resources shall
23 submit proposed rules required under section 23.321 ⁽³⁾ ~~(2)~~ of the statutes, as created
24 by this act, to the legislative council staff for review under section 227.15 (1) of the
25 statutes no later than the first day of the 18th month beginning after publication.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3637/P1ins
MGG:....ch

Insert ANL

91
The bill prohibits DNR from considering wetlands mitigation in reviewing whether to grant a permit or other approval if any of the wetlands involved is a wetland that is in or near to, or has a direct hydrologic connection with, an "area of special natural resource interest". The bill defines "an area of special natural resource interest" as being an area that has significant ecological, cultural, aesthetic, educational, recreational or scientific values and specifically lists certain areas. The areas listed include Lake Superior, Lake Michigan, the Mississippi River, the Lower Wisconsin State Riverway, fish and wildlife refuges and state parks and forests.

(no 91) DNR may not consider wetland mitigation unless the applicant for the approval demonstrates that all appropriate and practicable measures will be used to avoid and minimize the adverse impact on the wetland to be affected.

(END OF INSERT)

INS RCT

1997 ASSEMBLY BILL 201

March 20, 1997 - Introduced by Representatives NOTESTEIN, HANSON, TURNER, BLACK, R. YOUNG, BOCK, HUTCHISON, BAUMGART, RYBA, CULLEN, BOYLE, LORGE, HUBER, WILLIAMS, ROBSON, LA FAVE and PLOUFF, cosponsored by Senators CLAUSING, WIRCH and PLACHE. Referred to Committee on Environment.

1
2
3

AN ACT to create 281.17 (9) and 281.98 (3) of the statutes; relating to: water quality certifications and remedies for violations of laws related to water quality.

Analysis by the Legislative Reference Bureau

Under the Federal Water Pollution Control Act, a person who applies for a federal license or permit for an activity that may result in a discharge into water is required to obtain a state certification that the discharge will comply with water quality standards. If the state issues the certification, it may include conditions necessary to ensure compliance with water quality standards. ~~The department of natural resources (DNR)~~ has promulgated rules for making water quality certification decisions.

noff

This bill prohibits a person from conducting an activity for which DNR denies a water quality certification required under the Water Pollution Control Act. The bill also prohibits a person from violating a condition that DNR includes in a water quality certification required under the Water Pollution Control Act.

Current law provides civil monetary penalties (forfeitures) for violating certain laws related to water quality. Under this bill, in addition to imposing forfeitures, a court may require a person who violates these laws, including the prohibitions



ASSEMBLY BILL 201

created in the bill, to take any action necessary to eliminate or minimize any environmental damage caused by the person.

end of INSRCT

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

SECTION 1. 281.17 (9) of the statutes is created to read:

281.17 (9) (a) No person may conduct an activity for which the department denies a water quality certification required under 33 USC 1341 (a).

(b) No person may violate a condition imposed by the department in a water quality certification required under 33 USC 1341 (a).

SECTION 2. 281.98 (3) of the statutes is created to read:

281.98 (3) In addition to the penalties under sub. (1), the court may order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

(END)

The draft specifies that the DNR may not approve an activity in an "area of special natural resource interest", as defined by the draft, on the basis of wetland compensatory mitigation if the activity does not merit approval without consideration of mitigation.

The draft directs the DNR to promulgate rules to establish a process for consideration of wetland compensatory mitigation in permitting or otherwise authorizing activities that affect wetlands. It specifies several topics the rules must address and specifies that the rules will first apply to any applications that are pending at the time that the rules take effect.

The draft directs the DNR to initiate negotiations with the U.S. Army Corps of Engineers (ACE) to develop standards for wetland compensatory mitigation and wetland mitigation banks. It authorizes the DNR to impose conditions on permits or approvals that comply with these guidelines, if the ACE has not done so, but prohibits the DNR from requiring that an applicant implement a mitigation project that is larger (in acreage) than a mitigation project required by the guidelines.

The draft delays the DNR's new authority to consider mitigation in permitting or otherwise authorizing activities that affect wetlands by 15 months and requires that the DNR complete draft rules within 12 months.

Under the Federal Water Pollution Control Act, a person who applies for a federal license or permit for an activity that may result in a discharge into water (which includes the placement of fill in a wetland) is required to obtain a state certification that the discharge will comply with water quality standards. If the state issues the certification, it may include conditions necessary to ensure compliance with water quality standards. The DNR has promulgated rules for making water quality certification decisions. This draft prohibits a person from conducting an activity for which the DNR denies a water quality certification required under the Water Pollution Control Act. The draft also prohibits a person from violating a condition that the DNR includes in a water quality certification required under the Water Pollution Control Act.

Current law provides civil monetary penalties (forfeitures) for violating certain laws related to water quality. Under this draft, in addition to imposing forfeitures, a court may require a person who violates these laws, including the prohibitions created in the draft, to take any action necessary to eliminate or minimize any environmental damage caused by the person.

1 SECTION 1. 23.321 of the statutes is created to read:

2 **23.321 Compensatory mitigation of wetlands. (1) In this section:**

3 (a) "Area of special natural resource interest" means an area that possesses 1W5
4 significant ecological, cultural, aesthetic, educational, recreational or scientific 2-3
5 values, including any of the following:

6 1. A cold water community, as defined by the department, including a trout
7 stream or its tributary or a trout lake.

8 2. Lake Michigan, Lake Superior or the Mississippi River.



1 3. A wild and scenic river designated under 16 USC 1271 to 1287, a wild river
2 designated under s. 30.26, the lower Wisconsin state riverway or a scenic urban
3 waterway designated under s. 30.275.

INS
2-3

4 4. An environmentally sensitive area or an environmental corridor identified
5 in an areawide water quality management plan provided for under 33 USC 1288, a
6 special area management plan, as defined in 16 USC 1453 (17), a special wetland
7 inventory study or advanced delineation and identification study under 40 CFR
8 230.80 or an area designated by the U.S. environmental protection agency under 33
9 USC 1344 (c).

10 5. A calcareous fen.

11 6. Habitat used by state or federally designated threatened or endangered
12 species.

13 7. A state park, forest, trail or recreation area.

14 8. A state or federal fish and wildlife refuge or fish and wildlife management
15 area.

16 9. A state or federal designated wilderness area.

17 10. A state natural area designated or dedicated under ss. 23.27 to 23.29.

18 11. Wild rice waters.

19 12. Surface waters identified by the department as outstanding or exceptional
20 resource waters under s. 281.15.

21 13. Any other area identified by the department by rule.

NOTE: This definition is modeled on the definition of "areas of special natural resource interest", in s. NR 103.02 (1), Wis. Adm. Code, and the list of such areas in s. NR 103.04, Wis. Adm. Code.

22 (b) "Wetland" has the meaning given in s. 23.32 (1).

(END OF
INSERT)

1 (c) "Wetland compensatory ~~mitigation~~" means the restoration, creation or
2 preservation of wetlands to compensate for adverse impacts to other wetlands.

3 "Wetland compensatory mitigation" includes using credits from a wetlands
4 mitigation bank.

5 (d) "Wetland in ^{or near} an area of special natural resource interest" means a wetland
6 that is within an area of special natural resource interest or that is in proximity to
7 or has a direct hydrologic connection to an area of special natural resource interest.

INS
3-D

8 (e) "Wetland mitigation bank" means a system of accounting for wetland loss
9 and compensation that includes one or more sites where wetlands are restored or
10 created to provide transferable credits in advance of adverse impacts to other
11 wetlands.

12 (2) (a) The department may consider wetland compensatory mitigation in
13 reviewing an application for a permit or other authorization for an activity that
14 affects a wetland under s. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47 or 281.49
15 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295 or 299.

INS
3-14
(b)

16 ~~The department may not consider wetland compensatory mitigation unless the application demonstrates that~~
17 ~~all appropriate and practicable measures will be taken to avoid and minimize~~
18 ~~adverse impacts on the wetland. This paragraph does not entitle an applicant to a~~
19 ~~permit or other approval in exchange for conducting wetland compensatory~~
20 ~~mitigation.~~

(END OF INSERT)

21 (b) If the conditions of a permit or other authorization issued by the U.S. army
22 corps of engineers for an activity that affects a wetland do not meet the minimum
23 requirements of the guidelines established in the memorandum of agreement under
24 sub. (4), the department may impose additional conditions to ensure that the
25 requirements are met. The department may not require that the acreage of a

1 wetland compensatory mitigation project under par. (a) exceed the acreage that is
2 required for the project under the guidelines established in the memorandum of
3 agreement under sub. (4).

4 (c) If, without consideration of wetland compensatory mitigation, the
5 department would deny a permit or other approval for an activity that would affect
6 a wetland in an area of special natural resource interest, the department may not
7 grant the permit or other approval subject to the condition that the applicant conduct
8 wetland compensatory mitigation.

9 (d) The department may consider preservation of an existing wetland to be ^e ~~INS~~
10 mitigation ^a ~~only~~ in exceptional circumstances, as specified by the department by rule. ^{project} ~~47~~

11 The department may not consider preservation to be ^a ~~mitigation~~ ^{project} unless all of the
12 following ^{requirements} apply:

13 1. The wetland to be preserved performs physical or biological functions that
14 are important to the region.

15 2. The wetland to be preserved is under demonstrable threat of destruction or ^{INS}
16 substantial degradation due to human activity that ^{may} ~~might~~ not otherwise be expected ⁴⁻⁸
17 to be restricted.

18 3. ~~The preservation project will prevent the destruction or substantial~~
19 ~~degradation of the wetland, including legal protection of the wetland and sufficient~~
20 ~~surrounding upland areas to maintain the physical or biological functions that are~~
21 ~~performed by the wetland.~~

22 (e) (3) The department shall promulgate rules to establish a process for ^{INS}
23 consideration of wetland compensatory mitigation under sub. (2). Upon ⁴⁻²³
24 promulgation, the rules shall apply to any application or other request for an initial
25 determination for a permit or other authorization that is pending with the

(cs) Rules



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4-23

(end of insert)

1 department on the date on which the rules take effect. The rules shall address all
2 of the following:

3 (a) Requirements for the avoidance and minimization of adverse impacts to the
4 wetland that will be affected by the permitted activity.

5 (b) The conditions under which credits in a ^{wetlands} mitigation bank may be used for
6 wetland compensatory mitigation.

7 (c) Enforcement of a requirement to implement a mitigation project.

8 (d) Baseline studies of the wetland that will be affected by the permitted
9 activity and of the mitigation ^{project} site.

10 (e) Plan and project design requirements for a mitigation project, which shall
11 consider the relation of the project design to the hydrology of the watershed in which
12 a mitigation project is located.

13 ~~(f) The comparability of a mitigation project to the wetland that will be affected
14 by the permitted activity, including consideration of the size, location, type and
15 quality of the wetlands and the functional values performed by the wetlands, and
16 establishing a process for determining the replacement ratio.~~

17 ~~(g) Standards for measuring the short-term and long-term success of a
18 mitigation project and requirements for the short-term and long-term monitoring
19 of a mitigation project.~~

20 ~~(h) Remedial actions to be taken by the applicant if a mitigation project is not
21 successful and actions to be taken by a mitigation bank if a mitigation project on
22 which mitigation credits are based is not successful.~~

23 (4) The department shall initiate negotiations with the U.S. army corps of
24 engineers to develop a memorandum of agreement establishing standards for

MEMORANDUM OF UNDERSTANDING.

(CS)

INSERT
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5-21

1 ~~wetland compensatory~~ mitigation projects and wetland mitigation banks. The
2 guidelines shall address all of the topics described in sub. (3) (a) to (h).

3 SECTION 2. 281.17 (10) of the statutes is created to read:

4 281.17 (10) (a) No person may conduct an activity for which the department
5 denies a water quality certification required by rules promulgated under this
6 subchapter to implement 33 USC 1341 (a).

7 (b) No person may violate a condition imposed by the department in a water
8 quality certification required by rules promulgated under this subchapter to
9 implement 33 USC 1341 (a).

10 SECTION 3. 281.98 (3) of the statutes is created to read:

11 281.98 (3) In addition to the penalties under sub. (1), the court may order the
12 defendant to abate any nuisance, restore a natural resource or take, or refrain from
13 taking, any other action as necessary to eliminate or minimize any environmental
14 damage caused by the defendant.

end
used

15 SECTION 4. Nonstatutory provisions.

16 (1) SUBMISSION OF PROPOSED RULES. The department of natural resources shall
17 submit proposed rules required under section 23.321 (3) of the statutes, as created
18 by this act, to the legislative council staff for review under section 227.15 (1) of the
19 statutes no later than the first day of the 12th month beginning after publication.

20 SECTION 5. Effective dates. This act takes effect on the day after publication,
21 except as follows:

22 (1) The treatment of section 23.321 (2) of the statutes takes effect on the first
23 day of the 15th month beginning after publication.

24 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3637/1dn

MGG:.....

cmh

DATE

1. Note the changes in the definition of "wetlands mitigation bank" which I made to clarify the definition.
2. I added the language "as a means for complying with any wetland water quality standards" in s. 23.321 (2) because that concept is missing in the draft. If this does not comply with your intent, please let me know.
3. I broke down the listing in s. 23.321 (3) (f) to make it clearer. Again if this change results in the draft not complying with your intent, please let me know.

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

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

LRB-3637/1dn
MGG:cmh:jf

December 1, 1999

1. Note the changes in the definition of "wetlands mitigation bank" which I made to clarify the definition.
2. I added the language "as a means for complying with any wetland water quality standards" in s. 23.321 (2) because that concept is missing in the draft. If this does not comply with your intent, please let me know.
3. I broke down the listing in s. 23.321 (3) (f) to make it clearer. Again if this change results in the draft not complying with your intent, please let me know.

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

Gibson-Glass, Mary

From: Lovell, David
Sent: Tuesday, January 04, 2000 4:45 PM
To: Gibson-Glass, Mary
Cc: Dilweg, Sean
Subject: wetlands mitigation draft

Mary,

I just talked to Sean, from Sen. Cowles office, and DNR staff. We discussed the drafting instructions on LRB-3637/1 that you and I discussed earlier. Here are some comments:

p. 5, l. 12: they agree with the wording change we developed, substituting "for an activity that affects" for "if any of the wetlands involved is".

p. 6, l. 7: Scot Houseman is going to talk to Mike Cain about "protection" vs. "legal protection". He will get back to me tomorrow with their thoughts on whether any elaboration is needed and, if so, what language they think would work best. I'll pass that along to you by Thursday.

p. 7, l. 6: that language should be kept as it is, but put in a separate paragraph. (I will spare you an explanation of why the language is the way it is.)

I think those are all the questions we had--let me know if there are others.

Sean said that getting the redraft by next Tuesday would be fine.

Thanks.

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

Gibson-Glass, Mary

From: Lovell, David
Sent: Thursday, January 06, 2000 10:17 AM
To: Gibson-Glass, Mary
Cc: Dilweg, Sean; Hausmann, Paul S; Cain, Michael J
Subject: LRB-3637/1, relating to wetlands mitigation

Mary,

In our last communication regarding the request for a redraft of LRB-3637/1, I indicated that I would get back to you with the comments of the DNR staff (Scott Hausmann and Michael Cain) regarding p. 6, l. 7 of the draft. The message I got back was that the concept of legal protection should be included. They seemed content for the draft to say "including legal protection" or, better yet, "including permanent legal protection". I told them that you might want to indicate in the draft what that means; if that is the case, I suggest that you talk to Scott or Mike to get their ideas on how to express it. My only thought on this is that I would be a bit leary of a list the types of legal instruments that could be used to provide the contemplated legal protection, for fear that the list would be limiting--perhaps use of the word "including" would address this concern.

These conversations have identified a new issue to put into the draft. Nowhere is it said that created wetlands have the same protected status as natural wetlands. What is now requested is a new provision, perhaps an additional subsection in the new s. 23.321, stating that a wetland that is created for purposes of mitigation or mitigation banking is subject to the same protections under state law as a naturally occurring wetland.

Thank you. Feel free to call with any questions.

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

Tues
1/11/2000

1999 BILL

regen
cat

1 **AN ACT to create 23.321, 281.17 (10) and 281.98 (3) of the statutes; relating to:**
2 wetlands mitigation and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under federal law, projects involving the discharge of dredge or fill material into any body of water, including wetlands, must comply with certain guidelines contained in regulations promulgated by the federal environmental protection agency (EPA) in order for a permit to be issued by the U.S. Army Corps of Engineers (ACE). Under a memorandum of understanding entered into by EPA and ACE interpreting these guidelines, a project may comply with the guidelines, although it involves an adverse impact on an existing wetland, if compensatory action is taken, such as restoring another wetland that has already been degraded. However, before ACE may issue a permit, the department of natural resources (DNR) must determine that the project complies with state water quality standards, including those for wetlands.

Under current law, DNR has no specific authority to allow compensatory mitigation of wetlands under its statutory authority to promulgate state water quality standards. DNR does allow compensatory mitigation for certain metallic mining activities and for highway construction and repair activities that are conducted by the department of transportation.

This bill creates a process and requirements for DNR to use in allowing wetland mitigation. The bill allows DNR to consider wetland mitigation in determining whether to grant a permit or other approval (approval) for an activity that will have an adverse affect on the wetland.

BILL

that in enhances, creates or

Under the bill, a wetland mitigation project is a project that restores, preserves ~~or creates~~ (improves) a wetland to compensate for adverse impacts to other wetlands that uses credits from a "wetlands mitigation bank". A wetlands mitigation bank is a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to compensate for adverse impacts to other wetlands. DNR may also approve the preservation of a wetland as a mitigation project if the wetland the project is preserving performs significant physical or biological functions and is in danger of destruction or degradation by humans that may not be otherwise restricted and if the preservation activity will adequately protect the wetland.

The bill prohibits DNR from considering wetlands mitigation in reviewing whether to grant a permit or other approval if any of the wetlands involved is a wetland that is in or near to, or has a direct hydrologic connection with, an "area of special natural resource interest". The bill defines "an area of special natural resource interest" as being an area that has significant ecological, cultural, aesthetic, educational, recreational or scientific values and specifically lists certain areas. The areas listed include Lake Superior, Lake Michigan, the Mississippi River, the Lower Wisconsin State Riverway, fish and wildlife refuges and state parks and forests. DNR may not consider wetland mitigation unless the applicant for the approval demonstrates that all appropriate and practicable measures will be used to avoid and minimize the adverse impact on the wetland to be affected.

The bill requires that DNR initiate negotiations with ACE to establish guidelines, to be followed under state and federal law in issuing approvals for activities that affect wetlands. The bill specifically authorizes DNR to impose additional conditions on an approval it issues so that the approval complies with any guidelines that are established if ACE has not already required such compliance. Also, the bill specifically prohibits DNR from requiring that a mitigation project be larger in acreage than the minimum standards required by the guidelines.

The draft requires that DNR promulgate rules to regulate mitigation projects. The rules must address several topics, including the comparability in size and location of the wetland to be improved and the wetland adversely affected and standards for measuring the success of mitigation projects.

Under the Federal Water Pollution Control Act, a person who applies for a federal license or permit for an activity that may result in a discharge into water is required to obtain a state certification that the discharge will comply with water quality standards. If the state issues the certification, it may include conditions necessary to ensure compliance with water quality standards. DNR has promulgated rules for making water quality certification decisions. This bill prohibits a person from conducting an activity for which DNR denies a water quality certification required under the Water Pollution Control Act. The bill also prohibits a person from violating a condition that DNR includes in a water quality certification required under the Water Pollution Control Act.

INS
ANL

Current law provides civil monetary penalties (forfeitures) for violating certain laws related to water quality. Under this bill, in addition to imposing forfeitures, a court may require a person who violates these laws, including the prohibitions

BILL

created in the bill, to take any action necessary to eliminate or minimize any environmental damage caused by the person.

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

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

Insert 3-1

1 **SECTION 1.** 23.321 of the statutes is created to read:

2 **23.321 Compensatory mitigation of wetlands.** (1) **DEFINITIONS.** In this
3 section:

4 (a) “Area of special natural resource interest” means an area that possesses
5 significant ecological, cultural, aesthetic, educational, recreational or scientific
6 values, including any of the following:

7 1. A cold water community, as defined by the department, including a trout
8 stream or its tributary or a trout lake.

9 2. Lake Michigan, Lake Superior or the Mississippi River.

10 3. A wild and scenic river designated under 16 USC 1271 to 1287, a wild river
11 designated under s. 30.26, the Lower Wisconsin State Riverway or a scenic urban
12 waterway designated under s. 30.275.

13 4. An environmentally sensitive area or an environmental corridor identified
14 in an areawide water quality management plan provided for under 33 USC 1288, a
15 special area management plan, as defined in 16 USC 1453 (17), a special wetland
16 inventory study or advanced delineation and identification study under 40 CFR
17 230.80 or an area designated by the U.S. environmental protection agency under 33
18 USC 1344 (c).

19 5. A calcareous fen.

BILL

SECTION 1

1 6. A habitat used by state or federally designated threatened or endangered
2 species.

3 7. A state park, forest, trail or recreation area.

4 8. A state or federal fish and wildlife refuge or fish and wildlife management
5 area.

6 9. A state or federal designated wilderness area.

7 10. A state natural area designated or dedicated under ss. 23.27 to 23.29.

8 11. Wild rice waters.

9 12. Surface waters identified by the department as outstanding or exceptional
10 resource waters under s. 281.15.

11 13. Any other area identified by the department by rule. *enhancement,*

12 (b) "Mitigation project" means the ~~preservation~~ restoration *or preservation* or creation of
13 wetlands to compensate for adverse impacts to other wetlands. "Mitigation project"
14 includes using credits from a wetlands mitigation bank.

15 *stat.* (c) "Wetland" ~~has the meaning given in s. 23.32(1)~~ *insert 4-15*

16 (d) "Wetland in or near an area of special natural resource interest" means a
17 wetland that is within an area of special natural resource interest or that is in
18 proximity to or has a direct hydrologic connection to an area of special natural
19 resource interest.

20 (e) "Wetlands mitigation bank" means a system of accounting for wetland loss
21 and compensation that includes one or more sites where wetlands are ~~preserved,~~
22 *enhanced,* restored *or preserved* or created to provide transferable credits to be subsequently applied to
23 compensate for adverse impacts to other wetlands.

24 (f) "Wetland water quality standards" means water quality standards
25 promulgated under s. 281.15 (1) that affect wetlands.

BILL

1 (2) ISSUING PERMITS. (a) The department may consider a mitigation project as
2 a means for complying with any wetland water quality standards in determining
3 whether to issue a permit for, or to otherwise approve, an activity that affects a
4 wetland under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to 281.47 or 281.49 to 281.85
5 or ch. 30, 31, 283, 289, 291, 292, 293, 295 or 299. This subsection does not entitle an
6 applicant to a permit or other approval in exchange for conducting a mitigation
7 project. *in reviewing an application under par. (a)*

8 (b) The department may not consider a mitigation project unless the
9 application demonstrates that all appropriate and practicable measures will be
10 taken to avoid and minimize adverse impacts on the wetland. *applicant*

11 (c) The department may not consider a mitigation project in reviewing an
12 application under par. (a) ~~if any of the wetlands involved is~~ *for an activity that affects* a wetland in or near an
13 area of special natural resource interest.

14 (d) If the department determines that the conditions of a permit or other
15 authorization issued by the U.S. Army Corps of Engineers for an activity that affects
16 a wetland do not meet the ~~minimum~~ requirements of any guidelines established in
17 the memorandum of agreement under sub. (4), the department may impose
18 additional conditions to ensure that the requirements are met. The department may
19 not require that the acreage of a mitigation project considered under par. (a) exceed
20 the acreage that is required for the project under the guidelines established in the
21 memorandum of agreement under sub. (4).

22 (e) The department may consider preservation of an existing wetland to be a
23 mitigation project only in exceptional circumstances, as specified by the department
24 by rule. The department may not consider preservation to be a mitigation project
25 unless all of the following requirements apply:

BILL

SECTION 1

1 1. The wetland to be preserved performs physical or biological functions that
2 are important to the region.

3 2. The wetland to be preserved is under demonstrable threat of destruction or
4 substantial degradation due to human activity that may not otherwise be expected
5 to be restricted. *and includes measures to protect*

6 3. The mitigation project will prevent the destruction or substantial
7 degradation of the wetland to be preserved, *including protection of the wetland and*
8 *surrounding the wetland to the degree necessary* sufficient surrounding upland areas to maintain the physical *land* biological functions
9 that are performed by the wetland. *the*

INSERT 6-9

10 (3) RULES. The department shall promulgate rules to establish a process for
11 consideration of wetland compensatory mitigation under sub. (2). Upon
12 promulgation, the rules shall apply to any application or other request for an initial
13 determination for a permit or other authorization that is pending with the
14 department on the date on which the rules take effect. The rules shall address all
15 of the following:

16 (a) Requirements for the avoidance and minimization of adverse impacts to the
17 wetland that will be affected by the permitted activity.

18 (b) The conditions under which credits in a wetlands mitigation bank may be
19 used for wetland compensatory mitigation.

20 (c) Enforcement of a requirement to implement a mitigation project.

21 (d) Baseline studies of the wetland that will be affected by the permitted
22 activity and of the mitigation project site.

23 (e) Plan and project design requirements for a mitigation project, which shall
24 consider the relation of the project design to the hydrology of the watershed in which
25 a mitigation project is located.

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BILL

will be restored, enhanced, created or preserved

1 (f) The comparability of a wetland that is ~~the subject of the mitigation project~~
2 to the wetland that will be ^{adversely} affected by the permitted activity, including all of the
3 following:

4 1. Consideration of the size, location, type and quality of the wetlands.

5 2. Consideration of the functional values performed by the wetlands.

6 3. Establishment of a process for determining replacement ratios.

7 (g) Standards for measuring the short-term and long-term success of a
8 mitigation project and requirements for the short-term and long-term monitoring
9 of a mitigation project.

10 (h) Remedial actions to be taken by the applicant if a mitigation project is not
11 successful and actions to be taken by a wetlands mitigation bank if a mitigation
12 project on which mitigation credits are based is not successful.

13 (4) MEMORANDUM OF UNDERSTANDING. The department shall initiate
14 negotiations with the U.S. army corps of engineers to develop a memorandum of
15 agreement establishing standards for mitigation projects and wetland mitigation
16 banks. The guidelines shall address all of the topics described in sub. (3) (a) to (h).

*INS
7-16*

17 SECTION 2. 281.17 (10) of the statutes is created to read:

18 281.17 (10) (a) No person may conduct an activity for which the department
19 denies a water quality certification required by rules promulgated under this
20 subchapter to implement 33 USC 1341 (a).

21 (b) No person may violate a condition imposed by the department in a water
22 quality certification required by rules promulgated under this subchapter to
23 implement 33 USC 1341 (a).

24 SECTION 3. 281.98 (3) of the statutes is created to read:

Insert ANL

(9) The bill also provides that a wetland that is created as part of a wetland mitigation project is treated the same as a naturally formed wetland for purpose of state law.

These state laws include laws regulating the zoning of wetlands in shorelands, ^{the law} (determining eligibility for inclusion ^{of land} in tax incremental finance districts and ~~property tax laws~~ the law defining certain wetlands for property tax purposes.

(END OF INS ANL)

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for property taxes purposes

~~Insert ANL~~

and The bill also specifies that a wetland that is created as part of a wetland mitigation project is treated the same as a naturally formed wetland for purposes of state law. ~~These laws included laws regulating the zoning of shorelands in wetlands, providing wetland habitat for waterfowl and~~

~~Insert 3-1~~

SECTION 1. 16.967 (1) (f) of the statutes is created to read:

16.967 (1) (f) "Wetland" has the meaning given in s. 23.32 (1) (b). *Wetlands in a park independent district.*

SECTION 2. 23.19 (2) (d) of the statutes is amended to read:

23.19 (2) (d) Restoration of wetland, as defined in s. 23.32 (1) (b).

History: 1989 a. 350; 1995 a. 27.

SECTION 3. 23.32 (1) of the statutes is *renumbered 23.32 (1) (intro.)* amended to read:

23.32 (1) *(intro.)* In this section "wetland":

(b) "Wetland" means an area, either naturally formed or artificially created as part of a mitigation project, where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

History: 1977 c. 374; 1979 c. 221; 1983 a. 27; 1985 a. 29; 1989 a. 31; 1995 a. 27; 1997 a. 27.

SECTION 4. 23.32 (1) (am) of the statutes is created to read:

23.32 (1) (am) "Mitigation project" has the meaning given in s. 23.321 (1) (b).

SECTION 5. 23.32 (2) (b) of the statutes is amended to read:

23.32 (2) (b) Mapping priorities, technical methods and standards to be used in delineating wetlands and a long-term schedule which will result in completion of the mapping effort at the earliest possible date, but not later than July 1, 1984, shall be developed by the department in cooperation with those other state agencies having mapping, aerial photography and comprehensive planning responsibilities.

History: 1977 c. 374; 1979 c. 221; 1983 a. 27; 1985 a. 29; 1989 a. 31; 1995 a. 27; 1997 a. 27.

(END OF INSERT 3-1)

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means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

Insert 6-9 ✓

91

4. The holder of the permit or other approval from the department will take the necessary legal measures, as determined by the department, to ensure that the preserved wetland will not be destroyed or substantially degraded by any subsequent owner or holder of interest in the property on which the preserved wetland is located.

Insert 7-16

SECTION 6. 29.001 (89) of the statutes is created to read:

29.001 (89) "Wetland" has the meaning given in s. 23.32 (1) (b).

→
→

SECTION 7. 30.01 (7) of the statutes is created to read:

30.01 (7) "Wetland" has the meaning given in s. 23.32 (1) (b).

SECTION 8. 33.41 (6) of the statutes is created to read:

33.41 (6) "Wetland" has the meaning given in s. 23.32 (1) (b).

SECTION 9. 59.001 (5) of the statutes is created to read:

59.001 (5) "Wetland" has the meaning given in s. 23.32 (1) (b).

SECTION 10. 61.351 (1) (b) of the statutes is amended to read:

61.351 (1) (b) "Wetlands" has the meaning specified under s. 23.32 (1) (b).

History: 1981 c. 330; 1995 a. 201, 227.

SECTION 11. 62.231 (1) (b) of the statutes is amended to read:

62.231 (1) (b) "Wetlands" has the meaning specified under s. 23.32 (1) (b).

Score

History: 1981 c. 330, 291; 1995 a. 201; 1995 a. 227.

SECTION 12. 281.01 (21) of the statutes is created to read:

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✓
281.01 (21) "Wetland" has the meaning given in s. 23.32 (1) (b).

SECTION 13. 281.69 (3) (b) 2. of the statutes is amended to read:

281.69 (3) (b) 2. The restoration of a wetland, ~~as defined in s. 23.32 (1)~~, if the
restoration will protect or improve a lake's water quality or its natural ecosystem.

History: 1991 a. 39; 1993 a. 343; 1995 a. 27; 1995 a. 227 s. 431; Stats. 1995 s. 281.69; 1997 a. 27.

SECTION 14. 293.13 (2) (c) 8. of the statutes is amended to read:

293.13 (2) (c) 8. Minimization of disturbance to wetlands, as defined in s. 23.32

(1) (b).

History: 1995 a. 227 s. 746, 747, 994; 1997 a. 35.

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SECTION 1. 86.255 (2) (a) of the statutes, as created by 1999 Wisconsin Act 9,
is amended to read:

86.255 (2) (a) The purchase of any land that is acquired as compensatory
mitigation for another wetland, as defined in s. 23.32 (1) (b), that will suffer an
adverse impact by degradation or destruction as part of a highway project.

History: 1999 a. 9.

(END OF INSERT I-1)