



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3637/2  
MGG&RCT:cmh:hmh

1999 BILL

1 AN ACT ~~to renumber and amend 23.32 (1); to amend 23.19 (2) (d), 23.32 (2) (b),~~  
2 ~~61.351 (1) (b), 62.231 (1) (b), 86.255 (2) (a), 281.69 (3) (b) 2. and 293.13 (2) (c) 8.;~~  
3 ~~and to create 16.067 (1) (f), 23.32 (1) (am), 23.321, 29.001 (89), 30.01 (79), 33.41~~  
4 ~~(6), 59.001 (5), 281.01 (21), 281.17 (10) and 281.98 (3) of the statutes; relating~~  
5 ~~to: wetlands mitigation and granting rule-making authority.~~

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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, *is allowed.*

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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.

Under the bill, a wetland mitigation project is a project that restores, enhances, ~~or~~ creates ~~or preserves (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~~ <sup>restored, enhanced or created</sup> 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 that 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.

~~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 the law defining certain wetlands for property tax purposes.~~

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

*standards for mitigation projects and mitigation banks.*

**BILL**

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.

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 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:*

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

2        ~~16.967 (1) (f) "Wetland" has the meaning given in s. 23.32 (1) (b).~~

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

4        ~~23.19 (2) (d) Restoration of wetland, as defined in s. 23.32 (1) (b).~~

5        ~~SECTION 3. 23.32 (1) of the statutes is renumbered 23.32 (1) (intro.) and~~  
6        ~~amended to read:~~

7        ~~23.32 (1) (intro.) In this section "wetland":~~

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

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

13       ~~23.32 (1) (am) "Mitigation project" has the meaning given in s. 23.321 (1) (b).~~

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

**BILL**

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

6           **SECTION 6.** 23.321 of the statutes is created to read:

7           **23.321 Compensatory mitigation of wetlands. (1) DEFINITIONS.** In this  
8 section:

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

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

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

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

18           4. An environmentally sensitive area or an environmental corridor identified  
19 in an areawide water quality management plan provided for under 33 USC 1288, a  
20 special area management plan, as defined in 16 USC 1453 (17), a special wetland  
21 inventory study or advanced delineation and identification study under 40 CFR  
22 230.80 or an area designated by the U.S. environmental protection agency under 33  
23 USC 1344 (c).

24           5. A calcareous fen.

**BILL**

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.

12           (b) "Mitigation project" means the restoration, enhancement, <sup>creation</sup> ~~or~~  
13 ~~preservation~~ of wetlands to compensate for adverse impacts to other wetlands.

14 "Mitigation project" includes using credits from a wetlands mitigation bank.

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

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

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

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

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

10 (b) The department may not consider a mitigation project in reviewing an  
11 application under par. (a) unless the applicant demonstrates that all appropriate and  
12 practicable measures will be taken to avoid and minimize adverse impacts on the  
13 wetland.

14 (c) The department may not consider a mitigation project in reviewing an  
15 application under par. (a) ~~that~~ <sup>adversely</sup> affects a wetland in or near an area of  
16 special natural resource interest.

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

(e) The department shall assure that all wetlands that are  
associated as mitigation projects are

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*protected in perpetuity with appropriate real estate agreements*  
*that effectively restrict harmful activities that might*  
*otherwise jeopardize the purpose of the site.*

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

5 1. The wetland to be preserved performs physical or biological functions that  
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 that may not otherwise be expected  
9 to be restricted.

10 3. The mitigation project will prevent the destruction or substantial  
11 degradation of the wetland to be preserved, and includes measures to protect the  
12 wetland and the upland areas surrounding the wetland to the degree necessary to  
13 maintain the physical and biological functions that are performed by the wetland.

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

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

that has negligible

1999 - 2000 Legislature

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- 8 - expedited

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(a) A rapid and streamlined decision-making process for activities affecting wetlands that are less than one acre in size and that, with the exception of stormwater storage, have no functional value.

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

3 c (a) The conditions under which credits in a wetlands mitigation bank may be  
4 used for wetland compensatory mitigation.

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

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

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

11 g (a) The comparability of a wetland that will be restored, enhanced, created or  
12 preserved to the wetland that will be adversely affected by the permitted activity,  
13 including all of the following:

- 14 1. Consideration of the size, location, type and quality of the wetlands.
- 15 2. Consideration of the functional values performed by the wetlands.

16 h <sup>The</sup> Establishment of a process for determining replacement ratios.

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

23 (4) MEMORANDUM OF UNDERSTANDING. The department shall initiate  
24 negotiations with the U.S. army corps of engineers to develop a memorandum of



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1 agreement establishing standards for mitigation projects and wetland mitigation  
2 banks. The guidelines shall address all of the topics described in sub. (3) (a) to <sup>J</sup>(~~21~~).

3 ~~SECTION 7. 29.001 (89) of the statutes is created to read:~~

4 ~~29.001 (89) "Wetland" has the meaning given in s. 23.32 (1) (b).~~

5 ~~SECTION 8. 30.01 (7s) of the statutes is created to read:~~

6 ~~30.01 (7s) "Wetland" has the meaning given in s. 23.32 (1) (b)."~~

7 ~~SECTION 9. 33.41 (6) of the statutes is created to read:~~

8 ~~33.41 (6) "Wetland" has the meaning given in s. 23.32 (1) (b).~~

9 ~~SECTION 10. 59.001 (5) of the statutes is created to read:~~

10 ~~59.001 (5) "Wetland" has the meaning given in s. 23.32 (1) (b).~~

11 ~~SECTION 11. 61.351 (1) (b) of the statutes is amended to read:~~

12 ~~61.351 (1) (b) "Wetlands" has the meaning specified under s. 23.32 (1) (b).~~

13 ~~SECTION 12. 62.231 (1) (b) of the statutes is amended to read:~~

14 ~~62.231 (1) (b) "Wetlands" has the meaning specified under s. 23.32 (1) (b).~~

15 ~~SECTION 13. 86.255 (2) (a) of the statutes, as created by 1999 Wisconsin Act 9,~~  
16 ~~is amended to read:~~

17 ~~86.255 (2) (a) The purchase of any land that is acquired as compensatory~~  
18 ~~mitigation for another wetland, as defined in s. 23.32 (1) (b), that will suffer an~~  
19 ~~adverse impact by degradation or destruction as part of a highway project.~~

20 ~~SECTION 14. 281.01 (21) of the statutes is created to read:~~

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

22 ~~SECTION 15. 281.17 (10) of the statutes is created to read:~~

23 ~~281.17 (10) (a) No person may conduct an activity for which the department~~  
24 ~~denies a water quality certification required by rules promulgated under this~~  
25 ~~subchapter to implement 33 USC 1341 (a).~~

**BILL**

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

4 ~~SECTION 16. 281.69 (3) (b) 2. of the statutes is amended to read:~~

5 ~~281.69 (3) (b) 2. The restoration of a wetland, as defined in s. 23.32 (1), if the~~  
6 ~~restoration will protect or improve a lake's water quality or its natural ecosystem.~~

7 **SECTION 17. 281.98 (3) of the statutes is created to read:**

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

12 ~~SECTION 18. 293.13 (2) (c) 8. of the statutes is amended to read:~~

13 ~~293.13 (2) (c) 8. Minimization of disturbance to wetlands, as defined in s. 23.32~~

14 ~~(1) (b).~~

15 **SECTION 19. 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 18th month beginning after publication.

20 **SECTION 20. 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 21st month beginning after publication.

24 (END)

Dave Siebert

Holmes vs. River View Bay

4-6048

① delete changes in definition of wetland

DNR will interpret wetlands to be ~~artificial~~  
wetlands

② Page 7, line 14-17 language is OK - expand to  
mitigation banking and to restored, enhanced  
or created wetlands.

{ legal measures requirements will not apply  
if mitigation site is no longer a wetland  
and if outside of the power of the holder, permit  
or subsequent owner or holder  
as determined by the department

③ p. 8, par. a  
"expedited decision-making <sup>process</sup> procedure"

delete "stormwater storage"

use "measurable functional value"

④ ~~page~~ direct hydrologic connections

⑤ changes on p. 8, line 16  
p. 6, line 11

⑥ metallic mining in analysis

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1999 - 2000 LEGISLATURE

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O-Note

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10 am

1999 BILL

under procedures jointly established  
by DNR and DOT.

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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.

The department of transportation  
(DOT) may engage in

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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.

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*standards for mitigation project and banks*

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.

**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 the law defining certain wetlands for property tax purposes.**

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*9* The bill ~~also~~ requires permit holders and persons engaged in mitigation to take legal measures to protect a ~~restored, enhanced or improved~~ wetland from being destroyed or substantially ~~destroyed~~ *destroyed* by subsequent owners.

**BILL**

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.

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

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4       23.19 (2) (d) Restoration of wetland, as defined in s. 23.32 (1) (b).

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8       (b) "Wetland" means an area, either naturally formed or artificially created as  
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11 soils indicative of wet conditions.

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

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

**BILL****SECTION 5**

1           23.32 (2) (b) Mapping priorities, technical methods and standards to be used  
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10 significant ecological, cultural, aesthetic, educational, recreational or scientific  
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13 stream or its tributary or a trout lake.

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15           3. A wild and scenic river designated under 16 USC 1271 to 1287, a wild river  
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19 in an areawide water quality management plan provided for under 33 USC 1288, a  
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5 area.

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12           (b) "Mitigation project" means the restoration, enhancement, <sup>or</sup> ~~creation~~  
13 preservation of wetlands to compensate for adverse impacts to other wetlands.

14 "Mitigation project" includes using credits from a wetlands mitigation bank.

15           (c) "Wetland" <sup>has the meaning given in s. 23.32(1) ⓪</sup> means an area where water is at, near, or above the land surface  
16 long enough to be capable of supporting aquatic or hydrophytic vegetation and which  
17 has soils indicative of wet conditions.

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

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

**BILL****SECTION 6**

1 (f) "Wetland water quality standards" means water quality standards  
2 promulgated under s. 281.15<sup>✓</sup> (1) that affect wetlands.

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

10 (b) The department may not consider a mitigation project in reviewing an  
11 application under par. (a)<sup>✓</sup> unless the applicant demonstrates that all appropriate and  
12 practicable measures will be taken to avoid and minimize adverse impacts on the  
13 wetland.

14 (c) The department may not consider a mitigation project in reviewing an  
15 application under par. (a) for an activity that <sup>adversely</sup> affects a wetland in or near an area of <sup>✓</sup>  
16 special natural resource interest.

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

**BILL**  
**(2m) SUBSEQUENT PROTECTION OF WETLANDS**

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

5 1. The wetland to be preserved performs physical or biological functions that  
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 that may not otherwise be expected  
9 to be restricted.

10 3. The mitigation project will prevent the destruction or substantial  
11 degradation of the wetland to be preserved, and includes measures to protect the  
12 wetland and the upland areas surrounding the wetland to the degree necessary to  
13 maintain the physical and biological functions that are performed by the wetland.

14 ~~The holder of the permit or other approval from the department will take the~~  
15 ~~necessary legal measures, as determined by the department, to ensure that the~~  
16 ~~preserved wetland will not be destroyed or substantially degraded by any~~  
17 ~~subsequent owner or holder of interest in the property on which the preserved~~  
18 ~~wetland is located.~~  
*That authorizing a mitigation project shall*  
*restored, enhanced or created wetland*  
*The department shall*

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

IN  
7-

**BILL**

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

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

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

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

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

11 (f) The comparability of a wetland that will be restored, enhanced, <sup>or</sup> created ~~or~~  
12 ~~preserved~~ to the wetland that will be adversely affected by the permitted activity,  
13 including all of the following:

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

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

16 (g) ~~g~~ <sup>The</sup> Establishment of a process for determining replacement ratios.

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

23 (4) <sup>adversely</sup> MEMORANDUM OF UNDERSTANDING. The department shall initiate  
24 negotiations with the U.S. army corps of engineers to develop a memorandum of

(9) <sup>ment of</sup> Establish <sup>an expedited decision-making process for</sup>  
<sup>occurrences affecting wetlands that are less than one acre in</sup>  
<sup>area and that have negligible functional value</sup>

**BILL**

1 agreement establishing standards for mitigation projects and wetland mitigation  
2 banks. The guidelines shall address all of the topics described in sub. (3) (a) to (1)(b)

3 **SECTION 7.** 29.001 (89) of the statutes is created to read:

4 29.001 (89) "Wetland" has the meaning given in s. 23.32 (1) (b).

5 **SECTION 8.** 30.01 (7s) of the statutes is created to read:

6 30.01 (7s) "Wetland" has the meaning given in s. 23.32 (1) (b).

7 **SECTION 9.** 33.41 (6) of the statutes is created to read:

8 33.41 (6) "Wetland" has the meaning given in s. 23.32 (1) (b).

9 **SECTION 10.** 59.001 (5) of the statutes is created to read:

10 59.001 (5) "Wetland" has the meaning given in s. 23.32 (1) (b).

11 **SECTION 11.** 61.351 (1) (b) of the statutes is amended to read:

12 61.351 (1) (b) "Wetlands" has the meaning specified under s. 23.32 (1) (b).

13 **SECTION 12.** 62.231 (1) (b) of the statutes is amended to read:

14 62.231 (1) (b) "Wetlands" has the meaning specified under s. 23.32 (1) (b).

15 **SECTION 13.** 86.255 (2) (a) of the statutes, as created by 1999 Wisconsin Act 9,  
16 is amended to read:

17 86.255 (2) (a) The purchase of any land that is acquired as compensatory  
18 mitigation for another wetland, as defined in s. 23.32 (1) (b), that will suffer an  
19 adverse impact by degradation or destruction as part of a highway project.

20 **SECTION 14.** 281.01 (21) of the statutes is created to read:

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

22 **SECTION 15.** 281.17 (10) of the statutes is created to read:

23 281.17 (10) (a) No person may conduct an activity for which the department  
24 denies a water quality certification required by rules promulgated under this  
25 subchapter to implement 33 USC 1341 (a).

**BILL**

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

4 **SECTION 16.** 281.69 (3) (b) 2. of the statutes is amended to read:

5 281.69 (3) (b) 2. The restoration of a wetland, ~~as defined in s. 23.32 (1)~~, if the  
6 restoration will protect or improve a lake's water quality or its natural ecosystem.

7 **SECTION 17.** 281.98 (3) of the statutes is created to read:

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

12 **SECTION 18.** 293.13 (2) (c) 8. of the statutes is amended to read:

13 293.13 (2) (c) 8. ~~Minimization of disturbance to wetlands, as defined in s. 23.32~~

14 (1) (b).

15 **SECTION 19. 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 18th month beginning after publication.

20 **SECTION 20. 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 21st month beginning after publication.

24 (END)

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3637/3ins  
MGG&RCT:cmh:hmh

(INS 7-19)

(2m) SUBSEQUENT PROTECTION FOR WETLANDS. (a) 1. A person who is holder of a permit or other approval that authorizes a mitigation project shall take the necessary legal measures, as determined by the department, to ensure that a wetland that is being restored, enhanced or created will not be destroyed or substantially degraded by any subsequent owner of or holder of interest in the property on which the wetland is located. The department shall revoke the permit or other approval if the holder of the permit or other approval fails to take these measures.

2. A person who is restoring, enhancing or ~~creating~~<sup>creating</sup> a wetland to provide transferable credits as part of a wetlands mitigation bank shall take the necessary legal measures, as determined by the department, to ensure that the wetland will not be destroyed or substantially degraded by any subsequent owner of or holder of interest in the property on which the wetland is located.

(b) Notwithstanding par. (a), the effect of any legal measures taken under par. (a) do not apply if all of the following apply:

1. The restored, enhanced or created wetland ceases to be a wetland.
2. The person who is required to take the legal measures did not contribute to the loss of the wetland specified in subd. 1.
3. Any subsequent owner of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the ~~wetland's~~ loss.

(END OF INSERT

7-19)

of the  
wetland

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

LRB-3637/3dn  
MGG&BCJ:cmh:hmh

Pursuant to our discussion at our meeting, I have drafted s. 23.321 (2m) (a) 2., but is it necessary? Won't the person restoring, enhancing or creating a wetland as part of mitigation banks always be a permit or approval holder? Also note that under s. 23.321 (2m) (a) 2. there is no consequence for not taking the necessary legal measures.

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



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

LRB-3637/3dn  
MGG:cmh:jf

January 14, 2000

Pursuant to our discussion at our meeting, I have drafted s. 23.321 (2m) (a) 2., but is it necessary? Won't the person restoring, enhancing or creating a wetland as part of mitigation banks always be a permit or approval holder? Also note that under s. 23.321 (2m) (a) 2. there is no consequence for not taking the necessary legal measures.

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

# ROBERT L. COWLES

Wisconsin State Senator • 2nd Senate District

TO: Becky Tradewell, LRB Drafting

FROM: Sean, Senator Cowles Office

DATE: February 14, 2000

RE: Changes to LRB 3637/3

- ✓ page 3 & 4 delete lines 19 through line 4 on page 4
- ✓ page 4 lines 21 delete "or near" and insert after means "for purposes of this section"
- ✓ page 4 line 22 delete "or that is in" and lines 23 & 24
- ✓ page 5 line 15 delete "all"
- ✓ delete the sentence on page 6 contained in lines 9 to 11.
- ✓ insert language on page 6 lines 17 to 18 allowing the DNR to determine if a wetland ceases to be a wetland.
- ✓ page 6 line 18 insert "if the DNR determines" in addition cross reference section 700.40 on conservation easements.
- ~~Page 8 (need to add terms of the easement with legal measures??) 40~~
- 8 lines 6 add language to approve the application within \_\_\_ days.
- ✓ eliminate references to section (3)(j) in the MOU on page 8 line 10.
- ✓ delete page 8 lines 18 to 20.
- ✓ Page 9 line 5 change "18<sup>th</sup> month" to "12<sup>th</sup> month"

*diff. approach see notes*

*see notes*

2/14/2000 Meeting with Sean & David Lovell (Leg. Council)

Re. p. 4, lines 21-24 - Delete the definition and use phrase "wetland in or adjacent to an area of special natural resource interest" instead, throughout draft

Page 6 - lines 5+6 replace "take the necessary legal measures, as determined by the department" with "grant a conservation easement ~~to~~, under s. 700.40, to the department" Also on lines 13-14

(through no fault of the person)

Page 6, lines 17-23: IF a wetland <sup>in whole or in part,</sup> ceases to be a wetland, DNR must release or modify the easement to reflect the loss

p. 8, line 6 - Sean will get back to me on this issue

RET

**Gibson-Glass, Mary**

---

**From:** Dilweg, Sean  
**Sent:** Monday, February 21, 2000 11:30 AM  
**To:** Gibson-Glass, Mary  
**Subject:** FW: Wetland Mitigation Follow-Up.

Mary,

Below is the language that I mentioned from DNR on expedited permits.

We will call between 1 & 2 pm today.

Thanks  
--Sean

-----Original Message-----

**From:** Kluesner, Elizabeth M  
**Sent:** Friday, February 18, 2000 12:08 PM  
**To:** Ottman, Tad; Dilweg, Sean; Wenzel, Bill; Schoepke, Jeff; Lovell, David  
**Cc:** Siebert, David R; Hausmann, Paul S  
**Subject:** FW: Wetland Mitigation Follow-Up.

Here is the Department's language to further define the expedited decision making described in the rules section of the proposed wetland mitigation draft.

I would be happy to discuss this if you have additional questions. My number is: 264-6266.

Modification to LRB 3673\3

Page 7, Line 3-4:

"The rules shall address all of the following...

Page 8, line 4:

....(j) Establishment of an expedited decision-making process for activities affecting wetlands that are less than one acre in size and that have negligible functional values."

***To further define what is meant by an expedited decision making process we would suggest additional language in this section on writing rules:***

For an application that includes all of the following:

- \* The affected wetland is not in an area of special natural resource interest;
  - \* ~~The affected wetland is less than one acre in size;~~ <sup>not</sup>
  - \* ~~The applicant agrees to provide compensatory mitigation according to state/federal guidelines;~~ <sup>if required to so</sup>
- not necessary*

\* The project does not require a Chapter 30 permit;

\* The affected wetland is not in the ~~100 year~~ floodplain.

If the Department finds that the project meets the above criteria, a decision will be made in 60 business days, except where weather conditions are not adequate to make a determination.

*deletion of last sentence in re: revocation of permits  
not necessary being permitted activity already  
completed*



State of Wisconsin  
1999-2000 LEGISLATURE

LRB-3637/4  
MGG&RCT:cmh:jf

Tues noon D-Note

ymf

1999 BILL

regenerate  
↓

1 AN ACT to amend 23.32 (2) (b) and 281.69 (3) (b) 2.; and to create 23.321, 281.17  
2 (10) and 281.98 (3) of the statutes; relating to: wetlands mitigation and  
3 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. The department of transportation (DOT) may engage in compensatory mitigation of wetlands for highway construction and repair activities under procedures jointly established by DNR and DOT.

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

**BILL**

*grant a conservation easement to the Department to ensure that*

whether to grant a permit or other approval (approval) for an activity that will have an adverse affect on the wetland.

Under the bill, a wetland mitigation project is a project that restores, enhances or creates 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 restored, enhanced or created to provide transferable credits to be subsequently applied to compensate for adverse impacts to other wetlands.

*adjacent*

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 permit holder ~~and~~ person engaged in mitigation to take legal measures to protect a restored, enhanced or created wetland ~~from being~~ destroyed or substantially degraded by subsequent owners. *is not*

*\**

*guidelines*

The bill requires also that DNR initiate negotiations with ACE to establish ~~standards~~ for mitigation projects and banking. 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. *acreage*

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. *INS ANL*

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 prohibits also 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

**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.

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

1           **SECTION 1.** 23.32 (2) (b) of the statutes is amended to read:

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

7           **SECTION 2.** 23.321 of the statutes is created to read:

8           ~~23.321~~ <sup>(2)</sup> **Compensatory mitigation of wetlands** (1) DEFINITIONS. In this  
9 section:

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

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

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

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

19           4. An environmentally sensitive area or an environmental corridor identified  
20 in an areawide water quality management plan provided for under 33 USC 1288, a



## BILL

## SECTION 2

1 special area management plan, as defined in 16 USC 1453 (17), a special wetland  
2 inventory study or advanced delineation and identification study under 40 CFR  
3 230.80 or an area designated by the U.S. environmental protection agency under 33  
4 USC 1344 (c).

5 ~~4~~<sup>4</sup>. A calcareous fen.

6 ~~5~~<sup>5</sup>. A habitat used by state or federally designated threatened or endangered  
7 species.

8 ~~6~~<sup>6</sup>. A state park, forest, trail or recreation area.

9 ~~7~~<sup>7</sup>. A state or federal fish and wildlife refuge or fish and wildlife management  
10 area.

11 ~~8~~<sup>8</sup>. A state or federal designated wilderness area.

12 ~~9~~<sup>9</sup>. A state natural area designated or dedicated under ss. 23.27 to 23.29.

13 ~~10~~<sup>10</sup>. Wild rice waters.

14 ~~11~~<sup>11</sup>. Surface waters identified by the department as outstanding or exceptional  
15 resource waters under s. 281.15.

16 ~~12~~<sup>12</sup>. Any other area identified by the department by rule.

17 (b) "Mitigation project" means the restoration, enhancement or creation of  
18 wetlands to compensate for adverse impacts to other wetlands. "Mitigation project"  
19 includes using credits from a wetlands mitigation bank.

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

21 (d) "Wetland in or near an area of special natural resource interest" means a  
22 wetland that is within an area of special natural resource interest or that is in  
23 proximity to or has a direct hydrologic connection to an area of special natural  
24 resource interest.

**BILL**

*"Working day" has the meaning given in S. 227.01(14)*

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

*(e)* "Wetland water quality standards" means water quality standards promulgated under s. 281.15 (1) that affect wetlands.

(2) ISSUING PERMITS. (a) The department may consider a mitigation project as a means for complying with any wetland water quality standards in determining whether to issue a permit for, or to otherwise approve, an activity that affects a wetland under ss. 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, 291, 292, 293, 295 or 299. This subsection does not entitle an applicant to a permit or other approval in exchange for conducting a mitigation project.

(b) The department may not consider a mitigation project in reviewing an application under par. (a) unless the applicant demonstrates that all appropriate and practicable measures will be taken to avoid and minimize adverse impacts on the wetland.

(c) The department may not consider a mitigation project in reviewing an application under par. (a) for an activity that adversely affects a wetland in or ~~near~~ <sup>adjacent to</sup> an area of special natural resource interest.

(d) If the department determines that the conditions of a permit or other authorization issued by the U.S. Army Corps of Engineers for an activity that affects a wetland do not meet the requirements of any guidelines established in the memorandum of agreement under sub. (4), the department may impose additional conditions to ensure that the requirements are met. The department may not

**BILL**

**SECTION 2**

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

4 (2m) SUBSEQUENT PROTECTION FOR WETLANDS. (a) 1. A person who is <sup>the</sup> holder of  
5 a permit or other approval that authorizes a mitigation project shall ~~take~~ the  
6 ~~necessary legal measures, as determined by~~ <sup>grant a conservation easement under s. 700.40 to</sup> the department, to ensure that a  
7 wetland that is being restored, enhanced or created will not be destroyed or  
8 substantially degraded by any subsequent owner of or holder of interest in the  
9 property on which the wetland is located. ~~The department shall revoke the permit~~  
10 ~~or other approval if the holder of the permit or other approval fails to take these~~  
11 ~~measures.~~

12 2. A person who is restoring, enhancing or creating a wetland to provide  
13 transferable credits as part of a wetlands mitigation bank shall ~~take the necessary~~  
14 ~~legal measures, as determined by~~ <sup>grant a conservation easement under s. 700.40 to</sup> the department, to ensure that the wetland will  
15 not be destroyed or substantially degraded by any subsequent owner of or holder of  
16 interest in the property on which the wetland is located.

17 (b) Notwithstanding par. (a), ~~the effects of any legal measures taken under par.~~ <sup>department shall modify or release a conservation</sup>  
18 ~~do not apply~~ <sup>easement granted</sup> if all of the following apply: <sup>under</sup>  
19 1. ~~The~~ <sup>department determines that part or all of the</sup> restored, enhanced or created wetland ceases to be a wetland.  
20 2. The person who is required to ~~take the legal measures~~ <sup>grant the conservation easement</sup> did not contribute to  
the loss of the wetland specified in subd. 1.

22 3. Any subsequent owner of or holder of interest in the property on which the  
23 wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

24 (3) RULES. The department shall promulgate rules to establish a process for  
25 consideration of wetland compensatory mitigation under sub. (2). Upon

**BILL**

1 promulgation, the rules shall apply to any application or other request for an initial  
2 determination for a permit or other authorization that is pending with the  
3 department on the date on which the rules take effect. The rules shall address all  
4 of the following:

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

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

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

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

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

15 (f) The comparability of a wetland that will be restored, enhanced or created  
16 to the wetland that will be adversely affected by the permitted activity, including all  
17 of the following:

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

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

20 (g) The establishment of a process for determining replacement ratios.

21 (h) Standards for measuring the short-term and long-term success of a  
22 mitigation project and requirements for the short-term and long-term monitoring  
23 of a mitigation project.

**BILL**

**SECTION 2**

1 (i) Remedial actions to be taken by the applicant if a mitigation project is not  
2 successful and actions to be taken by a wetlands mitigation bank if a mitigation  
3 project on which mitigation credits are based is not successful.

4 (j) Establishment of an expedited decision-making process for activities  
5 adversely affecting wetlands that are less than one acre in size and that have  
6 negligible functional values.

7 (4) MEMORANDUM OF UNDERSTANDING. The department shall initiate  
8 negotiations with the U.S. army corps of engineers to develop a memorandum of  
9 agreement establishing <sup>guidelines</sup> ~~standards~~ for mitigation projects and wetland mitigation  
10 banks. The guidelines shall address all of the topics described in sub. (3) (a) to <sup>(i)</sup> ~~(j)~~

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

12 281.17 (10) (a) No person may conduct an activity for which the department  
13 denies a water quality certification required by rules promulgated under this  
14 subchapter to implement 33 USC 1341 (a).

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

18 SECTION 4. 281.69 (3) (b) 2. of the statutes is amended to read:

19 281.69 (3) (b) 2. The restoration of a wetland, as defined in s. 23.32 (1), if the  
20 restoration will protect or improve a lake's water quality or its natural ecosystem.

21 SECTION 5. 281.98 (3) of the statutes is created to read:

22 281.98 (3) In addition to the penalties under sub. (1), the court may order the  
23 defendant to abate any nuisance, restore a natural resource or take, or refrain from  
24 taking, any other action as necessary to eliminate or minimize any environmental  
25 damage caused by the defendant.

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**BILL****1 SECTION 6. Nonstatutory provisions.**

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

6 **SECTION 7. Effective dates.** This act takes effect on the day after publication,  
7 except as follows:

8 (1) The treatment of section 23.321<sup>✓</sup> (2) of the statutes takes effect on the first  
9 day of the 21st month beginning after publication.

10 (END)

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The rules must also establish an expedited decision-making process for granting approvals involving wetland mitigation. The rules must contain a provision that if the wetland that will be adversely affected is not located in a floodplain and if the activity for which the approval is sought does not involve the issuance of a permit required by DNR for a navigable water, DNR must issue the approval within 60 days after a complete application is submitted, unless weather conditions prevent DNR from doing so.

*all of the following apply: # 1,*

(5) EXPEDITED DECISION-MAKING PROCESS. (a) The expedited decision-making process established under the rules under sub. (3) (j) shall include a requirement that the department shall decide whether to issue a permit for, or otherwise approve, an activity within 60 ~~business~~ <sup>*working*</sup> days after a complete application for the permit or approval has been received by the department if the wetland that will be adversely affected is not located in a floodplain <sup>*or other approval*</sup> ~~and~~ <sup>*4 2.*</sup> the application does not involve the issuance of a permit under ch. 30.

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

*(END OF INSERT)*

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

LRB-3637/4dn  
MGG&RCD:cmh:jf

Attention: Sean

1. You were right about eliminating the language regarding the adversely affected wetland not being in an <sup>91</sup>(an) area of special natural resource interest. Since mitigation may not be used for any wetland in such an area, only wetlands that are outside such areas may involve wetland mitigation and the language is unnecessary. To include it would result in the 60-day limit applying to all mitigation applications.

2. In s. 23.321 (4) I changed "standards" to "guidelines" for consistency purposes. See the use of "guidelines" in 2 places in s. 23.321 (2) (d).

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



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

LRB-3637/4dn  
MGG:cmh:km

February 22, 2000

Attention: Sean

1. You were right about eliminating the language regarding the adversely affected wetland not being in an area of special natural resource interest. Since mitigation may not be used for any wetland in such an area, only wetlands that are outside such areas may involve wetland mitigation and the language is unnecessary. To include it would result in the 60-day limit applying to all mitigation applications.

2. In s. 23.321 (4) I changed "standards" to "guidelines" for consistency purposes. See the use of "guidelines" in 2 places in s. 23.321 (2) (d).

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Senior Legislative Attorney  
Phone: (608) 267-3215

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LEGISLATIVE REFERENCE BUREAU

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street

fully, proofread each word, and

**ROBERT L. COWLES**

Wisconsin State Senate • 2nd Senate District

Mary,

2/28

ing number: LRB-3637

— Enclosed is a marked copy of 14 for a redraft.

I have also forwarded this to David Lovell.

— DNR thought (j) on page 7 and a separate (s) on page 8 created confusion.

Please combine if possible

uester under whose name the  
ne draft to be submitted. Please



porated.

Thank you

— Sean

proposal makes an appropriation or  
government fiscal liability or  
roduction. If you choose to  
will be requested automatically upon  
esting the fiscal estimate prior to  
posal.

266-3561. If you have any questions

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If you have any questions

relating to the attached draft, please feel free to call me.

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