

2001 DRAFTING REQUEST

Bill

Received: **12/05/2001**

Received By: **gibsom**

Wanted: **Soon**

Identical to LRB:

For: **Glenn Grothman (608) 264-8486**

By/Representing: **Ron Sklansky**

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

Drafter: **gibsom**

May Contact:

Addl. Drafters:

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

Extra Copies: **1 - Ron Sklansky**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Acreage ratio for wetland mitigation

Instructions:

Companion bill for 01-4298

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>
/?	gibsom 12/06/2001	chanaman 12/06/2001		_____			State
/1			pgreensl 12/06/2001	_____	lrb_docadmin 12/06/2001	lrb_docadmin 12/20/2001	

FE Sent For:

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LRB-4298/1
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2001 BILL

UPS: 4367
&
4298 are
identical
except the
P-NOTE

re-
sync

1 AN ACT to repeal 281.37 (3) (g); and to create 281.37 (3c), 281.37 (3g) and 281.37
2 (3j) of the statutes; relating to: the size of restored, enhanced, or created
3 wetlands that are parts of wetland mitigation projects.

Analysis by the Legislative Reference Bureau

Under federal law, projects involving the discharge of dredge or fill material into any navigable body of water, including some 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. For wetlands not subject to federal law, any discharge of dredge or fill material, with certain exceptions, must also comply with all of the state water quality standards.

Current state law specifically authorizes DNR to consider a wetland mitigation project as a means for complying with these water quality standards in determining whether to grant a permit or other approval (approval) for an activity that will have an adverse effect on a wetland. Under this law, wetland mitigation may be accomplished by restoring, enhancing, or creating another wetland to compensate for the impact to the wetland that is being adversely affected or by using credits from

BILL

a “wetland mitigation bank.” A wetland 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.

Current law prohibits DNR from considering wetland mitigation in reviewing whether to grant an approval for a project that adversely affects “an area of special natural resource interest” or a wetland that is in such an area. 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. Also, 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 adversely affected.

Current state law also requires that DNR initiate negotiations with ACE to establish guidelines for mitigation projects and banking. Current law authorizes DNR to promulgate rules concerning the size of the wetlands to be restored, enhanced, or created (mitigating wetlands) and replacement ratios that will apply in determining the size of these wetlands. Current law specifically prohibits DNR from requiring that a mitigation project be larger in acreage than the acreage required by these guidelines.

This bill repeals DNR’s authority to promulgate rules establishing a process for determining these replacement ratios. Instead, the bill imposes a general minimum size requirement that the size of the mitigating wetlands be at least 150% of the size of the adversely affected wetlands.

The bill reduces this minimum size requirement to 100% for a mitigation project that meets certain criteria. The mitigating wetlands used for such a project must come from a mitigation bank approved by DNR, and the activity for which the mitigation project is authorized may not affect certain areas, such as deep marshes or wet prairies in any area of the state, or other areas that are located south of STH 10, such as wet meadows and forested swamps.

The bill specifies that, if the size of the mitigating wetlands using the 150% or 100% replacement ratio exceeds the acreage that is required for the mitigation project under the guidelines, the size of the mitigating wetlands shall be reduced to equal the maximum acreage allowed under those guidelines.

This bill is introduced as required by s. 227.19 (5) (e), stats., in support of the objection of the senate committee on environmental resources on October 9, 2001, and the objection of the joint committee for review of administrative rules on November 14, 2001, to the issuance of a portion of clearinghouse rule 00-164 by DNR. The portion of the proposed rule objected to would allow DNR to grant a variance to reduce the replacement ratio to 100% for certain mitigation projects that are in addition to those described above to which the 100% ratio applies.

BILL

For further information see the *state* 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. 281.37 (3) (g) of the statutes, as affected by 2001 Wisconsin Act 6,
2 is repealed.

3 SECTION 2. 281.37 (3c) of the statutes is created to read:

4 281.37 (3c) SIZE REQUIREMENT. (a) In approving a mitigation project, the
5 department shall determine the size of the wetlands to be restored, enhanced, or
6 created.

7 (b) Except as provided in sub. (3g), and subject to sub. (3j), the size of the
8 wetlands that are restored, enhanced, or created as part of a mitigation project shall
9 be at least 150% of the size of the wetlands that are adversely impacted.

10 SECTION 3. 281.37 (3g) of the statutes is created to read:

11 281.37 (3g) SIZE REQUIREMENT; SPECIFIC AREAS. Subject to sub. (3j), the size of
12 the wetlands that are restored, enhanced, or created as part of a mitigation project
13 shall be at least 100% of the size of the wetlands that are adversely impacted if all
14 of the following apply:

15 (a) Credits from a mitigation bank that has been approved by the department
16 are being used for the mitigation project.

17 (b) The permitted activity for which the mitigation project is being authorized
18 will not impact any of the following:

19 1. A deep marsh.

20 2. A ridge and swale complex.

BILL

SECTION 3

1 3. A wet prairie that is not dominated by reed canary grass to the exclusion of
2 a significant population of native species.

3 4. An ephemeral pond in a wooded area.

4 5. A sedge meadow or fresh wet meadow that is not dominated by reed canary
5 grass to the exclusion of a significant population of native species and that is located
6 south of STH 10.

7 6. A bog located south of STH 10.

8 7. A hardwood, cedar, or conifer swamp located south of STH 10.

9 **SECTION 4.** 281.37 (3j) of the statutes is created to read:

10 281.37 (3j) SIZE REQUIREMENT, ADJUSTMENT. If the size of the wetlands to be
11 restored, enhanced, or created as part of a mitigation project, as calculated under
12 sub. (3c) or (3g), exceeds the acreage that is required for the mitigation project under
13 the guidelines establish^y in the memorandum of agreement under sub. (4), the size
14 of the wetlands shall be reduced to equal the maximum acreage allowed under the
15 guidelines.

ed

(END)

Barman, Mike

From: Barman, Mike
Sent: Thursday, December 06, 2001 3:58 PM
To: Rep.Grothman
Subject: LRB-4367/1 (attached - requested by Maggie)



01-4367/1

Emery, Lynn

From: Austin, David
Sent: Thursday, December 20, 2001 11:33 AM
To: LRB.Legal
Cc: Delaporte, Maggie; Sklansky, Ron

Dear LRB:

Please Jacket LRB 4367 for the Assembly and LRB 4298 for the Senate. These are identical bills drafted by the Joint Committee for Review of Administrative Rules to uphold an objection to a proposed administrative rule. The report to the legislature required by section 227.19(6)(a) is attached.

Please send the Assembly jacket to Maggie Delaporte in Representative Grothman's office and the Senate jacket to David Austin in Senator Robson's office.

If you have any questions, please let me know.

David Austin
Senator Robson's office
6-2253



CR 00-164 Report
to the Legisl...