




# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A – Pt. I

### LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB–0748 (For: DOA)

has been copied/added to the drafting file for


**2011 LRB–0990** (For: Senator Fitzgerald)

 Are These “Companion Bills” ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 01/21/2011 (Per: MGG & CMH)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

## Barman, Mike

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**From:** Hanaman, Cathlene  
**Sent:** Friday, January 21, 2011 11:12 AM  
**To:** Barman, Mike  
**Cc:** Gibson-Glass, Mary

Mary is correct; I told you about compiles, but I did not ask you to copy the file when we decompiled for Senator Fitzgerald. The file from -0748 should be accessible in -0990 (SB-10) ~~and 11016 (not introduced).~~

Same with -0819-- file should be accessible in -0989 (introduced SB-9) ~~and 1017 (not introduced).~~

Same with -0820 -- file should be accessible in -0991 (SB-8).

2011 Jr1 DRAFTING REQUEST

**Bill**

Received: 12/16/2010

Received By: mglass

Wanted: As time permits

Companion to LRB:

For: Administration

By/Representing: Jana Steinmetz

May Contact:

Drafter: mglass

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

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Jana.Steinmetz@wisconsin.gov

Carbon copy (CC:) to: jennifer.kraus@doa.state.wi.us  
david.schmiedicke@doa.state.wi.us  
r.murray@wisconsin.gov

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Wetland regulation changes

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**Instructions:**

See attached

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**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>
/?							
/P1	mglass 12/18/2010	jdyer 12/20/2010	jfrantze 12/20/2010	_____	sbasford 12/20/2010		S&L
	mglass 12/20/2010	jdyer 12/20/2010	phenry 12/20/2010	_____			
/1	mglass 01/03/2011	nnatzke 01/04/2011	nnatzke 01/04/2011	_____	sbasford 01/04/2011		S&L

**LRB-0748**

01/06/2011 03:12:53 PM

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	mglass 01/06/2011	nnatzke 01/06/2011	mduchek 01/06/2011	_____	lparisi 01/06/2011		

FE Sent For:

<END>

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Wanted: **As time permits**

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**david.schmiedicke@doa.state.wi.us**  
**r.murray@wisconsin.gov**

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/?							
/P1	mglass 12/18/2010	jdyer 12/20/2010	jfrantze 12/20/2010	_____	sbasford 12/20/2010		S&L
	mglass 12/20/2010	jdyer 12/20/2010	phenry 12/20/2010	_____			
/1	mglass 01/03/2011	nmatzke 01/04/2011 /2 nwn 1/6	nmatzke 01/04/2011	_____	sbasford 01/04/2011		

*Handwritten signatures and initials:*  
M. [unclear]  
[unclear] [unclear]

***LRB-0748***

01/04/2011 11:04:50 AM

Page 2

FE Sent For:

<END>

**2011 DRAFTING REQUEST**

**Bill**

Received: 12/16/2010

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Administration**

By/Representing: **Jana Steinmetz**

May Contact:

Drafter: **mglass**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Jana.Steinmetz@wisconsin.gov**

Carbon copy (CC:) to: **jennifer.kraus@doa.state.wi.us**  
**david.schmiedicke@doa.state.wi.us**  
**kevin.moore@wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Wetland regulation changes

---

**Instructions:**

See attached

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**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>
/?							
/P1	mglass 12/18/2010	jdyer 12/20/2010	jfrantze 12/20/2010	_____	sbasford 12/20/2010		
	mglass 12/20/2010	jdyer 12/20/2010	phenry 12/20/2010	_____			
		1 nwn 1/3	Ycl ph	1/4 ph JK			
FE Sent For:				<END>			

2011 DRAFTING REQUEST

Bill

Received: 12/16/2010

Received By: mglass

Wanted: As time permits

Companion to LRB:

For: Administration

By/Representing: Jana Steinmetz

May Contact:

Drafter: mglass

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

Add. Drafters:

Extra Copies:

*place  
letter  
into system  
update consch.  
1 gov*

Submit via email: YES

Requester's email: Jana.Steinmetz@wisconsin.gov

*Kevin Moore @*

Carbon copy (CC:) to: first.last@Sisconsin.gov

*Denise Krans  
David Schmiedicke*

*100A*

Pre Topic:

No specific pre topic given

Topic:

Wetland regulation changes

Instructions:

See attached

Drafting History:

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

/?    mglass    *PI 12/20 JLD*    *Jb 12/20 Jb*    *pk 12/20*

FE Sent For:

*12/20  
pk  
\*END>  
12/20  
JK/PLH*



**281.165 Compliance with water quality standards for wetlands.**

**(1) Compliance; exemption.** An activity shall be considered to comply with the water quality standards that are applicable to wetlands and that are promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292 or 299 or specified under any rule promulgated, order issued or ordinance adopted under any of those sections or chapters, if the activity meets all of the requirements under either sub~~s.~~ (2) ~~or~~ (4)(3).

**(2) Trempealeau County.** Subsection (1) applies to an activity that meets all of the following requirements:

- (a) The wetland area that will be affected by the activity is less than 15 acres in size.
- (b) The site of the activity is zoned for industrial use and is in the vicinity of a manufacturing facility.
- (c) The site of the activity is within the corporate limits of a city on January 1, 1999.
- (d) The governing body of the city adopts a resolution stating that the exemption under this section is necessary to protect jobs that exist in the city on the date of the adoption of the resolution or is necessary to promote job creation.
- (e) The site of the activity is located in Trempealeau County.

**(3) Dunn County.**

(a) Subsection (1) applies to an activity that meets the requirements under sub. (2) (c) and (d) and all of the following requirements:

- 1. The wetland area that will be affected by the activity is no more than 4.2 acres in size.
  - 2. The site of the activity is zoned for technology park use and is in the vicinity of a manufacturing facility.
  - 3. The site of the activity is located in Dunn County.
- (b) Before any person engages in the activity described in par. (a), the U.S. Army Corps of Engineers shall have issued a permit for the activity that contains a mitigation plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland affected by the activity.

**(4) Brown County.** Subsection (1) applies to an activity that meets all of the following requirements:

- (a) The wetland area that will be affected by the activity is less than 3 acres in size.

(b) The site of the activity is zoned for community business use and is part of a tax incremental district.

(c) The site of the activity is located in Brown County.

(d) Before a person engages in the activity described in par. (a) the person shall provide wetland mitigation as follows:

1. For a wetland under the jurisdiction of the U.S. Army Corps of Engineers, the U.S. Army Corps of Engineers shall have issued a permit for the activity that contains a mitigation plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland affected by the activity.

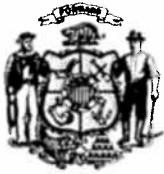
2. For a nonfederal wetland under s. 281.36, the person shall file with the department proof of acquisition of wetlands in a wetland mitigation bank at a ratio of 1.5 acres of wetland for each acre of wetland affected by the activity.

**281.36 Water quality certification for nonfederal wetlands.**

**(2) Certification requirement.**

(a) No person may discharge dredged or fill material into a nonfederal wetland of 2.0 acres or more unless the discharge is authorized by a water quality certification issued by the department under this section. No person may violate any condition imposed by the department in a water quality certification under this section. The department may not issue a water quality certification under this section unless it determines that the discharge will comply with all applicable water quality standards.

(ar) Before any person discharges dredged or fill material into a nonfederal wetland of less than 2.0 acres, the person shall file with the department proof of acquisition of wetlands in a wetland mitigation bank at a ratio of 2.0 acres of wetland for each acre of wetland affected by the activity.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0748/P1  
MGG:.....

Mon  
AM

Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

✓

Gen

1

AN ACT ...; **relating to:** exemptions from water quality certification and wetland

2

mitigation requirements for ✓ nonfederal wetlands that are less than <sup>two</sup> 2 acres in

3

size and an exemption from water quality standards for wetlands and from

4

certain other regulatory provisions concerning water quality and surface water

5

use that apply to a wetland area in ✓ Brown county and review of certain changes

6

to shoreland, wetland, and floodplain zoning ordinance <sup>s</sup> that apply to a wetland

7

area in Brown County. ✓

**Analysis by the Legislative Reference Bureau**

✓ This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

8

SECTION 1. 59.692 (6m) <sup>✓</sup> of the statutes is amended to read:

9

59.692 (6m) For an amendment to an ordinance enacted under this section that

10

affects an activity that meets all of the requirements under s. 281.165 (2) or, (3) (a) <sup>2</sup>

1 or (4) (a)<sup>✓</sup>, the department may not proceed under sub. (6) or (7) (b) or (c), or otherwise  
2 review the amendment, to determine whether the ordinance, as amended, fails to  
3 meet the shoreland zoning standards.

xxHistory: 1979 c. 233; 1981 c. 330; 1983 a. 189 s. 329 (23); 1991 a. 39; 1993 a. 329; 1995 a. 201 s. 476; Stats. 1995 s. 59.692; 1995 a. 227; 1997 a. 27, 35, 252; 1999 a. 9; 1999 a. 150 s. 672; 2005 a. 112.

4 **SECTION 2.** 62.231 (6m)<sup>✓</sup> of the statutes is amended to read:

5 62.231 (6m) CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an  
6 ordinance enacted under this section that affects an activity that meets all of the  
7 requirements under s. 281.165 (2) ~~or~~, (3) (a)<sup>2</sup> or (4) (a)<sup>✓</sup>, the department of natural  
8 resources may not proceed under sub. (6), or otherwise review the amendment, to  
9 determine whether the ordinance, as amended, fails to meet reasonable minimum  
10 standards.

xxHistory: 1981 c. 330, 391; 1995 a. 201; 1995 a. 227; 1999 a. 9; 2005 a. 112.

11 **SECTION 3.** 87.30 (1) (d)<sup>✓</sup> of the statutes is amended to read:

12 87.30 (1) (d) For an amendment to a floodplain zoning ordinance that affects  
13 an activity that meets all of the requirements under s. 281.165 (2) ~~or~~, (3) (a)<sup>2</sup> or (4) (a)<sup>✓</sup>,  
14 the department may not proceed under this subsection, or otherwise review the  
15 amendment, to determine whether the ordinance, as amended, is insufficient.

xxHistory: 1971 c. 164; 1975 c. 232, 301, 422; 1977 c. 29 s. 1654 (8) (c); 1977 c. 437, 447; 1979 c. 34 s. 2102 (58) (b); 1981 c. 339; 1985 a. 182; 1995 a. 201, 311, 455; 1999 a. 9.

16 **SECTION 4.** 281.165 (1)<sup>✓</sup> of the statutes is amended to read:

17 281.165 (1) COMPLIANCE; EXEMPTION. An activity shall be considered to comply  
18 with the water quality standards that are applicable to wetlands and that are  
19 promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction,  
20 requirement, permit, license, approval, authorization, fee, notice, hearing,  
21 procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292  
22 or 299 or specified under any rule promulgated, order issued or ordinance adopted

1 under any of those sections or chapters, if the activity meets all of the requirements  
2 under either sub. (2) or (3) or (4).

xxHistory: 1999 s. 9.

3 SECTION 5. 281.165 (4) of the statutes is created to read:

4 281.165 (4) BROWN COUNTY. (a) Subsection (1) applies to an activity that meets  
5 all of the following requirements:

6 1. The wetland area that will be affected by the activity is less than 3 acres in  
7 size.

8 2. The site of the activity is zoned for community business use and is in the is  
9 part of a tax incremental district.

10 3. The site of the activity is located in Brown County.

11 4. The person engaged in the activity is in compliance with par. (b) 1. or 2.

12 (b) 1. For a wetland that is other than a nonfederal wetland, as defined in s.  
13 281.36 (1) (c), before engaging the activity described in par. (a), the U.S. Army Corps  
14 of Engineers shall have issued a permit for the activity that contains a mitigation  
15 plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland  
16 affected by the activity.

17 2. For a nonfederal wetland, as defined in s. 281.36 (1) (c), before engaging in  
18 the activity described in par. (a), the person who will engage in the activity shall have  
19 purchased credits from any of the wetland mitigation banks that are located in the  
20 state and that are approved by the department at the ratio of at least 1.5 acres of  
21 wetland purchased for each acre of wetland affected by the activity and shall have  
22 provided to the department a written affidavit that the purchase occurred. The  
23 department may not require that the person meet any additional wetland mitigation  
24 requirements.

1           **SECTION 6.** 281.36 (4) (title) <sup>X</sup> of the statutes is amended to read:

2           281.36 (4) (title) EXEMPTIONS: CERTAIN ACTIVITIES ✓

3           <sup>xxHistory: 2001 a. 6; 2005 a. 253.</sup> **SECTION 7.** 281.36 (4) (intro.) of the statutes is amended to read:

4           <sup>xxHistory: 2001 a. 6; 2005 a. 253.</sup> **SECTION 8.** 281.36 (4m) <sup>X</sup> of the statutes is created to read:

5           281.36 (4m) EXEMPTIONS; LESS THAN <sup>e 2 ← (5)</sup> TWO ACRES. Except as provided in sub. (5),  
6           the certification requirement under sub. (2) ✓ does not apply to any discharge that  
7           adversely affects a nonfederal wetland if it is less than 2 ✓ acres in size and if the  
8           applicant purchases credits from wetland mitigation bank as provided in s. 281.37 ✓

9           (2)(e).  
          ↑

10          **SECTION 9.** 281.36 (5) (intro.) <sup>X</sup> of the statutes is amended to read:

11          281.36 (5) INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding sub.

12          ✓ subs. (4) and (5) <sup>4m</sup>, a discharge that would be exempt under sub. (4) or <sup>4m</sup> (5) is subject to  
13          the certification requirement under sub. (2) if the discharge is incidental to an  
14          activity that has as its purpose bringing a nonfederal wetland, or part of an  
15          nonfederal wetland, into a use for which it was not previously subject and if the  
16          activity may do any of the following:

17          <sup>xxHistory: 2001 a. 6; 2005 a. 253.</sup> **SECTION 10.** 281.36 (7) <sup>X</sup> of the statutes is repealed.

18          **SECTION 11.** 281.37 (1) (cg) <sup>X</sup> of the statutes is created to read:

19          281.37 (1) (cg) <sup>X</sup> "Nonfederal wetland" means a wetland that is identified as such  
20          under s. 281.36 (1m).

21          **SECTION 12.** 281.37 (2) (a) <sup>X</sup> of the statutes is amended to read:

22          281.37 (2) (a) The department may consider a mitigation project as part of an  
23          application, in combination with the requirements under par. (b), for complying with  
24          any wetland water quality standards in determining whether to issue a permit for,

1 or to otherwise approve, an activity that affects a wetland under ss. 59.692, 61.351,  
2 62.231, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292,  
3 293, 295 or 299. For a mitigation project that will affect a nonfederal wetland that  
4 is less than 2 acres in size, upon request of the applicant, the department shall allow  
5 the purchase of credits from a wetland mitigation bank as provided in par. (e). This  
6 subsection does not entitle an applicant to a permit or other approval in exchange  
7 for conducting a mitigation project.

8 ~~xx~~History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

**SECTION 13.** 281.37 (2) (b) of the statutes is amended to read:

9 281.37 (2) (b) The department may not consider a mitigation project in  
10 reviewing an application under par. (a) unless the applicant demonstrates that all  
11 appropriate and practicable measures will be taken to avoid and minimize adverse  
12 impacts on the wetland. This paragraph does not apply to a mitigation project that  
13 will adversely affect a nonfederal wetland if the nonfederal wetland is less than 2  
14 acres in size and if the applicant purchases credits from a wetland mitigation bank  
15 as provided in par. (e).

16 ~~xx~~History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

**SECTION 14.** 281.37 (2) (c) of the statutes is amended to read:

17 281.37 (2) (c) The department may not consider a mitigation project in  
18 reviewing an application under par. (a) for an activity that adversely affects a  
19 wetland in an area of special natural resource interest or for an activity that  
20 adversely affects an area of special natural resource interest. This paragraph does  
21 not apply to a mitigation project that will adversely affect a nonfederal wetland if the  
22 nonfederal wetland is less than 2 acres in size and if the applicant purchases credits  
23 from a wetland mitigation bank as provided in par. (e).

24 ~~xx~~History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.

**SECTION 15.** 281.37 (2) (e) of the statutes is created to read:



1           281.37 (2) (e) For a mitigation project that adversely affects a nonfederal  
2 wetland that <sup>is</sup> less than 2<sup>✓</sup> acres in size, upon request of an applicant, the department  
3 shall allow the purchase of credits from any of the wetland mitigation banks that  
4 are located in the state and that are approved by the department at a ratio <sup>of the</sup> at the  
5 <sup>of</sup> ratio of 2 acres of wetland purchased for each acre of wetland adversely affected by  
6 the activity, <sup>✓</sup> provided that there are wetland mitigation credits available. The  
7 applicant shall provide to the department a written affidavit that the purchase has  
8 occurred before beginning the mitigation project. <sup>✓</sup> The department may not require  
9 that the applicant meet any additional wetland mitigation requirements. <sup>✓</sup>

10

(END)



State of Wisconsin  
2011 - 2012 LEGISLATURE



stays

LRB-0748/P1  
MGG:jld:jf

D-N

TODAY

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

x Regen

1 AN ACT *to repeal* 281.36 (7); *to amend* 59.692 (6m), 62.231 (6m), 87.30 (1) (d),  
 2 281.165 (1), 281.36 (4) (title), 281.36 (5) (intro.), 281.37 (2) (a), 281.37 (2) (b) and  
 3 281.37 (2) (c); and *to create* 281.165 (4), 281.36 (4m), 281.37 (1) (cg) and 281.37  
 4 (2) (e) of the statutes; **relating to:** exemptions from water quality certification  
 5 and wetland mitigation requirements for nonfederal wetlands that are less  
 6 than two acres in size; an exemption from water quality standards for wetlands  
 7 and from certain other regulatory provisions concerning water quality and  
 8 surface water use that apply to a wetland area in Brown County; and review  
 9 of certain changes to shoreland, wetland, and floodplain zoning ordinances that  
 10 apply to a wetland area in Brown County. ✓

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

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

1           **SECTION 1.** 59.692 (6m) of the statutes is amended to read:

2           59.692 **(6m)** For an amendment to an ordinance enacted under this section that

3           affects an activity that meets all of the requirements under s. 281.165 (2) ~~or~~, (3) (a) <sup>or (4) (a)</sup>

4           or (4) (a), the department may not proceed under sub. (6) or (7) (b) or (c), or otherwise

5           review the amendment, to determine whether the ordinance, as amended, fails to

6           meet the shoreland zoning standards.

7           **SECTION 2.** 62.231 (6m) of the statutes is amended to read:

8           62.231 **(6m)** CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an

9           ordinance enacted under this section that affects an activity that meets all of the

10          requirements under s. 281.165 (2) ~~or~~, (3) (a), or (4) (a), the department of natural

11          resources may not proceed under sub. (6), or otherwise review the amendment, to

12          determine whether the ordinance, as amended, fails to meet reasonable minimum

13          standards.

14          **SECTION 3.** 87.30 (1) (d) of the statutes is amended to read:

15          87.30 (1) (d) For an amendment to a floodplain zoning ordinance that affects

16          an activity that meets all of the requirements under s. 281.165 (2) ~~or~~, (3) (a), or (4)

17          (a), the department may not proceed under this subsection, or otherwise review the

18          amendment, to determine whether the ordinance, as amended, is insufficient.

19          **SECTION 4.** 281.165 (1) of the statutes is amended to read:

20          281.165 (1) COMPLIANCE; EXEMPTION. An activity shall be considered to comply

21          with the water quality standards that are applicable to wetlands and that are

22          promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction,

23          requirement, permit, license, approval, authorization, fee, notice, hearing,

24          procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292

25          or 299 or specified under any rule promulgated, order issued or ordinance adopted

1 under any of those sections or chapters, if the activity meets all of the requirements  
2 under either sub. (2) ~~or~~, (3), or (4).

3 SECTION 5. 281.165 (4) of the statutes is created to read:

4 281.165 (4) BROWN COUNTY. (a) Subsection (1) applies to an activity that meets  
5 all of the following requirements:

6 1. The wetland area that will be affected by the activity is less than 3 acres in  
7 size.

8 2. The site of the activity is zoned for community business use and is part of a  
9 tax incremental district.

10 3. The site of the activity is located in Brown County.

11 4. The person engaged in the activity is in compliance with par. (b) 1. or 2.

12 (b) 1. For a wetland that is other than a nonfederal wetland, as defined in s.  
13 281.36 (1) (c), before engaging the activity described in par. (a), the U.S. Army Corps  
14 of Engineers shall have issued a permit for the activity that contains a mitigation  
15 plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland  
16 affected by the activity.

17 2. For a nonfederal wetland, as defined in s. 281.36 (1) (c), before engaging in  
18 the activity described in par. (a), the person who will engage in the activity shall have  
19 purchased credits from any of the wetland mitigation banks that are located in the  
20 state and that are approved by the department at the ratio of at least 1.5 acres of  
21 wetland purchased for each acre of wetland affected by the activity and shall have  
22 provided to the department a written affidavit that the purchase occurred. The  
23 department may not require that the person meet any additional wetland mitigation  
24 requirements.

25 SECTION 6. 281.36 (4) (title) of the statutes is amended to read:

1 281.36 (4) (title) ~~EXEMPTIONS; CERTAIN ACTIVITIES.~~

2 SECTION 7. 281.36 (4m) of the statutes is created to read:

3 281.36 (4m) EXEMPTIONS; LESS THAN 2 ACRES. Except as provided in sub. (5), the  
4 certification requirement under sub. (2) does not apply to any discharge that  
5 adversely affects a nonfederal wetland if it is less than 2 acres in size and if the  
6 applicant purchases credits from wetland mitigation bank as provided in s. 281.37  
7 (2) (e).

8 SECTION 8. 281.36 (5) (intro.) of the statutes is amended to read:

9 281.36 (5) INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding ~~sub.~~ subs.  
10 (4) and (4m), a discharge that would be exempt under sub. (4) or (4m) is subject to  
11 the certification requirement under sub. (2) if the discharge is incidental to an  
12 activity that has as its purpose bringing a nonfederal wetland, or part of an  
13 nonfederal wetland, into a use for which it was not previously subject and if the  
14 activity may do any of the following:

15 SECTION 9. 281.36 (7) of the statutes is repealed.

16 SECTION 10. 281.37 (1) (cg) of the statutes is created to read:

17 281.37 (1) (cg) "Nonfederal wetland" means a wetland that is identified as such  
18 under s. 281.36 (1m).

19 SECTION 11. 281.37 (2) (a) of the statutes is amended to read:

20 281.37 (2) (a) The department may consider a mitigation project as part of an  
21 application, in combination with the requirements under par. (b), for complying with  
22 any wetland water quality standards in determining whether to issue a permit for,  
23 or to otherwise approve, an activity that affects a wetland under ss. 59.692, 61.351,  
24 62.231, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292,  
25 293, 295 or 299. For a mitigation project that will affect a nonfederal wetland that

15

~~SECTION 9. 281.36 (7) of the statutes is repealed.~~

g  
✓

✓  
4-15  
IWS \$

1 is less than 2 acres in size, upon request of the applicant, the department shall allow  
2 the purchase of credits from a wetland mitigation bank as provided in par. (e). This  
3 subsection does not entitle an applicant to a permit or other approval in exchange  
4 for conducting a mitigation project.

5 **SECTION 12.** 281.37 (2) (b) of the statutes is amended to read:

6 281.37 (2) (b) The department may not consider a mitigation project in  
7 reviewing an application under par. (a) unless the applicant demonstrates that all  
8 appropriate and practicable measures will be taken to avoid and minimize adverse  
9 impacts on the wetland. This paragraph does not apply to a mitigation project that  
10 will adversely affect a nonfederal wetland if the nonfederal wetland is less than 2  
11 acres in size and if the applicant purchases credits from a wetland mitigation bank  
12 as provided in par. (e).

13 **SECTION 13.** 281.37 (2) (c) of the statutes is amended to read:

14 281.37 (2) (c) The department may not consider a mitigation project in  
15 reviewing an application under par. (a) for an activity that adversely affects a  
16 wetland in an area of special natural resource interest or for an activity that  
17 adversely affects an area of special natural resource interest. This paragraph does  
18 not apply to a mitigation project that will adversely affect a nonfederal wetland if the  
19 nonfederal wetland is less than 2 acres in size and if the applicant purchases credits  
20 from a wetland mitigation bank as provided in par. (e).

21 **SECTION 14.** 281.37 (2) (e) of the statutes is created to read:

22 281.37 (2) (e) For a mitigation project that adversely affects a nonfederal  
23 wetland that is less than 2 acres in size, upon request of an applicant, the department  
24 shall allow the purchase of credits from any of the wetland mitigation banks that are  
25 located in the state and that are approved by the department at the ratio of 2 acres

1 of wetland purchased for each acre of wetland adversely affected by the activity,  
2 provided that there are wetland mitigation credits available. The applicant shall  
3 provide to the department a written affidavit that the purchase has occurred before  
4 beginning the mitigation project. The department may not require that the  
5 applicant meet any additional wetland mitigation requirements.

← Insert 6-6

6 (END)

D-note



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

LRB-0748/P1dn  
MGG:jld:jf

↑  
keep

date

1. The exemption for Brown County would likely be found to be a "private or local bill" which, under Article IV, section 18, of the Wisconsin constitution, must be enacted as single-subject legislation. Because the Brown County exemption is contained in a bill that contains provisions of statewide application a court may well find enactment of this bill to be unconstitutional. In light of this, you may wish to introduce this legislation in two separate bills. \*
2. In drafting this legislation, I had to make many choices as to the scope of the exemption for nonfederal wetlands that are less than two acres. In reviewing this draft to determine whether it achieves your intent please review all of ss. 281.36 and 281.37 to determine how the changes in this draft interact with the current provisions in ss. 281.36 and 281.37. Specifically note how the draft affects wetlands in "areas of special natural resource interest." \*
3. I made the purchase of wetland credits optional so that if there are no wetland credits available an applicant can still proceed under the "regular" application and certification process. \*
4. Please review the initial applicability provision. If you want the two-acre provision to apply to wetlands for which applications are already pending, this will need to be redrafted.

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



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

INS 4-15

SEC # CR, 281.36 (7)(a) 4.

281.36 (7)(a) 4. The person submitting the application  
elect credits wetland  
does not elect to purchase credits from a wetland  
mitigation bank provided  
mitigation bank as provided in <sup>s</sup> § 281.37 (2)(e) ✓

(end ins)

INS 6-6 ~~III~~

Section #. 281.37 (3) (intro.)<sup>X</sup> of the statutes is amended to read:

281.37 (3) RULES. (intro.)<sup>✓</sup> The department shall promulgate rules to establish a process for consideration of wetland compensatory mitigation under sub. (2). Upon promulgation, the rules shall apply to any application or other request for an initial determination for a permit or other authorization that is pending with the department on the date on which the rules take effect. The rules shall address all of the following:

History: 1999 a. 147; 2001 a. 6 ss. 1 to 5; Stats. 2001 s. 281.37; 2001 a. 38.



, except  
as provided  
in sub. (2)(e) ✓

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

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LRB

INSERT 6-6  
CONT

EC.# . INITIAL APPLICABILITY. The treatment of A  
 applies first ~~shall~~ apply to applications for certifications  
 of compliance with ~~water~~ for wetlands that  
 are submitted to the department of natural  
 resources on the effective date of this  
 subsection.

sections 281.36(4) (title), (4m), (5) (intro.),  
 and (7)(a)4. and 281.37(2)(a), (b), (c), (e) and  
 intro. (3) (intro.) of the statutes (NO #)

(end ins 6-6)

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

LRB-0748/P1dn  
MGG:jld:ph

December 20, 2010

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