



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## ☞ Appendix A – Pt. II

### 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.



State of Wisconsin  
2011 - 2012 LEGISLATURE

NOW



RMR

LRB-0748/Pt 4  
MGG:jld:ph

nwn

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Regen.

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

INS  
ANL

***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),  
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).<sup>✓</sup>

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

4 281.165 (4) BROWN COUNTY. (a) Subsection (1)<sup>✓</sup> 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.<sup>✓</sup>

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

10 *IF PRO* 3. The site of the activity is located in Brown County.<sup>✓</sup>

11 4. The person engaged in the activity is in compliance with par. (b) 1. or 2.<sup>✓</sup>

12 *STET* (b) 1. ~~For a~~ <sup>*There*</sup> 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.<sup>✓</sup>

17 2. For a nonfederal wetland, as defined in s. 281.36 (1) (c), before engaging in  
18 the activity described in par. (a),<sup>✓</sup> 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.<sup>✓</sup>

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

*For a ~~part of~~  
wetland that is ~~1~~  
less than 2 acres in size*  
**SECTION 6**

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) (a) 4 of the statutes is created to read:  
16 281.36 (7) (a) 4. The person submitting the application does not elect to  
17 purchase credits from a wetland mitigation bank as provided in s. 281.37 (2) (e).

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

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

INSERT  
4-9-17

21 SECTION 11. 281.37 (2) (a) 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,  
25 or to otherwise approve, an activity that affects a wetland under ss. 59.692, 61.351,

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

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

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

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

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

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

24 281.37 (2) (e) For a mitigation project that adversely affects a nonfederal  
25 wetland that is less than 2 acres in size, upon request of an applicant, the department

1 shall allow the purchase of credits from any of the wetland mitigation banks that are  
2 located in the state and that are approved by the department at the ratio of 2 acres  
3 of wetland purchased for each acre of wetland adversely affected by the activity,  
4 provided that there are wetland mitigation credits available. The applicant shall  
5 provide to the department a written affidavit that the purchase has occurred before  
6 beginning the mitigation project. The department may not require that the  
7 applicant meet any additional wetland mitigation requirements.✓

8 **SECTION 15.** 281.37 (3) (intro.) of the statutes is amended to read:

9 281.37 (3) RULES. (intro.) The department shall promulgate rules to establish  
10 a process for consideration of wetland compensatory mitigation under sub. (2). Upon  
11 promulgation, the rules shall apply to any application or other request for an initial  
12 determination for a permit or other authorization that is pending with the  
13 department on the date on which the rules take effect, except as provided in sub. (2)  
14 (e).✓ The rules shall address all of the following:✓

15 **SECTION 16. Initial applicability.**

16 (1) The treatment of sections 281.36 (4) (title), (4m), (5) (intro.), and (7) (a) 4.  
17 and 281.37 (2) (a), (b), (c), and (e) and (3) (intro.) of the statutes first applies to  
18 applications for water quality certifications for wetlands that are submitted to the  
19 department of natural resources on the effective date of this subsection.

20 (END)

*D-Note*  
*upon review*  
*I removed the creation of s. 281.36 (7)(a) 4.*  
*because it seems unnecessary and confusing.*  
*This concept*

*MGG* *D-note*

Wetlands to which state law applies

**Insert ANL**

**Wetland water quality certification and mitigation**

either Under current law, certain activities that affect wetlands in the state are either subject to federal law (federal wetlands) or state law (nonfederal wetlands). Nonfederal wetlands are wetlands that have been determined to be nonnavigable and are isolated entirely within this state. Under current law, DNR must certify whether an activity affecting a nonfederal wetland will comply with water quality standards that DNR promulgates for wetlands. DNR must certify that the activity is in compliance with these standards before DNR may issue a permit or other approval that is required for the project. Federal law also requires compliance with these standards for activities affecting federal wetlands.

current Current state law specifically authorizes DNR to consider a mitigation project for both federal and nonfederal wetlands as a means of complying with the water quality standards for wetlands in determining whether DNR will grant a permit or other approval for an activity that will have an adverse effect on a federal or nonfederal 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 purchasing credits from 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 for the purpose of providing credits to be subsequently sold or otherwise transferred to compensate for adverse impacts to other wetlands. stet.

5 Current law prohibits DNR from considering 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. Also, DNR may not consider 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 (protected wetland or area). Current law 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.

This bill exempts an activity that will affect a nonfederal wetland, regardless of whether it is a protected wetland or area, from having to comply with the water quality standards that are applicable from wetlands if the nonfederal wetland is less than two acres in size and if the applicant for the permit or approval being sought purchases wetland credits from a wetland mitigation bank at the ratio of two acres for each wetland affected. to

**Compliance with wetland standards for an area in Brown County**

Under this bill, an activity affecting a wetland in Brown County is considered to be in compliance with the water quality standards applicable to wetlands and exempts the activity from other laws administered by DNR that relate to water

acre of

that types of All other wetlands are federal wetlands. in parens nonfederal wetlands this that



quality and navigable waters if the activity meets certain criteria. These criteria include that the wetland area to be affected must be less than 3 acres in size, that the site of the activity is in a tax incremental district and that the person engaged in the activity will complete mitigation at a ratio of at least 1.5 acres of wetlands created or mitigation bank credits purchased to one acre of wetland affected.

and three

FE-SL

depending on whether the wetland is a federal or non-federal wetland

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0748/lins  
MGG:.....

1 *Insert 4-17*

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

3 281.36 (7) (d) This subsection <sup>✓</sup> does not apply if the person is applying for water  
4 quality certification for a wetland that meets the requirements in par. (a) 1. <sup>✓</sup> and 2. <sup>✓</sup>  
5 and the person elects to purchase credits from a wetland <sup>s</sup> mitigation bank as  
6 authorized under s. 281.37 (7) (e).

*(7) (e) purchase*  
*e (2)*

(D-N)

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

LRB-0748/1dn  
MGG:.....

I renumbered s. 281.36 (7) (a) 4. to s. 281.36 (7) (d) and changed the wording to better reconcile the provisions in s. 281.36 (7) and 281.37 (2) (e), which both relate to small wetlands. Please review.

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

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

LRB-0748/1dn  
MGG:nwn:ph

January 4, 2011

I renumbered s. 281.36 (7) (a) 4. to s. 281.36 (7) (d) and changed the wording to better reconcile the provisions in s. 281.36 (7) and 281.37 (2) (e), which both relate to small wetlands. Please review.

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

**Gibson-Glass, Mary**

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**From:** Murray, Ryan M - GOV [RyanM.Murray@wisconsin.gov]  
**Sent:** Wednesday, January 05, 2011 4:36 PM  
**To:** Gibson-Glass, Mary  
**Cc:** Kent, P  
**Subject:** RE: Draft review: LRB 11-0748/1 Topic: Wetland regulation changes  
Mary-

After reviewing the questions you raised in the drafters note to this bill, I think it would be best to connect you with Paul Kent, who has been advising us on the language for the draft. He can help work through some of these issues.

[pkent@staffordlaw.com](mailto:pkent@staffordlaw.com)  
608-259-2665

Thanks,

Ryan Murray

**Ryan Murray**  
*Director of Policy and Legislative Affairs*  
*Office of the Governor*  
*Main: 608-266-1212*  
*Email: r.murray@wisconsin.gov*

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**From:** Basford, Sarah [mailto:Sarah.Basford@legis.wisconsin.gov]  
**Sent:** Tuesday, January 04, 2011 11:05 AM  
**To:** Murray, Ryan M - GOV  
**Subject:** Draft review: LRB 11-0748/1 Topic: Wetland regulation changes

**Draft Requester: Administration**

**Following is the PDF version of draft LRB 11-0748/1 and drafter's note.**

01/06/11

com w/ Paul Kent for 12

Limit to Brown County - explained Brown  
County must be in relating clause, either  
by name or description - if put into  
a compile w/ other legislation still  
has private + local issue



State of Wisconsin  
 2011 - 2012 LEGISLATURE  
 January 2011 Special Session



LRB-0748/2  
 MGG:jld&nwn:ph

EMR

Now

D-N

**BILL**

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

*Analysis by the Legislative Reference Bureau*

Wetland water quality certification and mitigation

Under current law, certain activities that affect wetlands in this state are subject either to federal law or state law. Wetlands to which state law applies are wetlands that have been determined to be nonnavigable and that are isolated entirely within this state (nonfederal wetlands). All other wetlands are federal

**BILL**

wetlands. Under current law, DNR must certify whether an activity affecting a nonfederal wetland will comply with water quality standards that DNR promulgates for wetlands. DNR must certify that the activity is in compliance with these standards before DNR may issue a permit or other approval that is required for the project. Federal law also requires compliance with these standards for activities affecting federal wetlands.

Current state law specifically authorizes DNR to consider a mitigation project for both federal and nonfederal wetlands as a means of complying with the water quality standards for wetlands in determining whether DNR will grant a permit or other approval for an activity that will have an adverse effect on a federal or nonfederal wetland. Under current 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 purchasing 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 for the purpose of providing credits to be subsequently sold or otherwise transferred to compensate for adverse impacts to other wetlands.

Current law prohibits DNR from considering 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. Also, DNR may not consider 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 (protected wetland or area). Current law defines "an area of special natural resource interest" as an area that has significant ecological, cultural, aesthetic, educational, recreational, or scientific values and specifically lists certain types of areas.

This bill exempts an activity that will affect a nonfederal wetland, regardless of whether it is a protected wetland or area, from having to comply with the water quality standards that are applicable to wetlands if the nonfederal wetland is less than two acres in size and if the applicant for the permit or approval being sought purchases wetland credits from a wetland mitigation bank at the ratio of two acres for each acre of wetland affected.

***Compliance with wetland standards for an area in Brown County***

Under this bill, an activity affecting a wetland in Brown County is considered to be in compliance with the water quality standards applicable to wetlands and exempts the activity from other laws administered by DNR that relate to water quality and navigable waters if the activity meets certain criteria. These criteria include that the wetland area to be affected must be less than three acres in size, that the site of the activity is in a tax incremental district, and that the person engaged in the activity will complete mitigation at a ratio of at least 1.5 acres of wetlands created or mitigation bank credits purchased to one acre of wetland affected depending on whether the wetland is a federal or nonfederal wetland.



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.** 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),  
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

✓ 1 promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction,  
2 requirement, permit, license, approval, authorization, fee, notice, hearing,  
3 procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292  
4 or 299 or specified under any rule promulgated, order issued or ordinance adopted  
5 under any of those sections or chapters, if the activity meets all of the requirements  
6 under either sub. (2) ~~or (3)~~, or (4).

✓ 7 **SECTION 5.** 281.165 (4) of the statutes is created to read:

8 281.165 **(4)** BROWN COUNTY. (a) Subsection (1) applies to an activity that meets  
9 all of the following requirements:

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

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

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

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

16 (b) 1. For a wetland that is other than a nonfederal wetland, as defined in s.  
17 281.36 (1) (c), before engaging the activity described in par. (a), the U.S. Army Corps  
18 of Engineers shall have issued a permit for the activity that contains a mitigation  
19 plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland  
20 affected by the activity.

21 2. For a nonfederal wetland, as defined in s. 281.36 (1) (c), before engaging in  
22 the activity described in par. (a), the person who will engage in the activity shall have  
23 purchased credits from any of the wetland mitigation banks that are located in the  
24 state and that are approved by the department at the ratio of at least 1.5 acres of  
25 wetland purchased for each acre of wetland affected by the activity and shall have

1 provided to the department a written affidavit that the purchase occurred. The  
2 department may not require that the person meet any additional wetland mitigation  
3 requirements.

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

5 281.36 (4) (title) EXEMPTIONS: CERTAIN ACTIVITIES.

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

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

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

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16 activity that has as its purpose bringing a nonfederal wetland, or part of an  
17 nonfederal wetland, into a use for which it was not previously subject and if the  
18 activity may do any of the following:

19 **SECTION 9.** 281.36 (7) (d) of the statutes is created to read:

20 281.36 (7) (d) This subsection does not apply if the person is applying for water  
21 quality certification for a wetland that meets the requirements in par. (a) 1. and 2.  
22 and the person elects to purchase credits from a wetlands mitigation bank as  
23 authorized under s. 281.37 (2) (e).

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

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

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

4 281.37 (2) (a) The department may consider a mitigation project as part of an  
5 application, in combination with the requirements under par. (b), for complying with  
6 any wetland water quality standards in determining whether to issue a permit for,  
7 or to otherwise approve, an activity that affects a wetland under ss. 59.692, 61.351,  
8 62.231, 87.30, 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292,  
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12 subsection does not entitle an applicant to a permit or other approval in exchange  
13 for conducting a mitigation project.

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

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

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

23 281.37 (2) (c) The department may not consider a mitigation project in  
24 reviewing an application under par. (a) for an activity that adversely affects a  
25 wetland in an area of special natural resource interest or for an activity that

1 adversely affects an area of special natural resource interest. This paragraph does  
2 not apply to a mitigation project that will adversely affect a nonfederal wetland if the  
3 nonfederal wetland is less than 2 acres in size and if the applicant purchases credits  
4 from a wetland mitigation bank as provided in par. (e).

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

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

15 **SECTION 15.** 281.37 (3) (intro.) of the statutes is amended to read:

16 281.37 (3) RULES. (intro.) The department shall promulgate rules to establish  
17 a process for consideration of wetland compensatory mitigation under sub. (2). Upon  
18 promulgation, the rules shall apply to any application or other request for an initial  
19 determination for a permit or other authorization that is pending with the  
20 department on the date on which the rules take effect, except as provided in sub. (2)  
21 (e). The rules shall address all of the following:

22 **SECTION 16. Initial applicability.**

23 (1) ~~The treatment of sections 281.36 (4) (title), (4m), (5) (intro.), and (7) (a) 4.~~  
24 and 281.37 (2) (a), (b), (c), and (e) and (3) (intro.) of the statutes first applies to

1 applications for ~~water quality certifications for wetlands~~ that are submitted to the  
2 department of natural resources on the effective date of this subsection.)

3 (END)

DN

MGG: nwn:

this afternoon

Attention Ryan Murray

~~DN~~

Date

Kent

Pursuant to my conversation with Paul ~~Kent~~  
this bill is now limited to the wetland area  
in Brown County. You may wish to intro-  
duce this <sup>draft</sup> separately to ~~avoid~~ avoid the  
private and local issue. Also please note  
the call for the special session does not  
cover the ~~Brown County legislation~~  
wetland area  
provisions in this draft.

contained

MGG

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

LRB-0748/2dn  
MGG:nwn:md

January 6, 2011

Attention Ryan Murray:

Pursuant to my conversation with Paul Kent this afternoon, this bill is now limited to the wetland area in Brown County. You may wish to introduce this draft separately to avoid the private and local issue. Also, please note the call for the special session does not cover the provisions contained in this draft.

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



State of Wisconsin  
LEGISLATIVE REFERENCE BUREAU

**RESEARCH APPENDIX -**  
***PLEASE DO NOT REMOVE FROM DRAFTING FILE***

Date Transfer Requested: 01/07/2011 (Per: CMH)

A = The 2011 drafting file for LRB-0748

B = The 2011 drafting file for LRB-0819

C = The 2011 drafting file for LRB-0820

☛ **Compile Draft – Appendix \_\_\_**

has been copied/added to the drafting file for

**2011 LRB-0929**





State of Wisconsin  
2011 - 2012 LEGISLATURE  
January 2011 Special Session



LRB-0748/2  
MGG:jld&nwn:md

## BILL

1     **AN ACT** *to amend* 59.692 (6m), 62.231 (6m), 87.30 (1) (d) and 281.165 (1); and *to*  
2             *create* 281.165 (4) of the statutes; **relating to:** an exemption from water  
3             quality standards for wetlands and from certain other regulatory provisions  
4             concerning water quality and surface water use that apply to a wetland area  
5             in Brown County; and review of certain changes to shoreland, wetland, and  
6             floodplain zoning ordinances that apply to a wetland area in Brown County.

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

Under this bill, an activity affecting a wetland in Brown County is considered to be in compliance with the water quality standards applicable to wetlands and exempts the activity from other laws administered by DNR that relate to water quality and navigable waters if the activity meets certain criteria. These criteria include that the wetland area to be affected must be less than three acres in size, that the site of the activity is in a tax incremental district, and that the person engaged in the activity will complete mitigation at a ratio of at least 1.5 acres of wetlands created or mitigation bank credits purchased to one acre of wetland affected depending on whether the wetland is a federal or nonfederal wetland.

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.** 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),  
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

1 promulgated as rules under s. 281.15 and is exempt from any prohibition, restriction,  
2 requirement, permit, license, approval, authorization, fee, notice, hearing,  
3 procedure or penalty specified under s. 29.601 (3) or chs. 30, 31, 281, 283, 289 to 292  
4 or 299 or specified under any rule promulgated, order issued or ordinance adopted  
5 under any of those sections or chapters, if the activity meets all of the requirements  
6 under ~~either~~ sub. (2) ~~or~~, (3), or (4).

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

8 281.165 (4) BROWN COUNTY. (a) Subsection (1) applies to an activity that meets  
9 all of the following requirements:

- 10 1. The wetland area that will be affected by the activity is less than 3 acres in  
11 size.
- 12 2. The site of the activity is zoned for community business use and is part of a  
13 tax incremental district.
- 14 3. The site of the activity is located in Brown County.
- 15 4. The person engaged in the activity is in compliance with par. (b) 1. or 2.

16 (b) 1. For a wetland that is other than a nonfederal wetland, as defined in s.  
17 281.36 (1) (c), before engaging the activity described in par. (a), the U.S. Army Corps  
18 of Engineers shall have issued a permit for the activity that contains a mitigation  
19 plan that requires the creation of at least 1.5 acres of wetland for each acre of wetland  
20 affected by the activity.

21 2. For a nonfederal wetland, as defined in s. 281.36 (1) (c), before engaging in  
22 the activity described in par. (a), the person who will engage in the activity shall have  
23 purchased credits from any of the wetland mitigation banks that are located in the  
24 state and that are approved by the department at the ratio of at least 1.5 acres of  
25 wetland purchased for each acre of wetland affected by the activity and shall have

1 provided to the department a written affidavit that the purchase occurred. The  
2 department may not require that the person meet any additional wetland mitigation  
3 requirements.

4 (END)