



2011 SENATE BILL 368

1 **AN ACT** *to repeal* 23.321 (2) (a), 23.321 (3) (a), 23.321 (4) (a) 1., 30.28 (2) (title),
2 30.28 (2) (a) (intro.), 30.28 (2) (a) 1., 30.28 (2) (a) 2., 30.28 (2) (a) 3., 30.28 (2m)
3 (c), 31.39 (2m) (c), 281.22 (1), 281.22 (2) (c), 281.22 (4), 281.36 (1) (am), 281.36
4 (1) (bg), 281.36 (1) (c) and (cm), 281.36 (1) (cr), 281.36 (1m), 281.36 (2) (title),
5 281.36 (2) (b), 281.36 (7), 281.36 (8) (title), 281.36 (8) (a), 281.36 (8) (b), 281.36
6 (8) (bn) 2., 281.36 (8) (c), 281.36 (8) (d), 281.36 (8) (e), 281.36 (9) (am) to (c),
7 281.36 (10) (b), 281.37 (title), 281.37 (1) (intro.), 281.37 (1) (a), 281.37 (1) (e),
8 281.37 (1) (f), 281.37 (2), 281.37 (3) (g), 281.37 (3) (j), 281.37 (3m) and 281.37 (4);
9 **to renumber** 30.28 (2) (b) 1., 30.28 (2) (b) 2., 281.22 (2) (title), 281.22 (2m) (title)
10 and 281.22 (2m) (a) 2.; **to renumber and amend** 30.28 (1), 281.22 (title),
11 281.22 (2) (a), 281.22 (2) (b), 281.22 (2) (d), 281.22 (2m) (a) (intro.), 281.22 (2m)
12 (a) 1., 281.22 (2m) (b), 281.22 (3), 281.36 (2) (a), 281.36 (3), 281.36 (8) (bn) 1.,
13 281.37 (1) (b), 281.37 (1) (d), 281.37 (2m), 281.37 (3) (intro.), 281.37 (3) (a),
14 281.37 (3) (b), 281.37 (3) (c), 281.37 (3) (d), 281.37 (3) (e), 281.37 (3) (f), 281.37

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1 (3) (h), 281.37 (3) (i) and 281.37 (5); **to consolidate, renumber and amend**
2 281.36 (10) (intro.) and (a); **to amend** 20.370 (4) (bi), 23.321 (title), 23.321 (4)
3 (a) 2. and 3., 30.025 (1b) (b), 30.03 (4) (a), 30.2022 (2), 30.207 (7) (a), 30.28 (title),
4 30.28 (2m) (a), 30.28 (2m) (am), 30.28 (2m) (b), 30.28 (2m) (d), 30.28 (2r) (a)
5 (intro.), 30.28 (2r) (a) 1., 30.28 (2r) (b), 281.165 (4) (a) 1m., 281.36 (4) (intro.),
6 281.36 (4) (b), 281.36 (4) (e) 1., 281.36 (4) (e) 2., 281.36 (4) (e) 3., 281.36 (5)
7 (intro.), 281.36 (5) (a), 281.36 (5) (b), 281.36 (6) (a) 1., 281.36 (9) (a) (intro.),
8 281.36 (9) (a) 1., 281.36 (9) (a) 2., 281.36 (9) (a) 3., 281.98 (1) and 814.04 (intro.);
9 **to repeal and recreate** 281.36 (title); and **to create** 20.370 (4) (bm), 23.321
10 (1) (title), 23.321 (2) (title), 23.321 (2m) (title), 23.321 (3) (title), 23.321 (3m),
11 23.321 (4) (title), 23.321 (5) (title), 23.321 (6) (title), 30.28 (1) (a), 30.28 (1) (b),
12 30.28 (1m), 227.01 (13) (ru), 281.17 (10) (c), 281.36 (1) (bd), 281.36 (1) (bj),
13 281.36 (1) (cp), 281.36 (3b) (title), 281.36 (3b) (a), 281.36 (3g) (title), 281.36 (3g)
14 (a), 281.36 (3g) (c), 281.36 (3g) (d), 281.36 (3g) (e), 281.36 (3g) (f), 281.36 (3g) (fg),
15 281.36 (3g) (fm), 281.36 (3g) (fr), 281.36 (3g) (g), 281.36 (3g) (h), 281.36 (3g) (i),
16 281.36 (3m), 281.36 (3n), 281.36 (3p), 281.36 (3q), 281.36 (3r), 281.36 (9) (d) and
17 (e), 281.36 (11), 281.36 (12) (a), 281.36 (12) (b), 281.36 (13) and 281.36 (14) of
18 the statutes; **relating to:** permits for discharges into wetlands; wetland
19 mitigation; wetland mapping and delineation; fees for permits and other
20 authorizations or determinations by the Department of Natural Resources

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1 relating to structures, deposits, and other activities in or near navigable
2 waters; making appropriations; and providing penalties.

Analysis by the Legislative Reference Bureau

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

3 **SECTION 1.** 20.370 (4) (bi) of the statutes is amended to read:

4 20.370 (4) (bi) *Water regulation and zoning — fees.* From the general fund, all
5 moneys received under ss. 23.32 (3), 23.321, 30.28, 31.39, and ~~281.22~~ 281.36 (12) for
6 activities relating to permits, contracts, authorizations, and other approvals issued
7 under s. 281.36 and chs. 30 and 31, for activities relating to water quality standards
8 under subch. II of ch. 281, and for wetland mapping under s. 23.32 and wetlands
9 services under s. 23.321.

10 **SECTION 2.** 20.370 (4) (bm) of the statutes is created to read:

11 20.370 (4) (bm) *Wetland restoration — fees; payments.* From the general fund,
12 all moneys received as surcharge fees under s. 281.36 (11) and all moneys received
13 under the in lieu fee subprogram under s. 281.36 (3r) (e) for the restoration or
14 creation of wetlands and for any other activities authorized under the in lieu fee
15 subprogram.

16 **SECTION 3.** 23.321 (title) of the statutes is amended to read:

17 **23.321 (title) Wetland map review, identification, and confirmation.**

18 **SECTION 4.** 23.321 (1) (title) of the statutes is created to read:

19 23.321 (1) (title) DEFINITION.

20 **SECTION 5.** 23.321 (2) (title) of the statutes is created to read:

21 23.321 (2) (title) TYPES OF SERVICES.

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1 **SECTION 6.** 23.321 (2) (a) of the statutes is repealed.

2 **SECTION 7.** 23.321 (2m) (title) of the statutes is created to read:

3 23.321 **(2m)** (title) MEMORANDUM OF AGREEMENT.

4 **SECTION 8.** 23.321 (3) (title) of the statutes is created to read:

5 23.321 **(3)** (title) FEES; GENERALLY.

6 **SECTION 9.** 23.321 (3) (a) of the statutes is repealed.

7 **SECTION 10.** 23.321 (3m) of the statutes is created to read:

8 23.321 **(3m)** FEES; EXPEDITED SERVICE. The department may charge a
9 supplemental fee for a type of service under sub. (2) that is in addition to the fee
10 charged under sub. (3) if all of the following apply:

11 (a) The applicant requests in writing that the service be provided within a time
12 period that is shorter than the time limit specified under sub. (4) for that type of
13 service.

14 (b) The department verifies that it will be able to comply with the request.

15 **SECTION 11.** 23.321 (4) (title) of the statutes is created to read:

16 23.321 **(4)** (title) TIME LIMITS.

17 **SECTION 12.** 23.321 (4) (a) 1. of the statutes is repealed.

18 **SECTION 12m.** 23.321 (4) (a) 2. and 3. of the statutes are amended to read:

19 23.321 **(4)** (a) 2. Provide a wetland identification not later than ~~30~~ 60 days after
20 a person files a request, in the manner and form required by the department, for a
21 wetland identification.

22 3. Provide a wetland confirmation not later than ~~30~~ 60 days after a person files
23 a request, in the manner and form required by the department, for a wetland
24 confirmation.

25 **SECTION 13.** 23.321 (5) (title) of the statutes is created to read:

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1 23.321 (5) (title) LENGTH OF VALIDITY.

2 **SECTION 14.** 23.321 (6) (title) of the statutes is created to read:

3 23.321 (6) (title) INCLUDED ON MAPS.

4 **SECTION 15.** 30.025 (1b) (b) of the statutes is amended to read:

5 30.025 (1b) (b) “Permit” means an individual permit, a general permit, an
6 approval, or a contract required under this subchapter or subch. II, a permit or an
7 approval required under ch. 31, a storm water discharge permit required under s.
8 283.33 (1) (a), or a ~~water quality certification~~ wetland general permit or wetland
9 individual permit required under s. 281.36 or under rules promulgated under subch.
10 II of ch. 281 to implement 33 USC 1341 (a).

11 **SECTION 16.** 30.03 (4) (a) of the statutes is amended to read:

12 30.03 (4) (a) If the department learns of a possible violation of s. 281.36 or of
13 the statutes relating to navigable waters or a possible infringement of the public
14 rights relating to navigable waters, and the department determines that the public
15 interest may not be adequately served by imposition of a penalty or forfeiture, the
16 department may proceed as provided in this paragraph, either in lieu of or in addition
17 to any other relief provided by law. The department may order a hearing under ch.
18 227 concerning the possible violation or infringement, and may request the hearing
19 examiner to issue an order directing the responsible parties to perform or refrain
20 from performing acts in order to comply with s. 281.36 or to fully protect the interests
21 of the public in the navigable waters. If any person fails or neglects to obey an order,
22 the department may request the attorney general to institute proceedings for the
23 enforcement of the department’s order in the name of the state. The proceedings
24 shall be brought in the manner and with the effect of proceedings under s. 111.07 (7).

25 **SECTION 17.** 30.2022 (2) of the statutes is amended to read:

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1 30.2022 **(2)** The exemption under sub. (1) does not apply unless the activity is
2 accomplished in accordance with interdepartmental liaison procedures established
3 by the department and the department of transportation for the purpose of
4 minimizing the adverse environmental impact, if any, of the activity. If the activity
5 affects a wetland, as defined in s. 23.32 (1), the department of transportation shall
6 conduct any required mitigation either by complying with the interdepartmental
7 liaison procedures and any applicable interagency agreement on mitigation banks
8 that is approved by the department of natural resources or by using any of the
9 methods specified in s. 281.36 (3r) (a) 1. to 3.

10 **SECTION 18.** 30.207 (7) (a) of the statutes is amended to read:

11 30.207 **(7)** (a) At least 15 days before beginning the activity that is authorized
12 by a general permit under this section the person who wishes to conduct the activity
13 shall submit a notice to the department and shall pay the fee specified in s. 30.28 ~~(2)~~
14 ~~(b) 2~~ (1) (d). The notice shall describe the activity, state the name of the person that
15 will be conducting the activity and state the site where the activity will be conducted.
16 The notice shall also contain a statement signed by the person conducting the
17 activity that the person will act in conformance with the standards contained in the
18 general permit.

19 **SECTION 19.** 30.28 (title) of the statutes is amended to read:

20 **30.28** (title) **Fees for permits, other approvals, and determinations and**
21 **hearings.**

22 **SECTION 20.** 30.28 (1) of the statutes is renumbered 30.28 (1) (intro.) and
23 amended to read:

24 30.28 **(1)** (intro.) The department shall charge a ~~permit or approval fee for~~
25 ~~carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and~~

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1 ~~30.21 to 30.27 reviewing, investigating, and making decisions on determinations and~~
2 ~~on whether to issue or grant permits, contracts, authorizations, or other approvals~~
3 ~~under this subchapter. The permit or approval required fee shall accompany the~~
4 ~~permit application, notice or request for approval or other submitted documentation.~~
5 ~~The department shall set each type of fee in the amount that is necessary to meet the~~
6 ~~costs incurred by the department except as follows:~~

7 **SECTION 21.** 30.28 (1) (a) of the statutes is created to read:

8 30.28 (1) (a) For an individual permit issued under s. 30.208, the application
9 fee shall be \$600.

10 **SECTION 22.** 30.28 (1) (b) of the statutes is created to read:

11 30.28 (1) (b) For authorization to proceed under a general permit issued under
12 s. 30.206, the application fee shall be \$300.

13 **SECTION 23.** 30.28 (1m) of the statutes is created to read:

14 30.28 (1m) ADDITIONAL FEES. (a) In addition to the fees required under sub. (1),
15 the department may set and charge fees for making any of the following
16 determinations:

- 17 1. An identification of an ordinary high-water mark.
- 18 2. A determination of navigability.
- 19 3. Any other determination that is necessary for reviewing, investigating, or
20 making a decision on applications for permits, contracts, authorizations, or other
21 approvals under this chapter.

22 (b) The department shall set each fee authorized under this subsection in the
23 amount that is necessary to meet the costs incurred by the department.

24 **SECTION 24.** 30.28 (2) (title) of the statutes is repealed.

25 **SECTION 25.** 30.28 (2) (a) (intro.) of the statutes is repealed.

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1 **SECTION 26.** 30.28 (2) (a) 1. of the statutes is repealed.

2 **SECTION 27.** 30.28 (2) (a) 2. of the statutes is repealed.

3 **SECTION 28.** 30.28 (2) (a) 3. of the statutes is repealed.

4 **SECTION 29.** 30.28 (2) (b) 1. of the statutes is renumbered 30.28 (1) (c).

5 **SECTION 30.** 30.28 (2) (b) 2. of the statutes is renumbered 30.28 (1) (d).

6 **SECTION 31.** 30.28 (2m) (a) of the statutes is amended to read:

7 30.28 **(2m)** (a) The department shall refund a ~~permit or approval~~ fee charged
8 under sub. (1) (a) if the applicant requests a refund before the department
9 determines that the application ~~for the permit or approval~~ is complete. Except as
10 provided in par. (am), the department may not refund a ~~permit or approval~~ fee after
11 the department determines that the application is complete unless required to do so
12 under a rule promulgated under s. 299.05.

13 **SECTION 32.** 30.28 (2m) (am) of the statutes is amended to read:

14 30.28 **(2m)** (am) The department shall refund 50% of the fee specified in sub.
15 ~~(2) (b) 1. (1) (c)~~ if the department denies an application for a general permit under
16 s. 30.207 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

17 **SECTION 33.** 30.28 (2m) (b) of the statutes is amended to read:

18 30.28 **(2m)** (b) ~~If the applicant applies for a permit, requests an approval, or~~
19 ~~submits a notice under s. 30.207 (7)~~ a person applies for a permit or otherwise seeks
20 authorization or gives notice for a project or activity after the project or activity is
21 begun or after it is completed, the department shall charge an amount equal to twice
22 the amount of the fee that it would have charged under this section.

23 **SECTION 34.** 30.28 (2m) (c) of the statutes is repealed.

24 **SECTION 35.** 30.28 (2m) (d) of the statutes is amended to read:

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1 30.28 **(2m)** (d) The department, ~~by rule,~~ may increase any fee specified in sub.
2 ~~(2) (a).~~ The department, by rule, may increase a fee specified in sub. ~~(2) (b) (1) or (1m)~~
3 only if the increase is necessary to meet the costs incurred by the department in
4 acting on general permits or on notices submitted under s. 30.207 performing the
5 activities for which the fee is charged.

6 **SECTION 36.** 30.28 (2r) (a) (intro.) of the statutes is amended to read:

7 30.28 **(2r)** (a) (intro.) The department, by rule, may charge a supplemental fee
8 for a permit ~~or, contract, authorization, other approval, or determination~~ that is in
9 addition to the fee charged under this section if all of the following apply:

10 **SECTION 37.** 30.28 (2r) (a) 1. of the statutes is amended to read:

11 30.28 **(2r)** (a) 1. The applicant requests in writing that the permit ~~or, approval~~
12 authorization, or determination be issued or the contract be granted within a time
13 period that is shorter than the time limit under the rule promulgated under par. (b)
14 for that type of permit ~~or, contract, authorization, approval, or determination.~~

15 **SECTION 38.** 30.28 (2r) (b) of the statutes is amended to read:

16 30.28 **(2r)** (b) If the department promulgates a rule under par. (a), the rule shall
17 contain a time limit for each type of permit ~~or, contract, authorization, approval~~
18 ~~classified under sub. (2) (a) for determining whether the department will grant the~~
19 ~~permit or approval, or determination.~~

20 **SECTION 39.** 31.39 (2m) (c) of the statutes is repealed.

21 **SECTION 40.** 227.01 (13) (ru) of the statutes is created to read:

22 227.01 **(13)** (ru) Is a wetland general permit issued under s. 281.36 (3g).

23 **SECTION 41.** 281.165 (4) (a) 1m. of the statutes, as created by 2011 Wisconsin
24 Act 6, is amended to read:

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1 281.165 (4) (a) 1m. The wetland area is ~~a nonfederal wetland, as defined in s.~~
2 ~~281.36 (1) (e) not subject to federal jurisdiction under 33 USC 1344~~, and the activity
3 will affect less than 3 acres of that wetland area.

4 **SECTION 42.** 281.17 (10) (c) of the statutes is created to read:

5 281.17 (10) (c) This subsection does not apply to discharges into wetlands that
6 are subject to regulation under s. 281.36.

7 **SECTION 43.** 281.22 (title) of the statutes is renumbered 281.36 (12) (title) and
8 amended to read:

9 281.36 (12) (title) ~~FEES APPLICATION FEES AND TIME LIMITS FOR WATER QUALITY~~
10 ~~DETERMINATIONS FOR WETLANDS.~~

11 **SECTION 44.** 281.22 (1) of the statutes is repealed.

12 **SECTION 45.** 281.22 (2) (title) of the statutes is renumbered 281.36 (12) (c)
13 (title).

14 **SECTION 46.** 281.22 (2) (a) of the statutes is renumbered 281.36 (12) (c) 1. and
15 amended to read:

16 281.36 (12) (c) 1. The department shall refund ~~the~~ an application fee charged
17 for a wetland individual permit under par. (a) if the applicant requests a refund
18 before the department determines that the application ~~for the determination~~ is
19 complete. The department may not refund a fee after the department determines
20 that the application is complete unless required to do so under a rule promulgated
21 under s. 299.05.

22 **SECTION 47.** 281.22 (2) (b) of the statutes is renumbered 281.36 (12) (c) 2. and
23 amended to read:

24 281.36 (12) (c) 2. If the applicant ~~applies for a permit after the project~~ submits
25 an application for authorization to proceed under a wetland general or a wetland

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1 individual permit after the discharge is begun or after it is completed, the
2 department shall charge an amount equal to twice the amount of the fee that it would
3 have charged under this section.

4 **SECTION 48.** 281.22 (2) (c) of the statutes is repealed.

5 **SECTION 49.** 281.22 (2) (d) of the statutes is renumbered 281.36 (12) (c) 3. and
6 amended to read:

7 281.36 (12) (c) 3. The department, ~~by rule,~~ may increase the fee specified in ~~sub.~~
8 (1) par. (a) only if the increase is necessary to meet the costs of the department in
9 performing the activities for which the fee is charged.

10 **SECTION 50.** 281.22 (2m) (title) of the statutes is renumbered 281.36 (12) (d)
11 (title).

12 **SECTION 51.** 281.22 (2m) (a) (intro.) of the statutes is renumbered 281.36 (12)
13 (d) 1. (intro.) and amended to read:

14 281.36 (12) (d) 1. (intro.) The department, by rule, may charge a supplemental
15 fee for a determination under ~~sub. (1)~~ that is in addition to the a fee charged under
16 ~~sub. (1)~~ this subsection if all of the following apply:

17 **SECTION 52.** 281.22 (2m) (a) 1. of the statutes is renumbered 281.36 (12) (d) 1.
18 a. and amended to read:

19 281.36 (12) (d) 1. a. The applicant requests in writing that the ~~determination~~
20 decision on the application be issued within a time period that is shorter than the
21 time limit promulgated under ~~par. (b)~~ subd. 2. for the ~~determination~~ decision.

22 **SECTION 53.** 281.22 (2m) (a) 2. of the statutes is renumbered 281.36 (12) (d) 1.
23 b.

24 **SECTION 54.** 281.22 (2m) (b) of the statutes is renumbered 281.36 (12) (d) 2. and
25 amended to read:

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1 281.36 (12) (d) 2. If the department promulgates a rule under ~~par. (a) subd. 1.~~,
2 the rule shall contain for a time limit for making determinations ~~under sub. (1)~~
3 decisions on the application.

4 **SECTION 55.** 281.22 (3) of the statutes is renumbered 281.36 (12) (e) and
5 amended to read:

6 281.36 (12) (e) *Exemptions from fees.* ~~Subsections (1), (2) and (2m) Paragraphs~~
7 (a), (b), (c), and (d) do not apply to any federal agency or state agency.

8 **SECTION 56.** 281.22 (4) of the statutes is repealed.

9 **SECTION 57.** 281.36 (title) of the statutes is repealed and recreated to read:

10 **281.36 (title) Permits for discharges into wetlands; mitigation.**

11 **SECTION 58.** 281.36 (1) (am) of the statutes is repealed.

12 **SECTION 59.** 281.36 (1) (bd) of the statutes is created to read:

13 281.36 (1) (bd) “Fill material” has the meaning given in 33 CFR 323.2 (e), as
14 the meaning exists on the effective date of this paragraph [LRB inserts date].

15 **SECTION 60.** 281.36 (1) (bg) of the statutes is repealed.

16 **SECTION 61.** 281.36 (1) (bj) of the statutes is created to read:

17 281.36 (1) (bj) “Mitigation” means the restoration, enhancement, creation, or
18 preservation of wetlands to compensate for adverse impacts to other wetlands.

19 **SECTION 62.** 281.36 (1) (c) and (cm) of the statutes are repealed.

20 **SECTION 63.** 281.36 (1) (cp) of the statutes is created to read:

21 281.36 (1) (cp) “Practicable” means reasonably available and capable of being
22 implemented after taking into consideration cost, site availability, available
23 technology, logistics, and proximity to the proposed project site, in light of the overall
24 purpose and scope of the project.

25 **SECTION 64.** 281.36 (1) (cr) of the statutes is repealed.

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1 **SECTION 65.** 281.36 (1m) of the statutes is repealed.

2 **SECTION 66.** 281.36 (2) (title) of the statutes is repealed.

3 **SECTION 67.** 281.36 (2) (a) of the statutes is renumbered 281.36 (3b) (b) and
4 amended to read:

5 281.36 **(3b)** (b) No person may discharge dredged material or fill material into
6 a ~~nonfederal~~ wetland unless the discharge is authorized by a ~~water quality~~
7 ~~certification~~ wetland general permit or individual permit issued by the department
8 under this section or the discharge is exempt under sub. (4). No person may violate
9 any condition ~~imposed by the department in a water quality certification~~ contained
10 in a wetland general or individual permit issued by the department under this
11 section. The department may not issue a ~~water quality certification~~ wetland general
12 or individual permit under this section unless it determines that the discharge
13 authorized pursuant to the wetland general or individual permit will comply with all
14 applicable water quality standards.

15 **SECTION 68.** 281.36 (2) (b) of the statutes is repealed.

16 **SECTION 69.** 281.36 (3) of the statutes is renumbered 281.36 (2m) and amended
17 to read:

18 281.36 **(2m)** DELINEATION PROCEDURES. For purposes of delineating the
19 boundary of a ~~nonfederal~~ wetland, ~~the department and the person who is applying~~
20 ~~for or who holds a water quality certification under this section shall use~~ under this
21 section, the procedures contained in the wetlands delineation manual published by
22 the U.S. army corps of engineers shall be used. The edition of the manual that shall
23 be used shall be the 1987 edition of the manual and any document that the U.S. army
24 corps of engineers issues interpreting that manual, unless the U.S. army corps of
25 engineers publishes an edition of the manual after January 9, 2001, and the

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1 department ~~by rule~~ designates that edition as the one to be used under this
2 subsection. ~~If the U.S. army corps of engineers issues a guidance document~~
3 ~~interpreting the edition of the wetlands delineation manual that the department is~~
4 ~~required to use under this subsection and if that guidance document is issued after~~
5 ~~May 8, 2001, the department shall notify the appropriate standing committee of each~~
6 ~~house of the legislature, as determined by the speaker of the assembly and the~~
7 ~~president of the senate, of the issuance of the guidance document and whether the~~
8 ~~department intends to promulgate a rule incorporating the provisions of the~~
9 ~~guidance document.~~

10 **SECTION 70.** 281.36 (3b) (title) of the statutes is created to read:

11 281.36 **(3b)** (title) PERMIT REQUIRED.

12 **SECTION 71.** 281.36 (3b) (a) of the statutes is created to read:

13 281.36 **(3b)** (a) For purposes of this section, a wetland general or individual
14 permit issued by the department constitutes water quality certification as required
15 by 33 USC 1341 (a).

16 **SECTION 72.** 281.36 (3g) (title) of the statutes is created to read:

17 281.36 **(3g)** (title) WETLAND GENERAL PERMITS.

18 **SECTION 73.** 281.36 (3g) (a) of the statutes is created to read:

19 281.36 **(3g)** (a) *Required permits.* The department shall issue a wetland
20 general permit for each of the following types of discharges:

21 1. A discharge that is necessary for the treatment or disposal of hazardous
22 waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic
23 pollutants and does not affect more than 2 acres of wetland.

24 2. A discharge that is necessary for temporary access and dewatering, if the
25 discharge does not affect more than 2 acres of wetland.

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1 3. A temporary or permanent discharge for routine utility construction and
2 maintenance projects and activities.

3 4. A discharge that is part of a development for industrial purposes, if the
4 discharge does not affect more than 10,000 square feet of wetland. For purposes of
5 this subdivision, the development of a waste disposal site is considered to be a
6 development for industrial purposes.

7 5. A discharge that is part of a development for commercial purposes, if the
8 discharge does not affect more than 10,000 square feet of wetland.

9 6. A discharge that is part of a development for residential purposes, if the
10 discharge does not affect more than 10,000 square feet of wetland.

11 7. A discharge that is part of a development for agricultural purposes, if the
12 discharge does not affect more than 10,000 square feet of wetland.

13 8. A discharge that is part of a development for municipal purposes, if the
14 discharge does not affect more than 10,000 square feet of wetland.

15 9. A discharge that is part of a development for recreational purposes, if the
16 discharge does not affect more than 10,000 square feet of wetland.

17 10. A discharge that is necessary for the construction, reconstruction, or
18 maintenance of a bridge or culvert that is part of a transportation project that is
19 being carried out under the direction and supervision of a city, village, town, or
20 county.

21 **SECTION 74.** 281.36 (3g) (c) of the statutes is created to read:

22 281.36 **(3g)** (c) *Additional permits.* The department may issue wetland general
23 permits, in addition to those required under pars. (a) and (b), to regulate other
24 discharges that affect wetlands located in this state.

25 **SECTION 75.** 281.36 (3g) (d) of the statutes is created to read:

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1 281.36 (3g) (d) *Requirements; conditions; restrictions.* In issuing wetland
2 general permits under this subsection, the department shall establish requirements,
3 conditions, and exceptions to ensure that the discharges will cause only minimal
4 adverse environmental effects, and a general permit may apply only to a single and
5 complete project. As part of a general permit, the department may prohibit
6 discharges into wetlands that are identified by the department as being one of the
7 following:

8 1. Great Lakes ridge and swale complexes.

9 2. Interdunal wetlands.

10 3. Coastal plain marshes.

11 4. Emergent marshes containing wild rice.

12 5m. Sphagnum bogs that are located in the area located south of a horizontal
13 line drawn across the state based on the routes of STH 16 and STH 21 west of Lake
14 Winnebago and on USH 151 east of Lake Winnebago.

15 6. Boreal rich fens.

16 7. Calcareous fens.

17 **SECTION 76.** 281.36 (3g) (e) of the statutes is created to read:

18 281.36 (3g) (e) *Period of validity; subsequent actions.* A wetland general permit
19 issued under this subsection is valid for a period of 5 years. Upon compliance with
20 the requirements under pars. (f) to (g), the department may renew, modify, or revoke
21 a wetland general permit issued under this subsection.

22 **SECTION 77.** 281.36 (3g) (f) of the statutes is created to read:

23 281.36 (3g) (f) *Public notice.* The department shall provide to interested
24 members of the public notices of its intention to issue, renew, modify, or revoke a

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1 wetland general permit under this subsection. Procedures for providing public
2 notices shall include all of the following:

- 3 1. Publication of a class 1 notice under ch. 985.
- 4 2. Providing a copy of the notice to any person or group upon request of the
5 person or group.
- 6 3. Publication of the notice on the department's Internet Web site.

7 **SECTION 78.** 281.36 (3g) (fg) of the statutes is created to read:

8 281.36 **(3g)** (fg) *Date of notice.* For the purpose of determining the date on
9 which public notice is provided under this subsection, the date on which the
10 department first publishes the notice on its Internet Web site shall be considered the
11 date of public notice.

12 **SECTION 79.** 281.36 (3g) (fm) of the statutes is created to read:

13 281.36 **(3g)** (fm) *Written comments.* The department shall provide a period of
14 not less than 30 days after the date of the public notice during which time interested
15 persons may submit their written comments on the department's intention to issue,
16 renew, modify, or revoke a wetland general permit under this subsection. All written
17 comments submitted during the period for comment shall be retained by the
18 department and considered by the department in acting on the general permit.

19 **SECTION 80.** 281.36 (3g) (fr) of the statutes is created to read:

20 281.36 **(3g)** (fr) *Description in notice.* Every public notice provided by the
21 department under par. (f) shall include a description of the discharges to be
22 authorized under the wetland general permit.

23 **SECTION 81.** 281.36 (3g) (g) of the statutes is created to read:

24 281.36 **(3g)** (g) *Public informational hearing.* 1. The department shall provide
25 an opportunity for any interested state agency or federal agency or person or group

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1 of persons to request a public informational hearing with respect to the department's
2 intention to issue, renew, modify, or revoke a wetland general permit under this
3 subsection. The request for the hearing shall be filed with the department within 30
4 days after the provision of the public notice under par. (f) and shall indicate the
5 interest of the party filing the request and the reasons why the hearing is warranted.

6 2. The department shall hold a public informational hearing upon a request
7 under subd. 1. if the department determines that there is a significant public interest
8 in holding such a hearing. Hearings held under this subsection are not contested
9 cases under s. 227.01 (3).

10 3. Public notice of any hearing held under this subsection shall be circulated
11 in accordance with the requirements under par. (f). The public notice shall include
12 the time, date, and location of the hearing, a summary of the subject matter of the
13 wetland general permit, and information indicating where additional information
14 about the general permit may be viewed on the department's Internet Web site. The
15 summary shall contain a brief, precise, easily understandable, plain language
16 description of the subject matter of the general permit.

17 **SECTION 82.** 281.36 (3g) (h) of the statutes is created to read:

18 281.36 (3g) (h) *Authorizations for discharges under wetland general permits.*

19 1. A person wishing to proceed with a discharge that may be authorized under a
20 wetland general permit shall apply to the department, with written notification of
21 the person's wish to proceed, not less than 30 days before commencing the discharge
22 authorized by the general permit unless subd. 4. applies. The application shall
23 provide information describing the discharge in order to allow the department to
24 determine whether the discharge is authorized by the wetland general permit and
25 shall give the department consent to enter and inspect the site, subject to sub. (9).

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1 The application shall identify all activities affecting wetlands that will be conducted
2 as part of the single and complete project. The application shall include a detailed
3 explanation of why the impact to the wetland cannot be avoided and how the impact
4 to the wetland will be minimized to the greatest extent practicable. The application
5 shall be accompanied by the fee specified in sub. (12) (a). If the application is for
6 authorization to proceed under a wetland general permit that is issued under sub.
7 (3g) (a) 4., 5., or 6., the application shall be accompanied by a surcharge fee, as
8 calculated under sub. (11). The department may make a request for additional
9 information one time during this 30-day period.

10 2. If, within 30 days after an application under subd. 1. is received by the
11 department, the department does not either request additional information or
12 inform the applicant that a wetland individual permit will be required as provided
13 in par. (i), the discharge shall be considered to be authorized under the wetland
14 general permit and the applicant may proceed without further notice, hearing,
15 permit, or approval if the discharge is carried out in compliance with all of the
16 conditions of the general permit.

17 2m. If adverse weather conditions prevent the department from conducting an
18 accurate on-site inspection during this 30-day period specified in subd. 1., the
19 department shall give notice to the person wishing to proceed with the discharge that
20 adverse weather conditions will prevent the department from complying with the
21 30-day deadline and shall complete the inspection as soon as weather conditions
22 permit.

23 3. If the department requests additional information under subd. 1., the
24 30-day period is tolled from the date the person applying for authorization to proceed

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1 receives the request until the date on which the department receives all of the
2 additional information.

3 4. As part of a wetland general permit issued under par. (b) or (c), the
4 department may waive the requirement that a person wishing to proceed under the
5 general permit apply to the department as required under this paragraph so that the
6 person may proceed with the discharge without specific authorization from the
7 department.

8 5. Authorization to proceed under a wetland general permit is valid for 5 years
9 after the date on which the discharge is considered to be authorized or until the
10 discharge is completed, whichever occurs first.

11 **SECTION 83.** 281.36 (3g) (i) of the statutes is created to read:

12 281.36 (3g) (i) *Wetland individual permit in lieu of wetland general permit.* For
13 a proposed discharge for which an application has been received by the department
14 under par. (h), the department may decide to require that a person who submitted
15 the application apply for a wetland individual permit if the department has
16 inspected the site as provided in par. (h) and has determined that conditions specific
17 to the site require additional restrictions on the discharge in order to provide
18 reasonable assurance that no significant adverse impacts to wetland functional
19 values will occur.

20 **SECTION 84.** 281.36 (3m) of the statutes is created to read:

21 281.36 (3m) **WETLAND INDIVIDUAL PERMITS.** (a) *When permit required.* Any
22 person wishing to proceed with a discharge into any wetland shall submit an
23 application for a wetland individual permit under this subsection unless the
24 discharge has been authorized under a wetland general permit as provided in sub.
25 (3g) or is exempt under sub. (4). Before submitting the application, the department

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1 shall hold a meeting with the applicant to discuss the details of the proposed
2 discharge and the requirements for submitting the application and for delineating
3 the wetland. An applicant may include in the application a request for a public
4 informational hearing. The application shall be accompanied by the applicable fee
5 specified in sub. (11) or (12) (a).

6 (b) *Analysis of practicable alternatives.* An applicant shall include in an
7 application submitted under par. (a) an analysis of the practicable alternatives that
8 will avoid and minimize the adverse impacts of the discharge on wetland functional
9 values and that will not result in any other significant adverse environmental
10 consequences.

11 (c) *Review; no additional information required.* In issuing wetland individual
12 permits under this section, the department shall review an application, and within
13 30 days after the application is submitted, the department shall determine that
14 either the application is complete or that additional information is needed. If the
15 department determines that the application is complete, the department shall notify
16 the applicant in writing of that fact within the 30-day period, and the date on which
17 the notice under this paragraph is sent shall be considered the date of closure for
18 purposes of par. (g) 1.

19 (d) *Additional information requested.* If the department determines that the
20 application is incomplete, the department shall notify the applicant in writing and
21 may make only one request for additional information during the 30-day period
22 specified in par. (c). Within 10 days after receiving all of the requested information
23 from the applicant, the department shall notify the applicant in writing as to
24 whether the application is complete. The date on which the 2nd notice under this
25 paragraph is sent shall be set as the date of closure for purposes of par. (g) 1. The

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1 department may request additional information from the applicant to supplement
2 the application, but the department may not request items of information that are
3 outside the scope of the original request unless the applicant and the department
4 both agree. A request for any such additional information may not affect the date
5 of closure.

6 (e) *Specificity of notice; limits on information.* Any notice stating that an
7 application has been determined to be incomplete or any other request for
8 information that is sent under par. (d) shall state the reason for the determination
9 or request and the specific items of information that are still needed.

10 (f) *Failure to meet time limits.* If the department fails to meet the 30-day time
11 limit under par. (c) or 10-day time limit under par. (d), the application shall be
12 considered to have a date of closure that is the last day of that 30-day or 10-day time
13 period for purposes of par. (g) 1.

14 (g) *Notice of application.* 1. Within 15 days after the date of closure, as
15 determined under par. (c) or (d), the department shall provide notice of pending
16 application to interested members of the public. If the applicant has requested a
17 public informational hearing as part of the submitted application, a notice of the
18 public hearing shall be part of the notice of pending application.

19 2. If the notice of pending application does not contain a notice of public
20 informational hearing, any person may request a public informational hearing in
21 writing or the department may decide to hold a public informational hearing with
22 or without a request being submitted if the department determines that there is a
23 significant public interest in holding a hearing.

24 (h) *Request for hearing.* A request for a public informational hearing under par.
25 (g) 2. must be submitted to the department or the department's decision to hold a

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1 public informational hearing must occur within 20 days after the department
2 provides the notice of pending application. The department shall provide notice of
3 public informational hearing within 15 days after the request for the public hearing
4 is submitted or the department makes its decision to hold a public informational
5 hearing.

6 (i) *Decision.* Within 20 days after the period for public comment under par. (j)
7 has ended or if no public informational hearing is held, within 30 days after the
8 30-day comment period under par. (j) has ended, the department shall render a
9 decision issuing or denying the wetland individual permit that is the subject of the
10 application submitted under par. (a). If the decision issued by the department under
11 this paragraph is a denial, the department shall include in the decision the specific
12 grounds and reasons as to how the applicable provisions of this section were not met.
13 If the denial is based on an incomplete application, the department shall inform the
14 applicant of the areas of the application that were incomplete.

15 (j) *Public comment.* 1. The department shall provide a period for public
16 comment after the department has provided a notice of pending application under
17 par. (g) during which time any person may submit written comments with respect
18 to the application for a wetland individual permit. The department shall retain all
19 of the written comments submitted during this period and shall consider all of the
20 comments in rendering a decision on the application. The period for public comment
21 shall end on the 30th day following the date on which the department provides the
22 notice of pending application except as provided in subd. 2.

23 2. If a public informational hearing is held, the period for public comment shall
24 end on the 10th day following the date on which the hearing is completed.

25 **SECTION 85.** 281.36 (3n) of the statutes is created to read:

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1 281.36 **(3n)** REVIEW BY DEPARTMENT. (a) *Review limits.* For the purpose of
2 issuing a wetland individual permit, during the period between the date on which
3 the application under sub. (3m) (a) is submitted and the date on which a decision
4 under sub. (3m) (i) is rendered, the department shall conduct its review under this
5 subsection. The department shall review the analysis of practicable alternatives
6 presented in the application under sub. (3m) (b). The department shall limit its
7 review to those practicable alternatives that are located at the site of the discharge
8 and that are located adjacent to that site if the applicant has demonstrated that the
9 proposed project causing the discharge will result in a demonstrable economic public
10 benefit, that the proposed project is necessary for the expansion of an existing
11 industrial, commercial, or agricultural facility that is in existence at the time the
12 application is submitted, or that the proposed project will occur in an industrial park
13 that is in existence at the time the application is submitted.

14 (b) *Factors used in review.* In its review under par. (a), the department shall
15 consider all of the following factors when it assesses the impacts to wetland
16 functional values:

17 1. The direct impacts of the proposed project to wetland functional values.

18 2. The cumulative impacts attributable to the proposed project that may occur
19 to wetland functional values based on past impacts or reasonably anticipated
20 impacts caused by similar projects in the area affected by the project.

21 3. Potential secondary impacts of the proposed project to wetland functional
22 values.

23 4. The impact on functional values resulting from the mitigation that is
24 required under sub. (3r).

25 5. The net positive or negative environmental impact of the proposed project.

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1 (c) *Standards for issuing permits.* The department shall make a finding that
2 a proposed project causing a discharge is in compliance with water quality standards
3 and that a wetland individual permit may be issued if the department determines
4 that all of the following apply:

5 1. The proposed project represents the least environmentally damaging
6 practicable alternative taking into consideration practicable alternatives that avoid
7 wetland impacts.

8 2. All practicable measures to minimize the adverse impacts to wetland
9 functional values will be taken.

10 3. The proposed project will not result in significant adverse impact to wetland
11 functional values, in significant adverse impact to water quality, or in other
12 significant adverse environmental consequences.

13 (d) *Mitigation required.* The department shall require mitigation under the
14 program established under sub. (3r) for wetland individual permits it issues under
15 this subsection. This subsection does not entitle an applicant to a wetland individual
16 permit or any other approval in exchange for conducting mitigation.

17 **SECTION 86.** 281.36 (3p) of the statutes is created to read:

18 **281.36 (3p)** NOTICE REQUIREMENTS; WETLAND INDIVIDUAL PERMITS. (a) The
19 department shall establish procedures for providing notices of pending applications
20 and notices of public informational hearings to be provided under sub. (3m) and
21 notices of administrative hearings under sub. (3q). The procedures shall require all
22 of the following:

23 1. That the notice be published as a class 1 notice under ch. 985.

24 2. That the notice be provided to any person or group upon request of the person
25 or group.

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1 3. That the notice be published on the department's Internet Web site.

2 (b) The department shall prescribe the form and content of notices of pending
3 applications and notices of public informational hearings to be provided under sub.
4 (3m) and notices of administrative hearings under sub. (3q). Each notice shall
5 include all of the following information:

6 1. The name and address of the applicant.

7 2. A brief description of the discharge that requires the permit and the project
8 that includes the discharge.

9 3. For a notice of a public informational hearing, the time, date, and location
10 of the hearing.

11 4. For a notice of pending application and a notice of a public informational
12 hearing, a brief, precise, easily understandable, plain-language description of the
13 discharge and information indicating where the pending application may be viewed
14 on the department's Internet Web site.

15 5. For a notice of complete application and a notice of a public informational
16 hearing, a statement of the tentative determination of the department on the permit.

17 6. For a notice of complete application and a notice of public informational
18 hearing, a brief description of the procedures for the formulation of final
19 determinations, including a description of the comment period required under sub.
20 (3m) (j).

21 (c) For the purpose of determining the date on which notice is provided under
22 this subsection, the date of the notice shall be the date on which the department first
23 publishes the notice on its Internet Web site, unless the department delegates to the
24 applicant under par. (d) the requirement to provide notice. If the department
25 delegates to the applicant the requirement to provide notice, the date of the notice

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1 shall be the date on which the department first publishes the notice on its Internet
2 Web site or 10 days after the date on which the department receives satisfactory proof
3 of publication of a class 1 notice from the applicant, whichever is later.

4 (d) The department may delegate the department's requirement to provide
5 notice under sub. (3m) in the manner specified in par. (a) 1. and 2. by doing any of
6 the following:

7 1. Requiring that the applicant for the permit provide by publication, mailing,
8 or other distribution one or more of the notices.

9 2. Requiring that the applicant for the permit pay for the publication, mailing,
10 or any other distribution costs of providing one or more of the notices.

11 **SECTION 86m.** 281.36 (3q) of the statutes is created to read:

12 281.36 (3q) ADMINISTRATIVE AND JUDICIAL REVIEW. (a) *Definition.* In this
13 subsection, "applicant" means any person applying for a wetland individual permit
14 under this section or any person who has been issued such a permit under this
15 section.

16 (b) *Request for administrative review.* Any interested person may file a petition
17 with the department for administrative review within 30 days after any of the
18 following decisions given by the department:

19 1. The issuance, denial, or modification of any wetland individual permit issued
20 under this section.

21 2. The imposition of, or failure to impose, a condition on any wetland individual
22 permit issued under this section.

23 (c) *Content of the petition.* If the petitioner is not the applicant, the petition
24 shall describe the petitioner's objection to the wetland individual permit and shall
25 contain all of the following:

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1 1. A description of the objection that is sufficiently specific to allow the
2 department to determine which provisions of this section may be violated if the
3 proposed discharge under the wetland individual permit is allowed to proceed.

4 2. A description of the facts supporting the petition that is sufficiently specific
5 to determine how the petitioner believes the discharge, as proposed, may result in
6 a violation of the provisions of this section.

7 3. A commitment by the petitioner to appear at the administrative hearing and
8 present information supporting the petitioner's objection.

9 (d) *Stays.* 1. The discharge shall be stayed pending an administrative hearing
10 under this subsection if the petition contains a request for the stay showing that a
11 stay is necessary to prevent significant adverse impacts or irreversible harm to the
12 environment.

13 2. If a stay is requested under subd. 1., the stay shall be in effect until either
14 the department denies the request for an administrative hearing or the hearing
15 examiner determines that the stay is not necessary.

16 (e) *Filings.* The petitioner shall file a copy of the petition with the department.
17 If the petitioner is not the applicant, the petitioner shall simultaneously provide a
18 copy of the petition to the applicant. The applicant may file a response to the petition
19 with the department. If the applicant files a response under this paragraph, it shall
20 be filed within 15 days after the petition is filed.

21 (f) *Action on petition.* The department shall grant or deny the petition within
22 30 days after the petition is filed. The failure of the department to dispose of the
23 petition within this 30-day period is a denial. The department shall deny the
24 petition if any of the following applies:

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1 1. The petitioner is not the applicant, and the petition does not comply with the
2 requirements of par. (c).

3 2. The objection contained in the petition is not substantive. The department
4 shall determine that an objection is substantive if the supporting facts contained in
5 the objection appear to be substantially true and raise reasonable grounds to believe
6 that the provisions of this section may be violated if the activity or project is
7 undertaken.

8 3. If the department denies the petition, the department shall send the
9 petitioner the denial in writing, stating the reasons for the denial.

10 4. If the department grants a petition under this subsection, the department
11 shall refer the matter to the division of hearings and appeals in the department of
12 administration within 15 days after granting the petition unless the petitioner and
13 the applicant agree to an extension.

14 (g) *Administrative hearing.* 1. An administrative hearing under this
15 subsection shall be treated as a contested case under ch. 227.

16 2. If a stay under par. (d) 1. is in effect, the hearing examiner shall, within 30
17 days after receipt of the referral under par. (f) 4., determine whether continuation
18 of the stay is necessary to prevent significant adverse impacts or irreversible harm
19 to the environment pending completion of the administrative hearing. The hearing
20 examiner shall make the determination based on the request under par. (d) 1., any
21 response from the applicant under par. (e), and any testimony at a public hearing or
22 any public comments. The determination shall be made without a hearing.

23 3. An administrative hearing under this subsection shall be completed within
24 90 days after receipt of the referral of the petition under par. (f) 4., unless all parties
25 agree to an extension of that period. In addition, a hearing examiner may grant a

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1 one-time extension for the completion of the hearing of up to 60 days on the motion
2 of any party and a showing of good cause demonstrating extraordinary
3 circumstances justifying an extension.

4 4. Notwithstanding s. 227.44 (1), the department shall provide a notice of the
5 administrative hearing at least 30 days before the date of the hearing to all of the
6 following:

7 a. The applicant.

8 b. Each petitioner, if other than the applicant.

9 c. Any other persons required to receive notice as provided under sub. (3p).

10 5. In an administrative hearing under this subsection, the petitioner shall
11 proceed first with the presentation of evidence and shall have the burden of proof.

12 (h) *Judicial review.* 1. Any person whose substantial interest is affected by a
13 decision of the department under par. (b) 1. or 2. may commence an action in circuit
14 court to review that decision.

15 2. Any party aggrieved by a decision of the hearing examiner under par. (g) may
16 commence an action in circuit court to review that decision.

17 **SECTION 87.** 281.36 (3r) of the statutes is created to read:

18 **281.36 (3r) MITIGATION; IN LIEU FEE SUBPROGRAM.** (a) The department shall
19 establish a mitigation program that applies only to the issuance of wetland
20 individual permits and that allows mitigation to be accomplished by any of the
21 following methods:

22 1. Purchasing credits from a mitigation bank located in this state.

23 2. Participating in the in lieu fee subprogram, if such a subprogram is
24 established under par. (e).

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1 3. Completing mitigation within the same watershed or within one-half mile
2 of the site of the discharge.

3 (b) Under the mitigation program, mitigation as specified in par. (a) 1. and
4 participation in the in lieu fee subprogram, if established under par. (a) 2. shall be
5 the preferred types of mitigation.

6 (c) The department shall establish a system of service areas for the mitigation
7 banks under the mitigation program that is geographically based on the locations of
8 the major watersheds in the state. The system shall be consistent with federal
9 regulations.

10 (cm) Before entering into an agreement with a sponsor of a mitigation bank to
11 establish such a bank or before otherwise approving a mitigation bank, the
12 department shall provide written notice that a mitigation bank may be established.
13 The notice shall be given to each city, village, town, and county in which each
14 proposed mitigation bank site will be located. Each city, village, town, and county
15 receiving the notice shall be given an opportunity to submit comments regarding the
16 establishment of the mitigation bank. The notice shall contain all of the following
17 information:

18 1. The name of the sponsor of the proposed mitigation bank.

19 2. A brief description of the mitigation bank and all of its bank sites.

20 3. A date after which the department will not accept comments from the
21 affected cities, villages, towns, or counties.

22 4. An address to which any comments shall be submitted.

23 (d) 1. The department shall establish under the mitigation program mitigation
24 ratios that are consistent, to the greatest extent possible, with the federal
25 regulations that apply to mitigation and mitigation banks but, unless subd. 2.

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1 applies, the minimum ratio shall be at least 1.2 acres for each acre affected by the
2 discharge.

3 2. For mitigation that occurs within the same watershed in which the discharge
4 is located or within one-half mile of the site of the discharge, the ratio established
5 by the department shall equal 90 percent of the ratio that would apply if the
6 mitigation were to occur outside the watershed or were to occur one-half mile or more
7 from the site of the discharge, but the ratio established under this subdivision may
8 be no less than 1.2 acres for each acre affected by the discharge.

9 (e) As part of the mitigation program established under par. (a), the department
10 may establish an in lieu fee subprogram, in consultation with the army corps of
11 engineers, under which payments are made to the department or another entity for
12 the purposes of restoring, enhancing, creating, or preserving wetlands or other water
13 resource features. The department shall establish requirements for calculating the
14 in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit
15 from the program shall be open to the public for hunting, fishing, trapping,
16 cross-country skiing, or hiking or any combination thereof, but the department may
17 establish reasonable restrictions on the use of the land by the public in order to
18 protect public safety or to protect a unique plant or animal community. The
19 subprogram shall be consistent with federal regulations.

20 **SECTION 88.** 281.36 (4) (intro.) of the statutes is amended to read:

21 281.36 (4) EXEMPTIONS. (intro.) Except as provided in sub. (5), the ~~certification~~
22 permitting requirement under sub. ~~(2)~~ (3b) does not apply to any discharge that is
23 the result of any of the following activities:

24 **SECTION 89.** 281.36 (4) (b) of the statutes is amended to read:

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1 281.36 (4) (b) Maintenance, emergency repair, or reconstruction of damaged
2 parts of structures that are in use in a ~~nonfederal~~ wetland.

3 **SECTION 90.** 281.36 (4) (e) 1. of the statutes is amended to read:

4 281.36 (4) (e) 1. That the flow and circulation patterns and chemical and
5 biological characteristics of the affected ~~nonfederal~~ wetland are not impaired.

6 **SECTION 91.** 281.36 (4) (e) 2. of the statutes is amended to read:

7 281.36 (4) (e) 2. That the reach of the affected ~~nonfederal~~ wetland is not
8 reduced.

9 **SECTION 92.** 281.36 (4) (e) 3. of the statutes is amended to read:

10 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the
11 affected ~~nonfederal~~ wetland is minimized to the degree required by the department.

12 **SECTION 93.** 281.36 (5) (intro.) of the statutes is amended to read:

13 281.36 (5) INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding sub. (4),
14 a discharge that would be exempt under sub. (4) is subject to the certification
15 permitting requirement under sub. (2) (3b) if the discharge is incidental to an activity
16 that has as its purpose bringing a ~~nonfederal~~ wetland, or part of a ~~nonfederal~~
17 wetland, into a use for which it was not previously subject and if the activity may do
18 any of the following:

19 **SECTION 94.** 281.36 (5) (a) of the statutes is amended to read:

20 281.36 (5) (a) Impair the flow or circulation of any ~~nonfederal~~ wetland.

21 **SECTION 95.** 281.36 (5) (b) of the statutes is amended to read:

22 281.36 (5) (b) Reduce the reach of any ~~nonfederal~~ wetland.

23 **SECTION 96.** 281.36 (6) (a) 1. of the statutes is amended to read:

24 281.36 (6) (a) 1. Make the rules consistent with existing federal law or
25 interpretation.

SENATE BILL 368**SECTION 97**

1 **SECTION 97.** 281.36 (7) of the statutes is repealed.

2 **SECTION 98.** 281.36 (8) (title) of the statutes is repealed.

3 **SECTION 99.** 281.36 (8) (a) of the statutes is repealed.

4 **SECTION 100.** 281.36 (8) (b) of the statutes is repealed.

5 **SECTION 101.** 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (b) and
6 amended to read:

7 281.36 **(3g)** (b) *Additional required permits.* ~~The~~ In addition to the wetland
8 general permits required under par. (a), the department shall issue wetland general
9 water quality certifications permits that are consistent with all of the, and
10 correspond to, any general permits that are issued under 33 USC 1344 (e) that
11 applied on January 8, 2001, to nonfederal wetlands located in this state and that
12 regulate discharges other than those regulated under the required wetland general
13 permits issued under par. (a).

14 **SECTION 102.** 281.36 (8) (bn) 2. of the statutes is repealed.

15 **SECTION 103.** 281.36 (8) (c) of the statutes is repealed.

16 **SECTION 104.** 281.36 (8) (d) of the statutes is repealed.

17 **SECTION 105.** 281.36 (8) (e) of the statutes is repealed.

18 **SECTION 106.** 281.36 (9) (a) (intro.) of the statutes is amended to read:

19 281.36 **(9)** (a) (intro.) For purposes of determining whether to issue a wetland
20 individual permit, whether authorization to proceed as authorized under a wetland
21 general permit is appropriate, or whether an exemption under sub. (4) is
22 appropriate, and for purposes of enforcing this section, any employee or other
23 representative of the department, upon presenting his or her credentials, may do any
24 of the following:

25 **SECTION 107.** 281.36 (9) (a) 1. of the statutes is amended to read:

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1 281.36 (9) (a) 1. Enter and inspect any property on which is located a ~~nonfederal~~
2 wetland, or part of a ~~nonfederal~~ wetland, for which an application for a water quality
3 certification has been submitted to the department under sub. (3g) or (3m).

4 **SECTION 108.** 281.36 (9) (a) 2. of the statutes is amended to read:

5 281.36 (9) (a) 2. Enter and inspect any property on which is located a ~~nonfederal~~
6 wetland to investigate a discharge of ~~dredged or fill material~~ that the department has
7 reason to believe is in violation of this section.

8 **SECTION 109.** 281.36 (9) (a) 3. of the statutes is amended to read:

9 281.36 (9) (a) 3. Gain access to and inspect any records that the department
10 requires a holder of a water quality certification to wetland individual permit or a
11 person acting under the authority of a wetland general permit is required by the
12 department to keep.

13 **SECTION 110.** 281.36 (9) (am) to (c) of the statutes are repealed.

14 **SECTION 111.** 281.36 (9) (d) and (e) of the statutes are created to read:

15 281.36 (9) (d) The department shall provide reasonable advance notice to the
16 property owner before entering and inspecting property as authorized under par (a).

17 (e) If the owner of the property refuses to give consent for the entry and
18 inspection, the department may do any of the following:

19 1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.

20 2. Deny an application for a wetland individual permit or deny authorization
21 to proceed under a wetland general permit.

22 **SECTION 112.** 281.36 (10) (intro.) and (a) of the statutes are consolidated,
23 renumbered 281.36 (10) and amended to read:

24 281.36 (10) ~~OTHER~~ ADDITIONAL REQUIREMENTS. The requirement of being issued
25 a wetland individual permit or proceeding under the authority of a wetland general

SENATE BILL 368**SECTION 112**

1 permit under this section is in addition to any permit or other approval required by
2 the department for a project or activity that involves a discharge into a wetland. This
3 section governs the determination of whether a discharge is in compliance with
4 water quality standards but does not affect the authority of the department to ~~do any~~
5 ~~of the following:~~ (a) ~~Regulate~~ otherwise regulate the discharge of dredged or fill
6 material in a ~~nonfederal~~ wetland under ss. 59.692, 61.351, 62.231, 87.30, 281.11 to
7 281.35, 281.41 to 281.47, or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293,
8 295, or 299.

9 **SECTION 113.** 281.36 (10) (b) of the statutes is repealed.

10 **SECTION 114.** 281.36 (11) of the statutes is created to read:

11 **281.36 (11) RESTORATION; SURCHARGE FEE.** (a) The department shall set a
12 surcharge fee to be charged for each application to proceed under a wetland general
13 permit that is issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set
14 on an annual basis by the department and may not exceed more than 50 percent of
15 the market price, as determined by the department, for the equivalent purchase of
16 credits from a mitigation bank. These fees shall be credited to the appropriation
17 account under s. 20.370 (4) (bm) for the restoration and creation of wetlands. The
18 department may enter into agreements with other entities for the restoration and
19 creation of such wetlands.

20 (b) Any wetland that is restored or created using funding from the
21 appropriation under s. 20.370 (4) (bm) shall be open to the public for hunting, fishing,
22 trapping, cross-country skiing, or hiking or any combination thereof, but the
23 department may establish reasonable restrictions on the use of the land by the public
24 in order to protect public safety or to protect a unique plant or animal community.

25 **SECTION 115.** 281.36 (12) (a) of the statutes is created to read:

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1 281.36 (12) (a) *Fees required.* The department shall charge a fee for reviewing,
2 investigating, and making decisions on applications to proceed under wetland
3 general permits under sub. (3g) and on applications for wetland individual permits
4 under sub. (3m). For an authorization to proceed under a wetland general permit,
5 the application fee shall be \$500. For a wetland individual permit, the application
6 fee shall be \$800.

7 **SECTION 116.** 281.36 (12) (b) of the statutes is created to read:

8 281.36 (12) (b) *Additional fee.* The department may set and charge a fee in the
9 amount necessary to meet the costs incurred by the department in reviewing
10 mitigation that is conducted by mitigation banks.

11 **SECTION 117.** 281.36 (13) of the statutes is created to read:

12 281.36 (13) **PARTIES TO A VIOLATION.** (a) Whoever is concerned in the commission
13 of a violation of this section for which a forfeiture is imposed is a principal and may
14 be charged and found in violation although he or she did not directly commit the
15 violation and although the person who directly committed it has not been found in
16 violation.

17 (b) A person is concerned in the commission of the violation if the person does
18 any of the following:

- 19 1. Directly commits the violation.
- 20 2. Aids and abets the commission of the violation.
- 21 3. Is a party to a conspiracy with another to commit the violation or advises,
22 hires, counsels, or otherwise procures any person to commit it.

23 **SECTION 118.** 281.36 (14) of the statutes is created to read:

24 281.36 (14) **PENALTIES.** (a) Except as provided in par. (b), any person who
25 violates any provision of this section shall forfeit not less than \$100 nor more than

SENATE BILL 368**SECTION 118**

1 \$10,000 for the first offense and shall forfeit not less than \$500 nor more than
2 \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

3 (b) Any person who violates a wetland general permit issued under sub. (3g)
4 shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit
5 not less than \$50 nor more than \$500 upon being found in violation of the same
6 offense a 2nd or subsequent time.

7 (c) A violation of any condition contained in a wetland general permit issued
8 under sub. (3g) is a violation of the statute under which the general permit was
9 issued.

10 (d) In addition to the forfeitures specified under pars. (a) and (b), a court may
11 order a defendant to abate any nuisance, restore a natural resource, or take, or
12 refrain from taking, any other action as necessary to eliminate or minimize any
13 environmental damage caused by the defendant.

14 **SECTION 119.** 281.37 (title) of the statutes is repealed.

15 **SECTION 120.** 281.37 (1) (intro.) of the statutes is repealed.

16 **SECTION 121.** 281.37 (1) (a) of the statutes is repealed.

17 **SECTION 122.** 281.37 (1) (b) of the statutes is renumbered 281.36 (1) (bn) and
18 amended to read:

19 281.36 (1) (bn) “Mitigation project” means ~~the restoration, enhancement or~~
20 ~~creation of wetlands to compensate for adverse impacts to other wetlands.~~
21 “Mitigation project” includes using credits from a wetlands mitigation bank
22 mitigation of the type specified in sub. (3r) (a) 3.

23 **SECTION 123.** 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (bL) and
24 amended to read:

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1 281.36 (1) (bL) “~~Wetlands mitigation~~ Mitigation bank” means a system of
2 accounting for wetland loss and compensation that includes one or more sites where
3 wetlands are restored, enhanced ~~or~~, created, or preserved to provide transferable
4 credits to be subsequently applied or purchased in order to compensate for adverse
5 impacts to other wetlands.

6 **SECTION 124.** 281.37 (1) (e) of the statutes is repealed.

7 **SECTION 125.** 281.37 (1) (f) of the statutes is repealed.

8 **SECTION 126.** 281.37 (2) of the statutes is repealed.

9 **SECTION 127.** 281.37 (2m) of the statutes is renumbered 281.36 (8m), and
10 281.36 (8m) (a) 1. and 2. and (b) (intro.) and 2., as renumbered, are amended to read:

11 281.36 (8m) (a) 1. A person who is the holder of a wetland individual permit
12 ~~or other approval~~ that authorizes a mitigation project shall grant a conservation
13 easement under s. 700.40 to the department or shall execute a comparable legal
14 instrument to ensure that a wetland that is being restored, enhanced, ~~or~~ created, or
15 preserved will not be destroyed or substantially degraded by any subsequent
16 proprietor of or holder of interest in the property on which the wetland is located.
17 The department shall revoke the wetland individual permit ~~or other approval~~ if the
18 holder of the individual permit ~~or other approval~~ fails to take these measures.

19 2. A person who is restoring, enhancing, ~~or~~ creating, or preserving a wetland
20 to provide transferable credits as part of a wetlands mitigation bank shall grant a
21 conservation easement under s. 700.40 to the department, or shall execute a
22 comparable legal instrument to ensure that the wetland will not be destroyed or
23 substantially degraded by any subsequent proprietor of or holder of interest in the
24 property on which the wetland is located.

SENATE BILL 368**SECTION 127**

1 (b) (intro.) Notwithstanding par. (a), the department shall modify or release a
2 conservation easement granted under par. (a); or shall void a comparable legal
3 instrument executed under par. (a) if all of the following apply:

4 2. The person who is required to grant the conservation easement or execute
5 the legal instrument did not contribute to the loss of the wetland specified in subd.
6 1.

7 **SECTION 128.** 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t)
8 (intro.) and amended to read:

9 281.36 (3t) RULES FOR MITIGATION. (intro.) The department shall promulgate
10 rules to establish a process for ~~consideration of wetland compensatory mitigation~~
11 ~~under sub. (2).~~ Upon promulgation, the rules shall apply to any application or other
12 request for an initial determination for a permit or other authorization that is
13 pending with the department on the date on which the rules take effect the
14 mitigation program under sub. (3r). The rules shall address all of the following:

15 **SECTION 129.** 281.37 (3) (a) of the statutes is renumbered 281.36 (3t) (a) and
16 amended to read:

17 281.36 (3t) (a) Requirements for the ~~avoidance and minimization of adverse~~
18 ~~impacts to the wetland that will be affected by the permitted activity~~ analysis of
19 practicable alternatives that is included in an application for a wetland individual
20 permit under sub. (3m) (b).

21 **SECTION 130.** 281.37 (3) (b) of the statutes is renumbered 281.36 (3t) (b) and
22 amended to read:

23 281.36 (3t) (b) The conditions under which credits in a wetlands mitigation
24 bank may be used for wetland compensatory mitigation purchased from a mitigation
25 bank to comply with the mitigation program under sub. (3r).

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1 **SECTION 131.** 281.37 (3) (c) of the statutes is renumbered 281.36 (3t) (c) and
2 amended to read:

3 281.36 (3t) (c) Enforcement of ~~a requirement to implement a mitigation project~~
4 requirements under the mitigation program under sub. (3r) that apply to mitigation
5 projects and mitigation banks.

6 **SECTION 132.** 281.37 (3) (d) of the statutes is renumbered 281.36 (3t) (d) and
7 amended to read:

8 281.36 (3t) (d) Baseline studies of ~~the wetland~~ wetlands that will be affected
9 by the ~~permitted activity~~ discharges and of the sites for mitigation project site
10 projects.

11 **SECTION 133.** 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and
12 amended to read:

13 281.36 (3t) (e) Plan and project design requirements for ~~a~~ mitigation project,
14 ~~which shall consider the relation of the project design~~ projects and mitigation bank
15 sites, which shall include requirements for relating the design of a mitigation project
16 or a mitigation bank site to the hydrology of the watershed in which a mitigation
17 project or mitigation bank site is located.

18 **SECTION 134.** 281.37 (3) (f) of the statutes is renumbered 281.36 (3t) (f), and
19 281.36 (3t) (f) (intro.), as renumbered, is amended to read:

20 281.36 (3t) (f) (intro.) ~~The comparability of a wetland~~ Standards for comparing
21 wetlands that will be restored, enhanced ~~or~~, created, or preserved as a mitigation
22 project or at a mitigation bank site to the wetland wetlands that will be adversely
23 affected by the ~~permitted activity~~ discharges, including all of the following:

24 **SECTION 135.** 281.37 (3) (g) of the statutes is repealed.

SENATE BILL 368**SECTION 136**

1 **SECTION 136.** 281.37 (3) (h) of the statutes is renumbered 281.36 (3t) (h) and
2 amended to read:

3 281.36 **(3t)** (h) Standards for measuring the short-term and long-term success
4 of ~~a~~ mitigation project projects and mitigation bank sites and requirements for the
5 short-term and long-term monitoring of ~~a~~ mitigation project projects and
6 mitigation bank sites.

7 **SECTION 137.** 281.37 (3) (i) of the statutes is renumbered 281.36 (3t) (i) and
8 amended to read:

9 281.36 **(3t)** (i) Remedial actions to be taken by the applicant if a holders of
10 wetland individual permits for mitigation project is projects that are not successful
11 and actions to be taken by ~~a wetlands mitigation bank if a~~ banks for mitigation
12 project on which mitigation credits are based is projects performed by the mitigation
13 banks that are not successful.

14 **SECTION 138.** 281.37 (3) (j) of the statutes is repealed.

15 **SECTION 139.** 281.37 (3m) of the statutes is repealed.

16 **SECTION 140.** 281.37 (4) of the statutes is repealed.

17 **SECTION 141.** 281.37 (5) of the statutes is renumbered 281.36 (13m) and
18 amended to read:

19 281.36 **(13m)** REPORT TO LEGISLATURE. No later than January 31, 2003, and no
20 later than January 31 of each subsequent odd-numbered year, the department shall
21 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the
22 impact of the implementation of ~~this section~~ mitigation on wetland resources and on
23 the issuance of permits or other approvals under ss. 59.692, 61.351, 62.231, 87.30,
24 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

25 **SECTION 142.** 281.98 (1) of the statutes is amended to read:

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1 281.98 (1) Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a),
2 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any
3 rule promulgated or any plan approval, license, special order, or water quality
4 certification issued under this chapter shall forfeit not less than \$10 nor more than
5 \$5,000 for each violation. Each day of continued violation is a separate offense.
6 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

7 **SECTION 143.** 814.04 (intro.) of the statutes, as affected by 2011 Wisconsin Act
8 2, is amended to read:

9 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
10 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b)~~
11 ~~1.,~~ 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),
12 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
13 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

14 **SECTION 144. Nonstatutory provisions.**

15 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department
16 of natural resources are increased by 2.0 PR positions to be funded from the
17 appropriation under section 20.370 (4) (bi) of the statutes, to implement the
18 mitigation program under section 281.36 (3r) of the statutes as created in this act.

19 (2) PROJECT POSITION CHANGES.

20 (a) The authorized FTE positions for the department of natural resources are
21 decreased by 3.0 PR project positions funded from the appropriation under section
22 20.370 (4) (bi) of the statutes, for the purpose for which the appropriation is made.

23 (b) The authorized FTE positions for the department of natural resources are
24 increased by 3.0 PR positions to be funded from the appropriation under section

SENATE BILL 368**SECTION 144**

1 20.370 (4) (bi) of the statutes, for the purpose of providing wetland identification and
2 confirmation services under section 23.321 of the statutes, as affected by this act.

3 **SECTION 145. Initial applicability.**

4 (1) The treatment of sections 30.28 (2m) (c), 31.39 (2m) (c), 281.22 (2) (c), and
5 281.36 (3m), (3n), (3p), (3q), (3r), and (12) (a) and (b) of the statutes, the renumbering
6 of section 30.28 (1) of the statutes, and the creation of section 30.28 (1) (a) and (b) of
7 the statutes first apply to applications that are submitted to the department of
8 natural resources on the effective date of this subsection.

9 (2) The treatment of section 281.36 (14) of the statutes first applies to violations
10 committed on the effective date of this subsection.

11 **SECTION 146. Effective date.**

12 (1) This act takes effect on the first day of the 4th month beginning after
13 publication.

14 (END)