



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2803/P3
MGG:wlj:rs

D-Note

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT ~~to repeal~~ 23.321 (2) (a), 23.321 (3) (a), 23.321 (4) (a) 1., 30.2065, 30.28
2 (2) (title), 30.28 (2) (a) (intro.), 30.28 (2) (a) 1., 30.28 (2) (a) 2., 30.28 (2) (a) 3.,
3 30.28 (2m) (c), 31.39 (2m) (c), 227.01 (13) (rt), 281.22 (1), 281.22 (2) (c), 281.22
4 (2) (d), 281.22 (4), 281.36 (1) (am), 281.36 (1) (bg), 281.36 (1) (c) and (cm), 281.36
5 (1) (cr), 281.36 (1m), 281.36 (2) (title), 281.36 (2) (b), 281.36 (7), 281.36 (8) (title),
6 281.36 (8) (a), 281.36 (8) (b), 281.36 (8) (bn) 2., 281.36 (8) (c), 281.36 (8) (d),
7 281.36 (8) (e), 281.36 (9) (am) to (c), 281.36 (10), 281.37 (title), 281.37 (1) (intro.),
8 281.37 (1) (a), 281.37 (1) (e), 281.37 (1) (f), 281.37 (2), 281.37 (3) (g), 281.37 (3)
9 (j), 281.37 (3m) and 281.37 (4); **to renumber** 30.28 (2) (b) 1., 30.28 (2) (b) 2.,
10 281.22 (2) (title), 281.22 (2m) (title) and 281.22 (2m) (a) 2.; **to renumber and**
11 **amend** 30.28 (1), 281.22 (title), 281.22 (2) (a), 281.22 (2) (b), 281.22 (2m) (a)
12 (intro.), 281.22 (2m) (a) 1., 281.22 (2m) (b), 281.22 (3), 281.36 (2) (a), 281.36 (3),
13 281.36 (8) (bn) 1., 281.37 (1) (b), 281.37 (1) (d), 281.37 (2m), 281.37 (3) (intro.),
14 281.37 (3) (a), 281.37 (3) (b), 281.37 (3) (c), 281.37 (3) (d), 281.37 (3) (e), 281.37
15 (3) (f), 281.37 (3) (h), 281.37 (3) (i) and 281.37 (5); **to amend** 20.370 (4) (bi),

1 23.321 (title), 30.025 (1b) (b), 30.2022 (4), 30.207 (7) (a), 30.28 (title), 30.28 (2m)
2 (a), 30.28 (2m) (am), 30.28 (2m) (b), 30.28 (2m) (d), 30.28 (2r) (a) (intro.), 30.28
3 (2r) (a) 1., 30.28 (2r) (b), 30.298 (3), 281.165 (4) (a) 1m., 281.36 (4) (intro.), 281.36
4 (4) (b), 281.36 (4) (e) 1., 281.36 (4) (e) 2., 281.36 (4) (e) 3., 281.36 (5) (intro.),
5 281.36 (5) (a), 281.36 (5) (b), 281.36 (6) (a) 1., 281.36 (9) (a) (intro.), 281.36 (9)
6 (a) 1., 281.36 (9) (a) 2., 281.36 (9) (a) 3., 281.98 (1) and 814.04 (intro.); **to repeal**
7 **and recreate** 281.36 (title); and **to create** 23.321 (1) (title), 23.321 (2) (title),
8 23.321 (2m) (title), 23.321 (3) (title), 23.321 (3m), 23.321 (4) (title), 23.321 (5)
9 (title), 23.321 (6) (title), 30.28 (1) (a), 30.28 (1) (b), 30.28 (1m), 227.01 (13) (ru),
10 281.17 (10) (c), 281.36 (1) (bj), 281.36 (1) (cp), 281.36 (3b) (title), 281.36 (3b) (a),
11 281.36 (3g) (title), 281.36 (3g) (a), 281.36 (3g) (c), 281.36 (3g) (d), 281.36 (3g) (e),
12 281.36 (3g) (f), 281.36 (3g) (g), 281.36 (3g) (h), 281.36 (3m), 281.36 (3r), 281.36
13 (9) (d) and (e), 281.36 (11) (a), 281.36 (12) and 281.36 (13) of the statutes;
14 **relating to:** permits for discharges into wetlands; wetland mitigation; wetland
15 mapping and delineation; fees for permits and other authorizations or
16 determinations by the Department of Natural Resources relating to structures,
17 deposits, and other activities in or near navigable waters; granting ?
18 rule-making authority; making an appropriation; and providing penalties.

Analysis by the Legislative Reference Bureau

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

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

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

1 20.370 (4) (bi) *Water regulation and zoning — fees.* From the general fund, all
2 moneys received under ss. 23.32 (3), 23.321, 30.28, 31.39, and ~~281.22~~ 281.36 (11) for
3 activities relating to permits, contracts, authorizations, and other approvals issued
4 under s. 281.36 and chs. 30 and 31, for activities relating to water quality standards
5 under subch. II of ch. 281, and for wetland mapping under s. 23.32 and wetlands
6 services under s. 23.321.

← [INSERT 3-6 ✓

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

8 **23.321 (title) Wetland map review, identification, and confirmation.**

9 **SECTION 3.** 23.321 (1) (title) of the statutes is created to read:

10 23.321 (1) (title) DEFINITION.

11 **SECTION 4.** 23.321 (2) (title) of the statutes is created to read:

12 23.321 (2) (title) TYPES OF SERVICES.

13 **SECTION 5.** 23.321 (2) (a) of the statutes is repealed.

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

15 23.321 (2m) (title) MEMORANDUM OF AGREEMENT.

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

17 23.321 (3) (title) FEES; GENERALLY.

18 **SECTION 8.** 23.321 (3) (a) of the statutes is repealed.

19 **SECTION 9.** 23.321 (3m) of the statutes is created to read:

20 23.321 (3m) FEES; EXPEDITED SERVICE. The department may charge a
21 supplemental fee for a type of service under sub. (2) that is in addition to the fee
22 charged under sub. (3) if all of the following apply:

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

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

SECTION 10. 23.321 (4) (title) of the statutes is created to read:

23.321 (4) (title) TIME LIMITS.

SECTION 11. 23.321 (4) (a) 1. of the statutes is repealed.

SECTION 12. 23.321 (5) (title) of the statutes is created to read:

23.321 (5) (title) LENGTH OF VALIDITY.

SECTION 13. 23.321 (6) (title) of the statutes is created to read:

23.321 (6) (title) INCLUDED ON MAPS.

SECTION 14. 30.025 (1b) (b) of the statutes is amended to read:

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

INSERT 4-8-15

wetland

SECTION 15. 30.2022 (4) of the statutes is amended to read:

30.2022 (4) (a) The department of transportation and the department shall exchange information and cooperate in the planning and carrying out of such activities in order to alleviate, to the extent practical under the circumstances, any potential detrimental encroachment on the waters of the state. If such an activity affects a wetland, as defined in s. 23.32 (1), and if the department determines that mitigation is required in order to comply with the environmental protection requirements developed under sub. (3), the department of transportation may accomplish mitigation by any of the methods specified in s. 281.36 (3r) (a) 1. to 3.

****NOTE: Please review all of s. 30.2022 to make sure the underscored language achieves the desired intent.

← INSERT 5-1 ✓

1 SECTION 16. 30.2065 of the statutes is repealed.

2 SECTION 17. 30.207 (7) (a) of the statutes is amended to read:

3 30.207 (7) (a) At least 15 days before beginning the activity that is authorized
4 by a general permit under this section the person who wishes to conduct the activity
5 shall submit a notice to the department and shall pay the fee specified in s. 30.28 (2)
6 (b) 2 (1) (d). The notice shall describe the activity, state the name of the person that
7 will be conducting the activity and state the site where the activity will be conducted.
8 The notice shall also contain a statement signed by the person conducting the
9 activity that the person will act in conformance with the standards contained in the
10 general permit.

11 SECTION 18. 30.28 (title) of the statutes is amended to read:

12 30.28 (title) Fees for permits, other approvals, and determinations and
13 hearings.

14 SECTION 19. 30.28 (1) of the statutes is renumbered 30.28 (1) (intro.) and
15 amended to read;

16 30.28 (1) (intro.) The department shall charge a ~~permit or approval~~ fee for
17 ~~carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and~~
18 ~~30.21 to 30.27 reviewing, investigating, and making decisions on determinations and~~
19 ~~on whether to issue or grant permits, contracts, authorizations, or other approvals~~
20 ~~under this subchapter. The permit or approval required~~ fee shall accompany the
21 ~~permit application, notice or request for approval or other submitted documentation.~~

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reasons
to court?

22 The department shall set these fees by rule except as follows:

****NOTE: Broadening of the cross-reference is necessary to include a cross-reference to the general permitting provisions under s. 30.206. However, there

← INSERT 5-22 ✓

may be sections in such. II of ch. 30 that involve the issuance of "approvals" to which you do not want s. 30.28 to apply. If that is the case, this will need redrafting.

1 SECTION 20. 30.28 (1) (a) of the statutes is created to read:

2 30.28 (1) (a) For an individual permit issued under s. 30.208, the application
3 fee shall be \$600.

4 SECTION 21. 30.28 (1) (b) of the statutes is created to read:

5 30.28 (1) (b) For authorization to proceed under a general permit issued under
6 s. 30.206, the application fee shall be \$300.

7 SECTION 22. 30.28 (1m) of the statutes is created to read:

8 30.28 (1m) ADDITIONAL FEES. ^(a) In addition to the fees required under sub. (1), the
9 department may, ~~by rule set~~ ^{set and charge} fees for making any of the following determinations:

- 10 1. ~~(a)~~ An identification of an ordinary high-water mark.
- 11 2. ~~(b)~~ A determination of navigability.
- 12 3. ~~(c)~~ Any other determination that is necessary for reviewing, investigating, or
13 making a decision on applications for permits, contracts, authorizations, or other
14 approvals under this chapter.

15 SECTION 23. 30.28 (2) (title) of the statutes is repealed.

16 SECTION 24. 30.28 (2) (a) (intro.) of the statutes is repealed.

17 SECTION 25. 30.28 (2) (a) 1. of the statutes is repealed.

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

19 SECTION 27. 30.28 (2) (a) 3. of the statutes is repealed.

20 SECTION 28. 30.28 (2) (b) 1. of the statutes is renumbered 30.28 (1) (c).

21 SECTION 29. 30.28 (2) (b) 2. of the statutes is renumbered 30.28 (1) (d).

22 SECTION 30. 30.28 (2m) (a) of the statutes is amended to read:

← INSERT 6-14 ✓

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

****NOTE: Note that, as drafted, the refund provision in s. 30.28 (2m) (a) does not apply to any fees that may be set for determinations under s. 30.28 (1m) or to the general permit fee under s. 30.28 (1) (b).

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

8 30.28 (2m) (am) The department shall refund 50% of the fee specified in sub.
 9 (2) (b) 1. (1) (c) if the department denies an application for a general permit under
 10 s. 30.207 (3) (d) 1. or does not issue a general permit under s. 30.207 (6).

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

12 30.28 (2m) (b) If ~~the applicant applies for a permit, requests an approval, or~~
 13 ~~submits a notice under s. 30.207 (7)~~ a person applies for a permit or otherwise seeks
 14 authorization or gives notice for a project or activity after the project or activity is
 15 begun or after it is completed, the department shall charge an amount equal to twice
 16 the amount of the fee that it would have charged under this section.

17 **SECTION 33.** 30.28 (2m) (c) of the statutes is repealed.

18 **SECTION 34.** 30.28 (2m) (d) of the statutes is amended to read:

19 30.28 (2m) (d) The department, ~~by rule,~~ may increase any fee specified in sub.
 20 (2) (a) that is set ^{by} rule under sub. (1) or (1m). ~~The department, by rule, may~~
 21 increase a fee specified in sub. (2) (b) ~~(1) (c) or (d)~~ only if the increase is necessary to
 22 meet the costs incurred by the department in acting on general permits or on notices
 23 submitted under s. 30.207.

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****NOTE: The authority to increase fees does not apply to the fees statutorily set under s. 30.28 (1m) (a) and (b).

****NOTE: The provision in s. 30.28 (2m) (d) applies to any fees that may be set for determinations under s. 30.28 (1m).

1 **SECTION 35.** 30.28 (2r) (a) (intro.) of the statutes is amended to read:

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

5 **SECTION 36.** 30.28 (2r) (a) 1. of the statutes is amended to read:

6 30.28 (2r) (a) 1. The applicant requests in writing that the permit ~~or~~ approval
7 authorization, or determination be issued or the contract be granted within a time
8 period that is shorter than the time limit under the rule promulgated under par. (b)
9 for that type of permit ~~or~~ contract, authorization, approval, or determination.

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

11 30.28 (2r) (b) If the department promulgates a rule under par. (a), the rule shall
12 contain a time limit for each type of permit ~~or~~ contract, authorization, approval
13 ~~classified under sub. (2) (a) for determining whether the department will grant the~~
14 ~~permit or approval, or determination.~~

15 **SECTION 38.** 30.298 (3) of the statutes is amended to read:

16 30.298 (3) Any person who violates a general permit under s. 30.206 ~~or~~ 30.2065
17 shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit
18 not less than \$50 nor more than \$500 upon conviction of the same offense a 2nd or
19 subsequent time.

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

21 **SECTION 40.** 227.01 (13) (rt) of the statutes is repealed.

22 **SECTION 41.** 227.01 (13) (ru) of the statutes is created to read:

1 227.01 (13) (ru) Is a general wetland permit issued under s. 281.36 (3g).

2 SECTION 42. 281.165 (4) (a) 1m. of the statutes, as created by 2011 Wisconsin
3 Act 6, is amended to read:

4 281.165 (4) (a) 1m. The wetland area is ~~a nonfederal wetland, as defined in s.~~
5 281.36 (1) (c) not subject to federal jurisdiction under 33 USC 1344, and the activity
6 will affect less than 3 acres of that wetland area.

7 SECTION 43. 281.17 (10) (c) of the statutes is created to read:

8 281.17 (10) (c) This subsection does not apply to discharges of dredged or fill
9 material into wetlands. *that are subject to regulation under s. 281.36 (c)*

****NOTE: The prohibitions found in s. 281.17 (10) (a) and (b) under current law are found in s. 281.36 (3b) (b), as renumbered in this draft. Therefore, the language in s. 281.17 (10) (a) and (b) must be treated so that the same prohibitions are not in two places in ch. 281 and subject to separate penalties.

10 SECTION 44. 281.22 (title) of the statutes is renumbered 281.36 (11) (title) and
11 amended to read:

12 281.36 (11) (title) FEEES APPLICATION FEES AND TIME LIMITS FOR WATER QUALITY
13 DETERMINATIONS FOR WETLANDS.

14 SECTION 45. 281.22 (1) of the statutes is repealed.

15 SECTION 46. 281.22 (2) (title) of the statutes is renumbered 281.36 (11) ^(c) ~~(b)~~
16 (title).

17 SECTION 47. 281.22 (2) (a) of the statutes is renumbered 281.36 (11) ^(c) ~~(b)~~ 1. and
18 amended to read:

19 281.36 (11) ^(c) ~~(b)~~ 1. The department shall refund the an application fee charged
20 for an individual wetland permit under par. (a) 1. if the applicant requests a refund
21 before the department determines that the application ~~for the determination~~ is
22 complete. The department may not refund a fee after the department determines

under a wetland general

1 that the application is complete unless required to do so under a rule promulgated
2 under s. 299.05.

***NOTE: As drafted, s. 281.36 (11) (b) 1. applies only to individual permits.

3 SECTION 48. 281.22 (2) (b) of the statutes is renumbered 281.36 (11) ^(c) 2. and
4 amended to read: ^(c)

5 281.36 (11) ^(a) 2. If the applicant applies for a permit after the project submits
6 an application for authorization to proceed or for an individual wetland permit after
7 the discharge is begun or after it is completed, the department shall charge an
8 amount equal to twice the amount of the fee that it would have charged under this
9 section.

10 SECTION 49. 281.22 (2) (c) of the statutes is repealed.

11 SECTION 50. 281.22 (2) (d) of the statutes is repealed.

***NOTE: Since the only wetland application fees are now set by statute, the draft
repeals s. 281.22 (2) (d). OK?

12 SECTION 51. 281.22 (2m) (title) of the statutes is renumbered 281.36 (11) ^(d) 10-11
13 (title). ^(d)

14 (d) SECTION 52. 281.22 (2m) (a) (intro.) of the statutes is renumbered 281.36 (11)
15 ^(d) 1. (intro.) and amended to read:

16 281.36 (11) ^(d) 1. (intro.) The department, by rule, may charge a supplemental
17 fee for a determination under sub. (1) that is in addition to the a fee charged under
18 sub. (1) this subsection if all of the following apply:

19 SECTION 53. 281.22 (2m) (a) 1. of the statutes is renumbered 281.36 (11) ^(d) 1.
20 a. and amended to read:

21 281.36 (11) ^(d) 1. a. The applicant requests in writing that the determination
22 decision on the application be issued within a time period that is shorter than the
23 time limit promulgated under par. (b) subd. 2. for the determination decision.

1 SECTION 54. 281.22 (2m) (a) 2. of the statutes is renumbered 281.36 (11) ^(d) 1.

2 b.

3 SECTION 55. 281.22 (2m) (b) of the statutes is renumbered 281.36 (11) ^(d) 2. and
4 amended to read:

5 ^(d) 281.36 (11) ~~(a)~~ 2. If the department promulgates a rule charges a fee under par-
6 (a) subd. 1., the rule shall contain for a time limit for making determinations under
7 sub. (1) decisions subject to the fee.

8 SECTION 56. 281.22 (3) of the statutes is renumbered 281.36 (11) ^(e) ~~(f)~~ and
9 amended to read:

10 281.36 (11) ^(e) ~~(f)~~ Exemptions from fees. Subsections (1), (2) and (2m) Paragraphs
11 (a), (b), and (c) ^{and (d)} do not apply to any federal agency or state agency.

12 SECTION 57. 281.22 (4) of the statutes is repealed.

13 SECTION 58. 281.36 (title) of the statutes is repealed and recreated to read:

14 **281.36 (title) Permits for discharges into wetlands; mitigation.**

15 SECTION 59. 281.36 (1) (am) of the statutes is repealed.

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

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

18 281.36 (1) (bj) "Mitigation" means the restoration, enhancement, or creation
19 of wetlands to compensate for adverse impacts to other wetlands.

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

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

22 281.36 (1) (cp) "Practicable ~~alternatives~~" means ^{reasonably} ~~alternatives~~ that are available
23 and capable of being implemented after taking into consideration cost, available
24 technology, logistics, ^{and} proximity to the ~~discharge~~, ^{In light of} ~~and~~ the overall purpose of the

25 ^{discharge}
project

the proposed project site

INSERT 11-15

site availability

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

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

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

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

6 281.36 (3b) (b) No person may discharge dredged ~~or~~ fill material into a
7 nonfederal wetland unless the discharge is authorized by a water quality
8 certification ^{WQP} general or individual wetland permit issued by the department under
9 this section or the discharge is exempt under sub. (4). No person may violate any
10 condition imposed by the department in a water quality certification contained in a
11 general or individual wetland permit issued by the department under this section.
12 The department may not issue a water quality certification general or individual
13 wetland permit under this section unless it determines that the discharge authorized
14 pursuant to the general or individual wetland permit will comply with all applicable
15 water quality standards. ~~h 2~~

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

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

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

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

Strike

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

12 281.36 (3b) (title) PERMIT REQUIRED.

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

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

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

18 281.36 (3g) (title) GENERAL WETLAND PERMITS.

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

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

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

***NOTE: Does this achieve the desired intent? I have omitted discharges that contain hazardous wastes or toxic pollutants.

***NOTE: I changed the wording to make it more consistent with the language found in other state environmental laws. Do you want to incorporate the definition of "hazardous waste" found in s. 289.01 (12) or the definition of "toxic pollutant" found in s. 283.01 (17)?

temporary

2. A discharge that is temporary in nature, that is part of a construction project and that is necessary for access to the project and for dewatering at the project, if the discharge does not affect more than 2 acres of wetland.

3. A permanent discharge that is part of a utility line project, if the discharge does not affect more than 10,000 square feet of wetland for routine utility construction and maintenance projects and activities

4. A temporary discharge that is part of a utility line project, if the discharge does not affect more than 2 acres of wetland.

5. A discharge that involves the placement of a utility pole, bridge support, ramp surface, or retaining wall if the discharge does not affect more than 10,000 square feet of wetland.

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

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

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

281.36 (4) (3g) (c) Additional permits. The department may issue general wetland permits, in addition to those required under pars. (a) and (b), to regulate other discharges that affect wetlands located in this state.

INSERT 14-17

INSERT 14-17

INSERT 14-21

1

SECTION 75. 281.36 (3g) ^(e) of the statutes is created to read:

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281.36 (3g) ^(u) ~~(d)~~ *Period of validity; subsequent actions.* A general wetland permit

3

issued under this subsection is valid for a period of 5 years. Upon compliance with

4

the requirements under pars. ^(f) ~~(e)~~ and ^(a) ~~(d)~~, the department may renew, modify, or

5

revoke a general wetland permit issued under this subsection, and until such

6

renewal, modification, or revocation, the general permit shall remain in effect.

7

SECTION 76. 281.36 (3g) ^(f) ~~(e)~~ of the statutes is created to read:

8

281.36 (3g) ^(f) ~~(e)~~ *Notice of intent to issue.* The department shall circulate to

9

interested and potentially interested members of the public notices of its intention

10

to issue a general wetland permit under this subsection. Procedures for providing

11

public notices shall include all of the following:

12

1. A procedure for publishing a class 1 notice under ch. 985 or publishing a notice on the department's Internet Web site.

13

14

2. A procedure under which a copy of the notice is provided to any person or group upon request of the person or group.

15

16

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

17

281.36 (3g) ^(g) ~~(f)~~ *Public hearing.* 1. The department shall provide an opportunity

18

for any interested state agency or federal agency or person or group of persons to

19

request a informational public hearing with respect to the department's intention to issue a general

20

wetland permit under this subsection. Such request for a public hearing shall be

21

filed with the department within 30 days after the circulation of the public notice

22

under par. ^(f) ~~(e)~~ and shall indicate the interest of the party filing the request and the

23

reasons why the hearing is warranted.

24

2. The department shall hold a informational public hearing upon a request under subd. 1.

25

if the department determines that there is a significant public interest in holding

1 such a hearing. Hearings held under this subsection are not contested cases under
2 s. 227.01 (3).

3 3. Public notice of any hearing held under this subsection shall be circulated
4 in accordance with the requirements under par. (f)✓

5 SECTION 78. 281.36 (3g) ^(h) of the statutes is created to read:

6 281.36 (3g) ^(h) Authorizations for discharges under general wetland permits.

7 1. A person wishing to proceed with a discharge that may be authorized under a
8 general wetland permit shall apply to the department, with written notification of
9 the person's wish to proceed, not less than 30 days before commencing the discharge
10 authorized by the general permit unless subd. 5. applies. The application shall
11 provide information describing the discharge in order to allow the department to
12 determine whether the discharge is authorized by the general wetland permit and
13 shall give the department consent to enter and inspect the site, subject to sub. (9).

14 The application shall include a detailed explanation of why the impact to the wetland
15 cannot be avoided and how the impact to the wetland will be minimized to the
16 greatest extent ^e possible ^{practicable}. The application shall be accompanied by the fee specified
17 in sub. (11) (a) 1. If the application is for authorization to proceed under a general
18 wetland permit with a discharge that is part of a development for commercial,
19 residential, or industrial purposes, the application shall be accompanied by a
20 surcharge, as calculated under sub. (11) (a) 2 ⁽¹²⁾. The department may make a request
21 for additional information one time during this 30-day period.

22 2. If, within 30 days after an application under subd. 1. is submitted to the
23 department, the department ^a does not either request additional information or
24 inform the applicant that an individual wetland permit will be required as provided
25 in par. (h) ⁽ⁱ⁾, the discharge shall be considered to be authorized under the general

INSERT
16-12

reviewed
by

1 wetland ^{general} permit and the applicant may proceed without further notice, hearing,
 2 permit, or approval if the discharge is carried out in compliance with all of the
 3 conditions of the general permit.

4 3. If the department requests additional information under subd. 1., the
 5 30-day period is tolled from the date the person applying for authorization to proceed
 6 receives the request until the date on which the department receives the additional
 7 information.

8 4. As part of an ^a ~~an additional~~ general wetland permit issued under par. (c), the
 9 department may waive the requirement that a person wishing to proceed under the
 10 general permit apply to the department as required under this paragraph so that the
 11 person may proceed with the discharge without specific authorization from the
 12 department.

13 5. Authorization to proceed under a general wetland permit is valid for 5 years
 14 after the date on which the discharge is considered to be authorized.

****NOTE: Does subd. 5. achieve the desired intent?

Received by the department

15 (i) SECTION 79. 281.36 (3g) ⁽ⁱ⁾ ~~(b)~~ of the statutes is created to read:

16 281.36 (3g) ^(h) ~~(a)~~ Individual wetland permit in lieu of general wetland permit.

17 For a proposed discharge for which an application has been ^(h) ~~(g)~~ submitted under par. ^(h) ~~(g)~~,
 18 the department may decide to require that a person who submitted the application
 19 apply for ^(h) ~~(a)~~ individual wetland permit if the department has inspected the site as
 20 provided in par. ^(h) ~~(g)~~ and has determined that conditions specific to the site require
 21 additional restrictions on the discharge in order to provide reasonable assurance
 22 that no significant adverse impacts to the functional values of the wetland will occur.

****NOTE: I did not change "discharge" to "activity" in the above provision because only discharges are regulated under s. 281.36.

23 SECTION 80. 281.36 (3m) of the statutes is created to read:

1 281.36 (3m) ~~INDIVIDUAL WETLAND~~ PERMITS. (a) *When permit required.* Any
2 person wishing to proceed with a discharge into any wetland shall submit an
3 application for ^a ~~an~~ ~~individual~~ wetland permit under this subsection unless the
4 discharge has been authorized under a ~~general~~ wetland permit as provided in sub.
5 (3g) or is exempt under sub. (4). Before submitting the application, the applicant and
6 ~~the~~ department shall ^{hold a meeting with the applicant to} discuss the details of the proposed discharge and the
7 requirements for submitting the application and for delineating the wetland. An
8 applicant may include in the application a request for a public ^{uniform hearing} hearing. The
9 application shall be accompanied by the applicable fee specified in sub. (11) (a) 1.

10 (b) *Procedure for completing applications.* 1. In issuing ^a ~~an~~ ~~individual~~ wetland
11 permit under this subsection, the department shall initially determine whether a
12 complete application for the individual permit has been submitted and, no later than
13 30 days after the application is ^{received by the department} ~~submitted~~, provide a notice to the applicant in writing
14 about the initial determination of completeness. If the department determines that
15 the application is complete, the department shall issue a notice of complete
16 application within the 30-day period.

17 2. If the department determines that the application is incomplete, the
18 department may make one request for additional information within the 30-day
19 period specified under subd. 1. The request shall state the reason for determining
20 the application to be incomplete and the specific items of information necessary to
21 make the application complete. Within 10 days after the receipt of the additional
22 information, the department shall make a determination as to whether the
23 application is complete and shall inform the applicant of that determination. An
24 applicant may supplement and resubmit an application that the department has
25 determined to be incomplete. There is no limit on the number of times that an

1 applicant may resubmit an application that the department has determined to be
2 incomplete, 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.

5 3. Any rules promulgated under s. 299.05 that apply to this subsection apply
6 only to applications for individual wetland permits that the department has
7 determined to be complete.

8 (c) *Notice of complete application.* Upon determination by the department that
9 an application submitted under par. (b) is complete, the department shall provide
10 notice of complete application by publishing a Class I notice under ch. 985 or by
11 publishing a notice on the department's Internet Web site. Before providing this
12 notice, the department shall determine whether there is a significant public interest
13 in holding a ^{public informational} hearing if the applicant has not requested ^{such a} public hearing in the
14 application submitted under par. (a). If a ^{informational} public hearing will be held, the notice of
15 complete application shall contain a notice of ^{the} public hearing and the date of the
16 ^{public} hearing. The notice of complete application shall also state that there is a
17 30-day public comment period as provided in par. (d). The department shall provide
18 the notice within 15 days after making the determination that the application is
19 complete.

20 (d) *Public comment.* The department shall provide a period for public comment
21 after the department has provided a notice of complete application under par. (c)
22 during which time any person may submit written comments with respect to the
23 application for ~~an~~ individual wetland permit. The department shall retain all of the
24 written comments submitted during this period and shall consider all of the
25 comments in rendering a decision on the application. The period for public comment

present in the application

Shall review the analysis of practicable alternatives under par. (f). The department shall end on the 30th day following the date on which the department provides the notice of complete application.

(e) Decision. The department shall render a decision on the application within 30 days after the date the period for public comment under par. (d) ends unless a public hearing is held. If a hearing is held, the department shall render the decision within 30 days after the date the public hearing is concluded.

(f) Analysis of practicable alternatives. An applicant shall include in an application submitted or resubmitted under this subsection an analysis of the practicable alternatives that will minimize and avoid the significant adverse impacts of the discharge on the functional values of the wetland, and that will not result in any other significant adverse environmental consequences.

The alternative analysis shall consider the significant primary, secondary, and cumulative impacts to the functional value of the wetlands.

(g) Scope of analysis. The department shall limit its analysis of the practicable alternatives presented in the application under par. (f) to those that will have an impact on the site of the discharge and areas that are adjacent to the site if the department determines that all of the following apply:

1. The proposed project of which the discharge will be a part will result in a demonstrable economic benefit to the public.

****NOTE: I left in the phrase "of which the discharge will be a part" because the project needs to be linked to the discharge for which the alternative analysis is being done.

2. The wetland to be affected is rare, uncommon, or imperiled.

3. The wetland to be affected is highly disturbed and degraded.

(h) Requirements for issuance. After conducting its analysis of practicable alternatives, the department shall issue an individual wetland permit if it

under the natural heritage inventory prepared by the department under s. 23.27(3)

practicable alternatives

Analysis

by applicant

of the discharge on

significant adverse environmental consequences

scope of analysis

alternatives presented in the application

impact on the site of the discharge

demonstrable economic benefit

NOTE: I left in the phrase

wetland to be affected is rare

wetland to be affected is highly

Requirements for issuance

individual wetland permit

under the natural heritage inventory

1 determines that the discharge will comply with all of the applicable water quality
2 standards. In determining whether the discharge complies with all of these water
3 quality standards, the department shall require mitigation under the program
4 established under sub. (3r) for individual wetland permits it issues under this
5 subsection.

6 SECTION 81. 281.36 (3r) of the statutes is created to read:

← INSERT 21-5

7 281.36 (3r) MITIGATION. (a) The department shall establish a mitigation
8 program that applies only to the issuance of individual wetland permits and that
9 allows mitigation to be accomplished by any of the following methods:

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

11 2. Payment of a fee under an in lieu fee program established by the department

12 to be used for creating or restoring wetlands, in amount equal to the amount that
13 would be necessary to purchase the required amounts of credits from a mitigation
14 bank.

15 3. ~~Purchasing~~ ^{Completing a} mitigation within one-half mile of the site of the discharge.

16 (b) Under the program, the types of mitigation specified in par. (a) 1. and 2.

17 shall be the preferred types of mitigation.

18 (c) ~~For each mitigation bank in the state, the department shall determine the~~
19 ~~areas of the state that each mitigation bank covers.~~ ^{for} In making these determinations,
20 the department shall give priority to including wetlands that are in the same
21 watershed or watersheds and shall consider the different levels of demand that exist
22 across the state for the purchase of wetland credits.

23 (d) Under the program, the type of mitigation specified in par. (a) 2. shall be
24 approved by the U.S. army corps of engineers.

shall be consistent with federal regulations
INSERT 21-24

in lieu fee

Um...

INS 21-12
INS 21-14

1 (e) The department shall establish ^{the} ~~under the~~ ^{mitigation} ~~program mitigation ratios that~~
2 are consistent with ^{rules} ~~federal guidelines for~~ mitigation and mitigation banks ^{that apply to} ~~developed~~
3 jointly by the department and the U.S. army corps of engineers, but the minimum
4 ratio shall be at least 1.2 acres for each acre affected by the discharge.

5 **SECTION 82.** 281.36 (4) (intro.) of the statutes is amended to read:

6 281.36 (4) EXEMPTIONS. (intro.) Except as provided in sub. (5), the certification
7 permitting requirement under sub. ~~(2)~~ (3b) does not apply to any discharge that is
8 the result of any of the following activities:

9 **SECTION 83.** 281.36 (4) (b) of the statutes is amended to read:

10 281.36 (4) (b) Maintenance, emergency repair, or reconstruction of damaged
11 parts of structures that are in use in a ~~nonfederal~~ wetland.

12 **SECTION 84.** 281.36 (4) (e) 1. of the statutes is amended to read:

13 281.36 (4) (e) 1. That the flow and circulation patterns and chemical and
14 biological characteristics of the affected ~~nonfederal~~ wetland are not impaired.

15 **SECTION 85.** 281.36 (4) (e) 2. of the statutes is amended to read:

16 281.36 (4) (e) 2. That the reach of the affected ~~nonfederal~~ wetland is not
17 reduced.

18 **SECTION 86.** 281.36 (4) (e) 3. of the statutes is amended to read:

19 281.36 (4) (e) 3. That any adverse effect on the aquatic environment of the
20 affected ~~nonfederal~~ wetland is minimized to the degree required by the department.

21 **SECTION 87.** 281.36 (5) (intro.) of the statutes is amended to read:

22 281.36 (5) INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding sub. (4),
23 a discharge that would be exempt under sub. (4) is subject to the certification
24 permitting requirement under sub. ~~(2)~~ (3b) if the discharge is incidental to an activity
25 that has as its purpose bringing a ~~nonfederal~~ wetland, or part of a ~~nonfederal~~

1 wetland, into a use for which it was not previously subject and if the activity may do
2 any of the following:

3 SECTION 88. 281.36 (5) (a) of the statutes is amended to read:

4 281.36 (5) (a) Impair the flow or circulation of any ~~nonfederal~~ wetland.

5 SECTION 89. 281.36 (5) (b) of the statutes is amended to read:

6 281.36 (5) (b) Reduce the reach of any ~~nonfederal~~ wetland.

7 SECTION 90. 281.36 (6) (a) 1. of the statutes is amended to read:

8 281.36 (6) (a) 1. Make the rules consistent with existing federal law or
9 interpretation.

10 SECTION 91. 281.36 (7) of the statutes is repealed.

11 SECTION 92. 281.36 (8) (title) of the statutes is repealed.

12 SECTION 93. 281.36 (8) (a) of the statutes is repealed.

13 SECTION 94. 281.36 (8) (b) of the statutes is repealed.

14 SECTION 95. 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (b) and
15 amended to read:

16 281.36 (3g) (b) Additional required permits. ^{wetland} The In addition to the general
17 wetland permits required under par. (a), the department shall issue general water
18 quality certifications wetland permits that are consistent with all of the, and
19 correspond to, any general permits that are issued under 33 USC 1344 (e) that
20 applied on January 8, 2001, to nonfederal wetlands located in this state and that
21 regulate discharges other than those regulated under the required ^{wetland} general permits
22 issued under par. (a).

23 SECTION 96. 281.36 (8) (bn) 2. of the statutes is repealed.

24 SECTION 97. 281.36 (8) (c) of the statutes is repealed.

25 SECTION 98. 281.36 (8) (d) of the statutes is repealed.

1 SECTION 99. 281.36 (8) (e) of the statutes is repealed.

2 SECTION 100. 281.36 (9) (a) (intro.) of the statutes is amended to read:

3 281.36 (9) (a) (intro.) For purposes of determining whether to issue ^{an} ~~am~~

4 individual wetland permit, whether authorization to proceed as authorized under a

5 general wetland permit is appropriate, or whether an exemption under sub. (4) is

6 appropriate, and for purposes of enforcing this section, any employee or other

7 representative of the department, upon presenting his or her credentials, may do any

8 of the following:

9 SECTION 101. 281.36 (9) (a) 1. of the statutes is amended to read:

10 281.36 (9) (a) 1. Enter and inspect any property on which is located a ~~nonfederal~~

11 ~~wetland, or part of a nonfederal wetland, for which an application for a water quality~~

12 ~~certification has been submitted to the department under sub. (3g) or (3m).~~

13 SECTION 102. 281.36 (9) (a) 2. of the statutes is amended to read:

14 281.36 (9) (a) 2. Enter and inspect any property on which is located a ~~nonfederal~~

15 ~~wetland to investigate a discharge of dredged or fill material that the department has~~

16 ~~reason to believe is in violation of this section.~~

17 SECTION 103. 281.36 (9) (a) 3. of the statutes is amended to read:

18 281.36 (9) (a) 3. Gain access to and inspect any records that the department

19 requires a holder of a water quality certification to ^{plain + delete extra space} ~~obtain~~ ~~an~~ ~~individual~~ wetland permit or

20 a person acting under the authority of a ~~general~~ wetland permit is required by the

21 department to keep.

22 SECTION 104. 281.36 (9) (am) to (c) of the statutes are repealed.

23 SECTION 105. 281.36 (9) (d) and (e) of the statutes are created to read:

24 281.36 (9) (d) The department shall provide reasonable advance notice to the

25 property owner before entering and inspecting property as authorized under par (a).

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

- 3 1. Apply for, obtain, and execute a special inspection warrant under s. 66.0119.
- 4 2. Deny an application for ^{a wetland} ~~an~~ individual permit or deny authorization to
5 proceed under a ~~general~~ ^{wetland} permit.

***NOTE: I have made some substantive changes in s. 281.36 (9) since the /P1 version. Please review.

6 SECTION 106. 281.36 (10) of the statutes is repealed.

7 SECTION 107. 281.36 (11) (a) of the statutes is created to read:

8 281.36 (11) (a) ^e Fees required. (1.) The department shall charge a fee for
9 reviewing, investigating, and making decisions on applications to proceed under

10 general wetland permits under sub. (3g) and on applications for individual wetland
11 permits under sub. (3m). For an authorization to proceed under a general wetland
12 permit, the application fee shall be \$500. For ^a an individual wetland permit, the

13 application fee shall be \$800. ^{e 12}
14 #. CR; 281.36 (1)

14 (2) The department shall set a surcharge fee to be charged for each application
15 to proceed under a general wetland permit that is issued under sub. (3g) (a) 6. The
16 surcharge fee shall be set on an annual basis by the department and may not exceed

17 more than 50 percent of the market price, as determined by the department, for the
18 equivalent purchase of one credit from a mitigation bank.

19 SECTION 108. 281.36 (12) of the statutes is created to read:

20 281.36 (12) NUISANCES; ABATEMENT. Every violation of this section is declared
21 to be a public nuisance and may be prohibited by injunction and may be abated by
22 a legal action brought by any person.

23 SECTION 109. 281.36 ⁽¹³⁾ ⁽¹⁴⁾ of the statutes is created to read:

281.36 (11) SURCHARGE FEES. (a) W

12 9

INS 25-13

4, 5, or

INS 25-22

Ⓟ→(14)

1 281.36 ~~(1B)~~ PENALTIES. (a) Except as provided in par. (b), any person who
2 violates any provision of this section shall forfeit not less than \$100 nor more than
3 \$10,000 for the first offense and shall forfeit not less than \$500 nor more than
4 \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

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

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

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

15 SECTION 110. 281.37 (title) of the statutes is repealed.

16 SECTION 111. 281.37 (1) (intro.) of the statutes is repealed.

17 SECTION 112. 281.37 (1) (a) of the statutes is repealed.

18 SECTION 113. 281.37 (1) (b) of the statutes is renumbered 281.36 (1) (bn) and
19 amended to read:

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

24 SECTION 114. 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (bL) and
25 amended to read:

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 to provide ~~transferable~~ credits to be
4 subsequently ~~applied~~ purchased to compensate for adverse impacts to other
5 wetlands.

6 **SECTION 115.** 281.37 (1) (e) of the statutes is repealed.

****NOTE: This definition is duplicative of the definition found in s. 281.36 (1) (d)
and is therefore being repealed instead of being renumbered to s. 281.36.

7 **SECTION 116.** 281.37 (1) (f) of the statutes is repealed.

8 **SECTION 117.** 281.37 (2) of the statutes is repealed.

9 **SECTION 118.** 281.37 (2m) of the statutes is renumbered 281.36 (8m), and
10 281.36 (8m) (a) 1., as renumbered, is amended to read: *plain + delete extra spaces*

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

19 **SECTION 119.** 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t)
20 (intro.) and amended to read:

21 281.36 (3t) RULES ^{(CS) ↓} (intro.) The department shall promulgate rules to establish
22 a process for ~~consideration of wetland compensatory mitigation under sub. (2).~~ Upon
23 promulgation, the rules shall apply to any application or other request for an initial

1 ~~determination for a permit or other authorization that is pending with the~~
2 ~~department on the date on which the rules take effect~~ the mitigation program under
3 sub. (3r). The rules shall address all of the following:

4 **SECTION 120.** 281.37 (3) (a) of the statutes is renumbered 281.36 (3t) (a) and
5 amended to read:

6 281.36 (3t) (a) Requirements for the ~~avoidance and minimization of adverse~~
7 ~~impacts to the wetland that will be affected by the permitted activity~~ analysis of
8 practicable alternatives that is included in an application for ^A ~~an~~ individual wetland ~~λ~~
9 permit under sub.(3m) (f).

10 **SECTION 121.** 281.37 (3) (b) of the statutes is renumbered 281.36 (3t) (b) and
11 amended to read:

12 281.36 (3t) (b) The conditions under which credits ~~in a wetlands mitigation~~
13 ~~bank may be used for wetland compensatory mitigation~~ purchased from a mitigation
14 bank to comply with the mitigation program under sub. (3r).

15 **SECTION 122.** 281.37 (3) (c) of the statutes is renumbered 281.36 (3t) (c) and
16 amended to read:

17 281.36 (3t) (c) Enforcement of ~~a requirement to implement a mitigation project~~
18 requirements under the mitigation program under sub. (3r).

19 **SECTION 123.** 281.37 (3) (d) of the statutes is renumbered 281.36 (3t) (d) and
20 amended to read:

21 281.36 (3t) (d) Baseline studies of ~~the wetland~~ wetlands that will be affected
22 by the ~~permitted activity~~ discharges and of the sites for mitigation project site
23 projects.

24 **SECTION 124.** 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and
25 amended to read:

project org mitigation bank sites

PLAIN

PLAIN

1 281.36 (3t) (e) Plan and project design requirements for a mitigation project
2 ~~projects~~ which shall consider the relation of the project design to the hydrology of
3 the watershed in which ~~a~~ *the* mitigation project is ~~projects are~~ located.

****NOTE: In reviewing s. 281.36 (3t) (d) and (e), note that "mitigation project" is defined to be only mitigation that is not an in lieu fee or a purchase of mitigation credits.

4 SECTION 125. 281.37 (3) (f) of the statutes is renumbered 281.36 (3t) (f), and
5 281.36 (3t) (f) (intro.), as renumbered, is amended to read:

*IN SEI
29-3*

6 281.36 (3t) (f) (intro.) ~~The comparability of a wetland~~ Standards for comparing
7 wetlands that will be restored, enhanced, or created to ~~the wetland~~ wetlands that
8 will be adversely affected by the permitted activity discharges, including all of the
9 following:

10 SECTION 126. 281.37 (3) (g) of the statutes is repealed.

****NOTE: I repealed this provision because it conflicts with s. 281.36 (3r) (d), which is created in this draft.

11 SECTION 127. 281.37 (3) (h) of the statutes is renumbered ~~281.36 (3t) (h)~~ and
12 amended to read:

and mitigation bank sites

13 281.36 (3t) (h) Standards for measuring the short-term and long-term success
14 of ~~a~~ mitigation project ~~projects~~ and requirements for the short-term and long-term
15 monitoring of ~~a~~ mitigation project ~~projects~~.

16 SECTION 128. 281.37 (3) (i) of the statutes is renumbered 281.36 (3t) (i) and
17 amended to read:

18 281.36 (3t) (i) Remedial actions to be taken by the applicant if a holders of
19 individual wetland permits for mitigation project is projects that are not successful
20 and actions to be taken by ~~a~~ wetlands mitigation bank if a banks for mitigation
21 project on which mitigation credits are based is performed by the mitigation banks
22 that are not successful.

1 **SECTION 129.** 281.37 (3) (j) of the statutes is repealed.

2 **SECTION 130.** 281.37 (3m) of the statutes is repealed.

3 **SECTION 131.** 281.37 (4) of the statutes is repealed.

4 **SECTION 132.** 281.37 (5) of the statutes is renumbered 281.36 (14) and amended
5 to read:

6 **281.36 (14) REPORT TO LEGISLATURE.** No later than January 31, 2003, and no
7 later than January 31 of each subsequent odd-numbered year, the department shall
8 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the
9 impact of the implementation of ~~this section~~ mitigation on wetland resources and on
10 the issuance of permits or other approvals under ss. 59.692, 61.351, 62.231, 87.30,
11 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

12 **SECTION 133.** 281.98 (1) of the statutes is amended to read:

13 **281.98 (1)** Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a),
14 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any
15 rule promulgated or any plan approval, license, special order, or water quality
16 certification issued under this chapter shall forfeit not less than \$10 nor more than
17 \$5,000 for each violation. Each day of continued violation is a separate offense.
18 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

19 **SECTION 134.** 814.04 (intro.) of the statutes is amended to read:

20 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
21 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b)~~
22 ~~1,~~ 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),
23 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
24 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

25 **SECTION 135. Nonstatutory provisions.**

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P4ins
MGG:.....

LPS: Please
check spacing.

1 **Insert 3-6**

2 **SECTION ~~1~~** 20.370 (4) (bm) of the statutes is created to read:

3 20.370 (4) (bm) *Wetland restoration — fees*. From the general fund, from the

4 moneys received under ~~ss.~~ 281.36 (12) and under the in lieu fee program under s.
5 281.36 ~~(3)~~ for activities authorized under that program.

6 **Insert 4-~~8~~ 15**

7 **SECTION ~~2~~** 30.03 (4) (a) of the statutes is amended to read:

8 30.03 (4) (a) If the department learns of a possible violation of s. 281.36 or of
9 the statutes relating to navigable waters or a possible infringement of the public
10 rights relating to navigable waters, and the department determines that the public
11 interest may not be adequately served by imposition of a penalty or forfeiture, the
12 department may proceed as provided in this paragraph, either in lieu of or in addition
13 to any other relief provided by law. The department may order a hearing under ch.
14 227 concerning the possible violation or infringement, and may request the hearing
15 examiner to issue an order directing the responsible parties to perform or refrain
16 from performing acts in order to comply with s. 281.36 or to fully protect the interests
17 of the public in the navigable waters. If any person fails or neglects to obey an order,
18 the department may request the attorney general to institute proceedings for the
19 enforcement of the department's order in the name of the state. The proceedings
20 shall be brought in the manner and with the effect of proceedings under s. 111.07 (7).

History: 1979 c. 32 s. 92 (8); 1979 c. 257; 1981 c. 390; 1983 a. 524; 1987 a. 374; 2007 a. 204.

****NOTE: I did not amend s. 30.03 (2) to include violations of s. 281.36 since they would be violations under ch. 281, which are covered by the provisions in s. 299.95. If you want to amend s. 30.03 (2) to include violations of s. 281.36, s. 281.36 must be excluded from s. 299.95.

21 **Insert 5-1**

1 ~~SECTION 30.2022~~ 30.2022 (2) of the statutes is amended to read:

2 30.2022 (2) The exemption under sub. (1) does not apply unless the activity is
3 accomplished in accordance with interdepartmental liaison procedures established
4 by the department and the department of transportation for the purpose of
5 minimizing the adverse environmental impact, if any, of the activity. If the activity
6 affects a wetland, as defined in s. 23.32 (1), and if the department determines that
7 mitigation is required, the department of transportation shall conduct the
8 mitigation either by complying with the interdepartmental liaison procedures and
9 any applicable interagency agreement on mitigation banks that is approved by the
10 department of natural resources or by using any of the methods specified in s. 281.36
11 (3r) (a) 1. to 3.

History: 2003 a. 118 ss. 48 to 53, 129; 2005 a. 347.

12 **Insert 5-22**

13 

13 The department shall set each type of fee in the amount that is necessary to
14 meet the costs incurred by the department except as follows:

15 **Insert 6-14**

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

18 **Insert 7-23**

19 ~~SECTION 30.28~~ 30.28 (2m) (d) of the statutes is amended to read:

20 30.28 (2m) (d) The department, ~~by rule,~~ may increase any fee specified in sub.
21 (2) (a). ~~The department, by rule, may increase a fee specified in sub. (2) (b) (1) or (1m)~~
22 only if the increase is necessary to meet the costs incurred by the department in

1 ~~acting on general permits or on notices submitted under s. 30.207~~ ^e in performing the
2 activities for which the fee is charged.

3 History: 1977 c. 29; 1979 c. 221; 1981 c. 226, 346; 1987 a. 374; 1995 a. 27, 227; 1997 a. 27, 174; 2003 a. 118.

3 **Insert 10-11**

4 ~~SECTION 281.22~~ (2) (d) of the statutes is renumbered 281.36 (11) (c) 3. and
5 amended to read:

6 281.36 (11) (c) 3. The department, ~~by rule,~~ may increase the fee specified in sub.
7 (1) only if the increase is necessary to meet the costs of the department in performing
8 the activities for which the fee is charged.

9 History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27; 2001 a. 6.

9 **Insert 11-15**

10 ~~SECTION 281.22~~ ^{281.36} (1) (bd) of the statutes is created to read:

11 281.36 (1) (bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the
12 meaning exists on the effective date of this paragraph ... [LRB inserts date].

13 **Insert 14-14**

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

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

18 **Insert 14-17**

19 8. ~~7.~~ A discharge that is part of a development for municipal purposes, if the
20 discharge does not affect more than 10,000 square feet of wetland.

21 9. ~~8.~~ A discharge that is part of a development for recreational purposes, if the
22 discharge does not affect more than 10,000 square feet of wetland.

23 10. ~~9.~~ A discharge that is necessary for the construction, reconstruction, or
24 maintenance of a bridge or culvert that is part of a transportation project that is

1 being carried out under the direction and supervision of a city, village, town, or
2 county.

3 **Insert 14-21** ^{SECTION #} CR; 281.36 (3g) (d)

4 ^{281.36(3g)} (d) *Standards for wetland types.* In issuing general permits under this
5 ^(B) subsection, the department shall establish different requirements, conditions, and
6 exceptions for discharges into different types of wetlands. A general permit may not
7 authorize a discharge into ^a type of wetland that is classified as being rare or
8 imperiled under the natural heritage inventory prepared by the department under
9 s. 23.27 (3).

10 **Insert 16-12**

11 The application shall identify any other proposed discharges into wetlands that
12 are related to the discharge that is the subject of the application.

13 **Insert 21-5**

14 (h) *Factors used in review.* In its review under par. (g), the department shall
15 consider all of the following factors in assessing possible impacts to the functional
16 value of the wetland involved:

- 17 1. The direct impact of the proposed discharge.
- 18 2. The cumulative impact that may occur to the wetland's functional values
- 19 based on the proposed discharge and on any past impacts to those functional values.
- 20 3. The potential secondary impact of the proposed discharge.
- 21 4. The net positive or negative environmental impact of the proposed discharge.

****NOTE: I used the term "discharge" throughout par. (h). If the term "activity" *
is wanted, please call me to discuss this.

22 (i) *Finding by the department.* After its review under par. (g), the department
23 shall ^S decide which of the practicable alternative ^A proposed under par. (f) or by the

1 department is the least environmentally damaging. Based on the decision, the
 2 department shall make a determination that the discharge will comply with all
 3 applicable water quality standards, and shall issue a wetland individual permit, if
 4 the department finds that, upon implementation of that alternative, all of the
 5 following will occur:

- 6 1. All practicable measures will be taken to minimize the adverse impacts to
 7 the functional values of any wetland.
- 8 2. The discharge will not result in a significant adverse impact to the functional
 9 values of any wetland or to water quality in general.
- 10 3. The discharge will not result in other significant adverse environmental
 11 consequences.

****NOTE: Paragraphs (h) and (i) were challenging to draft. First of all, the
 "practicable analysis" is submitted but in all of the drafting instructions it is unclear what
 happens to it after submission. I, therefore, require DNR to review it and then decide
 which practicable alternative is the least environmentally damaging. Also, it is not clear
 what the alternative is an alternative to. Is an alternative an activity that is something
 else than a discharge? If so, then no permit is required since s. 281.36 is limited to
 discharges. Is a practicable alternative limited to an alternate type of discharge (small
 size, different place)? The language, as currently drafted, does not present this concept
 clearly.

****NOTE: Note in pars. (f), (g), (h), and (i) the references to wetlands sometimes is
 limited to just the wetland for which the individual permit is sought and other times
 refers to any wetland that may be affected. Please review carefully.

****NOTE: I assumed DNR would be required to issue the individual permit.
 Therefore I used the phrase "shall issue" instead of "may issue." OK?

12 (j) *Conditions on permit; length.* As a condition of the individual permit, the
 13 department shall require that the applicant implement the practicable alternative
 14 decided to be the least environmentally damaging under par. (i) and shall require
 15 that applicant participate in some type of mitigation under the mitigation program
 16 under sub. (3r). The permit shall specify the period of validity for the permit. The
 17 department may extend the period of validity.

1 **Insert 21-12**

(No ff)

2 for the purposes of restoring, enhancing, creating, or preserving wetlands or
3 other important water resources ^g features in an amount not less than the amount that

4 **Insert 21-14**

****NOTE: Currently "mitigation" is limited to ~~restoring, enhancing, creating~~ wetlands. Note that the concept of "preserving" is included under the in lieu fee program.
OK?

creating or restoring ~~OK?~~
restoring, enhancing, or creating

5 **Insert 21-22**

(6)

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

9 **Insert 21-24**

(No ff)

10 Under the in lieu fee program, the department may enter ^{into} agreements with
11 other entities for the purposes specified in par. (a) 2. ✓

12 **Insert 25-3** ^{e 13}

13 **SECTION** ~~281.36~~ 281.36 (11) (b) of the statutes is created to read:

14 281.36 (11) (b) *Additional fee.* The department may set and charge a fee in the
15 amount necessary to meet the costs incurred by the department in reviewing
16 mitigation projects that are conducted by mitigation banks.

17 **Insert 25-22**

18 **SECTION** ~~281.36~~ 281.36 (13) of the statutes is created to read:

(19)

19 281.36 (13) PARTIES TO A VIOLATION. ^(a) Whoever is concerned in the commission of
20 a violation of this section for which a forfeiture is imposed is a principal and may be
21 charged and found in violation although he or she did not directly commit the
22 violation and although the person who directly committed it has not been found in
23 violation ~~violation~~

1 (b) ^l(2) A person is concerned in the commission of the violation if the person does
2 any of the following:

3 1. (a) ^lDirectly commits the violation.

4 2. (b) ^lAids and abets the commission of the violation.

5 3. (c) ^lIs a party to a conspiracy with another to commit the violation or advises,
6 hires, counsels, or otherwise procures any person to commit it.

7 **Insert 29-3**

8 **SECTION ~~281.37~~ 281.37 (3) (e)** of the statutes is renumbered 281.36 (3t) (e) and
9 amended to read:

strike extra spaces

10 281.36 (3t) (e) Plan and project design requirements for a mitigation project,
11 ~~which shall consider the relation of the project design projects and banks, which shall~~
12 include requirements for relating the design of a mitigation project or a mitigation
13 bank to the hydrology of the watershed in which a mitigation project or mitigation
14 bank is located.

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

****NOTE: The syntax of the above provision in current law seemed very awkward to me. I have changed the wording to make the provision clearer.

15 **Insert 31-12**

****NOTE: Please review the above 3 provision ^srelating to positions and let me know if any changes are needed in light of the treatment of s. 20.370 (4) (bi) and (bm) in this draft. ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P4dn
MGG/.....

Wly

Date

1. This redraft contain^s all of the changes requested as of November 15th except for the changes in the procedure for issuing individual permits, initial applicability provisions, ~~and the changes to s. 30.2065.~~ Section 30.2065 is being treated in the substitute amendment to SB 24.

2. In making changes in ss. 30.28, ^{281.22} and 281.36 (11), I eliminated the requirement that fees be set by rule except for the fees for expedited service under s. 30.28 (2r), 2009 stats., and 281.22 (2m), 2009 stats. Also, whenever a fee is not set by rule, I included a requirement that the fee be set as necessary to meet DNR's costs.

3. I used the concept of "informational hearing" throughout s. 281.36. OK?

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