



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2803/P5
MGG:wlj:rs

RMR
/P5

~~Today~~ 11/28

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts
are out
of order.

Now=
TSAP

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

1 (bi), 23.321 (title), 30.025 (1b) (b), 30.03 (4) (a), 30.2022 (2), 30.207 (7) (a), 30.28
2 (title), 30.28 (2m) (a), 30.28 (2m) (am), 30.28 (2m) (b), 30.28 (2m) (d), 30.28 (2r)
3 (a) (intro.), 30.28 (2r) (a) 1., 30.28 (2r) (b), 30.298 (3), 281.165 (4) (a) 1m., 281.36
4 (4) (intro.), 281.36 (4) (b), 281.36 (4) (e) 1., 281.36 (4) (e) 2., 281.36 (4) (e) 3.,
5 281.36 (5) (intro.), 281.36 (5) (a), 281.36 (5) (b), 281.36 (6) (a) 1., 281.36 (9) (a)
6 (intro.), 281.36 (9) (a) 1., 281.36 (9) (a) 2., 281.36 (9) (a) 3., 281.98 (1) and 814.04
7 (intro.); **to repeal and recreate** 281.36 (title); and **to create** 20.370 (4) (bm),
8 23.321 (1) (title), 23.321 (2) (title), 23.321 (2m) (title), 23.321 (3) (title), 23.321
9 (3m), 23.321 (4) (title), 23.321 (5) (title), 23.321 (6) (title), 30.28 (1) (a), 30.28 (1)
10 (b), 30.28 (1m), 227.01 (13) (ru), 281.17 (10) (c), 281.36 (1) (bd), 281.36 (1) (bj),
11 281.36 (1) (cp), 281.36 (3b) (title), 281.36 (3b) (a), 281.36 (3g) (title), 281.36 (3g)
12 (a), 281.36 (3g) (c), 281.36 (3g) (d), 281.36 (3g) (e), 281.36 (3g) (f), 281.36 (3g) (g),
13 281.36 (3g) (h), 281.36 (3g) (i), 281.36 (3m), 281.36 (3r), 281.36 (9) (d) and (e),
14 281.36 (11) (a), 281.36 (11) (b), 281.36 (12), 281.36 (13) and 281.36 (14) of the
15 statutes; **relating to:** permits for discharges into wetlands; wetland
16 mitigation; wetland mapping and delineation; fees for permits and other
17 authorizations or determinations by the Department of Natural Resources
18 relating to structures, deposits, and other activities in or near navigable

1 waters; granting rule-making authority; making an appropriation; and
2 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:

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 (11)~~ 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. *as surcharge fees*

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

11 20.370 (4) (bm) *Wetland restoration — fees.* From the general fund, *all* moneys received under s. 281.36 (12) and under the in lieu fee program under s.
12 281.36 (3r) for activities authorized under that program. *all moneys received as payments by the department*
13 *all payments ← (I)*

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

15 **23.321 (title) Wetland map review, identification, and confirmation.**

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

17 **23.321 (1) (title) DEFINITION.**

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

19 **23.321 (2) (title) TYPES OF SERVICES.**

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

the restoration or creation of wetlands and for any other activities authorized under the in lieu fee program

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

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

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

4 23.321 **(3)** (title) FEES; GENERALLY.

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

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

7 23.321 **(3m)** FEES; EXPEDITED SERVICE. The department may charge a
8 supplemental fee for a type of service under sub. (2) that is in addition to the fee
9 charged under sub. (3) if all of the following apply:

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

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

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

15 23.321 **(4)** (title) TIME LIMITS.

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

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

18 23.321 **(5)** (title) LENGTH OF VALIDITY.

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

20 23.321 **(6)** (title) INCLUDED ON MAPS.

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

22 30.025 **(1b)** (b) "Permit" means an individual permit, a general permit, an
23 approval, or a contract required under this subchapter or subch. II, a permit or an
24 approval required under ch. 31, a storm water discharge permit required under s.
25 283.33 (1) (a), or a ~~water quality certification~~ wetland general permit or wetland

1 individual permit required under s. 281.36 or under rules promulgated under subch.
2 II of ch. 281 to implement 33 USC 1341 (a).

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

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

****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.

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

18 30.2022 (2) The exemption under sub. (1) does not apply unless the activity is
19 accomplished in accordance with interdepartmental liaison procedures established
20 by the department and the department of transportation for the purpose of
21 minimizing the adverse environmental impact, if any, of the activity. If the activity
22 affects a wetland, as defined in s. 23.32 (1), and if the department determines that
23 mitigation is required, the department of transportation shall conduct the

1 mitigation either by complying with the interdepartmental liaison procedures and
2 any applicable interagency agreement on mitigation banks that is approved by the
3 department of natural resources or by using any of the methods specified in s. 281.36
4 (3r) (a) 1. to 3.

5 SECTION 18. 30.2065 of the statutes is repealed.

6 SECTION 19. 30.207 (7) (a) of the statutes is amended to read:

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

15 SECTION 20. 30.28 (title) of the statutes is amended to read:

16 **30.28 (title) Fees for permits, other approvals, and determinations and**
17 **hearings.**

18 SECTION 21. 30.28 (1) of the statutes is renumbered 30.28 (1) (intro.) and
19 amended to read:

20 30.28 (1) (intro.) The department shall charge a ~~permit or approval~~ fee for
21 ~~carrying out its duties and responsibilities under ss. 30.10 to 30.205, 30.207 and~~
22 ~~30.21 to 30.27~~ reviewing, investigating, and making decisions on determinations and
23 on whether to issue or grant permits, contracts, authorizations, or other approvals
24 under this subchapter. The ~~permit or approval~~ required fee shall accompany the
25 ~~permit application, notice or request for approval or other submitted documentation.~~

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

3 SECTION 22. 30.28 (1) (a) of the statutes is created to read:

4 30.28 (1) (a) For an individual permit issued under s. 30.208, the application
5 fee shall be \$600.

6 SECTION 23. 30.28 (1) (b) of the statutes is created to read:

7 30.28 (1) (b) For authorization to proceed under a general permit issued under
8 s. 30.206, the application fee shall be \$300.

9 SECTION 24. 30.28 (1m) of the statutes is created to read:

10 30.28 (1m) ADDITIONAL FEES. (a) In addition to the fees required under sub. (1),
11 the department may, set and charge fees for making any of the following
12 determinations:

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

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

20 SECTION 25. 30.28 (2) (title) of the statutes is repealed.

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

22 SECTION 27. 30.28 (2) (a) 1. of the statutes is repealed.

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

24 SECTION 29. 30.28 (2) (a) 3. of the statutes is repealed.

25 SECTION 30. 30.28 (2) (b) 1. of the statutes is renumbered 30.28 (1) (c).

1 **SECTION 31.** 30.28 (2) (b) 2. of the statutes is renumbered 30.28 (1) (d).

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

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

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

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

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

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

19 **SECTION 35.** 30.28 (2m) (c) of the statutes is repealed.

20 **SECTION 36.** 30.28 (2m) (d) of the statutes is amended to read:

21 30.28 **(2m)** (d) The department, ~~by rule,~~ may increase any fee specified in sub.
22 ~~(2) (a).~~ The department, by rule, may increase a fee specified in sub. (2) (b) (1) or (1m)
23 only if the increase is necessary to meet the costs incurred by the department in
24 ~~acting on general permits or on notices submitted under s. 30.207~~ performing the
25 activities for which the fee is charged.

1 **SECTION 37.** 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 38.** 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 39.** 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 40.** 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 41.** 31.39 (2m) (c) of the statutes is repealed.

21 **SECTION 42.** 227.01 (13) (rt) of the statutes is repealed.

22 **SECTION 43.** 227.01 (13) (ru) of the statutes is created to read:

23 227.01 **(13)** (ru) Is a wetland general permit issued under s. 281.36 (3g).

24 **SECTION 44.** 281.165 (4) (a) 1m. of the statutes, as created by 2011 Wisconsin
25 Act 6, is amended to read:

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 45.** 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. (12)

7 **SECTION 46.** 281.22 (title) of the statutes is renumbered 281.36 (11) (title) and
8 amended to read: (12)

9 281.36 (11) (title) FEE APPLICATION FEES AND TIME LIMITS FOR WATER QUALITY
10 DETERMINATIONS FOR WETLANDS.

11 **SECTION 47.** 281.22 (1) of the statutes is repealed. (12)

12 **SECTION 48.** 281.22 (2) (title) of the statutes is renumbered 281.36 (11) (c)
13 (title). (12)

14 **SECTION 49.** 281.22 (2) (a) of the statutes is renumbered 281.36 (11) (c) 1. and
15 amended to read:

16 281.36 (11) (c) 1. The department shall refund ~~the~~ an application fee charged
17 for a wetland individual permit under par. (a) 1. 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 50.** 281.22 (2) (b) of the statutes is renumbered 281.36 (11) (c) 2. and (12)

23 amended to read:

24 281.36 (11) (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

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 51.** 281.22 (2) (c) of the statutes is repealed. (12)

5 **SECTION 52.** 281.22 (2) (d) of the statutes is renumbered 281.36 ~~(11)~~ (c) 3. and
6 amended to read: (12)

7 281.36 ~~(11)~~ (c) 3. The department, ~~by rule~~, may increase the fee specified in sub.
8 (1) only if the increase is necessary to meet the costs of the department in performing
9 the activities for which the fee is charged. (12)

10 **SECTION 53.** 281.22 (2m) (title) of the statutes is renumbered 281.36 ~~(11)~~ (d)
11 (title). (12)

12 **SECTION 54.** 281.22 (2m) (a) (intro.) of the statutes is renumbered 281.36 ~~(11)~~ (d)
13 (d) 1. (intro.) and amended to read: (12)

14 281.36 ~~(11)~~ (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: (12)

17 **SECTION 55.** 281.22 (2m) (a) 1. of the statutes is renumbered 281.36 ~~(11)~~ (d) 1.
18 a. and amended to read: (12)

19 281.36 ~~(11)~~ (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. (12)

22 **SECTION 56.** 281.22 (2m) (a) 2. of the statutes is renumbered 281.36 ~~(11)~~ (d) 1.
23 b. (12)

24 **SECTION 57.** 281.22 (2m) (b) of the statutes is renumbered 281.36 ~~(11)~~ (d) 2. and
25 amended to read:

(B) → (12)

1 281.36 (11) (d) 2. If the department promulgates a rule charges a fee under par.
2 (a) subd. 1, the rule shall contain ~~for~~ a time limit for making ~~determinations under~~
3 ~~sub. (1) decisions subject to the fee.~~ (12)

4 SECTION 58. 281.22 (3) of the statutes is renumbered 281.36 (11) (e) and
5 amended to read:

6 281.36 (11) (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 59. 281.22 (4) of the statutes is repealed.

9 SECTION 60. 281.36 (title) of the statutes is repealed and recreated to read:

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

11 SECTION 61. 281.36 (1) (bd) of the statutes is created to read:

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

14 SECTION 62. 281.36 (1) (am) of the statutes is repealed.

15 SECTION 63. 281.36 (1) (bg) of the statutes is repealed.

16 SECTION 64. 281.36 (1) (bj) of the statutes is created to read:

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

19 SECTION 65. 281.36 (1) (c) and (cm) of the statutes are repealed.

20 SECTION 66. 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 of the project.

25 SECTION 67. 281.36 (1) (cr) of the statutes is repealed.

1 **SECTION 68.** 281.36 (1m) of the statutes is repealed.

2 **SECTION 69.** 281.36 (2) (title) of the statutes is repealed.

3 **SECTION 70.** 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 issued by the department under
8 this section or the discharge is exempt under sub. (4). No person may violate any
9 condition ~~imposed by the department in a water quality certification contained in a~~
10 wetland general or individual permit issued by the department under this section.
11 The department may not issue a ~~water quality certification~~ wetland general or
12 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 71.** 281.36 (2) (b) of the statutes is repealed.

16 **SECTION 72.** 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

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 73. 281.36 (3b) (title) of the statutes is created to read:

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

12 SECTION 74. 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 75. 281.36 (3g) (title) of the statutes is created to read:

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

18 SECTION 76. 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.

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

22 281.36 **(4)** (3g) (c) *Additional permits.* The department may issue wetland
23 general permits, in addition to those required under pars. (a) and (b), to regulate
24 other discharges that affect wetlands located in this state.

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

1 281.36 (3g) (d) *Standards for wetland types.* In issuing general permits under
 2 this subsection, the department shall establish different requirements, conditions,
 3 and exceptions for discharges into different types of wetlands. A general permit may
 4 not authorize a discharge into a type of wetland that is classified as being rare or
 5 imperiled under the natural heritage inventory prepared by the department under
 6 s. 23.27 (3).

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

8 281.36 (3g) (e) *Period of validity; subsequent actions.* A wetland general permit
 9 issued under this subsection is valid for a period of 5 years. Upon compliance with
 10 the requirements under pars. (f) ~~and~~ (g), the department may renew, modify, or
 11 revoke a wetland general permit issued under this subsection, and until such
 12 renewal, modification, or revocation, the general permit shall remain in effect.

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

14 281.36 (3g) (f) ^① *Public notice* ~~Notice of intent to issue~~ ^{provide} The department shall ~~provide~~ to
 15 interested and potentially interested members of the public notices of its intention
 16 to issue a wetland general permit under this subsection. Procedures for providing
 17 public notices shall include all of the following:

- 18 1. A procedure ~~for~~ publishing a class 1 notice under ch. 985 or publishing a ~~notice~~
 19 notice on the department's Internet Web site.
- 20 2. A procedure under which a copy of the notice is provided to any person or
 21 group upon request of the person or group.

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

23 281.36 (3g) (g) *Public information hearing.* 1. The department shall provide
 24 an opportunity for any interested state agency or federal agency or person or group
 25 of persons to request a public informational hearing with respect to the department's

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 16-21

1 intention to issue a wetland general permit under this subsection. The request for
2 the hearing shall be filed with the department within 30 days after the ^{provision} ~~circulation~~
3 of the public notice under par. (f) and shall indicate the interest of the party filing the
4 request and the reasons why the hearing is warranted.

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

9 3. Public notice of any hearing held under this subsection ^{Wetland Act} shall be circulated
10 in accordance with the requirements under par. (f). ^{INS 17-10 (No ft)}

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

12 281.36 (3g) (h) *Authorizations for discharges under wetland general permits.*

13 ✓ 1. A person wishing to proceed with a discharge that may be authorized under a
14 wetland general permit shall apply to the department, with written notification of
15 the person's wish to proceed, not less than 30 days before commencing the discharge
16 authorized by the general permit unless subd. ^{4.} ~~§~~ (applies). The application shall
17 provide information describing the discharge in order to allow the department to
18 determine whether the discharge is authorized by the wetland general permit and
19 shall give the department consent to enter and inspect the site, subject to sub. (9).
20 The application shall identify any other proposed discharges into wetlands that are
21 related to the discharge that is the subject of the application. The application shall
22 include a detailed explanation of why the impact to the wetland cannot be avoided
23 and how the impact to the wetland will be minimized to the greatest extent
24 practicable. The application shall be accompanied by the fee specified in sub. ⁽¹²⁾ ~~(11)~~ (a)

25 If the application is for authorization to proceed under a wetland general permit
and the fee authorized under sub. (11) ^(a) ~~(11)~~, if applicable.

1 with a discharge that is part of a development for commercial, residential, or
2 industrial purposes, the application shall be accompanied by a surcharge, as
3 calculated under sub. (12). The department may make a request for additional
4 information one time during this 30-day period.

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

12 3. If the department requests additional information under subd. 1., the
13 30-day period is tolled from the date the person applying for authorization to proceed
14 receives the request until the date on which the department receives the additional
15 information.

16 4. As part of a wetland general permit issued under par. (c), the department
17 may waive the requirement that a person wishing to proceed under the general
18 permit apply to the department as required under this paragraph so that the person
19 may proceed with the discharge without specific authorization from the department.

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

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

23 281.36 (3g) (i) *Wetland individual permit in lieu of wetland general permit.* For
24 a proposed discharge for which an application has been received by the department
25 under par. (h), the department may decide to require that a person who submitted

1 the application apply for a wetland individual permit if the department has
2 inspected the site as provided in par. (h) and has determined that conditions specific
3 to the site require additional restrictions on the discharge in order to provide
4 reasonable assurance that no significant adverse impacts to the functional values of
5 the wetland will occur.

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

7 281.36 (3m) WETLAND INDIVIDUAL PERMITS. (a) *When permit required.* Any
8 person wishing to proceed with a discharge into any wetland shall submit an
9 application for a wetland individual permit under this subsection unless the
10 discharge has been authorized under a wetland general permit as provided in sub.
11 (3g) or is exempt under sub. (4). Before submitting the application, the department
12 shall hold a meeting with the applicant to discuss the details of the proposed
13 discharge and the requirements for submitting the application and for delineating
14 the wetland. An applicant may include in the application a request for a public
15 informational hearing. The application shall be accompanied by the applicable fee
16 specified in sub. (11) ^{or} (a) 1. (12)

17 (b) *Procedure for completing applications.* 1. In issuing a wetland individual
18 permit under this subsection, the department shall initially determine whether a
19 complete application for the individual permit has been submitted and, no later than
20 30 days after the application is received by the department, provide a notice to the
21 applicant in writing about the initial determination of completeness. If the
22 department determines that the application is complete, the department shall issue
23 a notice of complete application within the 30-day period.

24 2. If the department determines that the application is incomplete, the
25 department may make one request for additional information within the 30-day

1 period specified under subd. 1. The request shall state the reason for determining
2 the application to be incomplete and the specific items of information necessary to
3 make the application complete. Within 10 days after the receipt of the additional
4 information, the department shall make a determination as to whether the
5 application is complete and shall inform the applicant of that determination. An
6 applicant may supplement and resubmit an application that the department has
7 determined to be incomplete. There is no limit on the number of times that an
8 applicant may resubmit an application that the department has determined to be
9 incomplete, but the department may not request items of information that are
10 outside the scope of the original request unless the applicant and the department
11 both agree.

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

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

1 shall provide the notice within 15 days after making the determination that the
2 application is complete.

3 (i) ~~(a)~~ *Public comment.* The department shall provide a period for public comment
4 after the department has provided a notice of ~~complete~~ ^{pending} application under par. (c) ~~(h)~~ ✓
5 during which time any person may submit written comments with respect to the
6 application for a wetland individual permit. The department shall retain all of the
7 written comments submitted during this period and shall consider all of the
8 comments in rendering a decision on the application. The period for public comment
9 shall end on the 30th day following the date on which the department provides the
10 notice of ~~complete~~ ^{pending} application ^{except as provided in par. (j) subd. 2}

11 (j) ~~(f)~~ *Decision.* The department shall render a decision on the application within
12 30 days after the date the period for public comment under ~~par. (d)~~ ^{par. (i)} ends unless a
13 public informational hearing is held. If such a hearing is held, the department shall
14 render the decision ~~within 30 days after the date the hearing is concluded.~~

15 (k) ~~(h)~~ *Analysis of practicable alternatives by applicant.* An applicant shall include
16 in an application submitted or resubmitted under this subsection an analysis of the
17 practicable alternatives that will minimize and avoid the adverse impacts of the
18 discharge on the functional values of the wetland, and that will not result in any
19 other significant adverse environmental consequences.

20 (L) ~~(g)~~ *Review of analysis.* The department shall review the analysis of practicable
21 alternatives present in the application under par. ~~(k)~~ ^(k). The department shall limit its
22 analysis to those practicable alternatives that will have an impact on the site of the
23 discharge and on those areas that are adjacent to the site if the department
24 determines that all of the following apply:

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1 1. The proposed project creating the discharge will result in a demonstrable
2 economic benefit to the public.

3 2. The wetland to be affected is not a type of wetland that is classified as being
4 rare or imperiled under the natural heritage inventory prepared by the department
5 under s. 23.27 (3).

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

7 ~~(m)~~ ~~(h)~~ ^(L) *Factors used in review.* In its review under par. ~~(g)~~, the department shall
8 consider all of the following factors in assessing possible impacts to the functional
9 value of the wetland involved:

10 1. The direct impact of the proposed discharge.

11 2. The cumulative impact that may occur to the wetland's functional values
12 based on the proposed discharge and on any past impacts to those functional values.

13 3. The potential secondary impact of the proposed discharge.

14 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.

15 ~~(n)~~ ~~(h)~~ ^(L) *Finding by the department.* After its review under par. ~~(g)~~, the department
16 shall decide which of the practicable alternatives proposed under par. ~~(f)~~ ^(K) or by the
17 department is the least environmentally damaging. Based on the decision, the
18 department shall make a determination that the discharge will comply with all
19 applicable water quality standards, and shall issue a wetland individual permit, if
20 the department finds that, upon implementation of that alternative, all of the
21 following will occur:

22 1. All practicable measures will be taken to minimize the adverse impacts to
23 the functional values of any wetland.

1 2. The discharge will not result in a significant adverse impact to the functional
2 values of any wetland or to water quality in general.

3 3. The discharge will not result in other significant adverse environmental
4 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 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?

5 P ↓
6 (φ) → Conditions on permit; length. As a condition of the individual permit, the
7 decided to be the least environmentally damaging under par. (h) and shall require
8 that applicant participate in some type of mitigation under the mitigation program
9 under sub. (3r). The permit shall specify the period of validity for the permit. The
10 department may extend the period of validity.

← INSERT
23-10

SECTION 85. 281.36 (3r) of the statutes is created to read:

12 281.36 (3r) MITIGATION (CS) → IN LIEU FEE PROGRAM (a) The department shall establish a mitigation
13 program that applies only to the issuance of wetland individual permits and that
14 allows mitigation to be accomplished by any of the following methods:

- 15 1. Purchasing credits from a mitigation bank located in this state.
- 16 2. Payment of a fee under an in lieu fee program established by the department
- 17 for the purposes of restoring, enhancing, creating, or preserving wetlands or other

1 important water resource features in an amount not less than the amount that would
2 be necessary to purchase the required amounts of credits from a mitigation bank.

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

3 ~~20~~ ~~BA~~ Completing a mitigation project within the same watershed or within
4 one-half mile of the site of the discharge.

5 (b) Under the mitigation program, ~~the types of~~ mitigation ^{as} (specified in par. (a)
6 1. ~~and 2.~~ shall be the preferred types of mitigation.

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

10 (d) Under the in lieu fee program, the type of mitigation shall be consistent with
11 federal regulations. Under the in lieu fee program, the department may enter into
12 agreements with other entities for the purposes specified in par. (a) 2.

13 (d) ~~(e)~~ The department shall establish under the mitigation program mitigation
14 ratios that are consistent with the federal rules that apply to mitigation and
15 mitigation banks but the minimum ratio shall be at least 1.2 acres for each acre
16 affected by the discharge.

17 SECTION 86. 281.36 (4) (intro.) of the statutes is amended to read:

18 281.36 (4) EXEMPTIONS. (intro.) Except as provided in sub. (5), the certification
19 permitting requirement under sub. (2) (3b) does not apply to any discharge that is
20 the result of any of the following activities:

21 SECTION 87. 281.36 (4) (b) of the statutes is amended to read:

22 281.36 (4) (b) Maintenance, emergency repair, or reconstruction of damaged
23 parts of structures that are in use in a ~~nonfederal~~ wetland.

← INSERT 24-16
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1 **SECTION 88.** 281.36 (4) (e) 1. of the statutes is amended to read:

2 281.36 **(4)** (e) 1. That the flow and circulation patterns and chemical and
3 biological characteristics of the affected ~~nonfederal~~ wetland are not impaired.

4 **SECTION 89.** 281.36 (4) (e) 2. of the statutes is amended to read:

5 281.36 **(4)** (e) 2. That the reach of the affected ~~nonfederal~~ wetland is not
6 reduced.

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

8 281.36 **(4)** (e) 3. That any adverse effect on the aquatic environment of the
9 affected ~~nonfederal~~ wetland is minimized to the degree required by the department.

10 **SECTION 91.** 281.36 (5) (intro.) of the statutes is amended to read:

11 281.36 **(5)** INAPPLICABILITY OF EXEMPTIONS. (intro.) Notwithstanding sub. **(4)**,
12 a discharge that would be exempt under sub. **(4)** is subject to the ~~certification~~
13 permitting requirement under sub. ~~(2)~~ **(3b)** if the discharge is incidental to an activity
14 that has as its purpose bringing a ~~nonfederal~~ wetland, or part of a ~~nonfederal~~
15 wetland, into a use for which it was not previously subject and if the activity may do
16 any of the following:

17 **SECTION 92.** 281.36 (5) (a) of the statutes is amended to read:

18 281.36 **(5)** (a) Impair the flow or circulation of any ~~nonfederal~~ wetland.

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

20 281.36 **(5)** (b) Reduce the reach of any ~~nonfederal~~ wetland.

21 **SECTION 94.** 281.36 (6) (a) 1. of the statutes is amended to read:

22 281.36 **(6)** (a) 1. Make the rules consistent with existing federal law or
23 interpretation.

24 **SECTION 95.** 281.36 (7) of the statutes is repealed.

25 **SECTION 96.** 281.36 (8) (title) of the statutes is repealed.

1 **SECTION 97.** 281.36 (8) (a) of the statutes is repealed.

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

3 **SECTION 99.** 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (b) and
4 amended to read:

5 281.36 **(3g)** (b) Additional required permits. ~~The~~ In addition to the wetland
6 general permits required under par. (a), the department shall issue wetland general
7 water quality certifications permits that are consistent with all of the, and
8 correspond to, any general permits that are issued under 33 USC 1344 (e) that
9 applied on January 8, 2001, to nonfederal wetlands located in this state and that
10 regulate discharges other than those regulated under the required wetland general
11 permits issued under par. (a).

12 **SECTION 100.** 281.36 (8) (bn) 2. of the statutes is repealed.

13 **SECTION 101.** 281.36 (8) (c) of the statutes is repealed.

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

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

16 **SECTION 104.** 281.36 (9) (a) (intro.) of the statutes is amended to read:

17 281.36 **(9)** (a) (intro.) For purposes of determining whether to issue a wetland
18 individual permit, whether authorization to proceed as authorized under a wetland
19 general permit is appropriate, or whether an exemption under sub. (4) is
20 appropriate, and for purposes of enforcing this section, any employee or other
21 representative of the department, upon presenting his or her credentials, may do any
22 of the following:

23 **SECTION 105.** 281.36 (9) (a) 1. of the statutes is amended to read:

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 106.** 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 107.** 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 108.** 281.36 (9) (am) to (c) of the statutes are repealed.

14 **SECTION 109.** 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.

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

22 **SECTION 110.** 281.36 (10) of the statutes is repealed.

23 **SECTION 111.** 281.36 ^{(B) (12)} ~~(11)~~ (a) of the statutes is created to read:

← ****x from p. 28

(B) → (12)

1 281.36 (11) (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.

(12)

7 SECTION 112. 281.36 (11) (b) of the statutes is created to read:

(B) → (12)

8 281.36 (11) (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 projects that are conducted by mitigation banks.

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11 SECTION 113. 281.36 (12) of the statutes is created to read:

RESTORATION FEES (a)

12 281.36 (12) SURCHARGE FEES (a) The department shall set a surcharge fee to be
13 charged for each application to proceed under a wetland general permit that is issued
14 under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis by
15 the department and may not exceed more than 50 percent of the market price, as
16 determined by the department, for the equivalent purchase of credits from a
17 mitigation bank.

Insert (12-28) 28-28

18 SECTION 114. 281.36 (13) of the statutes is created to read:

19 281.36 (13) PARTIES TO A VIOLATION. (a) Whoever is concerned in the commission
20 of a violation of this section for which a forfeiture is imposed is a principal and may
21 be 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.

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

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

5 **SECTION 115.** 281.36 (14) of the statutes is created to read:

6 281.36 **(14)** PENALTIES. (a) Except as provided in par. (b), any person who
7 violates any provision of this section shall forfeit not less than \$100 nor more than
8 \$10,000 for the first offense and shall forfeit not less than \$500 nor more than
9 \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

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

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

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

21 **SECTION 116.** 281.37 (title) of the statutes is repealed.

22 **SECTION 117.** 281.37 (1) (intro.) of the statutes is repealed.

23 **SECTION 118.** 281.37 (1) (a) of the statutes is repealed.

24 **SECTION 119.** 281.37 (1) (b) of the statutes is renumbered 281.36 (1) (bn) and
25 amended to read:

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

5 **SECTION 120.** 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (bL) and
6 amended to read:

7 281.36 (1) (bL) “~~Wetlands mitigation~~ Mitigation bank” means a system of
8 accounting for wetland loss and compensation that includes one or more sites where
9 wetlands are restored, enhanced or created to provide ~~transferable~~ credits to be
10 subsequently ~~applied~~ purchased to compensate for adverse impacts to other
11 wetlands.

12 **SECTION 121.** 281.37 (1) (e) of the statutes is repealed.

13 **SECTION 122.** 281.37 (1) (f) of the statutes is repealed.

14 **SECTION 123.** 281.37 (2) of the statutes is repealed.

15 **SECTION 124.** 281.37 (2m) of the statutes is renumbered 281.36 (8m), and
16 281.36 (8m) (a) 1., as renumbered, is amended to read:

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

1 **SECTION 125.** 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t)
2 (intro.) and amended to read:

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

9 **SECTION 126.** 281.37 (3) (a) of the statutes is renumbered 281.36 (3t) (a) and
10 amended to read:

11 281.36 **(3t)** (a) Requirements for the ~~avoidance and minimization of adverse~~
12 ~~impacts to the wetland that will be affected by the permitted activity~~ analysis of
13 practicable alternatives that is included in an application for a wetland individual
14 permit under sub.(3m) ^(K) ~~A~~.

15 **SECTION 127.** 281.37 (3) (b) of the statutes is renumbered 281.36 (3t) (b) and
16 amended to read:

17 281.36 **(3t)** (b) The conditions under which credits ~~in a wetlands mitigation~~
18 ~~bank may be used for wetland compensatory mitigation~~ purchased from a mitigation
19 bank to comply with the mitigation program under sub. (3r).

20 **SECTION 128.** 281.37 (3) (c) of the statutes is renumbered 281.36 (3t) (c) and
21 amended to read:

22 281.36 **(3t)** (c) Enforcement of ~~a requirement to implement a mitigation project~~
23 requirements under the mitigation program under sub. (3r).

24 **SECTION 129.** 281.37 (3) (d) of the statutes is renumbered 281.36 (3t) (d) and
25 amended to read:

1 281.36 (3t) (d) Baseline studies of ~~the wetland~~ wetlands that will be affected
2 by the ~~permitted activity~~ discharges and of the sites for mitigation project-site
3 projects.

4 **SECTION 130.** 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and
5 amended to read:

6 281.36 (3t) (e) Plan and ~~project~~ design requirements for ~~-a-~~ mitigation ~~project,~~
7 ~~which shall consider the relation of the project design projects and banks, which shall~~
8 include requirements for relating the design of a mitigation project or a mitigation
9 bank to the hydrology of the watershed in which a mitigation project or mitigation
10 bank is located.

 ***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.

11 **SECTION 131.** 281.37 (3) (f) of the statutes is renumbered 281.36 (3t) (f), and
12 281.36 (3t) (f) (intro.), as renumbered, is amended to read:

13 281.36 (3t) (f) (intro.) ~~The comparability of a wetland~~ Standards for comparing
14 wetlands that will be restored, enhanced, or created to ~~the wetland wetlands~~ that
15 will be adversely affected by the ~~permitted activity~~ discharges, including all of the
16 following:

17 **SECTION 132.** 281.37 (3) (g) of the statutes is repealed.

18 **SECTION 133.** 281.37 (3) (h) of the statutes is renumbered 281.36 (3t) (h) and
19 amended to read:

20 281.36 (3t) (h) Standards for measuring the short-term and long-term success
21 of ~~-a-~~ mitigation ~~project~~ projects and mitigation bank sites and requirements for the
22 short-term and long-term monitoring of ~~-a-~~ mitigation ~~project~~ projects and
23 mitigation bank sites.

1 **SECTION 134.** 281.37 (3) (i) of the statutes is renumbered 281.36 (3t) (i) and
2 amended to read:

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

8 **SECTION 135.** 281.37 (3) (j) of the statutes is repealed.

9 **SECTION 136.** 281.37 (3m) of the statutes is repealed.

10 **SECTION 137.** 281.37 (4) of the statutes is repealed.

11 **SECTION 138.** 281.37 (5) of the statutes is renumbered 281.36 (14) and amended
12 to read:

13 281.36 **(14)** REPORT TO LEGISLATURE. No later than January 31, 2003, and no
14 later than January 31 of each subsequent odd-numbered year, the department shall
15 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the
16 impact of the implementation of ~~this section~~ mitigation on wetland resources and on
17 the issuance of permits or other approvals under ss. 59.692, 61.351, 62.231, 87.30,
18 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

19 **SECTION 139.** 281.98 (1) of the statutes is amended to read:

20 281.98 **(1)** Except as provided in ss. 281.344 (14) (a), 281.36, 281.346 (14) (a),
21 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any
22 rule promulgated or any plan approval, license, special order, or water quality
23 certification issued under this chapter shall forfeit not less than \$10 nor more than
24 \$5,000 for each violation. Each day of continued violation is a separate offense.
25 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

as affected by 2011 Wisconsin Act 2,

1

SECTION 140. 814.04 (intro.) of the statutes is amended to read:

2

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 100.195 (5m)

3

(b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b)~~

4

~~4.~~ 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),

5

895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51

6

(2) (b), and 995.10 (3), when allowed costs shall be as follows:

7

SECTION 141. Nonstatutory provisions.

8

(1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department

9

of natural resources are increased by 2.0 PR positions to be funded from the

10

appropriation under section 20.370 (4) (bi) of the statutes, to implement the

11

mitigation program under section 281.36 (3r) of the statutes as created in this act.

12

(2) PROJECT POSITION CHANGES.

13

(a) The authorized FTE positions for the department of natural resources are

14

decreased by 3.0 PR project positions funded from the appropriation under section

15

20.370 (4) (bi) of the statutes, for the purpose for which the appropriation is made.

16

(b) The authorized FTE positions for the department of natural resources are

17

increased by 3.0 PR positions to be funded from the appropriation under section

18

20.370 (4) (bi) of the statutes, for the purpose of providing wetland identification and

19

confirmation services under section 23.321 of the statutes, as affected by this act.

***NOTE: Please review the above 3 provisions relating 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.

20

SECTION 142. Effective date.

21

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

22

publication.

23

(END)

1 (ar) A permit issued under par. (a) or (am) is in lieu of any permit or contract
2 that would otherwise be required for that activity under this subchapter.

3 **SECTION 43.** 30.206 (1) (b) of the statutes is created to read:

4 **30.206 (1) (b)** A general permit issued under par. (a) or (am) is valid for a period
5 of 5 years, and an activity that the department determines is authorized by a general
6 permit remains authorized under the general permit for a period of 5 years from the
7 date of the department's determination or until the activity is completed, whichever
8 occurs first, regardless of whether the general permit expired before the activity is
9 completed. The department may renew or modify, or revoke a general permit issued
10 under par. (a) or (am) or s. 30.2065 upon compliance with the requirements under
11 subs. (2b) and (2m); and until such renewal, modification, or revocation, the general
12 permit shall remain in effect.

13 **SECTION 44.** 30.206 (1g) of the statutes is repealed.

14 **SECTION 45.** 30.206 (1m) of the statutes is repealed.

15 **SECTION 46.** 30.206 (1r) of the statutes is created to read:

16 **30.206 (1r) TRANSITIONS BETWEEN PERMITS.** Any general permit issued under
17 this section that is valid on the effective date of this subsection ... [LRB inserts date],
18 shall remain valid until the date upon which a general permit issued under sub. (1)
19 (a) or (am) that authorizes the same activity becomes effective.

20 **SECTION 47.** 30.206 (2b) of the statutes is created to read:

21 **30.206 (2b) PUBLIC NOTICE.** (a) The department shall provide to interested
22 members of the public notices of its intention to issue, renew, modify, or revoke a
23 general permit under sub. (1) (a) or (am) or s. 30.2065. Procedures for providing
24 public notices shall include all of the following:

25 1. Publication of a class 1 notice under ch. 985.

INSERT 16-21

**** NOTE: MGG - Should cross-reference above re to par. (f) instead of to "subsection"?

INS
16-21
Continued

1 2. Providing a copy of the notice to any person or group upon request of the
2 person or group.

3 3. Publication of the notice through an electronic notification system
4 established by the department.

5 4. Publication of the notice on the department's Internet Web site.

6 (CR) 281.36(39)(f) (f) (am) [⊕] Date of notice
7 For the purpose of determining the date on which public notice is provided
8 under this subsection, the date on which the department first publishes the notice
9 on its Internet Web site shall be considered the date of public notice.

10 (f) (m) [⊕] Written comments
11 The department shall provide a period of not less than 30 days after the date
12 of the public notice during which time interested persons may submit their written
13 comments on the department's intention to issue, ~~renew, modify, or revoke a general~~ ^(STET)
14 ~~wetland general permit under this subsection.~~ ~~permit under sub. (1) (a) or (am) or s. 30.2065.~~ ~~general~~

15 All written comments submitted
16 during the period for comment shall be retained by the department and considered
17 by the department in acting on the general permit.

18 (fr) [⊕] Description in notice ^{e provided} f
19 Every public notice ~~issued~~ by the department under par. (a) shall include
20 a description of ~~any activities~~ ^{the discharges} to be authorized under the ~~general permit.~~ ^{wetland}

21 SECTION 48. 30.206 (2m) of the statutes is created to read:

22 30.206 (2m) PUBLIC HEARING. (a) 1. The department shall provide an
23 opportunity for any interested state agency or federal agency or person or group of
24 persons to request a public hearing with respect to the department's intention to
issue, renew, modify, or revoke a general permit under sub. (1) (a) or (am) or s.
30.2065. Such request for a public hearing shall be filed with the department within
30 days after the provision of the public notice under sub. (2b) and shall indicate the
interest of the party filing the request and the reasons why a hearing is warranted.

CR
281.36
(39)(f)
CR
281.36
(39)(fr)

1 2. ~~The department shall hold a public hearing upon a request under subd. 1.~~
2 if the department determines that there is a significant public interest in holding
3 such a hearing. ~~Hearings held under this section are not contested cases under s.~~
4 227.01 (3).

5 (b) ~~Public notice of any hearing held under this subsection shall be provided in~~
6 ~~accordance with the requirements under sub. (2b).~~ The public notice shall include
7 the time, date, and location of the hearing, a summary of the subject matter of the
8 ^{westland} general permit, and information indicating where additional information about the
9 general permit may be viewed on the department's Internet Web site. The summary
10 shall contain a brief, precise, easily understandable, plain language description of
11 the subject matter of the general permit.

1WS
17-10

12 **SECTION 49.** 30.206 (3) (a) of the statutes is amended to read:

13 30.206 (3) (a) [✓] A person wishing to proceed with an activity that may be
14 authorized by a general permit under this section or s. 30.2065 shall apply to the
15 department, with written notification of the person's wish to proceed, not less than
16 30 days before commencing the activity authorized by a general permit. [✓] The
17 ~~notification~~ shall provide information describing the activity in order to allow the
18 department to determine whether the activity is authorized by the general permit
19 and shall give the department consent to enter and inspect the site, subject to s.
20 30.291. The department may make a request for additional information one time
21 during the 30-day period. If the department makes a request for additional
22 information, the 30-day period is tolled from the date the person applying for
23 authorization to proceed receives the request until the date on which the department
24 receives the information.

25 **SECTION 50.** 30.206 (5) of the statutes is amended to read:

1 30.206 (5) FAILURE TO FOLLOW PROCEDURAL REQUIREMENTS. Failure of an
2 applicant to follow the procedural requirements of this section may result in
3 forfeiture but may not, by itself, result in abatement of the activity.

4 **SECTION 51.** 30.206 (6) of the statutes is amended to read:

5 30.206 (6) REQUEST FOR INDIVIDUAL PERMIT. A person proposing an activity for
6 which a general permit has been issued under this section or s. 30.2065 may request
7 an individual permit under the applicable provisions of this subchapter or ch. 31 in
8 lieu of seeking authorization under the general permit.

9 **SECTION 52.** 30.2065 (2) (a) of the statutes is amended to read:

10 30.2065 (2) (a) ~~Upon compliance with the requirements under subs. (3) and (4),~~
11 ~~the~~ The department may issue a general permit to a person wishing to proceed with
12 an activity. A permit issued under this subsection is in lieu of any permit or approval
13 that would otherwise be required for that activity under this chapter or s. 31.02,
14 31.12, 31.33, 281.15, or 281.36.

15 **SECTION 53.** 30.2065 (2) (b) of the statutes is amended to read:

16 30.2065 (2) (b) A general permit issued under this subsection is valid for a
17 period of 5 years except that an activity that the department determines is
18 authorized by a general permit remains authorized under the permit until the
19 activity is completed. ~~The department may renew or modify a general permit issued~~
20 ~~under this subsection.~~

21 **SECTION 54.** 30.2065 (3) to (9) of the statutes are repealed.

22 **SECTION 55.** 30.208 (2) of the statutes is renumbered 30.208 (2) (a) and
23 amended to read:

24 30.208 (2) (a) ^(b) Review: no additional information required. In issuing
25 individual permits or entering contracts under this subchapter, the department shall

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21-2



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21-14²

PLAIN

1 initially determine whether a complete application for the permit or contract has
 2 been submitted and, no later than review an application, and within 30 days after
 3 the application is submitted, the department shall determine that either the
 4 application is complete or that additional information is needed. If the department
 5 determines that the application is complete, the department shall notify the
 6 applicant in writing about the initial determination of completeness of that fact
 7 within the 30-day period, and the date on which the notice under this paragraph is
 8 sent shall be considered the date of closure for purposes of sub (3)(a) par. (f) 1

PLAIN

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PLAIN

9 ~~(b)~~ Additional information requested. If the department determines that the
 10 application is incomplete, the department shall notify the applicant in writing and
 11 may make only one request for additional information during the 30-day period
 12 specified in par. (a). Within 10 days after receiving all of the requested information
 13 from the applicant, the department shall notify the applicant in writing as to
 14 whether the application is complete. The date on which the 2nd notice under this
 15 paragraph is sent shall be set as the date of closure for purposes of sub (3)(a). The
 16 department may request additional information from the applicant to supplement
 17 the application, but the department may not request items of information that are
 18 outside the scope of the original request unless the applicant and the department
 19 both agree. A request for any such additional information may not affect the date
 20 of closure.

PLAIN

par. (f) 1

21 ~~(a)~~ Specificity of notice; limits on information. Any notice stating that an
 22 application has been determined to be incomplete or any other request for
 23 information that is sent under par. (a) shall state the reason for the determination
 24 or request and the specific items of information necessary to make the application
 25 complete. An applicant may supplement and resubmit an application that the

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21-2
cont.

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~~department has determined to be incomplete. There is no limit on the number of times that an applicant may resubmit an application that the department has determined to be incomplete under this section. The department may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete unless both the department and the applicant agree or unless the applicant makes material additions or alterations to the activity or project for which the application has been submitted. The rules promulgated under s. 299.05 apply only to applications for individual permits or contracts under this subchapter that the department has determined to be complete that are still~~

PLAIN

needed.

SECTION 56. 30.208 (2) (d) of the statutes is created to read:

~~30.208 (2) (a)~~ ^(c) Failure to meet time limits. If the department fails to meet the 30-day time limit under par. ^(b) (a) or 10-day time limit under par. ^(c) (b), the application shall be considered to have a date of closure that is the last day of that 30-day or 10-day time period for purposes of ^{par. (f) 1} sub. (3) (a) ^(d) Notice of application ¹⁰ ~~10~~

~~SECTION 57. 30.208 (3) (a) of the statutes is amended to read:~~

^(f) ~~30.208 (3) (a)~~ Upon determination by the department under sub. (2), that an application submitted under sub. (1) is complete Within 15 days after the date of closure, as determined under sub. (2) (a) or (b), the department shall provide notice of ~~complete~~ pending application to interested and potentially interested members of the public, as determined by the department. The department shall provide the notice within 15 days after the determination that the application is complete. If the applicant has requested a public ^{informational} hearing as part of the submitted application, a notice of public hearing shall be part of the notice of ~~complete~~ pending application.

PLAIN

SECTION 58. 30.208 (3) (b) of the statutes is amended to read:

PLAIN

2.

-18 PLAIN
pending

1 30.208 (3) (b) If the notice of ~~pending~~ application does not contain a
2 notice of public hearing, any person may request a public hearing in writing or the
3 department may decide to hold a public hearing with or without a request being
4 submitted if the department determines that there is a significant public interest in
5 holding a hearing.

6 SECTION 59. 30.208 (3) (c) of the statutes is amended to read:

7 30.208 (3) (c) A request for a public ^{informational} hearing under par. (b) must be submitted
8 to the department or the department's decision to hold a public hearing must occur
9 within ~~30~~ ²⁰ days after the department ~~completes providing~~ ^{provides} the notice of
10 complete pending application. The department shall provide notice of public hearing
11 within 15 days after the request for public hearing is submitted or the department
12 makes its ~~determination~~ ^{(g) I} decision to hold a public hearing.

13 SECTION 60. 30.208 (3) (d) of the statutes is amended to read:

14 ^{plain} 30.208 (3) (d) Within ~~30~~ ^{plain} 20 days after the ~~public hearing is held~~ ^{period for public}
15 comment under ~~sub (1) (b)~~ ^{par. (i)} has ended or if no public hearing is held, within 30 days
16 of the 30-day comment period under ~~sub (1) (b)~~ ^{par. (i)}, the department shall render a
17 decision ^{individual wetland} issuing, denying, or modifying the permit ~~of~~ ^{of} approving or disapproving the
18 contract that is the subject of the application submitted under ~~sub (1) (b)~~ ^{par. (a)}. If the decision
19 issued by the department under this paragraph is a denial or disapproval, the
20 department shall include in the decision the specific grounds and reasons as to how
21 the applicable provisions of this ~~subchapter~~ ^{section} were not met. If the denial or
22 disapproval is based on an incomplete application, the department shall inform the
23 applicant of the areas of the application that were incomplete.

24 SECTION 61. 30.208 (3) (f) of the statutes is created to read:

END INS 2!-2

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P5ins
MGG:wlj:rs

28-28
1 **Insert 12-18**

2 **Not** These fees shall be credited to the appropriation account under s. 20.370 (4)

3 (bm) for the restoration and creation of wetlands. The department may enter into
agreements

4 agreements with other entities for the restoration and creation of such wetlands.

5 (b) (2) Any wetland that is restored or created using funding from the
6 appropriation under s. 20.370 (4) (bm) shall be open to the public for hunting, fishing,

7 trapping, cross-country skiing, and hiking. The owner of ~~an such~~ ^{the} wetland may

8 establish reasonable restriction^s on the use of the land by the public in order to protect

9 public safety or to protect a unique plant or animal community.

****NOTE: Note that each restored or created wetland has to be open to all ^{five} outdoor
activities. OK?

10 **Insert 21-10**

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

13 **Insert 23-10**

14 **SECTION ~~23~~** 281.36 (3p) of the statutes is created to read:

15 281.36 (3p) NOTICE REQUIREMENTS. (a) The department shall, by rule, establish
16 procedures for providing notices of pending applications and notices of public
17 informational hearings to be provided under sub. (3m). The procedures shall require
18 all of the following:

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

20 2. That the notice be mailed to any person or group upon request.

21 3. That the notice be published through an electronic notification system
22 established by the department.

4. That the onyxes be published on the department's Internet Web site.

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

1. The name and address of the applicant.

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

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

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

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

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

****NOTE: Sub. (3p) is partially modeled after what is found under s. 30.208 (5).
I omitted the requirements under s. 30.208(5)(b) 3. because it did not seem to fit. Let me know if you want it included.

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

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 in the manner specified par. (a) 1. and 2. by doing any of the
6 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 **Insert 24-16**

12 (e) In addition to the types of mitigation specified in par. (a), ^J the department
13 shall establish an ⁱⁿ in lieu ^{fee} fee program, in consultation with the army corps ^{of} (corps) of
14 engineers, under which payments are made to the department or another entity for
15 the purposes of restoring, enhancing, creating, or preserving wetlands or other water
16 resource features. The department shall establish requirements for calculating the
17 in lieu fee payments. Under this program, the department may require the wetlands
18 that benefit from the program be open to the public for hunting, fishing ^g, trapping,
19 cross-country skiing, or hiking or any combination thereof. The program shall be
20 consisten^t with federal regulations.
[^]

****NOTE: DNR is required, as opposed to just being authorized, to establish this program. OK?