

State of Wisconsin
2011 - 2012 LEGISLATURE



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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 (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) (fg),
13 281.36 (3g) (fm), 281.36 (3g) (fr), 281.36 (3g) (g), 281.36 (3g) (h), 281.36 (3g) (i),
14 281.36 (3m), 281.36 (3p), 281.36 (3r), 281.36 (9) (d) and (e), 281.36 (11), 281.36
15 (12) (a), 281.36 (12) (b), 281.36 (13) and 281.36 (14) of the statutes; **relating to:**
16 permits for discharges into wetlands; wetland mitigation; wetland mapping
17 and delineation; fees for permits and other authorizations or determinations by
18 the Department of Natural Resources relating to structures, deposits, and

1 other activities in or near navigable waters; granting rule-making authority;
2 making an appropriation^s 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:

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

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

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

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

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

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

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

19 23.321 (1) (title) DEFINITION.

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

1 23.321 (2) (title) TYPES OF SERVICES.

2 **SECTION 6.** 23.321 (2) (a) of the statutes is repealed.

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

4 23.321 (2m) (title) MEMORANDUM OF AGREEMENT.

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

6 23.321 (3) (title) FEES; GENERALLY.

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

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

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

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

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

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

17 23.321 (4) (title) TIME LIMITS.

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

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

20 23.321 (5) (title) LENGTH OF VALIDITY.

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

22 23.321 (6) (title) INCLUDED ON MAPS.

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

24 30.025 (1b) (b) "Permit" means an individual permit, a general permit, an
25 approval, or a contract required under this subchapter or subch. II, a permit or an

1 approval required under ch. 31, a storm water discharge permit required under s.
2 283.33 (1) (a), or a ~~water quality certification~~ wetland general permit or wetland
3 individual permit required under s. 281.36 or under rules promulgated under subch.
4 II of ch. 281 to implement 33 USC 1341 (a).

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

6 30.03 (4) (a) If the department learns of a possible violation of s. 281.36 or of
7 the statutes relating to navigable waters or a possible infringement of the public
8 rights relating to navigable waters, and the department determines that the public
9 interest may not be adequately served by imposition of a penalty or forfeiture, the
10 department may proceed as provided in this paragraph, either in lieu of or in addition
11 to any other relief provided by law. The department may order a hearing under ch.
12 227 concerning the possible violation or infringement, and may request the hearing
13 examiner to issue an order directing the responsible parties to perform or refrain
14 from performing acts in order to comply with s. 281.36 or to fully protect the interests
15 of the public in the navigable waters. If any person fails or neglects to obey an order,
16 the department may request the attorney general to institute proceedings for the
17 enforcement of the department's order in the name of the state. The proceedings
18 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.

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

20 30.2022 (2) The exemption under sub. (1) does not apply unless the activity is
21 accomplished in accordance with interdepartmental liaison procedures established
22 by the department and the department of transportation for the purpose of
23 minimizing the adverse environmental impact, if any, of the activity. If the activity

1 affects a wetland, as defined in s. 23.32 (1), and if the department determines that
2 mitigation is required, the department of transportation shall conduct the
3 mitigation either by complying with the interdepartmental liaison procedures and
4 any applicable interagency agreement on mitigation banks that is approved by the
5 department of natural resources or by using any of the methods specified in s. 281.36
6 (3r) (a) 1. to 3.

7 SECTION 18. 30.2065 of the statutes is repealed.

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

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

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

18 **30.28 (title) Fees for permits, other approvals, and determinations and**
19 **hearings.**

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

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

1 under this subchapter. The ~~permit or approval~~ required fee shall accompany the
2 permit application, ~~notice or request for approval~~ or other submitted documentation.
3 The department shall set each type of fee in the amount that is necessary to meet the
4 costs incurred by the department except as follows:

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

6 30.28 (1) (a) For an individual permit issued under s. 30.208, the application
7 fee shall be \$600.

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

9 30.28 (1) (b) For authorization to proceed under a general permit issued under
10 s. 30.206, the application fee shall be \$300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 30.28 **(2m)** (d) The department, ~~by rule,~~ may increase any fee specified in sub.
24 ~~(2) (a).~~ The department, by rule, may increase a fee specified in sub. (2) (b) (1) or (1m)
25 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~~ performing the
2 activities for which the fee is charged.

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

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

7 **SECTION 38.** 30.28 (2r) (a) 1. of the statutes is amended to read:

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

12 **SECTION 39.** 30.28 (2r) (b) of the statutes is amended to read:

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

17 **SECTION 40.** 30.298 (3) of the statutes is amended to read:

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

22 **SECTION 41.** 31.39 (2m) (c) of the statutes is repealed.

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

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

25 227.01 (13) (ru) Is a wetland general permit issued under s. 281.36 (3g).

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

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

6 **SECTION 45.** 281.17 (10) (c) of the statutes is created to read:

7 281.17 (10) (c) This subsection does not apply to discharges into wetlands that
8 are subject to regulation under s. 281.36.

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

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

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

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

16 **SECTION 49.** 281.22 (2) (a) of the statutes is renumbered 281.36 (12) (c) 1. and
17 amended to read:

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

24 **SECTION 50.** 281.22 (2) (b) of the statutes is renumbered 281.36 (12) (c) 2. and
25 amended to read:

1 281.36 (12) (c) 2. If the applicant ~~applies for a permit after the project submits~~
2 an application for authorization to proceed under a wetland general or a wetland
3 individual permit after the discharge is begun or after it is completed, the
4 department shall charge an amount equal to twice the amount of the fee that it would
5 have charged under this section.

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

7 **SECTION 52.** 281.22 (2) (d) of the statutes is renumbered 281.36 (12) (c) 3. and
8 amended to read:

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

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

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

16 281.36 (12) (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 55.** 281.22 (2m) (a) 1. of the statutes is renumbered 281.36 (12) (d) 1.
20 a. and amended to read:

21 281.36 (12) (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.~~ subd. 2. for the ~~determination~~ decision.

24 **SECTION 56.** 281.22 (2m) (a) 2. of the statutes is renumbered 281.36 (12) (d) 1.
25 b.

1 **SECTION 57.** 281.22 (2m) (b) of the statutes is renumbered 281.36 (12) (d) 2. and
2 amended to read:

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

6 **SECTION 58.** 281.22 (3) of the statutes is renumbered 281.36 (12) (e) and
7 amended to read:

8 281.36 (12) (e) *Exemptions from fees.* ~~Subsections (1), (2) and (2m)~~ Paragraphs
9 (a), (b), (c), and (d) do not apply to any federal agency or state agency.

10 **SECTION 59.** 281.22 (4) of the statutes is repealed.

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

12 **281.36 (title) Permits for discharges into wetlands; mitigation.**

13 **SECTION 61.** 281.36 (1) (am) of the statutes is repealed.

14 **SECTION 62.** 281.36 (1) (bd) of the statutes is created to read:

15 281.36 (1) (bd) "Fill material" has the meaning given in 33 CFR 323.2 (e), as
16 the meaning exists on the effective date of this paragraph [LRB inserts date].

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

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

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

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

22 **SECTION 66.** 281.36 (1) (cp) of the statutes is created to read:

23 281.36 (1) (cp) "Practicable" means reasonably available and capable of being
24 implemented after taking into consideration cost, site availability, available

1 technology, logistics, and proximity to the proposed project site, in light of the overall
2 purpose of the project.

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

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

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

6 **SECTION 70.** 281.36 (2) (a) of the statutes is renumbered 281.36 (3b) (b) and
7 amended to read:

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

18 **SECTION 71.** 281.36 (2) (b) of the statutes is repealed.

19 **SECTION 72.** 281.36 (3) of the statutes is renumbered 281.36 (2m) and amended
20 to read:

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

1 be used shall be the 1987 edition of the manual and any document that the U.S. army
2 corps of engineers issues interpreting that manual, unless the U.S. army corps of
3 engineers publishes an edition of the manual after January 9, 2001, and the
4 department ~~by rule~~ designates that edition as the one to be used under this
5 subsection. ~~If the U.S. army corps of engineers issues a guidance document~~
6 ~~interpreting the edition of the wetlands delineation manual that the department is~~
7 ~~required to use under this subsection and if that guidance document is issued after~~
8 ~~May 8, 2001, the department shall notify the appropriate standing committee of each~~
9 ~~house of the legislature, as determined by the speaker of the assembly and the~~
10 ~~president of the senate, of the issuance of the guidance document and whether the~~
11 ~~department intends to promulgate a rule incorporating the provisions of the~~
12 ~~guidance document.~~

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

14 281.36 **(3b)** (title) PERMIT REQUIRED.

15 **SECTION 74.** 281.36 (3b) (a) of the statutes is created to read:

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

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

20 281.36 **(3g)** (title) WETLAND GENERAL PERMITS.

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

22 281.36 **(3g)** (a) *Required permits.* The department shall issue a wetland
23 general permit for each of the following types of discharges:

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

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

6 3. A temporary or permanent discharge for routine utility construction and
7 maintenance projects and activities.

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

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

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

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

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

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

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

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

2 281.36 (4) (3g) (c) *Additional permits.* The department may issue wetland
3 general permits, in addition to those required under pars. (a) and (b), to regulate
4 other discharges that affect wetlands located in this state.

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

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

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

13 281.36 (3g) (e) *Period of validity; subsequent actions.* A wetland general permit
14 issued under this subsection is valid for a period of 5 years. Upon compliance with
15 the requirements under pars. (f) to (g), the department may renew, modify, or revoke
16 a wetland general permit issued under this subsection, and until such renewal,
17 modification, or revocation, the general permit shall remain in effect.

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

19 281.36 (3g) (f) *Public notice.* The department shall provide to interested
20 members of the public notices of its intention to issue ^{renew, modify, or revoke} a wetland general permit under
21 this subsection. Procedures for providing public notices shall include all of the
22 following:

- 23 1. Publication of a class 1 notice under ch. 985.
- 24 2. Providing a copy of the notice to any person or group upon request of the
25 person or group.

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

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

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

5 281.36 (3g) (fg) *Date of notice.* For the purpose of determining the date on
6 which public notice is provided under this subsection, the date on which the
7 department first publishes the notice on its Internet Web site shall be considered the
8 date of public notice.

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

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

10 281.36 (3g) (fm) *Written comments.* The department shall provide a period of
11 not less than 30 days after the date of the public notice during which time interested
12 persons may submit their written comments on the department's intention to issue
13 a wetland general permit under this subsection. All written comments submitted

14 during the period for comment shall be retained by the department and considered
15 by the department in acting on the general permit.

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

17 281.36 (3g) (fr) *Description in notice.* Every public notice provided by the
18 department under par. (f) shall include a description of the discharges to be
19 authorized under the wetland general permit.

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

21 281.36 (3g) (g) ^{① → informational} ~~Public information~~ hearing. 1. The department shall provide
22 an opportunity for any interested state agency or federal agency or person or group
23 of persons to request a public informational hearing with respect to the department's

1 intention to issue ^{renew, modify or revoke} 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 of
3 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 shall be circulated
10 in accordance with the requirements under par. (f). The public notice shall include
11 the time, date, and location of the hearing, a summary of the subject matter of the
12 wetland general permit, and information indicating where additional information
13 about the general permit may be viewed on the department's Internet Web site. The
14 summary shall contain a brief, precise, easily understandable, plain language
15 description of the subject matter of the general permit.

16 **SECTION 85.** 281.36 (3g) (h) of the statutes is created to read:

17 281.36 (3g) (h) *Authorizations for discharges under wetland general permits.*

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

1 related to the discharge that is the subject of the application. The application shall
2 include a detailed explanation of why the impact to the wetland cannot be avoided
3 and how the impact to the wetland will be minimized to the greatest extent
4 practicable. The application shall be accompanied by the fee specified in sub. (12)
5 (a) 1. and the fee authorized under sub. (11), if applicable. If the application is for
6 authorization to proceed under a wetland general permit with a discharge that is
7 part of a development for commercial, residential, or industrial purposes, the
8 application shall be accompanied by a surcharge, as calculated under sub. (12). The
9 department may make a request for additional information one time during this
10 30-day period.

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

18 3. If the department requests additional information under subd. 1., the
19 30-day period is tolled from the date the person applying for authorization to proceed
20 receives the request until the date on which the department receives the additional
21 information.

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

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

3 SECTION 86. 281.36 (3g) (i) of the statutes is created to read:

4 281.36 (3g) (i) *Wetland individual permit in lieu of wetland general permit.* For
5 a proposed discharge for which an application has been received by the department
6 under par. (h), the department may decide to require that a person who submitted
7 the application apply for a wetland individual permit if the department has
8 inspected the site as provided in par. (h) and has determined that conditions specific
9 to the site require additional restrictions on the discharge in order to provide
10 reasonable assurance that no significant adverse impacts to the functional values of
11 the wetland will occur.

12 SECTION 87. 281.36 (3m) of the statutes is created to read:

13 281.36 (3m) WETLAND INDIVIDUAL PERMITS. (a) *When permit required.* Any
14 person wishing to proceed with a discharge into any wetland shall submit an
15 application for a wetland individual permit under this subsection unless the
16 discharge has been authorized under a wetland general permit as provided in sub.
17 (3g) or is exempt under sub. (4). Before submitting the application, the department
18 shall hold a meeting with the applicant to discuss the details of the proposed
19 discharge and the requirements for submitting the application and for delineating
20 the wetland. An applicant may include in the application a request for a public
21 informational hearing. The application shall be accompanied by the applicable fee
22 specified in sub. (11) or (12) (a) 1.

23 (c) ~~Review~~ *Review; no additional information required.* In issuing individual permits
24 or entering contracts under this ^{Section} ~~subchapter~~, the department shall review an
25 application, and within 30 days after the application is submitted, the department

~~***x~~ ← wetland material from P.23

1 shall determine that either the application is complete or that additional information
2 is needed. If the department determines that the application is complete, the
3 department shall notify the applicant in writing of that fact within the 30-day
4 period, and the date on which the notice under this paragraph is sent shall be
5 considered the date of closure for purposes of par. ~~(a)~~ 1. (g) ✓

6 (d) ~~(a)~~ *Additional information requested.* If the department determines that the
7 application is incomplete, the department shall notify the applicant in writing and
8 may make only one request for additional information during the 30-day period
9 specified in par. ~~(b)~~ ^(c). Within 10 days after receiving all of the requested information
10 from the applicant, the department shall notify the applicant in writing as to
11 whether the application is complete. The date on which the 2nd notice under this
12 paragraph is sent shall be set as the date of closure for purposes of par. ~~(b)~~ 1. The
13 department may request additional information from the applicant to supplement (g)
14 the application, but the department may not request items of information that are
15 outside the scope of the original request unless the applicant and the department
16 both agree. A request for any such additional information may not affect the date
17 of closure.

18 (e) ~~(a)~~ *Specificity of notice; limits on information.* Any notice stating that an
19 application has been determined to be incomplete or any other request for
20 information that is sent under par. ~~(c)~~ ^(d) shall state the reason for the determination
21 or request and the specific items of information that are still needed.

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

1 ^(g) ~~(a)~~ Notice of application. 1. Within 15 days after the date of closure, as
 2 determined under par. ^(c) ~~(b)~~ or ^(d) ~~(c)~~, the department shall provide notice of pending
 3 application to interested members of the public, as determined by the department.
 4 If the applicant has requested a public informational hearing as part of the
 5 submitted application, a notice of ~~public~~ ^{the informational} hearing shall be part of the notice of pending
 6 application.

7 2. If the notice of pending application does not contain a notice of public
 8 ⁽⁸⁾ ~~informational~~ hearing, any person may request a public ^{informational} hearing in writing or the department may
 9 decide to hold a public ^{informational} hearing with or without a request being submitted if the
 10 department determines that there is a significant public interest in holding a
 11 hearing. ^(h)

12 ^(g) ~~(g)~~ Request for hearing. A request for a public informational hearing under par.
 13 ~~(d)~~ 2. must be submitted to the department or the department's decision to hold a
 14 public informational hearing must occur within 20 days after the department
 15 provides the notice of pending application. The department shall provide notice of
 16 public ^{informational} hearing within 15 days after the request for ^{the informational} public hearing is submitted or the
 17 department makes its decision to hold a ^{informational} public hearing.

18 ^(l) ~~(d)~~ Decision. Within 20 days after the period for public comment under par. ^(j) ~~(d)~~
 19 has ended or if no public ^{informational} hearing is held, within 30 days of the 30-day comment
 20 period under par. ^(k) ~~(d)~~, the department shall render a decision issuing, ^{or} denying ^{or} ~~(j)~~
 21 ~~modifying~~ the wetland individual permit that is the subject of the application
 22 submitted under par. (a). If the decision issued by the department under this
 23 paragraph is a denial, the department shall include in the decision the specific
 24 grounds and reasons as to how the applicable provisions of this section were not met.

1 If the denial is based on an incomplete application, the department shall inform the
2 applicant of the areas of the application that were incomplete.

3 ~~(j)~~ ^(g) ~~Public comment.~~ 1. The department shall provide a period for public
4 comment after the department has provided a notice of pending application under
5 par. ~~(b)~~ ^(a) during which time any person may submit written comments with respect to
6 the application for a wetland individual permit. The department shall retain all of
7 the 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 pending application except as provided in subd. 2.

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 ~~(j) Decision.~~ The department shall render a decision on the application within
14 30 days after the date the period for public comment under par. (i) ends unless a
15 public informational hearing is held. If such a hearing is held, the department shall
16 render the decision within 30 days after the date the hearing is concluded.

17 ~~(b) Analysis of practicable alternatives by applicants.~~ An applicant shall include
18 in an application submitted under ~~(i)~~ ^{par (a)} an analysis of the practicable
19 alternatives that will minimize and avoid the adverse impacts of the discharge on the
20 functional values of the wetland, and that will not result in any other significant
21 adverse environmental consequences.

22 ~~(l) Review of analysis.~~ The department shall review the analysis of practicable
23 alternatives present in the application under par. (k). The department shall limit its
24 analysis to those practicable alternatives that will have an impact on the site of the

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P. 20

1 discharge and on those areas that are adjacent to the site if the department
2 determines that all of the following apply:

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

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

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

9 ~~(m)~~ ^(b) *Factors used in review.* In its review under par. ~~(a)~~ ^(a) the department shall
10 consider all of the following factors in assessing possible impacts to the functional
11 value of the wetland involved:

12 1. The direct impact of the proposed discharge.

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

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

16 4. The net positive or negative environmental impact of the proposed discharge.

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

17 ~~(m)~~ ^(c) *Finding by the department.* After its review under ~~par. (a)~~ ^{par. (a)} the department
18 shall decide which of the practicable alternatives ~~proposed~~ ^{presented} under ~~par. (a)~~ ^{sub. (3m) (b)} or by the
19 department is the least environmentally damaging. Based on the decision, the

20 department shall make a determination that the discharge will comply with all
21 applicable water quality standards, and shall issue ~~a~~ ^{an} wetland individual permit, if

22 the department finds that, upon implementation of that alternative, all of the
23 following will occur:

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

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

5 3. The discharge will not result in other significant adverse environmental
6 consequences.

(a), (b), and (c)

****NOTE: Paragraphs ~~(a) and (b)~~ were challenging to draft. First ~~of all~~, the
"practicable analysis" is submitted but in all of the drafting instructions it is unclear what
other happens to it after submission. I, therefore, require DNR to review it and then decide Second
which practicable alternative is least environmentally damaging. Also, it is not clear
if 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.

sub. (3n)

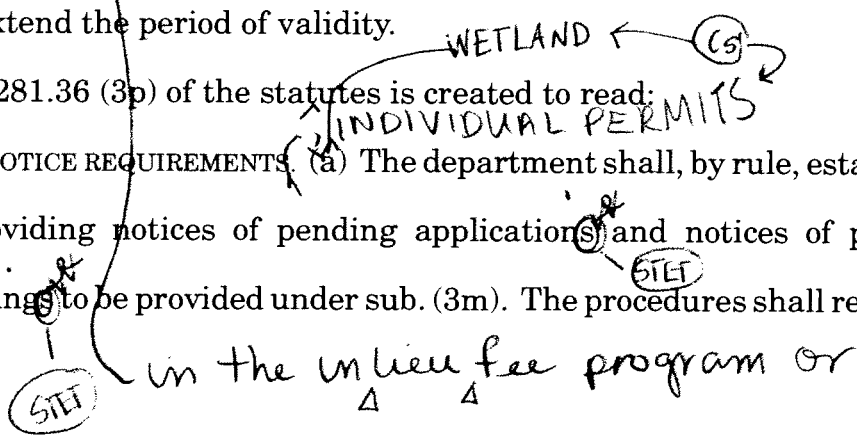
****NOTE: Note in ~~para. (a), (b), and (c)~~ the references to wetlands sometimes is
limited to just the wetland for which the individual permit is sought and other times
refers to any wetland that may be affected. Please review carefully.

****NOTE: I assumed DNR would be required to issue the individual permit.
Therefore I used the phrase "shall issue" instead of "may ~~not~~ issue" in
sub. (3n)(c) OK? wetland

7 (d) ~~AM~~ Conditions on permit; length. As a condition of the individual permit, the
8 department shall require that the applicant implement the practicable alternative
9 decided to be the least environmentally damaging under par. (a) ^(c) and shall require
10 that applicant participate in some type of mitigation under the mitigation program
11 under sub. (3r). The permit shall specify the period of validity for the permit. The
12 department may extend the period of validity.

SECTION 88. 281.36 (3p) of the statutes is created to read:

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



1 1. That the notice be published as a class 1 notice under ch. 985.
2 2. That the notice be mailed to any person or group upon request.
3 3. That the notice be published through an electronic notification system
4 established by the department. *notice*

5 4. That the ~~only~~ *notice* be published on the department's Internet Web site.

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

9 1. The name and address of the applicant.

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

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

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

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

20 6. For a notice of complete application and a notice of public ^{informational} hearing, a brief
21 description of the procedures for the formulation of final determinations, including
22 a description of the comment period required under sub. (3m) *(j)* *(j)* ✓

****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.

1 (c) For the purpose of determining the date on which notice is provided under
2 this subsection, the date of the notice shall be the date on which the department first
3 publishes the notice on its Internet Web site, unless the department delegates to the
4 applicant under par. (d) the requirement to provide notice. If the department
5 delegates to the applicant the requirement to provide notice, the date of the notice
6 shall be the date on which the department first publishes the notice on its Internet
7 Web site or 10 days after the date on which the department receives satisfactory proof
8 of publication of a class 1 notice from the applicant, whichever is later.

9 (d) The department may delegate the department's requirement to provide
10 notice under sub. (3m) in the manner specified ⁱⁿ par. (a) 1. and 2. by doing any of the
11 following: [^]

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

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

16 **SECTION 89.** 281.36 (3r) of the statutes is created to read:

17 281.36 (3r) MITIGATION; IN LIEU FEE PROGRAM. (a) The department shall
18 establish a mitigation program that applies only to the issuance of wetland
19 individual permits and that allows mitigation to be accomplished by any of the
20 following methods:

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

22 2. Completing a mitigation project within the same watershed or within
23 one-half mile of the site of the discharge.

24 (b) Under the mitigation program, mitigation as specified in par. (a) 1. shall be
25 the preferred type of mitigation.

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

5 (d) The department shall establish under the mitigation program mitigation
6 ratios that are consistent with the federal rules that apply to mitigation and
7 mitigation banks but the minimum ratio shall be at least 1.2 acres for each acre
8 affected by the discharge.

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

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

****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?

18 **SECTION 90.** 281.36 (4) (intro.) of the statutes is amended to read:

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

22 **SECTION 91.** 281.36 (4) (b) of the statutes is amended to read:

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

3 **SECTION 92.** 281.36 (4) (e) 1. of the statutes is amended to read:

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

6 **SECTION 93.** 281.36 (4) (e) 2. of the statutes is amended to read:

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

9 **SECTION 94.** 281.36 (4) (e) 3. of the statutes is amended to read:

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

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

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

19 **SECTION 96.** 281.36 (5) (a) of the statutes is amended to read:

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

21 **SECTION 97.** 281.36 (5) (b) of the statutes is amended to read:

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

23 **SECTION 98.** 281.36 (6) (a) 1. of the statutes is amended to read:

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

1 **SECTION 99.** 281.36 (7) of the statutes is repealed.

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

3 **SECTION 101.** 281.36 (8) (a) of the statutes is repealed.

4 **SECTION 102.** 281.36 (8) (b) of the statutes is repealed.

5 **SECTION 103.** 281.36 (8) (bn) 1. of the statutes is renumbered 281.36 (3g) (b) and
6 amended to read:

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

14 **SECTION 104.** 281.36 (8) (bn) 2. of the statutes is repealed.

15 **SECTION 105.** 281.36 (8) (c) of the statutes is repealed.

16 **SECTION 106.** 281.36 (8) (d) of the statutes is repealed.

17 **SECTION 107.** 281.36 (8) (e) of the statutes is repealed.

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

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

25 **SECTION 109.** 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 110.** 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 111.** 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 112.** 281.36 (9) (am) to (c) of the statutes are repealed.

14 **SECTION 113.** 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 114.** 281.36 (10) of the statutes is repealed.

23 **SECTION 115.** 281.36 (11) of the statutes is created to read:

1 281.36 (11) RESTORATION; FEES. (a) The department shall set a surcharge fee
2 to be charged for each application to proceed under a wetland general permit that is
3 issued under sub. (3g) (a) 4., 5., or 6. The surcharge fee shall be set on an annual basis
4 by the department and may not exceed more than 50 percent of the market price, as
5 determined by the department, for the equivalent purchase of credits from a
6 mitigation bank. These fees shall be credited to the appropriation account under s.
7 20.370 (4) (bm) for the restoration and creation of wetlands. The department may
8 enter into agreements with other entities for the restoration and creation of such
9 wetlands.

10 (b) Any wetland that is restored or created using funding from the
11 appropriation under s. 20.370 (4) (bm) shall be open to the public for hunting, fishing,
12 trapping, cross-country skiing, and hiking. The owner of the wetland may establish
13 reasonable restrictions on the use of the land by the public in order to protect public
14 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?

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

16 281.36 (12) (a) *Fees required.* The department shall charge a fee for reviewing,
17 investigating, and making decisions on applications to proceed under wetland
18 general permits under sub. (3g) and on applications for wetland individual permits
19 under sub. (3m). For an authorization to proceed under a wetland general permit,
20 the application fee shall be \$500. For a wetland individual permit, the application
21 fee shall be \$800.

22 **SECTION 117.** 281.36 (12) (b) of the statutes is created to read:

1 281.36 (12) (b) *Additional fee.* The department may set and charge a fee in the
2 amount necessary to meet the costs incurred by the department in reviewing
3 mitigation projects that are conducted by mitigation banks.

4 **SECTION 118.** 281.36 (13) of the statutes is created to read:

5 281.36 (13) PARTIES TO A VIOLATION. (a) Whoever is concerned in the commission
6 of a violation of this section for which a forfeiture is imposed is a principal and may
7 be charged and found in violation although he or she did not directly commit the
8 violation and although the person who directly committed it has not been found in
9 violation.

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

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

16 **SECTION 119.** 281.36 (14) of the statutes is created to read:

17 281.36 (14) PENALTIES. (a) Except as provided in par. (b), any person who
18 violates any provision of this section shall forfeit not less than \$100 nor more than
19 \$10,000 for the first offense and shall forfeit not less than \$500 nor more than
20 \$10,000 upon being found in violation of the same offense a 2nd or subsequent time.

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

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

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

8 **SECTION 120.** 281.37 (title) of the statutes is repealed.

9 **SECTION 121.** 281.37 (1) (intro.) of the statutes is repealed.

10 **SECTION 122.** 281.37 (1) (a) of the statutes is repealed.

11 **SECTION 123.** 281.37 (1) (b) of the statutes is renumbered 281.36 (1) (bn) and
12 amended to read:

13 281.36 (1) (bn) “Mitigation project” means ~~the restoration, enhancement or~~
14 ~~creation of wetlands to compensate for adverse impacts to other wetlands.~~
15 ~~“Mitigation project” includes using credits from a wetlands mitigation bank~~
16 mitigation of the type specified in sub. (3r) (a) 3.

17 **SECTION 124.** 281.37 (1) (d) of the statutes is renumbered 281.36 (1) (bL) and
18 amended to read:

19 281.36 (1) (bL) “~~Wetlands mitigation~~ Mitigation bank” means a system of
20 accounting for wetland loss and compensation that includes one or more sites where
21 wetlands are restored, enhanced or created to provide ~~transferable~~ credits to be
22 subsequently ~~applied~~ purchased to compensate for adverse impacts to other
23 wetlands.

24 **SECTION 125.** 281.37 (1) (e) of the statutes is repealed.

25 **SECTION 126.** 281.37 (1) (f) of the statutes is repealed.

1 **SECTION 127.** 281.37 (2) of the statutes is repealed.

2 **SECTION 128.** 281.37 (2m) of the statutes is renumbered 281.36 (8m), and
3 281.36 (8m) (a) 1., as renumbered, is amended to read:

4 281.36 **(8m)** (a) 1. A person who is the holder of a wetland individual permit
5 ~~or other approval~~ that authorizes a mitigation project shall grant a conservation
6 easement under s. 700.40 to the department to ensure that a wetland that is being
7 restored, enhanced, or created will not be destroyed or substantially degraded by any
8 subsequent proprietor of or holder of interest in the property on which the wetland
9 is located. The department shall revoke the wetland individual permit ~~or other~~
10 ~~approval~~ if the holder of the individual permit ~~or other approval~~ fails to take these
11 measures.

12 **SECTION 129.** 281.37 (3) (intro.) of the statutes is renumbered 281.36 (3t)
13 (intro.) and amended to read:

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

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

22 281.36 **(3t)** (a) Requirements for the ~~avoidance and minimization of adverse~~
23 ~~impacts to the wetland that will be affected by the permitted activity~~ analysis of
24 practicable alternatives that is included in an application for a wetland individual
25 permit under sub. (3m) (b). (b) ✓

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

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

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

8 281.36 (3t) (c) Enforcement of ~~a requirement to implement a mitigation project~~
9 requirements under the mitigation program under sub. (3r).

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

12 281.36 (3t) (d) Baseline studies of ~~the wetland~~ wetlands that will be affected
13 by the ~~permitted activity~~ discharges and of the sites for mitigation project site
14 projects.

15 **SECTION 134.** 281.37 (3) (e) of the statutes is renumbered 281.36 (3t) (e) and
16 amended to read:

17 281.36 (3t) (e) Plan and ~~project~~ design requirements for ~~a~~ mitigation project,
18 ~~which shall consider the relation of the project design projects and banks, which shall~~
19 include requirements for relating the design of a mitigation project or a mitigation
20 bank to the hydrology of the watershed in which a mitigation project or mitigation
21 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.

22 **SECTION 135.** 281.37 (3) (f) of the statutes is renumbered 281.36 (3t) (f), and
23 281.36 (3t) (f) (intro.), as renumbered, is amended to read:

1 281.36 (3t) (f) (intro.) ~~The comparability of a wetland~~ Standards for comparing
2 wetlands that will be restored, enhanced, or created to ~~the wetland~~ wetlands that
3 will be adversely affected by ~~the permitted activity~~ discharges, including all of the
4 following:

5 **SECTION 136.** 281.37 (3) (g) of the statutes is repealed.

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

8 281.36 (3t) (h) Standards for measuring the short-term and long-term success
9 of ~~a~~ mitigation project projects and mitigation bank sites and requirements for the
10 short-term and long-term monitoring of ~~a~~ mitigation project projects and
11 mitigation bank sites.

12 **SECTION 138.** 281.37 (3) (i) of the statutes is renumbered 281.36 (3t) (i) and
13 amended to read:

14 281.36 (3t) (i) Remedial actions to be taken by ~~the applicant if a~~ holders of
15 wetland individual permits for mitigation project is projects that are not successful
16 and actions to be taken by ~~a wetlands mitigation bank if a~~ banks for mitigation
17 project on which mitigation credits are based is performed by the mitigation banks
18 that are not successful.

19 **SECTION 139.** 281.37 (3) (j) of the statutes is repealed.

20 **SECTION 140.** 281.37 (3m) of the statutes is repealed.

21 **SECTION 141.** 281.37 (4) of the statutes is repealed.

22 **SECTION 142.** 281.37 (5) of the statutes is renumbered 281.36 (14) and amended
23 to read:

24 281.36 (14) REPORT TO LEGISLATURE. No later than January 31, 2003, and no
25 later than January 31 of each subsequent odd-numbered year, the department shall

1 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the
2 impact of the implementation of ~~this section~~ mitigation on wetland resources and on
3 the issuance of permits or other approvals under ss. 59.692, 61.351, 62.231, 87.30,
4 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.

5 **SECTION 143.** 281.98 (1) of the statutes is amended to read:

6 281.98 (1) Except as provided in ss. 281.344 (14) (a), ~~281.36~~, 281.346 (14) (a),
7 281.47 (1) (d), 281.75 (19), and 281.99 (2), any person who violates this chapter or any
8 rule promulgated or any plan approval, license, special order, or water quality
9 certification issued under this chapter shall forfeit not less than \$10 nor more than
10 \$5,000 for each violation. Each day of continued violation is a separate offense.
11 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

12 **SECTION 144.** 814.04 (intro.) of the statutes, as affected by 2011 Wisconsin Act
13 2, is amended to read:

14 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
15 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), ~~281.36 (2) (b)~~
16 ~~1~~, 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.443 (3),
17 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2) (d), 943.51
18 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

19 **SECTION 145. Nonstatutory provisions.**

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

24 (2) PROJECT POSITION CHANGES.

1 (a) The authorized FTE positions for the department of natural resources are
2 decreased by 3.0 PR project positions funded from the appropriation under section
3 20.370 (4) (bi) of the statutes, for the purpose for which the appropriation is made.

4 (b) The authorized FTE positions for the department of natural resources are
5 increased by 3.0 PR positions to be funded from the appropriation under section
6 20.370 (4) (bi) of the statutes, for the purpose of providing wetland identification and
7 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.

8 **SECTION 146. Effective date.**

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

11 (END)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P6ins
MGG:.....

1 **Insert 23-24**

2 SECTION ~~4~~ 281.36 (3n) of the statutes is created to read:

3 281.36 (3n) REVIEW BY DEPARTMENT. (a) For the purpose of issuing a wetland
4 individual permit, during the period between the date on which the application
5 under sub. (3m) (a) is submitted and the date on which a decision under sub. (3m)
6 (b) is rendered, the department shall conduct its review under this subsection. The
7 department shall review the analysis of practicable alternatives presented in the
8 application under sub. (3m) (b). The department shall limit its

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P6dn

MGG:.....

Wlj

Date

Please check Spacing

Not

As to the fees created in this draft, none are required to be set by rule.

Attention: Dan Johnson

1. This preliminary redraft contains all of the changes requested of this date except for the changes the initial applicability provisions.
2. I found in drafting this that the procedures with the ~~time~~ deadlines found in s. 281.36 (3m) did not mesh that well with the substantive review requirements in s. 281.36 (3n). If the department is going to have public informational hearings and public comment, is the resulting input to be used in the practicable alternative review? I assumed so, and, therefore, I added language in s. 281.36 (3n) (a) (intro.) in attempt to mesh the timing of the DNR practicable alternative review with the receipt of public input. Such language is necessary so that someone reading the statutes can have an understanding of how the entire application process is to work.
3. In making changes in ss. 30.28, 281.22, and 281.36 (12), 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.
4. I used the concept of "informational hearing" throughout s. 281.36. OK?
5. 4. The provisions under s. 281.36 (3m) and (3n) for individual permits apply only to issuing and not modifying permits. OK?

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

But No #

Also, I was not exactly sure how much of the presumptive permitting process I was to omit. Please review carefully.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2803/P6dn
MGG:wlj:jf

November 30, 2011

Attention: Dan Johnson

1. This preliminary redraft contains all of the changes requested as of this date except for the changes in the initial applicability provisions.

2. I found in drafting this that the procedures with the deadlines found in s. 281.36 (3m) did not mesh that well with the substantive review requirements in s. 281.36 (3n). If the department is going to have public informational hearings and public comment, is the resulting input to be used in the practicable alternative review? I assumed so, and, therefore, I added language in s. 281.36 (3n) (a) (intro.) in an attempt to mesh the timing of the DNR practicable alternative review with the receipt of public input. Such language is necessary so that someone reading the statutes can have an understanding of how the entire application process is to work.

Also, I was not exactly sure how much of the "presumptive permitting" process I was to omit. Please review carefully.

3. In making changes in ss. 30.28, 281.22, and 281.36 (12), I eliminated the requirement that fees be set by rule except for the fees for expedited service under s. 30.28 (2r), and 281.22 (2m). As to the fees created in this draft, none are required to be set by rule. 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.

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

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