



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0304/1
EHS:wlj&kjf

**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO ASSEMBLY BILL 547**

February 9, 2018 - Offered by Representative STEINEKE.

1 **AN ACT** *to repeal* 281.36 (3r) (a) 4. and 281.36 (3s); *to renumber and amend*
2 23.321 (1) and 23.321 (5); *to amend* 20.370 (9) (bm), 23.0917 (4) (c) 3., 23.321
3 (4) (a) 3., 281.36 (3b) (b), 281.36 (3m) (a), 281.36 (3n) (d) 1., 281.36 (3r) (a)
4 (intro.), 281.36 (4) (title), 281.36 (6) (a) (intro.), 281.36 (9) (a) (intro.) and 281.36
5 (13m); and *to create* 15.347 (22), 23.099, 23.321 (1) (am), 23.321 (2) (d), 23.321
6 (4) (a) 4., 23.321 (5) (b), 281.12 (2), 281.36 (3r) (am), 281.36 (4n), 281.36 (12m)
7 and 281.37 of the statutes; **relating to:** the regulation and study of wetlands;
8 grants for wetland projects; and making an appropriation.

This substitute amendment exempts artificial wetlands and certain nonfederal wetlands from Department of Natural Resources wetland permitting requirements; changes some requirements relating to wetland boundary delineations; creates wetland-related grant programs; and, if the Environmental Protection Agency delegates to the state the authority to administer its own permit program for the discharge of dredge or fill material into navigable waters, authorizes DNR to assume that authority.

Nonfederal wetlands. Under current federal law, generally, a person must obtain a permit from the federal government for a discharge into a wetland that is

under the jurisdiction of the federal government. Generally speaking, only wetlands that are adjacent to navigable waters are subject to federal jurisdiction. Federal law requires an applicant to submit with a permit application a certification from the state that the proposed discharge will comply with state water quality standards or that the state has waived such certification. In this state, DNR grants this certification by issuing a state wetland permit. Under current law, DNR must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur. Under current law, before DNR may issue a wetland individual permit, it must require the restoration, enhancement, creation, or preservation of other wetlands to compensate for adverse impacts to a wetland resulting from the discharge, also known as mitigation.

This substitute amendment exempts from wetland permitting requirements a discharge into a wetland that is not subject to federal jurisdiction (nonfederal wetland) that occurs in an urban area if it does not affect more than one acre of wetland per parcel, it does not affect a rare and high quality wetland, and if the development related to the discharge is carried out in compliance with any applicable storm water management zoning ordinance or storm water discharge permit. Under the substitute amendment, an urban area is an incorporated area, an area within one-half mile of an incorporated area, or an area that is served by a sewerage system. The substitute amendment defines a “rare and high quality wetland” as one that is directly adjacent or contiguous to a class I or class II trout stream or that consists of at least 75 percent of certain rare wetland types. If the discharge into such a wetland affects more than 10,000 square feet, the substitute amendment requires the mitigation of impacts from the discharge to the portion that exceeds 10,000 square feet.

The substitute amendment also exempts from wetland permitting requirements a discharge into a nonfederal wetland that occurs outside an urban area if it does not affect more than three acres of wetland per parcel, it does not affect a rare and high quality wetland, and if the development related to the discharge is a structure with an agricultural purpose. If the discharge into such a wetland affects more than 1.5 acres, the substitute amendment requires the mitigation of impacts from the discharge to the portion that exceeds 1.5 acres.

For any discharge to one of these wetlands that is exempt from permitting requirements under the substitute amendment but that requires mitigation, the substitute amendment requires the mitigation to be conducted in the same compensation search area as the discharge. Under current DNR administrative rule, a compensation search area is an area that includes the statewide management unit of the impacted wetland, the county of the impacted wetland, and a circle with a 20-mile radius from the impacted wetland. DNR has defined 22 statewide management units based on the major river basins of the state.

Under current law, upon request and for a fee, DNR may provide to a landowner or tenant either a wetland identification that consists of a written evaluation, based upon an on-site inspection of the land by DNR, of whether a parcel of land contains a wetland, or a wetland confirmation that consists of a written statement, based upon an on-site inspection of the land by DNR, of whether DNR concurs with the boundaries of a wetland as delineated by a third person. Under current law, DNR must provide either service within 60 days of receiving a request, and a wetland identification or confirmation remains effective for five years.

The substitute amendment adds another type of wetland confirmation that consists of a written statement, based upon DNR's review of the boundaries of a wetland as delineated by a qualified third person and not based upon an on-site inspection of the land by DNR, of whether DNR concurs with the delineation and requires DNR to provide this service within 15 days of receiving a request. Under the substitute amendment, a "qualified third person" is an individual who has completed basic and advanced wetland training and has a minimum of one year of field experience in wetland delineation. The substitute amendment extends the effectiveness of a wetland identification or confirmation to 15 years for a nonfederal wetland if the parcel of land is subject to a storm water management zoning ordinance or a storm water discharge permit, and prohibits DNR from requiring a new delineation for such a parcel until the wetland identification or confirmation expires. This extension to 15 years of validity applies first to a wetland identification or confirmation provided on January 1, 2003.

Artificial wetlands. Under current rules promulgated by DNR, discharges to certain artificial wetlands are exempt from the wetland permitting requirements unless DNR determines that significant functional values are present. This substitute amendment exempts from wetland permitting requirements a discharge to any artificial wetland. The substitute amendment defines an artificial wetland as a landscape feature where hydrophitic vegetation may be present as a result of human modification to the landscape or hydrology and for which DNR has no definitive evidence showing a prior wetland or stream history that existed before August 1, 1991, but excludes from the definition a wetland that serves as a fish spawning area or a passage to a fish spawning area or that was created as a result of a wetland mitigation requirement.

With respect to the exemptions created for nonfederal wetlands and for artificial wetlands, the substitute amendment establishes a process under which DNR must be notified of any project that may affect a wetland or landscape feature that is eligible for such an exemption and then must issue a determination of whether the eligibility requirements are met or not.

The substitute amendment also prohibits local governments from regulating a discharge into nonfederal wetlands and artificial wetlands exempt from permitting requirements under this substitute amendment and from regulating mitigation requirements for such a discharge.

State administration of wetland permit program. Under current federal law, a state's governor may apply to the EPA requesting that the state be delegated the authority to administer its own individual and general permit program for the

discharge of dredged or fill material into navigable waters, including federal wetlands, in place of the federal regulatory program. The substitute amendment authorizes DNR to submit such an application on behalf of and at the direction of the governor and authorizes DNR to assume that authority if the EPA delegates it to the state.

Wetland mitigation grant program. Under the authority of current law, with the approval of the U.S. Army Corps of Engineers (ACE), DNR has created the in lieu fee subprogram as one method by which wetland mitigation may be accomplished. Under this subprogram, payments are made to DNR or another entity for the purposes of improving or preserving wetlands or other water resource features.

This substitute amendment requires DNR to establish a wetland mitigation grant program (mitigation program) using moneys received under the in lieu fee subprogram and from surcharge fees charged for each application to proceed under a wetland general permit. Under the mitigation program, nonprofit organizations may apply to DNR on a rolling basis for grants to conduct projects to create, restore, or enhance wetlands on DNR land.

The substitute amendment requires DNR to identify land under its jurisdiction that is appropriate to include in the mitigation program. The substitute amendment requires DNR to include in the mitigation program no less than 25 percent of all DNR land and to include land in every watershed in the state.

The substitute amendment requires DNR to issue a request for proposals within three months after identifying appropriate lands or at the beginning of the next fiscal year, whichever is earlier, and no later than July 1 of each subsequent year. Under the substitute amendment, DNR must select and announce grant recipients at the end of each quarter, as funds are available.

The substitute amendment imposes requirements for what a wetland mitigation grant application must include, such as specifications of the wetland functional values that the project area does not provide or only sparsely provides and those that the proposed project would restore, enhance, or create. If an application is approved, the substitute amendment requires DNR and the grantee to identify all DNR permits that are required in order for the grantee to conduct the project, requires DNR to waive all permit fees for those permits, and limits the timelines for approval of those permits.

The substitute amendment also authorizes DNR to submit a request to ACE that ACE move up all deadlines relating to its review and approval of wetland mitigation project proposals under the in lieu fee subprogram and that ACE approve a modification to the subprogram in order to implement the mitigation program.

The substitute amendment requires DNR to pay out a wetland mitigation grant quarterly, or more frequently if necessary, withholding the final payment until the grantee certifies that the project is complete. If the grantee fails to certify that the project is complete by the date indicated for completion in its application, the substitute amendment requires DNR to use the remaining unpaid grant amount to either complete the project or contract with or issue a grant to another nonprofit organization to complete the project, unless DNR agrees to modify the deadline

because of unusual or unforeseen circumstances. Under the substitute amendment, an organization that fails to certify completion of a project by the date indicated in its application for completion, or another date agreed to by DNR, is not eligible for a new grant for two grant cycles.

The substitute amendment requires DNR to report to the legislature on the effectiveness of the mitigation program's first five years and any recommended changes.

Property development grants. The substitute amendment also requires DNR to establish a separate grant program under which it makes grants to nonprofit organizations for certain property development activities relating to wetlands affected by a project under a wetland mitigation grant. Property development activities that may be funded under this grant program include those that increase public access to, awareness about, or recreational use of the affected wetland, or that improve habitat in, on, or near the affected wetland. Under the substitute amendment, the property development grant program is funded from the property development and local assistance subprogram of the Warren Knowles-Gaylord Nelson stewardship 2000 program.

The substitute amendment requires an application for a property development grant, though it is separate from the wetland mitigation grant program, to be submitted at the same time as an application for a wetland mitigation grant, requires DNR to make a determination on both grants at the same time, and prohibits DNR from awarding a property development grant unless it also awards a wetland mitigation grant. The substitute amendment also restricts a property development grant to no more than 10 percent of the amount of the wetland mitigation grant and provides that a property development grant may not be paid until the grantee certifies that the project funded by the wetland mitigation grant is complete.

Wetland study council. The substitute amendment creates within DNR a wetland study council, consisting of nine members, appointed for staggered six-year terms by the governor and the secretary of natural resources, representing various interests and expertises, to research and provide recommendations on various issues relating to wetlands.

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

- 1 **SECTION 1.** 15.347 (22) of the statutes is created to read:
- 2 15.347 (22) WETLAND STUDY COUNCIL. (a) There is created in the department
- 3 of natural resources a wetland study council consisting of the following members,
- 4 appointed for staggered 6-year terms:

1 1. One member who is a representative of a statewide organization
2 representing the business community.

3 2. One member who is a representative of a statewide organization
4 representing waterfowl interests.

5 3. One member who is a representative of a statewide organization
6 representing real estate and development interests.

7 4. One member who is a representative of a statewide organization
8 representing municipal interests.

9 5. One member who is a representative of a statewide organization
10 representing rural and agricultural interests.

11 6. One member who is a representative of a statewide organization
12 representing a land conservation group with a specific interest in wetlands.

13 7. One member who is a statewide wetland delineator.

14 8. One member who is a statewide wetland consultant.

15 9. One member who is a department of natural resources biologist or
16 hydrologist and who is a wetland expert, appointed by the secretary of natural
17 resources.

18 (b) The wetland study council shall research and develop recommendations on
19 all of the following:

20 1. The implementation and effectiveness of statewide wetland mitigation
21 programs.

22 2. Program elements that would be necessary for the department of natural
23 resources to implement if the department assumes from the federal government the
24 authority to administer the state's own individual and general permit program for

1 the discharge of dredged or fill material into the navigable waters of the state under
2 s. 281.12 (2).

3 3. Issues related to the analysis of practicable alternatives that avoid and
4 minimize the adverse impacts of a discharge into a wetland on wetland functional
5 values and that will not result in any other significant adverse environmental
6 consequences.

7 4. Storm water management ponds and their potential to serve a role in
8 wetland mitigation.

9 5. Statewide incentive programs for creating, restoring, and enhancing
10 wetlands.

11 6. Statewide wetland trainings for department of natural resources staff,
12 wetland consultants, and wetland delineators.

13 7. The simplification of regulations associated with creating wetlands on farm
14 drainage ditches for the purpose of phosphorus pollution retention.

15 8. Ways to improve the in lieu fee subprogram of the wetland mitigation
16 program, under s. 281.36 (3r) (e), including subcontracting the management of a
17 program to a nonprofit organization.

18 9. The possibility of a professional, whose wetland delineation work is assured
19 under the department of natural resources' wetland delineation professional
20 assurance initiative, performing a wetland delineation confirmation under s. 23.321
21 on behalf of the department.

22 10. Methods of financing wetland mitigation requirements for local units of
23 government.

24 11. Any other item related to wetlands at the discretion of the council.

1 **SECTION 2.** 20.370 (9) (bm) of the statutes, as affected by 2017 Wisconsin Act
2 59, is amended to read:

3 20.370 (9) (bm) *Wetland restoration — fees; payments.* From the general fund,
4 all moneys received as surcharge fees under s. 281.36 (11), all moneys received as
5 transfers to the in lieu fee subprogram as provided in s. 281.36 (3s) (h), 2015 stats.,
6 and all moneys received under the in lieu fee subprogram under s. 281.36 (3r) (e) for
7 the restoration or creation of wetlands, for the wetland mitigation grant program
8 under s. 281.37, and for any other activities authorized under the in lieu fee
9 subprogram.

10 **SECTION 3.** 23.0917 (4) (c) 3. of the statutes is amended to read:

11 23.0917 (4) (c) 3. Grants under ~~s.~~ ss. 23.098 and 23.099.

12 **SECTION 4.** 23.099 of the statutes is created to read:

13 **23.099 Grants for property development relating to wetland**
14 **mitigation. (1)** In this section:

15 (a) “Department land” has the meaning given under s. 281.37 (1) (a).

16 (b) “Nonprofit organization” means an organization that is described in section
17 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax
18 under section 501 (a) of the Internal Revenue Code.

19 **(2)** The department shall establish a program to make grants from the
20 appropriation under s. 20.866 (2) (ta) to nonprofit organizations for property
21 development activities relating to wetlands created, restored, or enhanced under a
22 wetland mitigation grant under s. 281.37 on department land. Property
23 development activities for which a grant under this section may be awarded include
24 those that increase public access to, awareness about, or recreational use of the new,

1 restored, or enhanced wetland, or that improve habitat in, on, or near, the new,
2 restored, or enhanced wetland.

3 **(3)** A nonprofit organization that applies for a grant under this section shall
4 submit the application at the same time that it submits an application for a grant
5 under s. 281.37. The department shall make its determination with respect to both
6 grants at the same time, and may only award a grant under this section if it also
7 awards a grant under s. 281.37.

8 **(4)** A grant awarded under this section may not exceed 10 percent of the
9 amount of the related grant awarded under s. 281.37. The department may not issue
10 the grant funding under this section to the grantee until the grantee has certified
11 that the project funded by the grant under s. 281.37 is complete.

12 **SECTION 5.** 23.321 (1) of the statutes is renumbered 23.321 (1) (intro.) and
13 amended to read:

14 23.321 (1) DEFINITION. (intro.) In this section, “wetland”;

15 (b) “Wetland” has the meaning given in s. 23.32 (1).

16 **SECTION 6.** 23.321 (1) (am) of the statutes is created to read:

17 23.321 (1) (am) “Nonfederal wetland” has the meaning given in s. 281.36 (1)
18 (br).

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

20 23.321 (2) (d) 1. In this paragraph, “qualified 3rd person” means an individual
21 who has completed basic and advanced wetland training and has a minimum of one
22 year of field experience in wetland delineation.

23 2. A wetland confirmation that consists of a written statement, based upon the
24 department’s review of the boundaries of a wetland as delineated by a qualified 3rd
25 person and not based upon an on-site inspection of the land by the department, of

1 whether the department concurs with the delineation. The delineation prepared by
2 the qualified 3rd person shall include the exact location and boundaries of the
3 wetland. The department shall concur with the boundaries of a wetland delineated
4 by a qualified 3rd person unless the department determines that the location and
5 boundaries of the wetland identified in the delineation are not accurate based on
6 maps, aerial photographs, surveys, wetland delineations, or hydrophitic soil
7 conditions. If the department concurs with the boundaries of a wetland delineated
8 by a qualified 3rd person, the department's statement under this paragraph shall
9 also include the exact location and boundaries of the wetland. A wetland
10 confirmation under this paragraph is available only with respect to a nonfederal
11 wetland.

12 **SECTION 8.** 23.321 (4) (a) 3. of the statutes is amended to read:

13 23.321 (4) (a) 3. Provide a wetland confirmation not later than 60 days after
14 a person files a request, in the manner and form required by the department, for a
15 wetland confirmation under sub. (2) (c).

16 **SECTION 9.** 23.321 (4) (a) 4. of the statutes is created to read:

17 23.321 (4) (a) 4. Provide a wetland confirmation not later than 15 days after
18 a person files a request, in the manner and form required by the department, for a
19 wetland confirmation under sub. (2) (d).

20 **SECTION 10.** 23.321 (5) of the statutes is renumbered 23.321 (5) (a) and
21 amended to read:

22 23.321 (5) (a) ~~A~~ Except as provided in par. (b), a wetland identification
23 provided by the department under sub. (2) (b) and a wetland confirmation provided
24 by the department under sub. (2) (c) remain effective for 5 years from the date
25 provided by the department.

1 **SECTION 11.** 23.321 (5) (b) of the statutes is created to read:

2 23.321 (5) (b) 1. A wetland identification provided by the department under
3 sub. (2) (b) and a wetland confirmation provided by the department under sub. (2)
4 (c) or (d) remain effective for 15 years from the date provided by the department if
5 all of the following conditions are met:

6 a. The wetland is a nonfederal wetland.

7 b. The parcel of land is subject to a storm water management zoning ordinance
8 enacted under s. 59.693, 60.627, 61.354, or 62.234 or a storm water discharge permit
9 issued under s. 283.33.

10 2. The department may not invalidate or amend an existing wetland
11 delineation, or require a new wetland delineation, for a parcel to which subd. 1.
12 applies until the wetland identification or confirmation expires.

13 **SECTION 12.** 281.12 (2) of the statutes is created to read:

14 281.12 (2) The department, on behalf of and at the direction of the governor,
15 may submit an application to the federal environmental protection agency under 33
16 USC 1344 (g) seeking the delegation of authority to this state to administer its own
17 individual and general permit program for the discharge of dredged or fill material
18 into the navigable waters of this state. If the federal environmental protection
19 agency delegates this authority to this state, the department may assume that
20 authority.

21 **SECTION 13.** 281.36 (3b) (b) of the statutes, as affected by 2017 Wisconsin Acts
22 58 and 115, is amended to read:

23 281.36 (3b) (b) No person may discharge dredged material or fill material into
24 a wetland unless the discharge is authorized by a wetland general permit or
25 individual permit issued by the department under this section or the discharge is

1 exempt under sub. (4), (4m) (a), (4n), or (4r). No person may violate any condition
2 contained in a wetland general or individual permit issued by the department under
3 this section. The department may not issue a wetland general or individual permit
4 under this section unless it determines that the discharge authorized pursuant to the
5 wetland general or individual permit will comply with all applicable water quality
6 standards.

7 **SECTION 14.** 281.36 (3m) (a) of the statutes, as affected by 2017 Wisconsin Acts
8 58 and 115, is amended to read:

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

19 **SECTION 15.** 281.36 (3n) (d) 1. of the statutes, as affected by 2017 Wisconsin Act
20 118, is amended to read:

21 281.36 **(3n)** (d) 1. Except as provided in subd. 2., the department shall require
22 mitigation under the program established under sub. (3r) for wetland individual
23 permits it issues under this subsection and for a discharge that is exempt from
24 permitting requirements under sub. (4n) (b) that affects more than 10,000 square
25 feet of wetland or under sub. (4n) (c) that affects more than 1.5 acres of wetland. This

1 subsection does not entitle an applicant to a wetland individual permit or any other
2 approval in exchange for conducting mitigation.

3 **SECTION 16.** 281.36 (3r) (a) (intro.) of the statutes is amended to read:

4 281.36 **(3r)** (a) (intro.) The department shall establish a mitigation program
5 that applies only to the issuance of wetland individual permits ~~and that allows and,~~
6 with respect to a discharge that is exempt from permitting requirements under sub.
7 (4n) (b) that affects more than 10,000 square feet of wetland or under sub. (4n) (c) that
8 affects more than 1.5 acres of wetland, the portion of the affected wetland that
9 exceeds 10,000 square feet or 1.5 acres, respectively. Under the mitigation program,
10 subject to par. (am), the department shall allow mitigation to be accomplished by any
11 of the following methods:

12 **SECTION 17.** 281.36 (3r) (a) 4. of the statutes is repealed.

13 **SECTION 18.** 281.36 (3r) (am) of the statutes is created to read:

14 281.36 **(3r)** (am) For a discharge that is exempt from permitting requirements
15 under sub. (4n) (b) or (c), any off-site mitigation, including any mitigation conducted
16 by a mitigation bank or under the in lieu fee subprogram, shall be completed within
17 the same compensation search area, as defined by the department by rule, as the
18 discharge.

19 **SECTION 19.** 281.36 (3s) of the statutes is repealed.

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

21 281.36 **(4)** (title) EXEMPTIONS; CERTAIN ACTIVITIES.

22 **SECTION 21.** 281.36 (4n) of the statutes is created to read:

23 281.36 **(4n)** EXEMPTIONS; CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL
24 WETLANDS. (a) In this subsection:

1 1. “Artificial wetland” means a landscape feature where hydrophitic vegetation
2 may be present as a result of human modification to the landscape or hydrology and
3 for which the department has no definitive evidence showing a prior wetland or
4 stream history that existed before August 1, 1991, but does not include any of the
5 following:

6 a. A wetland that serves as a fish spawning area or a passage to a fish spawning
7 area.

8 b. A wetland created as a result of a mitigation requirement under sub. (3r).

9 2. “Definitive evidence” means documentary evidence such as any of the
10 following:

11 a. Maps.

12 b. Aerial photographs.

13 c. Surveys that use a scale of not more than 100 feet per inch.

14 d. Wetland delineations.

15 3. “Rare and high quality wetland” means a wetland that is directly adjacent
16 or contiguous to a class I or class II trout stream or that consists of 75 percent or more
17 of any of the following wetland types:

18 a. Alder thicket.

19 b. Calcareous fen.

20 c. Coniferous swamp.

21 d. Coniferous bog.

22 e. Floodplain forest.

23 f. Hardwood swamp.

24 g. Interdunal wetland.

25 h. Open bog.

1 i. Ridge and swail complex.

2 j. Deep marsh.

3 k. Sedge meadow.

4 4. "Sewerage system" has the meaning given in s. 281.01 (14).

5 5. "Urban area" means any of the following:

6 a. An incorporated area.

7 b. An area within one-half mile of an incorporated area.

8 c. An area in a town that is served by a sewerage system.

9 (b) Subject to par. (e), the permitting requirement under sub. (3b) does not
10 apply to any discharge into a nonfederal wetland that occurs in an urban area and
11 to which all of the following apply:

12 1. The discharge does not affect more than one acre of wetland per parcel.

13 2. The discharge does not affect a rare and high quality wetland.

14 3. The development related to the discharge is carried out in compliance with
15 any applicable storm water management zoning ordinance enacted under s. 59.693,
16 60.627, 61.354, or 62.234 or storm water discharge permit issued under s. 283.33.

17 (c) Subject to par. (e), the permitting requirement under sub. (3b) does not apply
18 to any discharge into a nonfederal wetland that occurs outside an urban area and to
19 which all of the following apply:

20 1. The discharge does not affect more than 3 acres of wetland per parcel.

21 2. The discharge does not affect a rare and high quality wetland.

22 3. The development related to the discharge is a structure, such as a building,
23 driveway, or road, with an agricultural purpose.

24 (d) Subject to par. (e), the permitting requirement under sub. (3b) does not
25 apply to any discharge into an artificial wetland.

1 (e) 1. A person who proposes a project that may affect a wetland or landscape
2 feature under par. (b), (c), or (d) shall notify the department no fewer than 15 working
3 days before initiating the project. The notice shall include one of the following to
4 show that the wetland or landscape feature is eligible for the relevant exemption:

5 a. A statement issued by a professional who has investigated the wetland and
6 who is qualified to give such an opinion.

7 b. A wetland delineation prepared by a qualified professional showing the exact
8 location and boundaries of the wetland.

9 2. Except as provided in subd. 3., if the department receives the notice and
10 information required under subd. 1., the department shall presume that the wetland
11 or landscape feature is eligible for the exemption unless the department, within 15
12 working days after receiving notification of the proposed project under subd. 1.,
13 notifies the person that one of the following conditions applies:

14 a. The eligibility requirements are not met.

15 b. The location and boundaries of the wetland identified in a wetland
16 delineation included with the notification under subd. 1. are not accurate.

17 c. With respect to an exemption under par. (d) only, the department determines
18 that the landscape feature is providing significant functions that either protect
19 adjacent or downstream property or infrastructure from flooding or significantly
20 improve the water quality of an adjacent or downstream water body.

21 3. If the department receives the notice and information required under subd.
22 1. but is unable to determine based on that information whether the eligibility
23 requirements are met, the department may, within 15 working days after the
24 notification under subd. 1., notify the person one time to request additional
25 information about the parcel of land. The person shall cooperate with the

1 department's efforts to obtain information about the relevant parcel of land and may
2 proceed with the project only upon notification that the department has determined
3 the landscape feature to be eligible for the exemption based on the definitive
4 evidence.

5 4. If, within 15 working days after the notification is delivered to the
6 department, the department notifies the person that subd. 2. a., b., or c. applies, the
7 person may not proceed with the project unless authorized by, or otherwise exempted
8 from, a wetland general or individual permit under this section.

9 **SECTION 22.** 281.36 (6) (a) (intro.) of the statutes, as affected by 2017 Wisconsin
10 Act 115, is amended to read:

11 281.36 (6) (a) (intro.) The department shall promulgate rules to interpret and
12 implement the provisions under subs. (4), ~~(4n)~~, (4r), and (5). In promulgating these
13 rules, the department shall do all of the following:

14 **SECTION 23.** 281.36 (9) (a) (intro.) of the statutes, as affected by 2017 Wisconsin
15 Act 115, is amended to read:

16 281.36 (9) (a) (intro.) For purposes of determining whether to issue a wetland
17 individual permit, whether authorization to proceed as authorized under a wetland
18 general permit is appropriate, or whether an exemption under sub. (4), ~~(4n)~~, or (4r)
19 is appropriate, and for purposes of enforcing this section, any employee or other
20 representative of the department, upon presenting his or her credentials, may do any
21 of the following:

22 **SECTION 24.** 281.36 (12m) of the statutes is created to read:

23 281.36 (12m) LOCAL REGULATION OF NONFEDERAL OR ARTIFICIAL WETLANDS. A local
24 government may not enact an ordinance or adopt a resolution regulating a matter
25 regulated under sub. (3n) (d) 1. or (3r) (a) (intro.) or (am), with respect to a discharge

1 exempt from permitting requirements under sub. (4n) (b) or (c), or a matter regulated
2 under sub. (4n). If a local government has in effect on the effective date of this
3 subsection [LRB inserts date], an ordinance or resolution regulating nonfederal
4 wetlands or artificial wetlands, the ordinance or resolution does not apply and may
5 not be enforced.

6 **SECTION 25.** 281.36 (13m) of the statutes is amended to read:

7 **281.36 (13m) REPORT TO LEGISLATURE.** No later than January 31, 2003, and no
8 later than January 31 of each subsequent odd-numbered year, the department shall
9 submit to the legislature under s. 13.172 (2) a report that provides an analysis of the
10 impact of the implementation of mitigation on wetland resources and on the issuance
11 of permits or other approvals under ss. 59.692, 61.351, 61.353, 62.231, 62.233, 87.30,
12 281.11 to 281.47 or 281.49 to 281.85 or ch. 30, 31, 283, 289, 291, 292, 293, 295, or 299.
13 The department shall include in its report a discussion of proposals and projects
14 under the property development grant program under s. 23.099.

15 **SECTION 26.** 281.37 of the statutes is created to read:

16 **281.37 Wetland mitigation grant program. (1)** In this subsection:

17 (a) "Department land" means land owned by or under easement to the state
18 that is under the jurisdiction of the department and used for one of the purposes
19 specified in s. 23.09 (2) (d).

20 (b) "Mitigation program" means the wetland mitigation grant program
21 established under sub. (2).

22 (c) "Nonprofit organization" means an organization that is described in section
23 501 (c) (3) of the Internal Revenue Code and that is exempt from federal income tax
24 under section 501 (a) of the Internal Revenue Code.

1 **(2)** The department shall establish a wetland mitigation grant program under
2 which it awards grants to nonprofit organizations to conduct projects to create,
3 restore, or enhance wetlands under the in lieu fee subprogram in s. 281.36 (3r) (e)
4 on department land as provided in this subsection.

5 **(3)** No later than 6 months after the effective date of this subsection [LRB
6 inserts date], the department shall identify department land that is appropriate to
7 include in the mitigation program. The department shall identify no less than 25
8 percent of department land for this purpose. The land identified shall include land
9 in every watershed in the state.

10 **(4)** (a) No later than 3 months after completion of the land identification stage
11 under sub. (3) or at the beginning of the following fiscal year, whichever is earlier,
12 and no later than July 1 of each subsequent year, the department shall issue a
13 request for proposals from nonprofit organizations for grants to conduct wetland
14 mitigation projects on department land identified under sub. (3). The issuance of
15 each new request for proposal begins a new grant cycle.

16 (b) The department shall require applications for grants under this section to
17 include all of the following:

- 18 1. The scope of the proposed project.
- 19 2. A project timeline.
- 20 3. If possible, a specification of the functional values or uses listed in s. NR
21 103.03 (1), Wis. Adm. Code, that the project area does not provide or only sparsely
22 provides.
- 23 4. A specification of the functional values or uses listed in s. NR 103.03 (1), Wis.
24 Adm. Code, that the proposed project would create, restore, or enhance.

1 5. All information required to be submitted for approval to the U.S. army corps
2 of engineers under 33 CFR part 332 and the Wisconsin Wetland Conservation Trust
3 program instrument.

4 (c) After issuing the request for proposals under par. (a), the department shall
5 accept grant applications on a rolling basis over the course of a fiscal year. The
6 department shall select and announce grant recipients under this subsection at the
7 end of each quarter as funds are available.

8 **(5)** (a) If an application under sub. (4) is approved, the grantee and the
9 department, in consultation, shall identify all department permits required for the
10 grantee to conduct the project. The department shall waive all permit fees for the
11 grantee in relation to department permits required to conduct the project.

12 (b) Notwithstanding timelines otherwise established for individual permits,
13 within 60 days of receiving the grantee's application for an individual permit that is
14 required to conduct the project, the department shall render a decision issuing,
15 denying, or modifying the permit, and the department shall adjust all other
16 deadlines relating to the review of the application accordingly.

17 **(7)** (a) The department shall pay out a grant under the mitigation program
18 quarterly unless the department determines that more frequent payments are
19 necessary to fulfill the objectives of the grant program. The department shall
20 withhold the final payment until the grantee certifies that the project is complete.

21 (b) If the grantee fails to certify that the project is complete by the date
22 indicated for completion in its application, the department shall use the remaining
23 unpaid grant amount to either complete the project or contract with or issue a grant
24 to another nonprofit organization to complete the project. An organization that fails
25 to certify completion of a project by the date indicated in its application for

1 completion is not eligible for a new grant under the mitigation program for 2 grant
2 cycles.

3 (c) The department may agree to a modified deadline for the project if unusual
4 or unforeseen circumstances cause a delay. If the department agrees to a modified
5 deadline, the consequences under par. (b) apply only if the grantee fails to certify that
6 a project is complete by the date indicated in that agreement.

7 (8) Before 6 months have elapsed after the 5th anniversary of the department's
8 first issuance of a request for proposals under sub. (4), the department shall submit
9 to the legislature under s. 13.172 (2) a report analyzing the effectiveness of the first
10 5 years of the mitigation program and making recommendations for changes to the
11 program.

12 **SECTION 27. Nonstatutory provisions.**

13 (1) FEDERAL REVIEW OF MITIGATION PROJECTS. The department of natural
14 resources may submit a request to the U.S. army corps of engineers that the U.S.
15 army corps of engineers move up all deadlines relating to its review and approval of
16 wetland mitigation project proposals under the in lieu fee subprogram under section
17 281.36 (3r) of the statutes so that the time it takes for the U.S. army corps of
18 engineers to approve such a proposal is shortened. The department of natural
19 resources may submit a request to the U.S. army corps of engineers to approve a
20 modification to the Wisconsin Wetland Conservation Trust program instrument in
21 order to implement the mitigation grant program established under section 281.37
22 of the statutes.

23 (2) APPOINTMENT OF MEMBERS OF WETLAND STUDY COUNCIL. The governor shall
24 appoint the members of the wetland study council under section 15.347 (22) (a) 1. to
25 8. of the statutes and the secretary of natural resources shall appoint the member

1 of the wetland study council under section 15.347 (22) (a) 9. of the statutes no later
2 than 6 months after the effective date of this subsection.

3 (3) INITIAL TERMS FOR WETLAND STUDY COUNCIL MEMBERS. Notwithstanding
4 section 15.347 (22) of the statutes, of the members of the wetland study council who
5 are appointed as initial members, 3 members shall serve for a 2-year term and 3
6 members shall serve for a 4-year term.

7 **SECTION 28. Initial applicability.**

8 (1) NONFEDERAL WETLAND DELINEATIONS.

9 (a) Except as provided in paragraph (b), the renumbering and amendment of
10 section 23.321 (1) and (5) of the statutes and the creation of section 23.321 (1) (am)
11 and (5) (b) of the statutes first apply to a wetland identification provided by the
12 department of natural resources under section 23.321 (2) (b) of the statutes and a
13 wetland confirmation provided by the department of natural resources under section
14 23.321 (2) (c) of the statutes for a nonfederal wetland on January 1, 2003.

15 (b) The renumbering and amendment of section 23.321 (1) and (5) of the
16 statutes and the creation of section 23.321 (1) (am) and (5) (b) of the statutes first
17 apply to a wetland identification and wetland confirmation under paragraph (a) even
18 if the wetland identification or wetland confirmation expired prior to the effective
19 date of this paragraph unless a more recent wetland identification or wetland
20 confirmation was provided by the department of natural resources showing a
21 wetland on the parcel and a discharge was carried out in the wetland in compliance
22 with a permit under section 281.36 of the statutes prior to the effective date of this
23 paragraph.

24 **SECTION 29. Effective dates.** This act takes effect on the day after publication,
25 except as follows:

1 (1) PERMIT EXEMPTIONS FOR CERTAIN NONFEDERAL WETLANDS AND ARTIFICIAL
2 WETLANDS. The treatment of sections 281.36 (3b) (b), (3m) (a), (3n) (d) 1., (3r) (a)
3 (intro.) and (am), (4) (title), (4n), (6) (a) (intro.), and (9) (a) (intro.) of the statutes takes
4 effect on July 1, 2018.

5

(END)