

**2019 DRAFTING REQUEST**

**Bill**

For: **Robert Cowles (608) 266-0484** Drafter: **mpfotenh**  
 By: **Toni** Secondary Drafters:  
 Date: **1/7/2019** May Contact:  
 Same as LRB: **-2370**

Submit via email: **YES**  
 Requester's email: **Sen.Cowles@legis.wisconsin.gov**  
 Carbon copy (CC) to: **mary.pfotenhauer@legis.wisconsin.gov**  
**zachary.wyatt@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Clean water clearinghouse

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mpfotenh 1/15/2019	aernstr 1/16/2019			
/P1	mpfotenh 2/11/2019	aernstr 2/12/2019	dwalker 1/16/2019		State S&L
/P2	mpfotenh 2/19/2019	aernstr 2/20/2019	dwalker 2/12/2019		State S&L
/P3			mbarman 2/20/2019		State S&L
/1			lparisi	lparisi	State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			2/22/2019	3/11/2019	S&L

FE Sent For:

At INFO

<END>

# Point/Nonpoint Nutrient Trading Clean Water Clearinghouse, A Trading Marketplace

DRAFT – January 7, 2019

## DRAFTING INSTRUCTIONS

### 1. Create section 16.705(3) of the statutes, as follows:

**16.705 (3)** (a) The department shall solicit contractual services from a vendor to be performed under s. 283.84 (5). The department may not award a contract under this section unless the department determines that all of the following requirements have been met:

1. The vendor has established or is capable of establishing the contract terms, conditions, and information required to document and enforce transactions under s. 283.84 (5) in a commercially reasonable manner.
2. The vendor has established a policy that requires a commercially reasonable amount of financial reserves, insurance, other system risk management mechanism or reserve credit pool for use in the event that a party defaults on an agreement under s. 283.84 (5).
3. The vendor has established a commercially reasonable process for soliciting and entering into transactions under s. 283.84 (5).
4. The vendor has established a clearly defined fee structure describing the manner in which and the amount that the clearinghouse will be paid for facilitating and executing transactions under s. 283.84 (5).
5. The vendor has demonstrated the capability of facilitating and executing transactions under s. 283.84 (5).
6. The vendor has satisfied all other applicable requirements to transact business in this state.

(b) The department may terminate a contract entered into under par. (a) if the vendor fails to meet any of the requirements under par. (a) (1) to (6) or s. 283.84 (5). The department shall give the vendor at least 120 days' notice of the default and a right to cure before terminating a contract under this paragraph.

### 2. Create section 283.84 (1) as follows:

**283.84 (1) Trading of water pollution credits. (1) DEFINITIONS.** In this section:

- (a) “Applicable hydrologic region” means a region of territory within this state, as interpreted by the department, which shall be as large as possible to facilitate implementation of this section while achieving water quality objectives.
- (b) “Clearinghouse” means the entity that provides contractual services under s. 16.705(3).
- (c) “Water pollution prevention or environmental enhancement services” means any activity or practice undertaken by any person who certifies that a specified, measureable amount of a specified pollutant is avoided or removed reducing the overall mass balance of pollution within an applicable hydrologic region over time.
- (d) “Water quality assurance credit pool” means a pool of credits sold under 283.84 (5) that is maintained by the clearinghouse to meet the requirements of s. 16.705(3) (a) 2.

**3. Renumber section 283.84 (1) to 283.84 (1d) and create (1d) (f) and (g) as follows:**

**283.84 (1d) (f)** Reaches a binding, written agreement with a clearinghouse to purchase clean water credits from the clearinghouse.

**283.84 (1d) (g)** Reaches a binding, written agreement with a third party under which the third party constructs a project, employs a technology or implements a plan that results in reducing the amount of water pollution from sources other than the source covered in the permit. If a third party agreement is reached the clearinghouse shall be notified.

**4. Amend section 283.84 (1m)(d) as follows:**

**283.84 (1m) (d)** Except as provided in par. (e), the increase in pollutants and the reduction in pollutants occur within the same basin or portion of a basin, as determined by the department.

**5. Create section 283.84 (1m) (e) as follows:**

**283.84 (1m) (e)** If the increase in pollutants is pursuant to an agreement under sub. (1d) (f) of (g), the increase in pollutants and the reduction in pollutants occur within the same applicable hydrologic region.

**6. Create section 283.84 (5) as follows:**

**283.84 (5) CLEAN WATER CLEARINGHOUSE SERVICES.** (a) The clearinghouse shall be primarily responsible for facilitating a financially sustainable market for the purchase of water pollution prevention or environmental enhancement services, the production of clean water credits from those services with specific attributes that facilitate the sale and use of those credits, and the sale of credits described in this subsection. As provided under this subsection, the clearinghouse shall do all of the following:

1. Facilitate the production of clean water credits, available for purchase under subd. 3., by entering into contracts with third parties to purchase water pollution prevention or environmental enhancement services which will avoid or remove a specified, measurable amount of a pollutant within an applicable hydrologic region,

2. Maintain a bank of available clean water credits produced or to be produced under subd. 1., and

3. Sell clean water credits at a ratio of 1.2 to 1 within the same applicable hydrologic region to any person.

(b) The clearinghouse shall determine the amount of credits that may be generated by various water pollution prevention or environmental enhancement services through the use of tables approved by the department and established by the clearinghouse based on the best available scientific protocols or, if such tables are not available, through environmental impact modeling approved by the department.

(c) The clearinghouse shall endeavor to minimize transaction costs, maximize the performance of water pollution prevention or environmental enhancement services and reduce the overall amount of pollutant lost to the applicable hydrologic region over time.

(d) The clearinghouse may:

1. Use funds received from the sale of credits for general program operations of the clearinghouse under this section, including costs associated with purchasing water pollution prevention or environmental enhancement services and the repayment of seed funds granted or loaned to the clearinghouse.

2. Hold excess funds in trust for the purpose of making grants, in collaboration with county land conservation offices, the department, and the department of agriculture, trade and consumer protection, or any combination thereof for targeted water pollution prevention, water pollution remediation, and other environmental enhancement projects that improve the water quality of this state.

3. Establish a water quality assurance credit pool.

4. Conduct research and make recommendations to the legislature on other market-based approaches to environmental improvement. The clearinghouse may submit its recommendations to the chief clerk of each house of the legislature, who shall distribute the recommendations to the members of the standing committee or committees of each house concerned with the subject matter of the recommendations.

(e) The department may contract with the clearinghouse to further the implementation of any market-based water quality improvement programs in effect in this state, including the implementation of s. 283.84.

(f) The department shall administer this section in a manner that is consistent with the federal Water Pollution Control Act, 33 USC 1251 to 1387. The department may enter into a memorandum of understanding with the federal environmental protection agency relating to the administration of this section.

## Pfotenhauer, Mary

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**From:** Herkert, Toni  
**Sent:** Tuesday, January 15, 2019 11:46 AM  
**To:** Pfotenhauer, Mary  
**Subject:** RE: Clearinghouse drafting request: questions

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Mary, I had a chance to review the questions and below are my answers in red. In addition, I am wondering if we can remove a provision and tweak one other before the p1 comes over?

- ✓ I would like to modify 283.84 (5)(d)4 to say – Conduct additional market-based and technical research. **AND remove** – “and make recommendations to the legislature on other market-based approaches to environmental improvement. The clearinghouse may submit its recommendations to the chief clerk of each house of the legislature, who shall distribute the recommendations to the members of the standing committee or committees of each house concerned with the subject matter of the recommendations.
- ✓ In addition, I would like to **remove** the section in 283.84 (5)(f) stating “The department shall administer this section in a manner that is consistent with the federal Water Pollution Control Act, 33 USC 1251 to 1387. We could discuss this more by phone.
- ✗ The rest of your questions are answered below in red.

**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles (608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



Here are some questions on the clearinghouse drafting request. Feel free to call tomorrow or Monday if you'd like to discuss.

- ✓ In general, I just want to make sure it's okay to tweak some of the language or some of the arrangement of things. If it's okay I'd like to send you a slightly different-looking layout and see what you think. No problem
- ✓ For the definition of “water pollution prevention or environmental enhancement services,” should the reduction be “over time” or over a specified period of time (if you would like to define that time frame I would say we have to add a reference to the department – so it would read “over a specified period of time as determined by the department.” Also for this definition, unless you object, I'm going to take out the reference to “applicable hydrologic region”—the explanation for why is long and 100% “in the weeds” so let me know if you want to discuss it in detail! I think we have to discuss this. I was trying to give the department some flexibility which would have to be approved by EPA (I think) but right now they use HUC 12's and the average size of a HUC 12 is 30 square miles which doesn't really provide the flexibility for a 3<sup>rd</sup> party trade. It actually makes trading very difficult. So in this phosphorus compliance option, I was trying to allow a little more flexibility to perhaps use a HUC 10 which is about 150 square miles without stating HUC 10 because the department doesn't know how many instances they would or could actually do that. Therefore, the “applicable hydrologic region” was attempting to provide flexibility without boxing them in.
- ✓ Under item #3, for s. 283.84 (1d) (g): Is this substantively different from the current ss. 283.84 (1) (a) and (b)? Could we instead add the requirement to notify the clearinghouse for any agreement entered into under sub. (1) (a) and (b)? If so, should we also add that requirement to the other paragraphs under sub. (1)? The requirements in the new (f) and (g) are for third party contracts. 3<sup>rd</sup> party contracts are not allowed under current law. Just trades with permittees, the department or a local unit of gov't. I guess the local unit may be a 3<sup>rd</sup> party, but not in a private market.

✓ Under item #6, for s. 283.84 (5) (a) 3.: Just for my clarification, does the ratio of 1.2 to 1 mean that 1 credit that is produced by the clearinghouse is sold by the clearinghouse for the cost of 1.2 credits? This might be clear enough, but you might also want to consider clarifying it. This probably needs clarification. The ratio was meant to convey that 1.2 lbs of phosphorus or amount of pollutant if not phosphorus had to be removed to qualify or be certified as 1 credit. So you have to remove more of the nutrient since there is a margin of error with any given practice.

✓ Under item #6, for s. 283.84 (5) (c): What does "lost to" mean in this context? Discharged/added to/introduced into? Something else? Farmers seem to be pretty sensitive to the concept of "discharge." So, this was an attempt to try and indicate that we are looking to reduce and ultimately completely prevent run-off of nutrients to receiving waters.

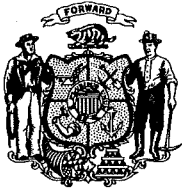
✓ Under item #6, for s. 283.84 (5) (d) 1.: Is the intent to allow repayment of "seed funds" only? Or is the repayment of other grants and loans okay? Broader the authority the better. More flexibility to use funds as appropriate to make this all work. Also, is "costs associated with purchasing water pollution prevention or environmental enhancement services" the same thing as "transactional costs" (used in (5) (c))? No. This language refers literally to what would get paid under contract to the farm or other party "harvesting" the nutrients and preventing the runoff. The "transaction costs" is different. It's meant to say the clearinghouse shouldn't charge exorbitant fees (like administrative fees) per transaction.

✓ Under item #6, for s. 283.84 (5) (f): May DNR enter into an MOU with EPA regarding all of section 283.84 or only regarding the clearinghouse under subsection (5)? I believe this should just be referring to an MOU under the new subsection (5) but also including the two third party trades now allowed in 283.84 (1d) (f) and (g). I think I am correct in stating that the DNR would have to get approval from EPA to allow 3<sup>rd</sup> party trades of any kind (including with the clearinghouse) and that is what the MOU would detail. But don't quote me on that issue.

Lastly you asked if we should make the contract with DOA to be subject to the competitive bid process and I think we should.

Thanks again for your patience as I was out of the office and all your help getting this draft out the door. Give me a call if you would like to discuss any of these modifications in greater detail. I am in the office today.

Toni



State of Wisconsin  
2019 - 2020 LEGISLATURE

1P1

LRB-1244(?)

MCP:..

ahc

In 1/15

Out 1/16 if possible (end of day)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

sal  
gen

- 1 AN ACT ...; relating to: buying and selling water pollution credits through a
- 2 central clearinghouse.

***Analysis by the Legislative Reference Bureau***

This bill creates a system for buying and selling water pollution credits through a central clearinghouse.

Under current law, the Department of Natural Resources administers a program for trading water pollution credits between sources of water pollution. Under the program, DNR may authorize a person (permit holder) who holds a water pollution discharge elimination system (WPDES) permit or a storm water discharge permit to discharge a pollutant above the levels authorized in the permit if the permit holder enters into an agreement with another party under which the other party will reduce water pollution. The agreement must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same water basin.

Under this bill, DNR may authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder purchases credits from a clearinghouse that has contracted with the Department of Administration. The purchase of credits must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same region, as determined by DNR. That region must be the largest region possible within this state to facilitate implementation of the water pollution trading program while achieving water



*those other sources*

quality objectives. The bill also allows DNR to authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder enters into a contract with a third party that works with other sources of water pollution to reduce the amount of water pollution that they cause. If a third-party contract is entered into, the parties must notify the clearinghouse that contracts with DOA, if any.

The bill requires DOA to solicit vendors to operate as a clearinghouse for the purpose of buying and selling water pollution credits. The department may not contract with a clearinghouse unless the clearinghouse has established 1) the contract terms, conditions, and information required to document and enforce sales and purchases of credits in a commercially reasonable manner; 2) a policy that requires a commercially reasonable amount of financial reserves or reserve credits in case of default by a seller of credits; 3) a commercially reasonable process for soliciting and entering into sales and purchases of credits; and 4) a fee structure for what and how the clearinghouse will be paid for facilitating and executing sales and purchases of credits. In addition, the clearinghouse must demonstrate the capability of facilitating and executing sales and purchases of credits and must satisfy all other applicable requirements to transact business in this state.

Under the bill, a clearinghouse that contracts with DOA must enter into agreements with parties to reduce pollution, which will generate credits at a ratio of one credit for every 1.2 units of pollution reduction; maintain a bank of credits; and sell credits to any person. The clearinghouse must establish, with DNR's approval, tables showing the amount of credits that may be produced by various pollution reduction activities. When the clearinghouse contracts with a party for pollution reduction activities, the clearinghouse must also seek to minimize transaction costs, maximize the performance of the pollution reduction activities, and reduce the overall amount of pollutants introduced into the applicable region.

The bill allows the clearinghouse to use funds received from the sale of credits for general program operations; to hold excess funds in trust for the purpose of making grants for water pollution reduction projects; establish a reserve pool of credits as a risk management mechanism; and conduct research on other market-based approaches to environmental improvement.

The bill does not change the existing water pollution credit trading program under current law; however, the bill does allow DOA to contract with the clearinghouse to further the implementation of any market-based water quality improvement programs in this state, including the implementation of the existing water pollution credit trading program.

The bill also allows DOA to terminate the contract with the clearinghouse if it fails to meet any requirements under the bill. The bill requires DOA to give the clearinghouse at least 120 days' notice of the default and a right to cure before terminating the contract.

*Certain policies and procedures specified in the bill*

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 16.9685 of the statutes is created to read:

2           **16.9685 Clean water clearinghouse.** (1) In this section, “water pollution  
3 prevention or environmental enhancement services” means any activity, practice, or  
4 project undertaken by any person who certifies that it will result in a specified,  
5 measurable amount of discharge of a specified pollutant being prevented or reduced  
6 and a reduction in the overall mass balance of water pollution over a specified period  
7 of time.

8           (2) The department shall solicit services from a clearinghouse to perform the  
9 functions under subs. (3) to (5). The department may not enter into a contract with  
10 a clearinghouse under this section unless the department determines that all of the  
11 following requirements have been met:

12           (a) The clearinghouse has established or is capable of establishing the contract  
13 terms, conditions, and information required to document and enforce transactions  
14 under sub. (3) (a) and (c) in a commercially reasonable manner.

15           (b) The clearinghouse has established a policy that requires a commercially  
16 reasonable amount of financial reserves, insurance, reserve credit pool, or other risk  
17 management mechanism for use in the event that a party defaults on an agreement  
18 under sub. (3) (a).

19           (c) The clearinghouse has established a commercially reasonable process for  
20 soliciting and entering into transactions under sub. (3) (a) and (c).

1 (d) The clearinghouse has established a clearly defined fee structure describing  
2 the manner in which and the amount that the vendor will be paid for facilitating and  
3 executing transactions under sub. (3) (a) and (c).

4 (e) The clearinghouse has demonstrated the capability of facilitating and  
5 executing transactions under sub. (3) (a) and (c).

6 (f) The clearinghouse has satisfied all other applicable requirements to  
7 transact business in this state.

8 (3) A clearinghouse with which the department enters into a contract under  
9 sub. (2) shall be the primary entity responsible for facilitating a financially stable  
10 market for the activities described in this subsection and sub. (4) and shall do all of  
11 the following:

12 (a) Produce credits by entering into contracts with other parties to undertake  
13 water pollution prevention or environmental enhancement services. Each credit  
14 generated by a contracting party under this paragraph shall require the party to  
15 undertake 1.2 times that amount in water pollution prevention or environmental  
16 enhancement services.

17 (b) Maintain a bank of credits produced or to be produced under par. (a).

18 (c) Sell credits produced under par. (a) to any person.

19 (d) Seek to establish, with the approval of the department of natural resources,  
20 tables providing the amount of credits that may be produced by various water  
21 pollution prevention or environmental enhancement services. The tables shall be  
22 based on the best available scientific protocols.

23 (e) When contracting with a party under par. (a), determine the amount of  
24 credits that may be produced by the water pollution prevention or environmental  
25 enhancement services by using the tables established under par. (d) or, if such tables

1 are not available, by using environmental impact modeling approved by the  
2 department of natural resources.

3 (f) When contracting with a party under par. (a), seek to minimize transaction  
4 costs, maximize the performance of the water pollution prevention or environmental  
5 enhancement services, and reduce the overall amount of pollutants introduced into  
6 the applicable hydrologic region, as defined under s. 283.84 (1m) (e) 2., over time.

7 (4) A clearinghouse with which the department enters into a contract under  
8 sub. (2) may do any of the following:

9 (a) Use funds received from the sale of credits for general program operations  
10 of the clearinghouse, including costs associated with purchasing water pollution  
11 prevention or environmental enhancement services and repayment of funds granted  
12 or loaned to the clearinghouse.

13 (b) Hold excess funds in trust for the purpose of making grants, in collaboration  
14 with county land conservation offices, the department, or the department of  
15 agriculture, trade and consumer protection, for targeted water pollution prevention,  
16 water pollution remediation, and other environmental enhancement projects that  
17 improve the water quality of this state.

18 (c) Establish a reserve pool of credits produced under sub. (3) (a) and maintain  
19 the reserve credit pool for the purpose of maintaining a risk management mechanism  
20 under sub. (2) (b).

21 (d) Conduct research on other market-based approaches to environmental  
22 improvement.

23 (5) The department may contract with a clearinghouse under sub. (2) to  
24 further the implementation of any market-based water quality improvement  
25 programs in effect in this state, including the implementation of s. 283.84.

1           (6) The department may enter into a memorandum of understanding with the  
2 federal environmental protection agency relating to the administration of this  
3 section.

4           (7) The department may terminate a contract entered into under sub. (2) if the  
5 clearinghouse fails to meet any of the requirements under this section or rules  
6 promulgated under (this section or) s. 283.84. The department shall give the  
7 clearinghouse at least 120 days' notice of the default and a right to cure before  
8 terminating a contract under this subsection.

9           **SECTION 2.** 283.84 (1) (f) of the statutes is created to read:

10           283.84 (1) (f) Reaches a binding, written agreement with a clearinghouse that  
11 holds a valid contract under s. 16.9685 to purchase credits from the clearinghouse.

12           **SECTION 3.** 283.84 (1) (g) of the statutes is created to read:

13           283.84 (1) (g) Reaches a binding, written agreement with a third party under  
14 which the third party agrees to work with one or more persons, other than the permit  
15 holder, who are causing water pollution to reduce the amount of water pollution that  
16 those persons cause below the levels of water pollution that those persons are  
17 causing when the agreement is reached. If an agreement is reached under this  
18 paragraph, the person who is required to obtain a permit or the third party shall  
19 notify the clearinghouse that holds a valid contract under s. 16.9685, if any.

20           **SECTION 4.** 283.84 (1m) (d) of the statutes is amended to read:

21           283.84 (1m) (d) The Except as provided under par. (e) 1., the increase in  
22 pollutants and the reduction in pollutants occur within the same basin or portion of  
23 a basin, as determined by the department.

History: 1997 a. 27; 2001 a. 16; 2003 a. 33; 2011 a. 151; 2013 a. 1; 2017 a. 134.

24           **SECTION 5.** 283.84 (1m) (e) of the statutes is created to read:



## Requested Modifications to LRB 1244/P1- 3<sup>rd</sup> Party Nutrient Trading

- ✓ In the analysis can we modify any reference to a hydrologic “region” to an “area” and then make that change throughout the legislation. I think I highlighted all the times it comes up in the statutory language but just in case, that is the intent.
- ✓ Page 2, Section 1, Lines 2-7: To improve clarity, in this section, “water pollution prevention or environmental enhancement services” means any activity, practice or project undertaken by any person who certifies that it will result in a quantifiable reduction of a specified pollutant in the overall mass balance of water pollution over a specified period of time.
- ✓ Page 2, Section 1, Line 8: Add the work single before clearinghouse.
- ✓ Page 3, Section 1, Line 13: Delete the word vendor in that line and add clearinghouse.
- ✓ Page 3, Section 1, Line 15: Delete the work demonstrated in that line.
- Jms* ✓ Page 3, Section 1, Line 18: After line 18 add a new requirement – (g) The department and the clearinghouse have consulted with the department of natural resources regarding the terms of the contract.
- ✓ Page 4, Section 1, Line 1: add the words “at a minimum” after “undertake” and before “1.2 times”
- Jms* ✓ Page 4, Section 1, Line 2: at the end of the sentence continue from enhancement services, unless the water pollution prevention or environmental enhancement services result in the pollutant being permanently transported outside of this state. ~~If the water pollution prevention or environmental enhancement services result in the pollutant being permanently removed from the state, the ratio of the credit to the amount of pollutant removed may be less than 1.2.~~
- ✓ Page 4, Section 1, Lines 14-17: Turn (f) into a list and change “region” to “area” so it reads: (f) When contracting with a party under par. (a) seek to do all of the following:
  1. Minimize transaction costs,
  2. Maximize the performance of the water pollution prevention or environmental enhancement services,
  3. Reduce the overall amount of pollutants introduced into the applicable hydrologic area, as defined under s. 283.84 (1m) (e) 2., over time.
- Jms* ✓ Page 4, Section 1, After Line 17: Add a (g) which states: (g) Maintain a centralized registry of all credits generated in this state and of the verification of all such credits and an internet based platform to facilitate the location of potential credit buyers, available

credits, and any other information that would facilitate credit transactions. The clearinghouse shall report this and other pertinent trading information annually to the DOA and DNR.

- ✓ Page 4, Section 1, Lines 20-23: Reword to read: (a) Charge fees and use funds received for general program operations of the clearinghouse, including costs associated with facilitating transactions, purchasing water pollution prevention or environmental enhancement services and repayment of funds granted or loaned to the clearinghouse.
- ✓ Page 5, Section 1, Line 7: Remove the words "market-based" and add "innovative"
- ✓ Page 5, Section 1, Line 9: Reword to read: (5) The department, in consultation with the department of natural resources, may contract with a clearinghouse under sub. (2) to further the implementation of any water quality improvement programs in effect in this state.
- ✓ Page 5, Section 1, Line 12-14: Remove (6) and lines 12-14.
- Ins* ✓ Page 5, Section 1, Line 15: Begin (7) with the following: The term of a contract entered into under sub. (2) shall be 5 years. Then continue with the remainder of (7)
- ✓ Page 5, Section 1, Lines 16-17: Remove "rules promulgated" because no rules have been promulgated
- Ins* ✓ Page 5, Section 2, Line 22: after the sentence add a new sentence stating: Prior to entering into any such agreement, the clearinghouse shall consult with the department to the extent required under the contract under s. 16.9685(2).
- Ins* ✓ Page 6, Section 3, Line 3: after ...the agreement is reached. Add the following: Prior to entering into any such agreement, the third party shall consult with the department concerning the terms of the agreement.
- ✓ Page 6, Section 5, Lines 13: Reword to read: applicable hydrologic area, as determined by the department.
- Ins* ✓ Page 6, Section 5, Lines 14-16: Reword to read: 2. In this paragraph, "applicable hydrologic area" means the largest area possible within the state to facilitate implementation of this section while achieving water quality standards and consistent with any applicable federally approved total maximum daily load allocation.
- Ins*  
*Nonstat* ✓ Page 6, Section 6, Lines 18-20: Reword to read: 283.84 (5) As quickly as possible, the department shall review and approve any tables established by a clearinghouse under s. 16.9685 (3) (d) and any environmental impact modeling proposed by a clearinghouse under s. 16.9685 (3) (e) provided the tables and models are consistent with the federal Water Pollution Control Act, 33 USC 1251 to 1387. Then continue with the remainder of the section



## **Pfotenhauer, Mary**

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**From:** Herkert, Toni  
**Sent:** Thursday, February 07, 2019 3:56 PM  
**To:** Pfotenhauer, Mary  
**Cc:** Henning, Anna  
**Subject:** Requested Edits to LRB 1244/P1  
**Attachments:** Suggested Edits for P2.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Mary,

Attached is a list of requested edits to the pollutant trading draft. Please let me know if you have any questions. Thank you again for all your help with this piece of legislation!

Toni

**Toni R. Herkert** Policy Advisor/Clerk.- Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1244/P1ins  
MCP:ahc

1           INSERT A ✓

          Under the bill, the term of a contract between DOA and a clearinghouse is five ✓  
years.

2

3           INSERT B ✓

          ; maintain a centralized registry of credits generated in this state; and maintain  
an Internet-based platform to facilitate the location of potential buyers, available  
credits, and other information that will facilitate credit transactions

4

5           INSERT C ✓

          Credits must be generated with the clearinghouse at a ratio of one credit for  
every 1.2 units, at a minimum, of pollution reduction, unless the pollution reduction ✓  
activities result in the permanent transportation of the pollutant to outside of the  
state.

6

7           INSERT 3-18 ✓

8           (g) The clearinghouse has consulted with the department of natural resources  
9           about the terms of the contract.

10

11           INSERT 4-2 ✓

12           , unless the water pollution prevention or environmental enhancement services  
13           result in the applicable pollutant being permanently transported outside of this  
14           state.

15

16           INSERT 4-17 ✓

17           (g) Maintain a centralized registry of all credits generated in this state and of  
18           the verification of all such credits, and maintain an Internet-based platform to

18

1 facilitate the location of potential credit buyers, available credits, and any other  
2 information that will facilitate credit transactions. The clearinghouse shall report  
3 this and other pertinent trading information annually to the department and to the  
4 department of natural resources.

5  
6 ✓ INSERT 5-15

7 The term of a contract entered into under sub. (2) shall be 5 years.

8  
9 ✓ INSERT 5-22

10 , if the clearinghouse has consulted with the department about the agreement  
11 to the extent required under the contract under s. 16.9685

12  
13 INSERT 6-3

14 (14) Before an agreement is reached under this paragraph, the <sup>3rd</sup> third party shall  
15 consult with the department about the terms of the agreement.

16  
17 INSERT 6-16 ✓

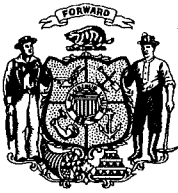
18 standards and any applicable federally approved total maximum daily load  
19 allocations

20  
21 INSERT 6-23

22 **SECTION 1. Nonstatutory provisions.**

23 (1) As soon as possible after the effective date of this act, the department of  
24 natural resources shall review any tables established by the clearinghouse under s.  
25 16.9685 (3) (d) ✓ and any environmental impact modeling proposed by the

1 clearinghouse under s. 16.9685 (3) (e) and shall approve such tables and models if  
2 they have been developed according to any applicable requirements under the  
3 federal water pollution control act, <sup>as amended,</sup> 33 USC 1251 <sup>et seq.</sup> (to 1387), and any regulations or  
4 guidance documents adopted under that act.  
5



State of Wisconsin  
2019 - 2020 LEGISLATURE

1P2  
LRB-1244/P1  
MCP:ahc

In 2/11  
Out 2/12 or 2/13

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Insert

sa✓

- 1 **AN ACT to amend** 283.84 (1m) (d); and **to create** 16.9685, 283.84 (1) (f), 283.84
- 2 (1) (g), 283.84 (1m) (e) and 283.84 (5) of the statutes; **relating to:** buying and
- 3 selling water pollution credits through a central clearinghouse.

***Analysis by the Legislative Reference Bureau***

This bill creates a system for buying and selling water pollution credits through a central clearinghouse.

Under current law, the Department of Natural Resources administers a program for trading water pollution credits between sources of water pollution. Under the program, DNR may authorize a person (permit holder) who holds a water pollution discharge elimination system (WPDES) permit or a storm water discharge permit to discharge a pollutant above the levels authorized in the permit if the permit holder enters into an agreement with another party under which the other party will reduce water pollution. The agreement must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same water basin.

Under this bill, DNR may authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder purchases credits from a clearinghouse that has contracted with the Department of Administration. The purchase of credits must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same region, as determined by DNR. That region must be the largest region possible within this state to facilitate

area area

standards and any federally approved total daily maximum load allocations.  
 implementation of the water pollution trading program while achieving water quality objectives. The bill also allows DNR to authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder enters into a contract with a third party that works with other sources of water pollution to reduce the amount of water pollution that those other sources cause. *the single*

The bill requires DOA to solicit vendors to operate as a clearinghouse for the purpose of buying and selling water pollution credits. The department may not contract with a clearinghouse unless the clearinghouse has established certain policies and procedures specified under the bill. *In this state.*

*the* Under the bill, a clearinghouse that contracts with DOA must enter into agreements with parties to reduce pollution, which will generate credits at a ratio of one credit for every 1.2 units of pollution reduction; maintain a bank of credits; and sell credits to any person. *In A* When the clearinghouse contracts with a party for pollution reduction activities, the clearinghouse must also seek to minimize transaction costs, maximize the performance of the pollution reduction activities, and reduce the overall amount of pollutants introduced into the applicable region. *generate credits by entering*

*In B* The bill does not change the existing water pollution credit trading program under current law; however, the bill does allow DOA to contract with the clearinghouse to further the implementation of any market-based water quality improvement programs in this state, including the implementation of the existing water pollution credit trading program. *In C*

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill. *area*

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

1 SECTION 1. 16.9685 of the statutes is created to read:

2 **16.9685 Clean water clearinghouse.** (1) In this section, "water pollution  
 3 prevention or environmental enhancement services" means any activity, practice, or  
 4 project undertaken by any person who certifies that it will result in a specified,  
 5 measurable amount of discharge of a specified pollutant being prevented or reduced  
 6 and a reduction in the overall mass balance of water pollution over a specified period  
 7 of time.

8 (2) The department shall solicit services from a clearinghouse to perform the  
 9 functions under subs. (3) to (5). The department may not enter into a contract with

1 a clearinghouse under this section unless the department determines that all of the  
2 following requirements have been met:

3 (a) The clearinghouse has established or is capable of establishing the contract  
4 terms, conditions, and information required to document and enforce transactions  
5 under sub. (3) (a) and (c) in a commercially reasonable manner.

6 (b) The clearinghouse has established a policy that requires a commercially  
7 reasonable amount of financial reserves, insurance, reserve credit pool, or other risk  
8 management mechanism for use in the event that a party defaults on an agreement  
9 under sub. (3) (a).

10 (c) The clearinghouse has established a commercially reasonable process for  
11 soliciting and entering into transactions under sub. (3) (a) and (c).

12 (d) The clearinghouse has established a clearly defined fee structure describing  
13 the manner in which and the amount that the vendor will be paid for facilitating and  
14 executing transactions under sub. (3) (a) and (c). *a clearinghouse*

15 (e) The clearinghouse has demonstrated the capability of facilitating and  
16 executing transactions under sub. (3) (a) and (c). *to facilitate*  
*execute*

17 (f) The clearinghouse has satisfied all other applicable requirements to  
18 transact business in this state.

19 **(3)** A clearinghouse with which the department enters into a contract under  
20 sub. (2) shall be the primary entity responsible for facilitating a financially stable  
21 market for the activities described in this subsection and sub. (4) and shall do all of  
22 the following:

23 (a) Produce credits by entering into contracts with other parties to undertake  
24 water pollution prevention or environmental enhancement services. Each credit  
25 generated by a contracting party under this paragraph shall require the party to

1 undertake <sup>at least</sup> 1.2 times that amount in water pollution prevention or environmental  
2 enhancement services. <sup>Ins 4-2</sup>

3 (b) Maintain a bank of credits produced or to be produced under par. (a).

4 (c) Sell credits produced under par. (a) to any person.

5 (d) Seek to establish, with the approval of the department of natural resources,  
6 tables providing the amount of credits that may be produced by various water  
7 pollution prevention or environmental enhancement services. The tables shall be  
8 based on the best available scientific protocols.

9 (e) When contracting with a party under par. (a), determine the amount of  
10 credits that may be produced by the water pollution prevention or environmental  
11 enhancement services by using the tables established under par. (d) or, if such tables  
12 are not available, by using environmental impact modeling approved by the  
13 department of natural resources.

14 (f) When contracting with a party under par. (a), seek to <sup>do all of the following:</sup> minimize transaction  
15 costs, <sup>or. P 2.</sup> maximize the performance of the water pollution prevention or environmental  
16 enhancement services, <sup>or. P 3.</sup> and reduce the overall amount of pollutants introduced into  
17 the applicable hydrologic <sup>area</sup> region, as defined under s. 283.84 (1m) (e) 2., over time.

18 <sup>Ins 4-17</sup> (4) <sup>The</sup> A clearinghouse with which the department enters into a contract under  
19 sub. (2) may do any of the following:

20 (a) <sup>Charge fees and</sup> Use funds received <sup>from the sale of credits</sup> for general program operations  
21 of the clearinghouse, including costs associated with <sup>facilitating transactions,</sup> purchasing water pollution  
22 prevention or environmental enhancement services and repayment of funds granted  
23 or loaned to the clearinghouse.

24 (b) Hold excess funds in trust for the purpose of making grants, in collaboration  
25 with county land conservation offices, the department, or the department of



1 agriculture, trade and consumer protection, for targeted water pollution prevention,  
2 water pollution remediation, and other environmental enhancement projects that  
3 improve the water quality of this state.

4 (c) Establish a reserve pool of credits produced under sub. (3) (a) and maintain  
5 the reserve credit pool for the purpose of maintaining a risk management mechanism  
6 under sub. (2) (b).

7 (d) Conduct research on other market-based <sup>innovative</sup> approaches to environmental  
8 improvement. <sup>in consultation with the department of natural resources,</sup>

9 (5) The department may contract with <sup>the</sup> a clearinghouse under sub. (2) to further  
10 the implementation of any market-based water quality improvement programs in  
11 effect in this state, including the implementation of s. 283.84. <sup>g</sup>

12 (6) The department may enter into a memorandum of understanding with the  
13 federal environmental protection agency relating to the administration of this  
14 section.

15 (6) <sup>Ins 5-15</sup> (7) The department may terminate a contract entered into under sub. (2) if the  
16 clearinghouse fails to meet any of the requirements under this section or rules  
17 promulgated under s. 283.84. The department shall give the clearinghouse at least  
18 120 days' notice of the default and a right to cure before terminating a contract under  
19 this subsection.

20 SECTION 2. 283.84 (1) (f) of the statutes is created to read:

21 283.84 (1) (f) Reaches a binding, written agreement with a clearinghouse that  
22 holds a valid contract under s. 16.9685 to purchase credits from the clearinghouse. <sup>Ins 5-22</sup>

23 SECTION 3. 283.84 (1) (g) of the statutes is created to read:

24 283.84 (1) (g) Reaches a binding, written agreement with a <sup>third</sup> third party under  
25 which the third party agrees to work with one or more persons, other than the permit

1 holder, who are causing water pollution to reduce the amount of water pollution that  
 2 those persons cause below the levels of water pollution that those persons are  
 3 causing when the agreement is reached. <sup>Ins 6-3</sup> If an agreement is reached under this  
 4 paragraph, the person who is required to obtain a permit or the <sup>2nd</sup> third party shall  
 5 notify the clearinghouse that holds a valid contract under s. 16.9685, if any.

6 SECTION 4. 283.84 (1m) (d) of the statutes is amended to read:

7 283.84 (1m) (d) The Except as provided under par. (e) 1., the increase in  
 8 pollutants and the reduction in pollutants occur within the same basin or portion of  
 9 a basin, as determined by the department.

10 SECTION 5. 283.84 (1m) (e) of the statutes is created to read:

11 283.84 (1m) (e) 1. If the person has entered into an agreement under sub. (1)  
 12 (f), the increase in pollutants and the reduction in pollutants occur within the same  
 13 applicable hydrologic <sup>area</sup> region, as determined by the department.

14 2. In this paragraph, "applicable hydrologic <sup>area</sup> region" means the largest <sup>area</sup> region  
 15 possible within this state to facilitate implementation of this section while achieving  
 16 water quality <sup>Ins 6-16</sup> objectives.

17 SECTION 6. 283.84 (5) of the statutes is created to read:

18 283.84 (5) The department shall review any tables established by a  
 19 clearinghouse under s. 16.9685 (3) (d) and any environmental impact modeling  
 20 proposed by a clearinghouse under s. 16.9685 (3) (e). The department may enter into  
 21 a memorandum of understanding with the federal environmental protection agency  
 22 relating to the administration of this section and s. 16.9685 in relation to the  
 23 operations of a central clearinghouse.

<sup>Ins 6-23</sup>

## **Pfotenhauer, Mary**

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**From:** Herkert, Toni  
**Sent:** Monday, February 18, 2019 2:10 PM  
**To:** Pfotenhauer, Mary  
**Subject:** Requested edits for LRB 1244 - Nutrient Trading  
**Attachments:** Suggested Edits for P3.docx

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Mary,

I had one more meeting with some stakeholders including DNR and came up with this (hopefully final) list of modifications to the nutrient trading draft. These modifications will take us from a P2 to a P3 and I hope to be ready to introduce after that draft.

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To that extent, this is the number 1 priority in our office and we are working on holding a press conference next Tuesday, February 26<sup>th</sup> in our district. I know that it is a lot to ask of you and I know you guys are swamped with the budget drafting, but I was hoping you might be able to get this back to me by Thursday this week. I know that will probably be difficult for you, but if at all possible, I would greatly appreciate the help.

Thank you so much!  
Toni

**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



## Requested Modifications to LRB 1244/P2 - 3<sup>rd</sup> Party Nutrient Trading

- ✓ Page 3, line 21: After “The clearinghouse” and we add and the department has consulted with the department of natural resources.
- ✓ Page 4; lines 7-9: modify to remove text after services – environmental enhancement services, unless the water pollution prevention or environmental enhancement services result in the applicable pollutant being permanently transported outside of this state.
- ✓ Page 4; lines 12-15: (d) Seek to establish, with the approval of the department of natural resources, tables methods which may be utilized to quantify providing the amount of credits that may be produced by various water pollution prevention or environmental enhancement services. Methods may include tables and models. ~~The tables shall be based on the best available scientific protocols.~~
- ✓ Page 5, line 8: add “The department of natural resources shall enter into a data sharing agreement with the clearinghouse to facilitate the ability of the clearinghouse to collect and make publicly available pertinent information concerning water quality improvement programs administered in this state.”
- ✓ Page 5, line 3: Related to the new wording on the registry, can you edit as follows: “Establish and maintain a centralized registry of all credits generated and transacted in this state...”
- ✓ Page 6, line 3: of any water quality ~~improvement~~ trading, adaptive management, multi-discharger variance, or future market-based water quality programs in effect in this state.
- ✓ Page 6; lines 15-23: 283.84 (1) (g) Reaches a binding, written agreement, approved by the department, with a 3rd party under which the 3rd party agrees to work with one or more persons, other than the permit holder, ~~who are causing water pollution to reduce the amount of water pollution that those persons cause below the levels of water pollution that those persons are causing when the agreement is reached. Before an agreement is reached under this paragraph, the 3rd party shall consult with the department about the terms of the agreement. If an agreement is reached under this paragraph, the person who is required to obtain a permit or the 3rd party shall notify the clearinghouse that holds a valid contract under s. 16.9685, if any.~~
- ✓ Page 6, line 23: add “. . . if any, and shall report to the clearinghouse in the time and manner specified by the department any information that the department, in consultation with the department of administration, determines is reasonable and necessary to the operation of the centralized registry under s. 16.9685(3)(g).”
- ✓ Page 7, line 23: “under” and add “consistent with that act” so the line reads, “regulations or guidance documents adopted ~~under~~ consistent with that act.”



State of Wisconsin  
2019 - 2020 LEGISLATURE

1P3  
LRB-1244/P2  
MCP:ahc

In 2/19  
Out 2/21 AM

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

5a

- 1     **AN ACT** *to amend* 283.84 (1m) (d); and *to create* 16.9685, 283.84 (1) (f), 283.84  
2           (1) (g), 283.84 (1m) (e) and 283.84 (5) of the statutes; **relating to:** buying and  
3           selling water pollution credits through a central clearinghouse.

***Analysis by the Legislative Reference Bureau***

This bill creates a system for buying and selling water pollution credits through a central clearinghouse.

Under current law, the Department of Natural Resources administers a program for trading water pollution credits between sources of water pollution. Under the program, DNR may authorize a person (permit holder) who holds a water pollution discharge elimination system (WPDES) permit or a storm water discharge permit to discharge a pollutant above the levels authorized in the permit if the permit holder enters into an agreement with another party under which the other party will reduce water pollution. The agreement must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same water basin.

Under this bill, DNR may authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder purchases credits from a clearinghouse that has contracted with the Department of Administration. The purchase of credits must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same area, as determined by DNR. That area must be the largest area possible within this state to facilitate

implementation of the water pollution trading program while achieving water quality standards and any federally approved total maximum daily load allocations. The bill also allows DNR to authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder enters into a contract with a third party that works with other sources of water pollution to reduce the amount of water pollution that those other sources cause.

The bill requires DOA to solicit vendors to operate as the single clearinghouse in this state for the purpose of buying and selling water pollution credits. The department may not contract with a clearinghouse unless the clearinghouse has established certain policies and procedures specified under the bill. Under the bill, the term of a contract between DOA and a clearinghouse is five years.

Under the bill, the clearinghouse that contracts with DOA must generate credits by entering into agreements with parties to reduce pollution; maintain a bank of credits; sell credits to any person; maintain a centralized registry of credits generated in this state; and maintain an Internet-based platform to facilitate the location of potential buyers, available credits, and other information that will facilitate credit transactions. Credits must be generated with the clearinghouse at a ratio of one credit for every 1.2 units, at a minimum, of pollution reduction, unless the pollution reduction activities result in the permanent transportation of the pollutant to outside of the state. When the clearinghouse contracts with a party for pollution reduction activities, the clearinghouse must also seek to minimize transaction costs, maximize the performance of the pollution reduction activities, and reduce the overall amount of pollutants introduced into the applicable area.

and sold

establish and

or

The bill also allows DOA to contract with the clearinghouse to further the implementation of any water quality improvement programs in this state.

8

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*Trading, adaptive management, multi-discharger variance, or future market-based water quality*

water quality trading,

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

1 SECTION 1. 16.9685 of the statutes is created to read:

2 16.9685 Clean water clearinghouse. (1) In this section, "water pollution  
3 prevention or environmental enhancement services" means any activity, practice, or  
4 project undertaken by any person who certifies that it will result in a quantifiable  
5 reduction of a specified pollutant in the overall mass balance of water pollution over  
6 a specified period of time.

1           (2) The department shall solicit services from a single clearinghouse to perform  
2 the functions under subs. (3) to (5). The department may not enter into a contract  
3 with a clearinghouse under this section unless the department determines that all  
4 of the following requirements have been met:

5           (a) The clearinghouse has established or is capable of establishing the contract  
6 terms, conditions, and information required to document and enforce transactions  
7 under sub. (3) (a) and (c) in a commercially reasonable manner.

8           (b) The clearinghouse has established a policy that requires a commercially  
9 reasonable amount of financial reserves, insurance, reserve credit pool, or other risk  
10 management mechanism for use in the event that a party defaults on an agreement  
11 under sub. (3) (a).

12           (c) The clearinghouse has established a commercially reasonable process for  
13 soliciting and entering into transactions under sub. (3) (a) and (c).

14           (d) The clearinghouse has established a clearly defined fee structure describing  
15 the manner in which and the amount that the clearinghouse will be paid for  
16 facilitating and executing transactions under sub. (3) (a) and (c).

17           (e) The clearinghouse has the capability to facilitate and execute transactions  
18 under sub. (3) (a) and (c).

19           (f) The clearinghouse has satisfied all other applicable requirements to  
20 transact business in this state.

21           (g) The clearinghouse <sup>has</sup> consulted with the department of natural resources  
22 about the terms of the contract.

23           (3) The clearinghouse with which the department enters into a contract under  
24 sub. (2) shall be the primary entity responsible for facilitating a financially stable

1 market for the activities described in this subsection and sub. (4) and shall do all of  
2 the following:

3 (a) Produce credits by entering into contracts with other parties to undertake  
4 water pollution prevention or environmental enhancement services. Each credit  
5 generated by a contracting party under this paragraph shall require the party to  
6 undertake at least 1.2 times that amount in water pollution prevention or  
7 environmental enhancement services, unless the water pollution prevention or  
8 environmental enhancement services result in the applicable pollutant being  
9 permanently transported outside of this state.

10 (b) Maintain a bank of credits produced or to be produced under par. (a).

11 (c) Sell credits produced under par. (a) to any person.

12 (d) Seek to establish, with the approval of the department of natural resources,  
13 tables providing <sup>methods for determining</sup> the amount of credits that may be produced by various water  
14 pollution prevention or environmental enhancement services. The tables shall be  
15 based on the best available scientific protocols. <sup>These methods may include tables and models</sup>

16 (e) When contracting with a party under par. (a), determine the amount of  
17 credits that may be produced by the water pollution prevention or environmental  
18 enhancement services by using the <sup>methods</sup> tables established under par. (d) or, if such <sup>methods</sup> tables  
19 are not available, by using environmental impact modeling approved by the  
20 department of natural resources.

21 (f) When contracting with a party under par. (a), seek to do all of the following:

22 1. Minimize transaction costs.

23 2. Maximize the performance of the water pollution prevention or  
24 environmental enhancement services.



1           3. Reduce the overall amount of pollutants introduced into the applicable  
2 hydrologic area, as defined under s. 283.84 (1m) (e) 2., over time.

3           (g) <sup>Establish and</sup> Maintain a centralized registry of all credits generated <sup>and sold</sup> in this state and of  
4 the verification of all such credits and maintain an Internet-based platform to  
5 facilitate the location of potential credit buyers, available credits, and any other  
6 information that will facilitate credit transactions. The clearinghouse shall report  
7 this and other pertinent trading information annually to the department and to the  
8 department of natural resources. <sup>The clearinghouse shall enter into a data-sharing agreement with the department of natural resources to facilitate the clearinghouse's ability to collect and make publicly available pertinent information relating to water quality improvement programs administered in this state.</sup>

9           (4) The clearinghouse with which the department enters into a contract under  
10 sub. (2) may do any of the following: <sup>programs administered in this state.</sup>

11           (a) Charge fees and use funds received for general program operations of the  
12 clearinghouse, including costs associated with facilitating transactions, purchasing  
13 water pollution prevention or environmental enhancement services, and repayment  
14 of funds granted or loaned to the clearinghouse.

15           (b) Hold excess funds in trust for the purpose of making grants, in collaboration  
16 with county land conservation offices, the department, <sup>of natural resources</sup> or the department of  
17 agriculture, trade and consumer protection, for targeted water pollution prevention,  
18 water pollution remediation, and other environmental enhancement projects that  
19 improve the water quality of this state.

20           (c) Establish a reserve pool of credits produced under sub. (3) (a) and maintain  
21 the reserve credit pool for the purpose of maintaining a risk management mechanism  
22 under sub. (2) (b).

23           (d) Conduct research on other innovative approaches to environmental  
24 improvement.

1 (5) The department, in consultation with the department of natural resources, *water quality trading, quality*  
 2 may contract with the clearinghouse under sub. (2) to further the implementation  
 3 of any water quality (improvement) programs in effect in this state. *trading, adaptive management, multi-discharger variance, for future market-based water quality*

4 (6) The term of a contract entered into under sub. (2) shall be 5 years. The  
 5 department may terminate a contract entered into under sub. (2) if the clearinghouse  
 6 fails to meet any of the requirements under this section or rules promulgated under  
 7 s. 283.84. The department shall give the clearinghouse at least 120 days' notice of  
 8 the default and a right to cure before terminating a contract under this subsection.

9 **SECTION 2.** 283.84 (1) (f) of the statutes is created to read:

10 283.84 (1) (f) Reaches a binding, written agreement with a clearinghouse that  
 11 holds a valid contract under s. 16.9685 to purchase credits from the clearinghouse,  
 12 if the clearinghouse has consulted with the department about the agreement to the  
 13 extent required under the contract under s. 16.9685.

14 **SECTION 3.** 283.84 (1) (g) of the statutes is created to read:

15 283.84 (1) (g) Reaches a binding, written agreement *approved by the department* with a 3rd party under  
 16 which the 3rd party agrees to work with one or more persons, other than the permit  
 17 holder, who are causing water pollution to reduce the amount of water pollution that  
 18 those persons cause below the levels of water pollution that those persons are  
 19 causing *e. cause* when the agreement is reached. *Before an agreement is reached under this*  
 20 *paragraph, the 3rd party shall consult with the department about the terms of the*  
 21 *agreement.* If an agreement is reached under this paragraph, the person who is  
 22 required to obtain a permit or the 3rd party shall notify the clearinghouse that holds  
 23 a valid contract under s. 16.9685, if any, *and shall report to the clearinghouse, in the time and manner specified by the department, any information*

24 **SECTION 4.** 283.84 (1m) (d) of the statutes is amended to read:

*that the department, in consultation with the department of administration, determines is reasonable and necessary for the operation of the centralized registry under s. 16.9685 (2) (g)*

1           283.84 (1m) (d) The Except as provided under par. (e) 1., the increase in  
2 pollutants and the reduction in pollutants occur within the same basin or portion of  
3 a basin, as determined by the department.

4           **SECTION 5.** 283.84 (1m) (e) of the statutes is created to read:

5           283.84 (1m) (e) 1. If the person has entered into an agreement under sub. (1)  
6 (f), the increase in pollutants and the reduction in pollutants occur within the same  
7 applicable hydrologic area, as determined by the department.

8           2. In this paragraph, “applicable hydrologic area” means the largest area  
9 possible within this state to facilitate implementation of this section while achieving  
10 water quality standards and any applicable federally approved total maximum daily  
11 load allocations.

12           **SECTION 6.** 283.84 (5) of the statutes is created to read:

13           283.84 (5) The department may enter into a memorandum of understanding  
14 with the federal environmental protection agency relating to the administration of  
15 this section and s. 16.9685 in relation to the operations of a central clearinghouse.

16           **SECTION 7. Nonstatutory provisions.**

17           (1) As soon as possible after the effective date of this act, the department of  
18 natural resources shall review any <sup>a methods ✓</sup> tables established by the clearinghouse under s.  
19 16.9685 (3) (d) and any environmental impact modeling proposed by the  
20 clearinghouse under s. 16.9685 (3) (e) and shall approve such <sup>a methods ✓</sup> tables and models if  
21 they have been developed according to any applicable requirements under the  
22 federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and any  
23 regulations or guidance documents adopted <sup>a consistent with</sup> (under) that act.

## Pfotenhauer, Mary

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**From:** Herkert, Toni  
**Sent:** Friday, February 22, 2019 2:32 PM  
**To:** Pfotenhauer, Mary  
**Subject:** FW: Draft review: LRB -1244/P3  
**Attachments:** 19-1244/P3.pdf

Hi Mary,

Can we create the /1 of nutrient trading? We are going to circulate on Tuesday...finally! Thank you SO much for all your help on this!

Toni

**Toni R. Herkert** Policy Advisor/Clerk - Natural Resources and Energy | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



**From:** Sen.Cowles <[Sen.Cowles@legis.wisconsin.gov](mailto:Sen.Cowles@legis.wisconsin.gov)>

**Sent:** Wednesday, February 20, 2019 9:19 AM

**To:** Herkert, Toni <[Toni.Herkert@legis.wisconsin.gov](mailto:Toni.Herkert@legis.wisconsin.gov)>; Miller, Evan <[Evan.Miller@legis.wisconsin.gov](mailto:Evan.Miller@legis.wisconsin.gov)>; Mugnaini, Jason <[Jason.Mugnaini@legis.wisconsin.gov](mailto:Jason.Mugnaini@legis.wisconsin.gov)>

**Subject:** FW: Draft review: LRB -1244/P3

**Heather Moore** Legislative Assistant | Office of State Senator Robert Cowles  
(608) 266-0484 | 118 South, State Capitol | <http://legis.wisconsin.gov/senate/02/cowles>



**From:** LRB.Legal <[lrblegal@legis.wisconsin.gov](mailto:lrblegal@legis.wisconsin.gov)>

**Sent:** Wednesday, February 20, 2019 9:16 AM

**To:** Sen.Cowles <[Sen.Cowles@legis.wisconsin.gov](mailto:Sen.Cowles@legis.wisconsin.gov)>

**Subject:** Draft review: LRB -1244/P3

**Following is the PDF version of draft LRB -1244/P3.**



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-1244/P3  
MCP:ahe

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No  
changes

- 1 AN ACT *to amend* 283.84 (1m) (d); and *to create* 16.9685, 283.84 (1) (f), 283.84  
2 (1) (g), 283.84 (1m) (e) and 283.84 (5) of the statutes; **relating to:** buying and  
3 selling water pollution credits through a central clearinghouse.

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*Analysis by the Legislative Reference Bureau*

This bill creates a system for buying and selling water pollution credits through a central clearinghouse.

Under current law, the Department of Natural Resources administers a program for trading water pollution credits between sources of water pollution. Under the program, DNR may authorize a person (permit holder) who holds a water pollution discharge elimination system (WPDES) permit or a storm water discharge permit to discharge a pollutant above the levels authorized in the permit if the permit holder enters into an agreement with another party under which the other party will reduce water pollution. The agreement must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same water basin.

Under this bill, DNR may authorize a permit holder to discharge a pollutant above the levels authorized in the permit if the permit holder purchases credits from a clearinghouse that has contracted with the Department of Administration. The purchase of credits must result in an improvement in water quality, and the increase and reduction in pollutants under the agreement must involve the same pollutant or the same water quality standard and occur within the same area, as determined by DNR. That area must be the largest area possible within this state to facilitate

1. federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and any
2. regulations or guidance documents adopted consistent with that act.

3. (END)

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**Parisi, Lori**

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**From:** Mugnaini, Jason  
**Sent:** Monday, March 11, 2019 9:05 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1244/1

Please Jacket LRB -1244/1 for the SENATE.