AN ACT to amend 283.84 (1m) (d); and to create 16.9685, 283.84 (1) (f), 283.84 (1) (g), 283.84 (1m) (e) and 283.84 (5) of the statutes; relating to: buying and 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; establish and maintain a centralized registry of credits generated and sold 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. 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.

The bill also allows DOA to contract with the clearinghouse to further the implementation of any adaptive management, multidischarger variance, water quality trading, or future market-based water quality programs in this state.

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:

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

16.9685 Clean water clearinghouse. (1) 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.
(2) The department shall solicit services from a single clearinghouse to perform the functions under subs. (3) to (5). The department may not enter into a contract with a clearinghouse under this section unless the department determines that all of the following requirements have been met:

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

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

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

(d) The clearinghouse 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 sub. (3) (a) and (c).

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

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

(g) The clearinghouse and the department have consulted with the department of natural resources about the terms of the contract.

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

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

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

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

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

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

(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.
(g) Establish and maintain a centralized registry of all credits generated and sold in this state and of the verification of all such credits and maintain an Internet-based platform to facilitate the location of potential credit buyers, available credits, and any other information that will facilitate credit transactions. The clearinghouse shall report this and other pertinent trading information annually to the department and to the department of natural resources. 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.

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

(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.

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

(c) Establish a reserve pool of credits produced under sub. (3) (a) and maintain the reserve credit pool for the purpose of maintaining a risk management mechanism under sub. (2) (b).
(d) Conduct research on other innovative approaches to environmental improvement.

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

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

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

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

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

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, to reduce the amount of water pollution that those persons cause below the levels of water pollution that those persons cause when the agreement is reached. 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, 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 for the operation of the centralized registry under s. 16.9685 (3) (g).

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

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

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

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

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

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

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


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