



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5535/1
EHS:kjf&ahe

2017 SENATE BILL 816

February 16, 2018 - Introduced by Senator WANGGAARD, cosponsored by Representative TUSLER. Referred to Committee on Natural Resources and Energy.

1 **AN ACT to amend** 281.36 (3r) (a) 1., 281.36 (3r) (a) 3. and 281.36 (3r) (e); and **to**
2 **create** 281.36 (1) (ae), 281.36 (1) (be), 281.36 (3t) (g) and 281.36 (3w) of the
3 statutes; **relating to:** requirements for siting wetland mitigation, wetland
4 mitigation banks, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes changes to wetland mitigation requirements and requirements for mitigation banks.

Wetland mitigation program. 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.

Under current law there are three methods by which wetland mitigation may be accomplished: 1) purchasing credits from a mitigation bank located in this state; 2) participating in the in lieu fee subprogram; or 3) completing mitigation within the same watershed or within one-half mile of the site of the discharge.

This bill changes all of these options by limiting credit purchases to only a mitigation bank located in the same compensation search area as the wetland

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impacted by the discharge, if available, and limiting any mitigation completed under the in lieu fee subprogram or by the permittee to the same compensation search area as the wetland impacted by the discharge. Under the bill, a compensation search area is an area that includes the geographic management unit of a wetland impacted by a discharge, the county of the impacted wetland, and a 20-mile radius from the impacted wetland. Under the bill, a geographic management unit is one of the 22 statewide management units established by DNR based on the major river basins of the state.

Mitigation banks. One method under current law by which wetland mitigation may be accomplished is by purchasing credits from a mitigation bank located in this state. Under current law, a mitigation bank is a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to compensate for adverse impacts to other wetlands. Under current law DNR must approve the establishment of a mitigation bank.

This bill requires DNR to establish by rule financial assurance requirements for the construction of mitigation projects by mitigation banks. The bill also establishes the means by which a mitigation bank that has not yet completed construction of a mitigation project and has not been approved by DNR (developing mitigation bank) may sell its estimated credits, or the credits that the mitigation bank estimates it will have once the mitigation project is complete. Under the bill, a developing mitigation bank may sell these credits if it is in compliance with DNR's financial assurance requirements and if it follows a specific schedule for release of the credits that is established in the bill.

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

1 **SECTION 1.** 281.36 (1) (ae) of the statutes is created to read:

2 281.36 (1) (ae) "Compensation search area" means an area that includes the
3 geographic management unit of a wetland impacted by a discharge, the county of the
4 impacted wetland, and a 20-mile radius from the impacted wetland.

5 **SECTION 2.** 281.36 (1) (be) of the statutes is created to read:

6 281.36 (1) (be) "Geographic management unit" means one of the 22 statewide
7 management units established by the department based on the major river basins
8 of the state.

9 **SECTION 3.** 281.36 (3r) (a) 1. of the statutes is amended to read:

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1 281.36 (3r) (a) 1. Purchasing credits from a mitigation bank located in the same
2 compensation search area as the wetland impacted by the discharge or, if not
3 available, located anywhere this state.

4 **SECTION 4.** 281.36 (3r) (a) 3. of the statutes is amended to read:

5 281.36 (3r) (a) 3. Completing mitigation within the same ~~watershed or within~~
6 ~~one-half mile of the site of the discharge~~ compensation search area as the wetland
7 impacted by the discharge.

8 **SECTION 5.** 281.36 (3r) (e) of the statutes is amended to read:

9 281.36 (3r) (e) As part of the mitigation program established under par. (a), the
10 department may establish an in lieu fee subprogram, under which payments are
11 made to the department or another entity for the purposes of restoring, enhancing,
12 creating, or preserving wetlands or other water resource features. The subprogram
13 must be approved by the U.S. army corps of engineers. The department shall
14 establish requirements for calculating the in lieu fee payments. The department
15 shall require that all mitigation under the in lieu fee program be completed within
16 the same compensation search area as the wetland impacted by the discharge. Under
17 the in lieu fee subprogram, the wetlands that benefit from the subprogram shall be
18 open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or
19 any combination thereof, but the department may establish reasonable restrictions
20 on the use of the land by the public in order to protect public safety or to protect a
21 unique plant or animal community. The subprogram shall be consistent with federal
22 regulations.

23 **SECTION 6.** 281.36 (3t) (g) of the statutes is created to read:

24 281.36 (3t) (g) Financial assurance requirements for the construction of
25 mitigation projects by mitigation banks.

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1 **SECTION 7.** 281.36 (3w) of the statutes is created to read:

2 281.36 **(3w)** RELEASE OF CREDITS. (a) In this subsection:

3 1. “Developing mitigation bank” means a mitigation bank that has not
4 completed its mitigation project and that has not yet been established under an
5 agreement between the bank’s sponsor and the department or otherwise approved
6 by the department.

7 2. “Estimated credits” means the total number of credits that a developing
8 mitigation bank estimates it will have once its mitigation project is constructed.

9 (b) A developing mitigation bank may sell its estimated credits if the mitigation
10 bank has met the financial assurance requirements established by the department
11 under sub. (3t) (g) and if the mitigation bank releases the credits in accordance with
12 the following schedule:

13 1. No more than 20 percent of the estimated credits after the department
14 approves and executes the mitigation bank document establishing the specifications
15 for the mitigation bank.

16 2. No more than 65 percent of the estimated credits after the applicant or bank
17 sponsor is issued a letter of compliance that construction and all corrective actions
18 are complete.

19 3. No more than 85 percent of the estimated credits after the department
20 approves a monitoring report, but not earlier than 2 years after construction of the
21 mitigation project.

22 4. 100 percent of the estimated credits after the department approves the final
23 monitoring report and determines that all performance standards applicable to the
24 mitigation bank are met.

25

(END)