



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-0118/1

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## 2023 SENATE BILL 255

April 20, 2023 - Introduced by Senator COWLES, cosponsored by Representatives MURSAU, BEHNKE, S. JOHNSON, KITCHENS and O'CONNOR. Referred to Committee on Natural Resources and Energy.

**AN ACT to amend** 281.36 (3r) (e) of the statutes; **relating to:** public access to wetlands benefitting from the in lieu fee subprogram.

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### *Analysis by the Legislative Reference Bureau*

This bill eliminates the requirement that wetlands that benefit from the in lieu fee subprogram administered by the Department of Natural Resources be open to the public. The bill also provides that, in determining projects that benefit from the subprogram, DNR must, to the extent practicable, ensure that there is no net loss of public access to wetlands.

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, one method by which wetland mitigation may be accomplished is participating in the in lieu fee subprogram. Under this

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subprogram, payments are made to DNR or another entity for the purposes of improving or preserving wetlands or other water resource features.

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

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

281.36 **(3r)** (e) As part of the mitigation program established under par. (a), the department shall establish an in lieu fee subprogram, under which payments are made to the department or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. The subprogram must be approved by the U.S. army corps of engineers. The department shall establish requirements for calculating the in lieu fee payments. Under the in lieu fee subprogram, the wetlands that benefit from the subprogram ~~shall~~ may be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, ~~but~~. In determining approved mitigation projects that benefit from the subprogram, the department shall, to the extent practicable, ensure that there is no net loss of public access to wetlands. If the wetlands that benefit from the subprogram are open to the public, the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram shall be consistent with federal regulations.

(END)