



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 16, 2001

Joint Committee on Finance

Paper #678

Wetland Compensatory Mitigation Staff (DNR -- Water Quality)

CURRENT LAW

1999 Act 147 created a wetland compensatory mitigation program and required DNR to promulgate rules to implement the provision. The Act generally allows DNR to consider a mitigation project or credits from a wetlands mitigation bank to compensate for the filling or dredging of a wetland, if an applicant demonstrates that they have first taken measures to minimize adverse impacts to the wetland.

GOVERNOR

No provision.

DISCUSSION POINTS

1. 1999 Act 147 did not provide staff for DNR to implement the wetland mitigation program. The Department determined in its fiscal note on the bill that it was likely there would be fiscal effects associated with implementing a wetlands mitigation program, but that they were unable to estimate the costs until the Department had proceeded with the rulemaking process. The proposed rule has been through public hearings, and DNR officials indicate it may go before the Natural Resources Board in May, 2001. If approved by the Board, it would then be forwarded to the Legislature for review.

2. DNR requested funding for 4.0 water regulation and zoning specialist positions and 1.0 natural resource specialist in its budget submittal to the Governor. In addition, at the March 15, 2001, budget briefing, the DNR Secretary requested the Joint Committee on Finance to consider providing staff for the wetlands mitigation program. Further, the Department submitted a request

under s. 13.10 of the statutes to the Joint Committee on Finance on April 18, 2001, requesting funding for the same 5.0 positions in the 1999-01 biennium. However, since the deadline for consideration at the April 24, 2001, s. 13.10 meeting had passed, the Committee has taken no action on the request. DNR officials believe the Department would be unable to carry out a wetland compensatory mitigation program without additional staff.

3. In order to implement a wetland mitigation program, DNR staff must review mitigation plans, inspect mitigation sites, review monitoring reports, track the sale of mitigation bank credits and enforce program regulations. DNR indicates it receives about 600 wetland permit applications annually and assumes that approximately 80% of them will include mitigation as part of their application. While mitigation is supposed to be the last alternative for an applicant after first attempting to avoid or minimize adverse impacts to a wetland, the Department anticipates that nearly 500 applicants will include mitigation on their application, whether or not mitigation is appropriate for the project. Further, DNR estimates that approximately 85% of the applicants who include wetland mitigation on their water permit applications will propose to use wetland mitigation bank credits. It is projected that over 400 permits would require an average of 20 hours of DNR staff time apiece. It is further estimated the remaining applicants would request to mitigate on or off site involving approximately 45 hours of DNR staff time per permit applicant.

4. It is unclear what provisions are included in the current rule draft that were not foreseen at the time of DNR's original fiscal note, which indicated costs were indeterminable. However, DNR now believes 4.0 water regulation and zoning specialists and a natural resource specialist are needed to implement the program. The Department has not made a final determination as to where the five positions would be placed. Based on workload analysis, however, it is anticipated that one water regulation and zoning specialist would be located in each of the Northeast, West Central, South Central and Southeast regions, while the statewide coordinator would be located in Madison. Regional staff would be responsible for the review and inspection of mitigation plans, banking and sites. According to DNR, the coordinator would serve as the Department liaison on wetland mitigation with the public, the U.S. Army Corps of Engineers, the Legislature and regional staff. Further, the coordinator would manage the compensatory mitigation banking program.

5. DNR has 48 staff in its Bureaus of Watershed Management and Fisheries Management and Habitat Protection assigned to permit review, local government support and dam safety activities. DNR estimates that these 48 staff assist 500 local governments and 10,000 landowners on water regulation, flood plain, shore land and wetland issues. While the Department believes the five additional positions are necessary to implement 1999 Act 147 provisions, the Department could make wetland mitigation staffing a priority by reallocating other staff to the program. This alternative would likely increase the amount of time it takes to receive a water permit from DNR.

6. Revenue from water regulation and zoning permit fees are generally deposited in a program revenue appropriation in the Water program. This appropriation is expected to have a balance of approximately \$290,000 at the end of the 2001-03 biennium. The Committee could

choose to provide funding from this appropriation for all or some of the wetland mitigation positions. Since the estimated June 30, 2003 account balance of \$290,000 would not fully cover expenditures of \$146,200 in 2001-02 and \$242,500 in 2002-03 for the five positions, the Committee may wish to require DNR to promulgate rules to collect fees from applicants based on the estimated time spent by the Department on a proposed mitigation project. This alternative would allow the Department to charge fees paid by users to reflect the increased costs of allowing wetland mitigation. DNR estimates that, in general, the more fill that is used in a project, the more staff time it would take to review and implement a mitigation permit.

7. The water resources account of the conservation fund would be another funding source to consider using to fund all or a portion of these positions. Since the coordinator position would be statewide, some may find it appropriate to fund this position from the water resources account. Further, others argue the wetland mitigation program has a statewide benefit, and therefore wish to fund a majority of wetland mitigation from this account rather than increasing user fees. The source of revenue to the water resources account is an annual transfer of motorboat fuel tax revenue into the account. Under the bill, it is anticipated the water resources account would have a June 30, 2003 balance of \$310,000.

8. The actual number of permit applications that will include mitigation proposals, and the number where mitigation will be approved, is not known at this time. Further, it may take some time before applicants begin to generally include wetland mitigation proposals in their permit applications. One alternative would be to provide a more limited number of staff to begin implementing the program. If actual workload exceeds initial staffing provided, DNR could seek additional resources through future legislation. Providing 2.0 specialists and a 0.5 coordinator position would allow the Department to begin reviewing and implementing mitigation projects.

ALTERNATIVES TO BASE

1. Require DNR to promulgate administrative rules to collect fees from applicants based on the estimated time spent by the Department on a proposed mitigation project and provide DNR \$146,200 PR in 2001-02 and \$242,500 PR in 2002-03 from water regulation and zoning permit fees for 4.0 water regulation and zoning specialists and 1.0 natural resource specialist.

Alternative 1	PR
2001-03 FUNDING (Change to Base) <i>[Change to Bill]</i>	\$388,700 \$388,700]
2002-03 POSITIONS (Change to Base) <i>[Change to Bill]</i>	5.00 5.00]

2. Require DNR to promulgate administrative rules to collect fees from applicants based on the estimated time spent by the Department on a proposed mitigation project and provide DNR \$111,800 PR in 2001-02 and \$184,000 PR in 2002-03 from water regulation and zoning permit fees for 4.0 water regulation and zoning specialists and \$34,300 SEG in 2001-02 and

\$58,600 SEG in 2002-03 from the water resources account for 1.0 natural resource specialist.

Alternative 2	PR	SEG	TOTAL
2001-03 FUNDING (Change to Base)	\$295,800	\$92,900	\$388,700
<i>[Change to Bill]</i>	<i>\$295,800</i>	<i>\$92,900</i>	<i>\$388,700</i>
2002-03 POSITIONS (Change to Base)	4.00	1.00	5.00
<i>[Change to Bill]</i>	<i>4.00</i>	<i>1.00</i>	<i>5.00</i>

3. Provide DNR \$111,800 SEG in 2001-02 and \$184,000 SEG in 2002-03 from the water resources account for 4.0 water regulation and zoning specialists and \$34,300 PR in 2001-02 and \$58,600 PR in 2002-03 from water regulation and zoning permit fees for 1.0 natural resource specialist.

Alternative 3	PR	SEG	TOTAL
2001-03 FUNDING (Change to Base)	\$92,900	\$295,800	\$388,700
<i>[Change to Bill]</i>	<i>\$92,900</i>	<i>\$295,800</i>	<i>\$388,700</i>
2002-03 POSITIONS (Change to Base)	1.00	4.00	5.00
<i>[Change to Bill]</i>	<i>1.00</i>	<i>4.00</i>	<i>5.00</i>

4. Require DNR to promulgate administrative rules to collect fees from applicants based on the estimated time spent by the Department on a proposed mitigation project and provide DNR \$75,600 PR in 2001-02 and \$121,300 PR in 2002-03 from water regulation and zoning permit fees for 2.0 water regulation and zoning specialists and 0.5 natural resource specialist.

Alternative 4	PR
2001-03 FUNDING (Change to Base)	\$196,900
<i>[Change to Bill]</i>	<i>\$196,900</i>
2002-03 POSITIONS (Change to Base)	2.50
<i>[Change to Bill]</i>	<i>2.50</i>

5. Require DNR to promulgate administrative rules to collect fees from applicants based on the estimated time spent by the Department on a proposed mitigation project and provide DNR \$56,000 PR in 2001-02 and \$92,000 PR in 2002-03 from water regulation and zoning permit fees for 2.0 water regulation and zoning specialists and \$19,600 SEG in 2001-02 and \$29,300 SEG in 2002-03 from the water resources account for 0.5 natural resource specialist.

Alternative 5	PR	SEG	TOTAL
2001-03 FUNDING (Change to Base)	\$148,000	\$48,900	\$196,900
<i>[Change to Bill]</i>	<i>\$148,000</i>	<i>\$48,900</i>	<i>\$196,900</i>
2002-03 POSITIONS (Change to Base)	2.00	0.50	2.50
<i>[Change to Bill]</i>	<i>2.00</i>	<i>0.50</i>	<i>2.50</i>

6. Provide DNR \$75,600 SEG in 2001-02 and \$121,300 SEG in 2002-03 from the water resources account for 2.0 water regulation and zoning specialists and 0.5 natural resource specialist.

Alternative 6	SEG
2001-03 FUNDING (Change to Base)	\$196,900
<i>[Change to Bill]</i>	<i>\$196,900]</i>
2002-03 POSITIONS (Change to Base)	2.50
<i>[Change to Bill]</i>	<i>2.50]</i>

7. Maintain current law. (DNR could request mitigation resources after actual workload is determined.)

Prepared by: David Schug