



2019 ASSEMBLY BILL 190

April 25, 2019 - Introduced by Representatives TUSLER, OHNSTAD, SINICKI, KERKMAN and MURSAU, cosponsored by Senators WANGGAARD, COWLES, WIRCH and OLSEN. Referred to Committee on Environment.

1 **AN ACT** *to renumber and amend* 281.36 (3r) (a) 1.; *to amend* 281.36 (3r) (am);
2 and *to create* 281.36 (1) (ae), 281.36 (1) (ag), 281.36 (1) (be), 281.36 (3r) (a) 1.
3 b., c. and d., 281.36 (3t) (g) and 281.36 (3w) of the statutes; **relating to:** wetland
4 mitigation banks, providing an exemption from emergency rule procedures,
5 providing an exemption from rule-making procedures, and requiring the
6 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes changes to requirements for wetland mitigation banks.

Under current law, the Department of Natural Resources 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

ASSEMBLY BILL 190

same watershed or within one-half mile of the site of the discharge. A mitigation bank is a system of accounting for wetland loss and compensation in which sites where wetlands are restored, enhanced, created, or preserved generate credits that may be 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 changes the first method of wetland mitigation by limiting credit purchases to only a mitigation bank located in the same compensation search area as the wetland impacted by the discharge, if available. 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 the area within 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. If no available mitigation bank is located in the same compensation search area as the wetland impacted by the discharge, the bill allows credit purchases to be made from a mitigation bank located within 50 miles of the wetland impacted by the discharge. If no available mitigation bank is located within 50 miles of the impacted wetland, the bill allows credit purchases to be made from a mitigation bank in the same basin as the wetland impacted by the discharge, meaning the Lake Michigan Basin, the Lake Superior Basin, or the Mississippi River Basin. If no available mitigation bank is located in the same basin as the wetland impacted by the discharge, the bill allows credit purchases to be made from a mitigation bank anywhere in the state.

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 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) "Basin" means the Lake Michigan basin, the Lake Superior
3 basin, or the Mississippi River basin, except that this definition does not apply to par.
4 (be).

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

ASSEMBLY BILL 190

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

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

5 281.36 (1) (be) “Geographic management unit” means one of the 22 statewide
6 management units established by the department based on the major river basins
7 of the state.

8 **SECTION 4.** 281.36 (3r) (a) 1. of the statutes is renumbered 281.36 (3r) (a) 1. a.
9 and amended to read:

10 281.36 (3r) (a) 1. a. Purchasing Except as provided in subd. 1. b., purchasing
11 credits from a mitigation bank located in this state the same compensation search
12 area as the wetland impacted by the discharge.

13 **SECTION 5.** 281.36 (3r) (a) 1. b., c. and d. of the statutes are created to read:

14 281.36 (3r) (a) 1. b. Except as provided in subd. 1. c., if credits are not available
15 to be purchased as provided under subd. 1. a., credits may be purchased from a
16 mitigation bank within 50 miles of the wetland impacted by the discharge, as
17 measured between the closest outer boundary of the impacted wetland and the
18 closest outer boundary of the mitigation bank.

19 c. Except as provided in subd. 1. d., if credits are not available to be purchased
20 as provided under subd. 1. b., credits may be purchased from a mitigation bank in
21 the same basin as the wetland impacted by the discharge.

22 d. If credits are not available to be purchased as provided under subd. 1. c.,
23 credits may be purchased from a mitigation bank anywhere in this state.

24 **SECTION 6.** 281.36 (3r) (am) of the statutes is amended to read:

ASSEMBLY BILL 190**SECTION 6**

1 281.36 **(3r)** (am) For a discharge that is exempt from permitting requirements
2 under sub. (4n) (b) or (c), any off-site mitigation, including any mitigation conducted
3 by a mitigation bank or under the in lieu fee subprogram, shall be completed within
4 the same compensation search area, ~~as defined by the department by rule,~~ as the
5 discharge.

6 **SECTION 7.** 281.36 (3t) (g) of the statutes is created to read:

7 281.36 **(3t)** (g) Financial assurance requirements for the construction of
8 mitigation projects by mitigation banks.

9 **SECTION 8.** 281.36 (3w) of the statutes is created to read:

10 281.36 **(3w)** RELEASE OF CREDITS. (a) In this subsection:

11 1. "Applicant" means the applicant for a wetland individual permit for which
12 wetland mitigation is required under sub. (3n) (d) or the proponent of a wetland
13 mitigation project required under sub. (3n) (d).

14 2. "Bank document" means a document that contains specifications pertaining
15 to the establishment, operation, and maintenance of a mitigation bank and any other
16 items required by the department by rule.

17 3. "Bank sponsor" means any public or private entity financially responsible
18 for establishing or operating a mitigation bank.

19 4. "Compensation site plan" means a comprehensive document prepared by an
20 applicant or bank sponsor that provides a thorough description of a proposed wetland
21 mitigation project.

22 5. "Developing mitigation bank" means a mitigation bank that has not
23 completed its mitigation project and that has not yet been established under an
24 agreement between the bank sponsor and the department or otherwise approved by
25 the department.

ASSEMBLY BILL 190

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

3 (b) A developing mitigation bank may sell its estimated credits under the
4 mitigation program under sub. (3r) only if the mitigation bank has met the financial
5 assurance requirements established by the department under sub. (3t) (g) and only
6 in accordance with the following schedule:

7 1. No more than 20 percent of the estimated credits after the department
8 approves and executes the bank document.

9 2. No more than 65 percent of the estimated credits after the department issues
10 a letter of compliance stating that construction and all corrective actions are
11 complete.

12 3. No more than 85 percent of the estimated credits after the department
13 approves a monitoring report for the mitigation bank or after 2 years have passed
14 after construction of the mitigation project is completed, whichever is later.

15 4. One hundred percent of the estimated credits after the department approves
16 the final monitoring report for the mitigation bank and determines that all
17 performance standards identified in the compensation site plan are met.

18 (c) After the department approves and executes a mitigation bank document
19 establishing the specifications for a developing mitigation bank, the sponsor of the
20 bank may not change the mitigation bank document without the approval of the
21 department. After the sponsor of a developing mitigation bank submits to the
22 department a proposed change to the mitigation bank document for review, the
23 mitigation bank may not sell any estimated credits under par. (b) until all of the
24 following occur:

25 1. The department approves the change to the mitigation bank document.

