

2007 DRAFTING REQUEST

Bill

Received: **09/19/2007**

Received By: **rkite**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-9170**

By/Representing: **Beth Bier**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - wet/shore/flood**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Miller@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Wetlands disclosure requirements

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	rkite 10/03/2007	bkraft 10/04/2007	pgreensl 10/04/2007	_____	lparisi 10/04/2007		
/P2	rkite 02/01/2008	bkraft 02/05/2008	pgreensl 02/05/2008	_____	sbasford 02/05/2008		
/P3	rkite 02/05/2008	bkraft 02/05/2008	rschluet 02/06/2008	_____	sbasford 02/06/2008		

Per RAK see prev. request sheet

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/P4	rkite 02/26/2008	bkraft 02/26/2008	nmatzke 02/27/2008	_____	sbasford 02/27/2008		State
/1	rkite 02/29/2008	bkraft 02/29/2008	pgreensl 02/29/2008	_____	cduerst 02/29/2008	cduerst 02/29/2008	

FE Sent For: "1" @ intro. 2-29-08
<END>

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/P3	rkite 02/05/2008	bkraft 02/05/2008	rschlue 02/06/2008	_____	sbasford 02/06/2008		

Handwritten notes:
2/9 pg
2/9 pg

Handwritten note on a tilted card:
PAs: 2/29
Please
Jacket
Thanks! RWK

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1/bjk²/29

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			nmw 2/26	nmw/rs 2/26			

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Submit via email: YES

Requester's email: Sen.Miller@legis.wisconsin.gov

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Instructions:

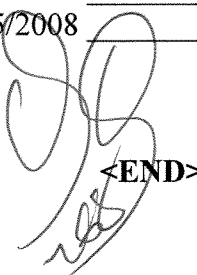
See Attached

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1/P3 bjk 2/5



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May Contact:

Adl. Drafters:

Subject: **Nat. Res. - wet/shore/flood**

Extra Copies: *John Stolzenberg
Leg. Council*

Submit via email: **YES**

Requester's email: **Sen.Miller@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

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Topic:

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Instructions:

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FE Sent For:

1P2 bjk 2/5 *2/5* *P8/110*
P8 **<END>**

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Addl. Drafters:

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Extra Copies: *MES*
PJK

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FE Sent For:

<END>

Kite, Robin

From: Gibson-Glass, Mary
Sent: Wednesday, September 19, 2007 9:14 AM
To: Kite, Robin
Subject: FW: Drafting Request - Wetlands Disclosure

From: Nowlan, Andrew
Sent: Tuesday, September 18, 2007 12:11 PM
To: Bier, Beth; Gibson-Glass, Mary
Cc: Miller, Mark
Subject: RE: Drafting Request - Wetlands Disclosure

Bies, will also be doing this bill in the Assembly as a companion!

Thanks!

Andrew Nowlan
Research Assistant
Office of Rep. Garey Bies

From: Bier, Beth
Sent: Tuesday, September 18, 2007 12:09 PM
To: Gibson-Glass, Mary
Cc: Nowlan, Andrew; Miller, Mark
Subject: Drafting Request - Wetlands Disclosure

Hi Mary,
Sen. Miller would like a bill drafted to do the following:

- ✓ 1. Requires a disclosure notice to be printed on local building permits and real estate transfer forms.
 - a. You did a draft amendment in 2005 with the language that Mark wants to use. It was LRBa2538/1 and was an amendment to SB 516, 2005.
 - b.
- ✓ 2. Require the DNR to provide an informational brochure about wetlands and wetland law to those who issue local building permits
3. Create a system, based on Michigan law, that would allow, for a fee, an individual to request the DNR to a) look at all available maps and give a determination as to the likelihood of wetlands; b) do a site visit and provide a report as to the likelihood of wetlands
 - a. The MI law is attached. Mark would like to see a couple changes:
 - i. Escalating fee for larger parcels
 - ii. Less specific information on site visits – leave that to rulemaking process

Please let me know if you have any questions or need more information and when you might be able to get this done. This is an extremely high priority for Mark. Thanks!!!

Thanks,
Beth

<< File: Wetland and waters site assess.doc >>

Beth Bier
Office of Senator Mark Miller
PO Box 7882
Madison, WI 53707

Phone: (608) 266-9170
Email: Beth.Bier@legis.wisconsin.gov

Wetland and Public Waters Identification and Assessment.

(1) When assessing whether a parcel of property or portion of a parcel is wetland or public water the department shall utilize criteria consistent with the definition of "wetland" and "navigable water" provided in sections... The department shall provide a written assessment report to the person who owns or leases the property or his or her agent within 30 days of the on-site evaluation, whether the parcel contains wetlands or public waters, or both, and the basis for the determination. The department shall evaluate a parcel or any portion of a parcel as identified by the person making the request.

(2) An assessment of wetlands on a parcel of property by the department may include any of the following:

(a) The provision of maps and supporting information that show areas currently mapped as wetlands or public waters or areas with features indicating the presence of wetlands or public waters on the property.

(b) An on-site identification of wetland, non-wetland and public waters areas on the property.

(c) An on-site review to confirm the identification of wetland boundaries on the property by a wetland professional.

281.921(1)(b)(iii). The department shall make the determination in writing and shall provide the determination to the person making the request within a reasonable period of time after receipt of the request.

(6) (a) A person who requests an assessment shall submit a form provided by the department and shall be accompanied by a check for the appropriate fee as set forth in section...

(b) All fees are nonrefundable.

(c) A person who owns or leases a parcel of property or his or her agent may request any of the following three levels of assessment with corresponding levels of fees:

(i) For a fee of \$100.00, the department will provide copies of wetland information immediately available for an identified area, including state and federal maps on file with the department that show the approximate location of wetlands on the parcel. In addition, regarding regulatory processes will be provided to a person who makes a request.

An application for this service is limited to not more than an area covering 4 adjoining square miles. Since the information and maps provided will not be based upon an on-site review, they will be useful for planning purposes, but the department will not certify where wetlands are and are not specifically located on the given parcel.

(ii) For a fee of \$500.00 for 1 acre or less, the department will perform an on-site wetland identification of a parcel or portion of a parcel that has its boundaries marked by the person who makes the request, to identify whether or not the marked area is or is not wetland, unless identification and description are not possible due to site conditions. The fee for the service will increase by \$250.00 per acre or fraction thereof for an assessment area larger than 1 acre. An application for this service is limited to an area of 5 acres or less.

(iii) For a fee of \$500.00 for 1 acre or less, the department will perform an on-site review of a mapped, flagged, and otherwise identifiable area to confirm specific boundaries established by a wetland professional between wetlands

and areas that are not wetlands. The fee for the service will increase by \$50.00 per acre or fraction thereof to confirm areas identified as wetland and \$20.00 per acre or fraction thereof to confirm areas identified as non wetland. The wetland and nonwetland boundaries must be flagged by a wetland professional representing the person who made the request. The boundaries must have been established utilizing methods and procedures consistent with the Act and these rules. If the department finds substantial errors during the confirmation process and the person making the request wishes to proceed, then the department will require that a new wetland boundary be identified by a wetland professional representing the person who made the request and that new fees in the amount of 1/2 of the original fee be submitted for the on-site confirmation of the new wetland boundary and the assessment report. If the assessment report determines that the area or part of the area evaluated is not wetland, then the report will state that the department lacks jurisdiction over the area that is not wetland and that the determination that an area is not wetland is binding on the department for 3 years from the date of the assessment. The person who is making the request will provide, for department approval, an acceptable and reproducible survey of the agreed upon boundaries.

(iv) The department will provide the report within 30 calendar days of a complete request, for an increased fee reflecting the additional cost to the department. For subsection (c)(ii), this increased fee will be \$2000.00 for 1 acre or less and \$200.00 per each additional acre or fraction thereof to confirm areas identified as wetland.

(7) If recent severe disturbances of the site have occurred, for example, removal of native vegetation, disturbance of soils, or diversion of drainage, making it impossible during a routine site visit to determine whether or not the area requested for assessment contains or has contained wetland or public waters, then the department will provide the person who made the request with a report that specifies the reasons for its inability to make a determination. The department will include with the report a description of the necessary technical information to be provided by the person who made the request in order for the department to make a final wetland or public waters determination.

(8) A written request for a reassessment the act, shall be submitted to the department no later than 30 days after the receipt of the written assessment report. The department shall conduct the reassessment, if possible, during the same calendar year as the original assessment or as soon as weather or other conditions allow.

History: 2006 AACS.

Kite, Robin

From: Bier, Beth
Sent: Friday, September 21, 2007 11:02 AM
To: Kite, Robin
Cc: Nowlan, Andrew; Vollbrecht, Mary E - DNR
Subject: RE: wetlands disclosure drafting request

Oh, one more thing. Please feel free to contact Mary Ellen Vollbrecht at the DNR with questions. Her number is 264-8554.

From: Kite, Robin
Sent: Friday, September 21, 2007 10:31 AM
To: Bier, Beth
Subject: wetlands disclosure drafting request

Beth:

You recently forwarded a drafting request on the referenced topic to Mary Gibson-Glass. I wanted you to know that I will be handling this request for your office. I understand that this request is a priority for your office and I will try and get this draft to you as soon as possible.

Robin

Robin Kite, Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-7291



(soon)
State of Wisconsin
2007 - 2008 LEGISLATURE

Rm num
PI
LRB-3192
RNK:.....
Lbjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

SA ✓
x-ref ✓

D-Note ←

gen. cat.

1 AN ACT ...; relating to: notices concerning construction near or on lakes, streams,
2 or wetlands that are given to applicants for building permits, requiring the
3 department of natural resources to furnish informational brochures about
4 wetlands laws, requiring the department of natural resources to make
5 determinations about whether certain land contains wetlands, and making an
6 appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

7 SECTION 1. 20.370 (4) (bi) of the statutes is amended to read:
8 ✓ 20.370 (4) (bi) *Water regulation and zoning — fees.* From the general fund, all
9 moneys received under ss. 23.32 (3), 23.321 (2) and (3), 30.28, 31.39 and 281.22 for

1 activities relating to permits and approvals issued under chs. 30 and 31, water
 2 quality standards under subch. II of ch. 281 and for wetland mapping under s. 23.32
 3 and wetlands determinations under s. 23.321.

History: 1971 c. 40, 95; 1971 c. 125 ss. 101 to 121, 522 (1); 1971 c. 211, 215, 277, 330, 336; 1973 c. 12 s. 37; 1973 c. 90, 100; 1973 c. 243 s. 82; 1973 c. 296, 298, 301, 318, 333, 336; 1975 c. 8, 39, 51, 91, 198; 1975 c. 224 ss. 7d, 7f, 7m, 17 to 19p; 1977 c. 29 ss. 181 to 234, 1657 (34); 1977 c. 274, 370, 374, 376, 377; 1977 c. 418 ss. 95 to 110, 929 (37); 1977 c. 421, 432; 1977 c. 447 ss. 42 to 44, 210; 1979 c. 34 ss. 199 to 322, 2102 (39) (a); 1979 c. 221; 1979 c. 361 s. 113; 1981 c. 1, 20, 86, 95, 131, 294, 330; 1981 c. 374 ss. 6, 7, 148, 150; 1983 a. 27 ss. 216m to 269, 2202 (23); 1983 a. 75, 181, 243, 397; 1983 a. 410 ss. 5m to 11, 2202 (38); 1983 a. 413; 1983 a. 416 ss. 1, 19; 1983 a. 426; 1985 a. 16, 22; 1985 a. 29 ss. 282d to 356, 3202 (26) (a), (39) (a), (c), (dm), (i); 1985 a. 46, 60, 65, 120, 202, 296; 1987 a. 27, 98, 110, 290, 295, 298, 305; 1987 a. 312 s. 17; 1987 a. 384, 397, 399, 403, 418; 1989 a. 31, 128, 284, 288, 326; 1989 a. 335 ss. 22nn to 30g, 89; 1989 a. 336, 350, 359, 366; 1991 a. 32; 1991 a. 39 ss. 326b to 394, 594c; 1991 a. 254, 269, 300, 309, 315; 1993 a. 16, 75, 166, 213, 343, 349, 415, 421, 453, 464; 1993 a. 490 ss. 18, 271; 1995 a. 27, 201, 225, 227, 296, 378, 459; 1997 a. 27, 35; 1997 a. 237 ss. 33 to 38d, 727g; 1997 a. 248; 1999 a. 9, 32, 74, 92; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16, 56, 92, 108, 109; 2003 a. 33, 228, 251, 310, 314, 321, 327; 2005 a. 25, 286, 288, 347, 394.

****NOTE: I have assumed that you want this program revenue appropriation to fund the wetlands determinations activities under this proposal. Am I correct?

4 SECTION 2. 23.321 of the statutes is created to read:

5 **23.321 Wetlands determinations.** (1) In this section, "wetland" has the
 6 meaning given in s. 23.32 (1).

7 (2) Any person who owns or leases land may request that the department, for
 8 a fee in the amount established by the department by rule, determine whether the
 9 land contains a wetland.

10 (3) The department shall make its determination under sub. (2) by reviewing
 11 wetland maps prepared under s. 23.32 and any other information that the
 12 department has available to it that would assist the department in its determination.
 13 Upon request, and for an additional fee established by the department by rule, the
 14 department shall also conduct an on-site evaluation of the land. The department
 15 shall establish fees under this subsection based on the size of the parcel of land for
 16 which a wetlands determination is requested.

****NOTE: This provision allows the department to charge fees for on-site evaluation based on the size of the parcel evaluated. Did you want the variable fee to also apply to those determinations that do not include on-site evaluation?

17 (4) (a) Except as provided under par. (b), the department shall provide a
 18 written report of its determination under this section not later than 30 days after a
 19 person files a request for a wetlands determination with the department.

1 (b) If a person requests an on-site evaluation of land, the department shall
2 provide a written report of its determination under this section not later than 30 days
3 after the department conducts its on-site evaluation.

***NOTE: Are these deadlines consistent with your intent? Please note that the draft does not give DNR a deadline for conducting an on-site evaluation.

4 SECTION 3. 23.323 of the statutes is created to read:

5 **23.323 Wetlands informational brochure.** The department shall furnish
6 an informational brochure to cities, villages, towns, and counties that describes the
7 laws that apply to wetlands.

8 SECTION 4. 59.691 of the statutes is created to read:

9 **59.691 Building affecting identified wetlands.** (1) In this section:

10 (a) "Department" means the department of natural resources.

11 (b) "Wetland" has the meaning given in s. 23.32 (1).

12 (2) A county may not issue a building permit for a dwelling, or for a garage,
13 shed, or other building that is an accessory building to the dwelling, to any person
14 without giving the person the written notice specified in sub. (3) at the time the
15 building permit is issued.

16 (3) Each notice shall contain the following language: "WARNING!! YOU ARE
17 RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL
18 LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR
19 WETLANDS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER
20 MAY BE DIFFICULT TO DETECT OR DELINEATE WITHOUT EXPERT ADVICE.
21 FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY
22 RESULT IN SUBSTANTIAL RESTORATION COSTS, FORFEITURES, FINES,
23 AND POTENTIAL REMOVAL OR MODIFICATION OF CONSTRUCTION THAT

1 VIOLATES THE LAW. FOR INFORMATION ABOUT COMPLYING WITH STATE
2 AND FEDERAL LAW VISIT THE INTERNET WEB SITE OF THE DEPARTMENT
3 OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE
4 DEPARTMENT OF NATURAL RESOURCES.

5 (4) The notice set forth in sub. (3) shall contain the electronic Web site address
6 that gives the recipient of the notice direct contact with that Web site.

7 (5) A county in issuing a notice under this subsection shall require that the
8 applicant for the building permit sign a statement acknowledging that the person
9 has received the notice.

10 SECTION 5. 60.625 of the statutes is created to read:

11 60.625 Building affecting identified wetlands. (1) In this section:

12 (a) "Department" means the department of natural resources.

13 (b) "Wetland" has the meaning given in s. 23.32 (1).

14 (2) A town may not issue a building permit for a dwelling, or for a garage, shed,
15 or other building that is an accessory building to the dwelling, to any person without
16 giving the person the written notice specified in sub. (3) at the time the building
17 permit is issued.

18 (3) Each notice shall contain the following language: "WARNING!! YOU ARE
19 RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL
20 LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR
21 WETLANDS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER
22 MAY BE DIFFICULT TO DETECT OR DELINEATE WITHOUT EXPERT ADVICE.
23 FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY
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 3 OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE
 4 DEPARTMENT OF NATURAL RESOURCES.

5 (4) The notice set forth in sub. (3) shall contain the electronic Web site address
 6 that gives the recipient of the notice direct contact with that Web site.

7 (5) A town in issuing a notice under this subsection ^{section} shall require that the
 8 applicant for the building permit sign a statement acknowledging that the person
 9 has received the notice.

10 SECTION 6. 61.352 of the statutes is created to read:

11 **61.352 Building affecting identified wetlands.** (1) In this section:

12 (a) "Department" means the department of natural resources.

13 (b) "Wetland" has the meaning given in s. 23.32 (1).

14 (2) A village may not issue a building permit for a dwelling, or for a garage,
 15 shed, or other building that is an accessory building to the dwelling, to any person
 16 without giving the person the written notice specified in sub. (3) at the time the
 17 building permit is issued.

18 (3) Each notice shall contain the ^{following} language: "WARNING!! YOU ARE
 19 RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL
 20 LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR
 21 WETLANDS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER
 22 MAY BE DIFFICULT TO DETECT OR DELINEATE WITHOUT EXPERT ADVICE.
 23 FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY
 24 RESULT IN SUBSTANTIAL RESTORATION COSTS, FORFEITURES, FINES,
 25 AND POTENTIAL REMOVAL OR MODIFICATION OF CONSTRUCTION THAT

1 VIOLATES THE LAW. FOR INFORMATION ABOUT COMPLYING WITH STATE
2 AND FEDERAL LAW VISIT THE INTERNET WEB SITE OF THE DEPARTMENT
3 OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE
4 DEPARTMENT OF NATURAL RESOURCES. ✓

5 (4) The notice set forth in sub. (3) shall contain the electronic Web site address
6 that gives the recipient of the notice direct contact with that Web site. ✓

7 (5) A village in issuing a notice under this subsection shall require that the
8 applicant for the building permit sign a statement acknowledging that the person
9 has received the notice. ✓

10 SECTION 7. 62.232 of the statutes is created to read:

11 **62.232 Building affecting identified wetlands.** (1) In this section:

12 (a) "Department" means the department of natural resources. ✓

13 (b) "Wetland" has the meaning given in s. 23.32 (1).

14 (2) A city may not issue a building permit for a dwelling, or for a garage, shed,
15 or other building that is an accessory building to the dwelling, to any person without
16 giving the person the written notice specified in sub. (3) at the time the building
17 permit is issued.

18 (3) Each notice shall contain the following language: "WARNING!! YOU ARE
19 RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL
20 LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR
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23 FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY
24 RESULT IN SUBSTANTIAL RESTORATION COSTS, FORFEITURES, FINES,
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1 VIOLATES THE LAW. FOR INFORMATION ABOUT COMPLYING WITH STATE
2 AND FEDERAL LAW VISIT THE INTERNET WEB SITE OF THE DEPARTMENT
3 OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE
4 DEPARTMENT OF NATURAL RESOURCES.

5 (4) The notice set forth in sub. (3) shall contain the electronic Web site address
6 that gives the recipient of the notice direct contact with that Web site.

7 (5) A city in issuing a notice under this subsection shall require that the
8 applicant for the building permit sign a statement acknowledging that the person
9 has received the notice.

10 SECTION 8. 709.03 (form) C. 28. of the statutes is created to read:

11 709.03 (form) C. 28.

12 C. 28. I am aware that the property, or portion of the
13 property, contains a wetland that has been
14 identified by the department of natural
15 resources.

16 SECTION 9. Initial applicability.

17 (1) BUILDING PERMITS. The treatment of sections 59.691, 60.625, 61.352, and
18 62.232 of the statutes first applies to applications for building permits that are
19 submitted on the effective date of this subsection.

20 (2) REAL ESTATE CONDITION REPORTS.. The treatment of sections 709.03 (form) C.
21 28. of the statutes first applies to real estate condition reports that are furnished on
22 the effective date of this subsection.

23 SECTION 10. Effective date.

1 ✓
2 (1) This act takes effect on the first day of the 7th month beginning after
3 publication. ✓

(END) ✓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3192/?dn

RNK:.....

Lbjk

Date

I have prepared this draft in preliminary form to give you an opportunity to address the notes embedded in the draft. In addition, please also note that the parameters of the wetlands determinations under this draft are not as specific as those in the Michigan law that you provided to me. Therefore, in this draft DNR is given rule-making authority to set fees. The draft also does not specify what information DNR must provide in its report. If you would like the draft to be more specific on these, or any other issues, please let me know and I will redraft accordingly. ✓

Because the draft provides that DNR must set fees by rule, and because it also will require the printing of new notices and forms, I have included a delayed effective date provision in order to give DNR time to promulgate rules and to give time for new forms to be printed. Does this provision meet with your intent? ✓

Please feel free to contact me if you have any other questions with regard to this draft. ✓

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3192/P1dn
RNK:bjk:pg

October 4, 2007

I have prepared this draft in preliminary form to give you an opportunity to address the notes embedded in the draft. In addition, please also note that the parameters of the wetlands determinations under this draft are not as specific as those in the Michigan law that you provided to me. Therefore, in this draft DNR is given rule-making authority to set fees. The draft also does not specify what information DNR must provide in its report. If you would like the draft to be more specific on these, or any other issues, please let me know and I will redraft accordingly.

Because the draft provides that DNR must set fees by rule, and because it also will require the printing of new notices and forms, I have included a delayed effective date provision in order to give DNR time to promulgate rules and to give time for new forms to be printed. Does this provision meet with your intent?

Please feel free to contact me if you have any other questions with regard to this draft.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Kite, Robin

From: Stolzenberg, John
Sent: Friday, December 07, 2007 9:39 AM
To: Kite, Robin
Subject: FW: Drafting Instructions and Questions on Wetlands ID Bill, LRB-3192/P1

Attachments: Wetlands Identification draft LRB-3192_P1 drafting instructions.doc; Wetlands ID draft LRB-3192_P1 Questions.doc

Robin,

Here are the drafting instructions and questions on the wetlands ID bill that we just discussed.

John

John Stolzenberg,
Legislative Council
266-2988

From: Stolzenberg, John
Sent: Thursday, December 06, 2007 5:16 PM
To: Bier, Beth; Vollbrecht, Mary E - DNR; Neumann, Paul F - DNR; Hagen, Cherie L - DNR
Subject: Drafting Instructions and Questions on Wetlands ID Bill, LRB-3192/P1

Hi all,

I've prepared the following documents that summarize drafting instructions on Sen. Miller's wetlands ID draft, LRB-3192/P1, and questions on these instructions or the draft.



Wetlands
identification draft ..



Wetlands ID draft
LRB-3192_P1 ...

These instructions are based on guidance I received at the November 20 meeting on the draft and follow up information from Mel and other DNR staff. Please let me know if you have any comments or corrections in the drafting instructions that do not have pending questions associated with them. I plan on providing those instructions to Robin Kite, the LRB drafter, tomorrow so she can get started drafting them.

Mel, Paul and Cherie, at your earliest convenience, please provide your responses to my questions and comments in the second document via a call or email note. I'll then discuss them with Beth to finalize the drafting instructions.

John

John Stolzenberg
Legislative Council
266-2988

Questions on the Wetlands Identification Bill Draft, LRB-3192/P1

Questions on Which Local Government and Department of Commerce Forms Should Be Required to Contain the Standard Wetlands Notice

These questions relate to items 5 b and 7 in the separate list of drafting instructions on this draft.

My notes from the November 20 meeting on the draft in Sen. Miller's office indicate that both Mel and I would look further at whether any additional local government permits, such as construction of a private sewage system, should be subject to the notification requirements in the draft, such as on page 3, lines 9 to 12. Mel did not address this issue in her November 28 note to me.

At the same time I think we should also examine if the reference in the notification requirement to a "building permit for a dwelling unit" is too broad (does it include a permit to do indoor electrical or plumbing work? If so, should that permit be covered by the bill's notification requirements?) and which Commerce Safety and Building Division forms should have the notice.

Another issue is whether the local government regulations should be drafted by type of local government in chs. 59, 60, 61 and 62, as is done in the P1 version of the draft, or in Commerce's statute, ch. 101, where local governments are given the authority to administer and enforce building codes.

Here's some background information as I continue to "get my arms around" the relation between local government and Commerce building code authority:

- Relevant text from a note I got from Bob DuPont at Commerce on the origin of the notice on Commerce's 1 and 2 family building permit form that I showed people at the November 20 meeting:

That provision relates to the fact that Commerce has statutory authority and responsibility to regulate building construction-related soil erosion. (See s. 101.653, stats., regarding one-and two-family dwellings and see s. 101.1205, stats., regarding public buildings and buildings that are places of employment.)

In addition, for building construction sites where one or more acres of soil are going to be disturbed, the Federal Clean Water Act directs that a Notice of Intent be filed with the regulatory agency. Commerce is the regulatory agency in this case. That federal requirement for the NOI also requires that the NOI submittal include a statement that there is a compliant stormwater management plan and that it will be implemented.

For home sites under the Uniform Dwelling Code we combined the building permit application with the NOI submittal. For commercial buildings the NOI is a separate submittal because there is no state-required building permit as under the UDC.

- Some other potentially relevant statutes and rules, in addition to those identified by Bob DuPont (this list is by no means exhaustive):
 - s. 59.70(1), re county building and sanitary code authority.

- s. 60.61 (1m), re town authority to enact and enforce specified building codes.
- s. 62.17, re municipal enforcement of building codes.
- s. 101.12 (3) (a), (am), and (b) re review of specified commercial and public building plans by specified cities, villages, towns and counties..
- s. 101.65, re municipal authority regarding one and two-family dwelling code, and especially ss. 101.65 (1r) on a building permit applicant's duty to sign the specified statement, and 101.65 (3) on the required use by a municipality acting under s. 101.65 to use Commerce's standard building permit form and file a copy of each such permit issued with Commerce.
- s. 101.76, re municipal authority regarding manufactured building code, and especially s. 101.67 (3) on the required use by a municipality acting under s. 101.76 to use Commerce's standard building permit form and file a copy of each such permit issued with Commerce.
- Excerpt from ch. COMM 60, re EROSION CONTROL, SEDIMENT CONTROL AND STORM WATER MANAGEMENT for buildings and structures serving as public buildings and places of employment.

Comm 60.12 Required submittals. (1) NOTICE OF

INTENT. (a) A notice of intent along with an erosion and sediment control plan summary in a format prescribed by the department shall be filed by the owner or owner's agent when land disturbing construction activity involves one or more acres.

Note: Copies of the notice of intent form SBD-10376 are available from the Safety and Buildings Division at P.O. Box 7162, Madison, WI 53707-7162, or by telephone 608/266-3151 and 608/264-8777 (TTY), or at the Safety and Buildings' web site at www.commerce.wi.gov/SB.

(b) The notice of intent shall be submitted at least 7 days prior to commencement of land disturbing construction activity unless a shorter time period is permitted by the department.

(c) A site specific erosion and sediment control plan and a storm water management plan shall be prepared and completed prior to submitting the notice of intent.

Note: Section Comm 2.36 states the amount of the fee remitted to the department when a notice of intent is filed.

(d) The submittal of a notice of intent to the department for a construction site with one or more acres of land disturbing construction activity constitutes an application for coverage under a storm water construction site general permit issued by the department of natural resources pursuant to s. 283.33, Stats., and ch. NR 216, which contains erosion control standards established by the department of commerce pursuant to s. 101.1205, Stats.

Note: Although construction site notices of intent are submitted to the Department of Commerce, coverage under the Department Natural Resources' storm water construction site general permit is required by the United States Environmental Protection Agency in accordance with its delegation of Clean Water Act permit authority to the Department of Natural Resources.

Note: Department of Natural Resources rules under s. NR 216.42 (4) state: "Storm water discharges from construction sites for public buildings and buildings that are places of employment regulated by the department of commerce pursuant to s. 101.1205, Stats., in a manner which is equivalent to this subchapter shall be deemed to hold a WPDES permit issued pursuant to this subchapter." Sites deemed to hold a WPDES permit are subject to DNR enforcement for violations of permit conditions.

Questions Relating to Positions Authorizations and Appropriations

These questions relate to item 9 in the separate list of drafting instructions on this draft and, in particular, the estimates for the cost of, and revenues from, the draft in Paul Neumann's Spreadsheet on "Methodology for Estimating Cost of Wetland Determination LRB Draft".

DNR position authorizations

My notes from the November 20 meeting indicate that DNR would be provided under the draft 1 FTE position and 3 project positions. It appears to me that the spreadsheet is based upon 2 LTE positions for map requests and 4 FTE positions for on-site determinations.

On-site determinations

If the amount of DNR staff work for an average on-site determination to identify whether a requested area contains a wetland is significantly different from the amount of work necessary for DNR to concur with the boundary of a wetland delineated by another person, then the spreadsheet should be revised to reflect these different assumptions.

Also, if some appreciable portion of these on-site determinations will involve more than five disturbed acres, should that be addressed in the spreadsheet?

Delayed effective date

I agree with Paul's observation that the draft will not have a fiscal impact in FY07-08 due to its delayed effective date. In light of this seven-month delay, I will assume that the draft will be enacted in late March, 2008 and thus go into effect October 1, 2008 and will prorate the total ongoing costs in FY 2008-09 accordingly.

Revenues

At the November 20 meeting, it was decided that the fees for the DNR's services under the draft the \$50 for an in-office wetland identification based upon maps, etc. and \$300 for either the on-site identification or on-site concurrence of the boundary of wetland delineated by a professional delineator. The \$300 fee applies to up to 5 acres of disturbed land.

The summary of revenues at the bottom of the spreadsheet (cells F38 and F39) base the revenue from map requests on a \$20 fee. Shouldn't this revenue be based upon the \$50 fee prescribed at the meeting? Also, the revenue for on-site determinations is based upon the DNR charging \$300 for each of those determinations. As noted above, if DNR staff have any estimate of the portion of on-site determinations that will involve more than 5 disturbed acres, and if that portion is significant, those estimates should be incorporated into the revenues for on-site determinations.

Mel or Paul, please let me know based on the above comments and questions the position authorizations and fees you recommend and whether you will be revising the total ongoing and one-time costs and annual revenues in the spreadsheet.

Prepared for Sen. Mark Miller
By John Stolzenberg, Legislative Council
December 6, 2007

**Drafting Instructions for Changes in LRB-3192/P1,
Relating to Wetlands Identification**

✓ 1. Page 2, lines 7 to 16: Rewrite proposed s. 23.321 (2) and (3) to do the following:

a. Authorize DNR to provide any of following 3 services at the request of a person who owns or leases land:

- Wetland map review* →
- i. Whether the land is likely to contain a wetlands based the department's review of wetland maps prepared under s. 23.32 or other information available to the department. [This service will be based upon a review conducted within DNR's offices and not involve any field or on-site work.]
- Wetland identification* →
- ii. Whether the land contains a wetland based upon the department's on-site inspection.
- Wetland confirmation* →
- iii. Whether the department concurs with the boundaries of a wetland on the land delineated by another person based upon the department's on-site inspection. [More than likely, this other person will be a professional wetland delineator.]

b. Specify that the fees for these services shall be as follows:

- i. \$50 for the in-office map review under item a. i.
- ii. \$300 for either of the on-site services under items a. ii. and iii. for up to 5 acres of disturbed land and \$300 for each additional 5 acre increment of disturbed land. [Thus, for example, the fee for a parcel with 12 disturbed acres would be \$900.]

c. Throughout these subsections and other provisions in the bill, substitute a different phrase for "wetlands determinations" such as "wetlands identification." [This change avoids the connotation of a "determination" being legally conclusive and, in the case of the first two services, more accurate than DNR's intended service will be.]

✓ 2. Page 2, lines 17 to 19: Provide a 15 day deadline for the DNR's map review service (item 1.a.i., above) and a 30 day deadline for the other two services.

✓ 3. Page 2, lines 20 to 22: For either of the DNR's on-site services, substitute that the DNR must provide its report within 30 days after the completion of its on-site work if snow or ice conditions prevent the department from completing this work within the 30 days after receiving the request. [This delay is modeled on the fish farm permit renewal provision in s. 29.733 (2) (c) 4., Stats.]

✓ 4. Page 3, lines 2 to 4: Clarify that the informational brochure is intended for use by the public rather than the listed local units of government. [These units will be distributing the brochure to the public.] Each

✓ 5. Page 3, lines 9 to 12 (plus make same changes in corresponding provisions in the bill that apply to cities, town and villages):

✓ a. Create an exception to this notice requirement if the county uses the Department Commerce's standard building permit form to process the permit application. [An example of Commerce's forms is its Uniform Building Permit Application form, #SBD-5823 (R.05/07) for one and two family dwellings accessible at <http://commerce.wi.gov/SB/SB-DivForms.html>.]

→ should be \$300 per acre - and will only inspect 5 acres or fewer acres

D. Note no cost?

b. Clarify that this notification requirement doesn't apply to all types of building permits, such as for electrical or HVAC work that does disturb land and add other types of permits for work that does disturb land to this notification requirement. [I am still working with DNR staff on this point, including what other permits, such as a permit to install a septic tank, should be added to this provision.]

6. Page 3, line 13 to page 4, line 2 (plus make same changes in corresponding provisions in the bill that apply to cities, town and villages): Change the text of the notice to read:

YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER MAY NOT BE APPARENT. FAILURE TO COMPLY MAY RESULT IN POTENTIAL REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW. FOR MORE INFORMATION, VISIT THE WETLANDS IDENTIFICATION PAGE OF THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER.

7. Page 76, line 7: After that line, insert new text that directs the Department of Commerce to include the notice given under item 6 is relevant standard Safety and Buildings Division forms. [These forms are posted at <http://commerce.wi.gov/SB/SB-DivForms.html>. I am still identifying with DNR staff which forms this notice should be added to.]

8. Page 7, lines 8 to 13: Delete the language in Section 8 on the content of the real estate condition report and substitute a new amendment to the Department of Regulation Licensing's (DRL) duties relating to approving forms for use in real estate practice modeled on Section 8 in 2007 Senate Bill 235 and add the following statement for DRL to include on its form for an offer to purchase real property:

SELLERS MAY NOT BE AWARE OF WETLANDS OR OTHER WATER FEATURES ON THEIR PROPERTY. THE PROSPECTIVE BUYER IS STRONGLY ADVISED TO INDEPENDENTLY CHECK FOR WETLANDS AND WATER FEATURES AS SUCH FEATURES MAY AFFECT CONSTRUCTION ON AND USE OF THE PROPERTY.

[Section 8 in Senate Bill 235 reads as follows:

Section 8. 452.05 (1) (b) of the statutes is renumbered 452.05 (1) (b) (intro.) and amended to read:

452.05 (1) (b) (intro.) Approve forms for use in real estate practice. The department may not approve a form for an offer to purchase real property unless the form includes a statement that advises the purchaser of all of the following:

9. Page 7, line 20: after that line insert a non-stat provision on DNR position authorizations and an increased appropriation to the s. 20.370 (4) (bi) appropriation in FY 2008-09. [I am still confirming the number of positions and the amount of this appropriation.]

John Stolzenberg

1 FTE

3 LTE

first year no approp

2d year 238,000 salary fringe supplies +
other expenses like computers
i.e. program costs + program admin

Tell John that the approp can't be increased
because it is not "amounts in the schedule"
- OK

positions - 1.0 FTE

3.0 project for 4 years

1-18-08

Per John Stolzenberg

Increase approp:

1 FTE

3 project positions

John will get back to me with amounts

re: "disturbing" land

includes "covering land"

can use language similar to s. 281.33(3)(b) 1.

but include "covering land"

also, make sure permit language is in
local chapters & also in ch. 101



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

Inserts

D-NOTE

SA ✓
X-ref ✓

regen. cat. ←

1 AN ACT to amend 20.370 (4) (bi); and to create 23.321, 23.323, 59.691, 60.625,
2 61.352, 62.232 and 709.03 (form) C. 28. of the statutes; relating to: notices
3 concerning construction near or on lakes, streams, or wetlands that are given
4 to applicants for building permits, and other construction approvals, requiring the Department of Natural
5 Resources to furnish informational brochures about wetlands laws, requiring
6 the Department of Natural Resources to make determinations about whether
7 certain land contains wetlands, and making an appropriation.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft. ✓

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

8 SECTION 1. 20.370 (4) (bi) of the statutes is amended to read:
9 20.370 (4) (bi) *Water regulation and zoning — fees.* From the general fund, all
10 moneys received under ss. 23.32 (3), 23.321 (2) and (3), 30.28, 31.39 and 281.22 for

1 activities relating to permits and approvals issued under chs. 30 and 31, water
2 quality standards under subch. II of ch. 281 and for wetland mapping under s. 23.32
3 and wetlands ~~determinations~~ ^{services} under s. 23.321.

****NOTE: I have assumed that you want this program revenue appropriation to fund the wetlands determinations activities under this proposal. Am I correct?

4 SECTION 2. 23.321 of the statutes is created to read:

5 23.321 Wetlands ~~determinations~~ ^{map review, identification and confirmation} (1) In this section, "wetland" has the
6 meaning given in s. 23.32 (1).

7 (2) Any person who owns or leases land may request that the department, for
8 a fee in the amount established by the department by rule, determine whether the
9 land contains a wetland.

10 (3) The department shall make its determination under sub. (2) by reviewing
11 wetland maps prepared under s. 23.32 and any other information that the
12 department has available to it that would assist the department in its determination.
13 Upon request, and for an additional fee established by the department by rule, the
14 department shall also conduct an on-site evaluation of the land. The department
15 shall establish fees under this subsection based on the size of the parcel of land for
16 which a wetlands determination is requested.

****NOTE: This provision allows the department to charge fees for on-site evaluation based on the size of the parcel evaluated. Did you want the variable fee to also apply to those determinations that do not include on-site evaluation?

17 (4) (a) Except as provided under par. (b), the department shall provide a written
18 report of its determination under this section not later than 30 days after a person
19 files a request for a wetlands determination with the department.

20 (b) If a person requests an on-site evaluation of land, the department shall
21 provide a written report of its determination under this section not later than 30 days
22 after the department conducts its on-site evaluation.

****NOTE: Are these deadlines consistent with your intent? Please note that the draft does not give DNR a deadline for conducting an on-site evaluation.

insert
3-1

SECTION 3. 23.323 of the statutes is created to read:

23.323 Wetlands informational brochure. The department shall furnish

an informational brochure to cities, villages, towns, and counties that describes the laws that apply to wetlands.

for distribution to the public

SECTION 4. 59.691 of the statutes is created to read:

59.691 Building affecting identified wetlands. (1) In this section:

Required notices on certain approvals

(a) "Department" means the department of natural resources.

(b) "Wetland" has the meaning given in s. 23.32 (1).

except as provided in para (b) or other approval for construction activity related to

(2) A county may not issue a building permit for a dwelling, or for a garage, shed, or other building that is an accessory building to the dwelling, to any person without giving the person the written notice specified in sub (3) at the time the building permit is issued.

insert
3-12

(3) Each notice shall contain the following language: "WARNING!! YOU ARE RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR WETLANDS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER MAY BE DIFFICULT TO DETECT OR DELINEATE WITHOUT EXPERT ADVICE. FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY RESULT IN SUBSTANTIAL RESTORATION COSTS, FORFEITURES, FINES, AND POTENTIAL REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW. FOR INFORMATION ABOUT COMPLYING WITH STATE AND FEDERAL LAW VISIT THE INTERNET WEB SITE OF THE DEPARTMENT

OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE DEPARTMENT OF NATURAL RESOURCES.

(4) The notice ^{required} set forth in sub. (3) shall contain the electronic Web site address that gives the recipient of the notice direct contact with that Web site.

(5) A county in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

SECTION 5. 60.625 of the statutes is created to read:

60.625 Building affecting identified wetlands. (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Wetland" has the meaning given in s. 23.32 (1).

(2) A town may not issue a building permit for a dwelling, or for a garage, shed, or other building that is an accessory building to the dwelling, to any person without giving the person the written notice specified in sub. (3) at the time the building permit is issued.

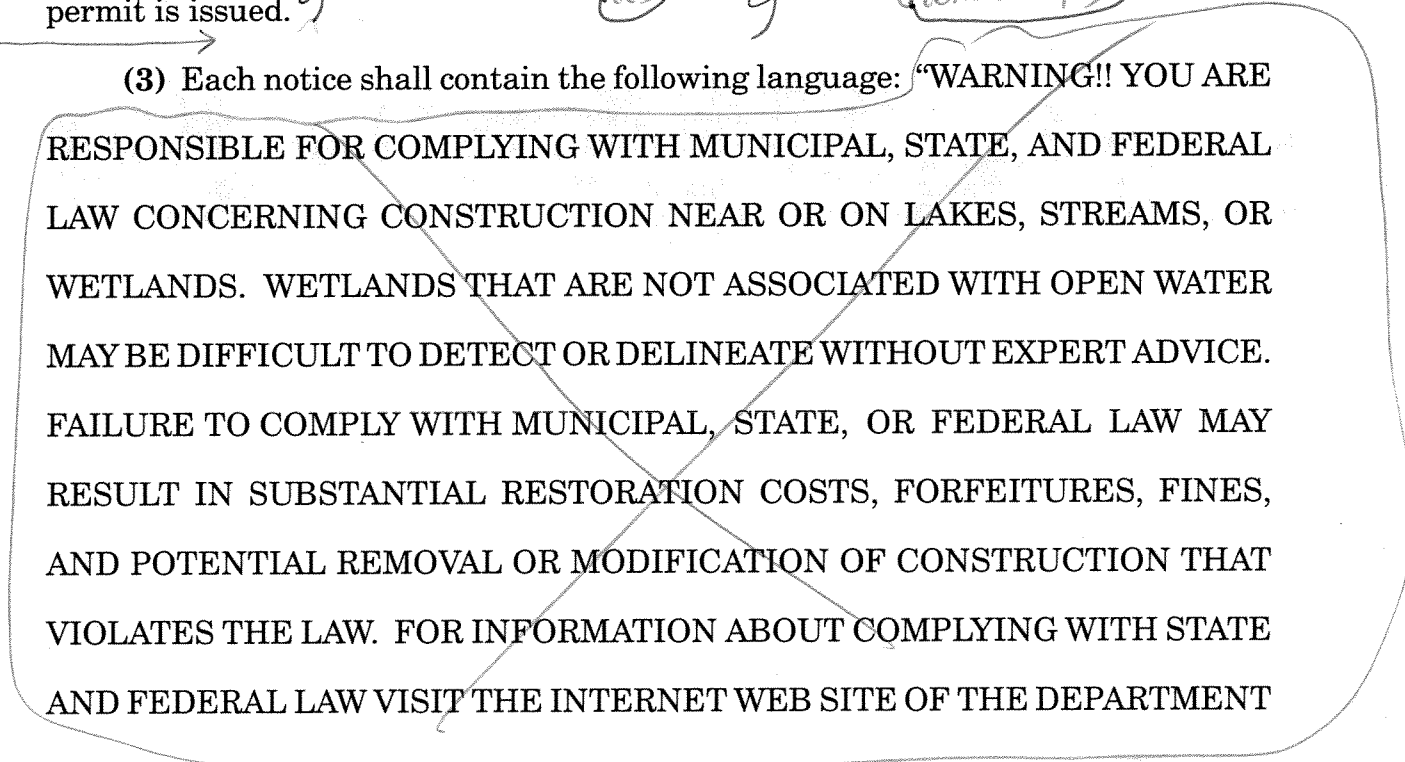
(3) Each notice shall contain the following language: "WARNING!! YOU ARE RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR WETLANDS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER MAY BE DIFFICULT TO DETECT OR DELINEATE WITHOUT EXPERT ADVICE. FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY RESULT IN SUBSTANTIAL RESTORATION COSTS, FORFEITURES, FINES, AND POTENTIAL REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW. FOR INFORMATION ABOUT COMPLYING WITH STATE AND FEDERAL LAW VISIT THE INTERNET WEB SITE OF THE DEPARTMENT

insert 4-2

insert 4-15

Required notices on certain approvals

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OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE DEPARTMENT OF NATURAL RESOURCES.

insert 4-2

(4) The notice ~~set forth~~ ^{e. required} in sub. (3) ^{(2) a (a)} shall contain the electronic Web site address that gives the recipient of the notice direct contact with that Web site.

(5) A town in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

Required notices on certain approvals

SECTION 6. 61.352 of the statutes is created to read:

~~61.352 Building affecting identified wetlands~~ (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Wetland" has the meaning given in s. 23.32 (1).

^{no. 4} (a) Except as provided in para (b)

(2) A village may not issue a building permit for a dwelling, or for a garage, shed, or other building that is an accessory building to the dwelling, to any person without giving the person the written notice specified in sub. (3) at the time the building permit is issued.

insert 5-14

(3) Each notice shall contain the following language: "WARNING!! YOU ARE RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR WETLANDS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER MAY BE DIFFICULT TO DETECT OR DELINEATE WITHOUT EXPERT ADVICE. FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY RESULT IN SUBSTANTIAL RESTORATION COSTS, FORFEITURES, FINES, AND POTENTIAL REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW. FOR INFORMATION ABOUT COMPLYING WITH STATE AND FEDERAL LAW VISIT THE INTERNET WEB SITE OF THE DEPARTMENT

OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE DEPARTMENT OF NATURAL RESOURCES.

(4) The notice ~~set forth~~ ^{required} in sub. (3) shall contain the electronic Web site address that gives the recipient of the notice direct contact with that Web site.

(5) A village in issuing a notice under this section shall require that the applicant for the building permit sign a statement acknowledging that the person has received the notice.

SECTION 7. 62.232 of the statutes is created to read:

62.232 Building affecting identified wetlands. (1) In this section:

(a) "Department" means the department of natural resources.

(b) "Wetland" has the meaning given in s. 23.32 (1).

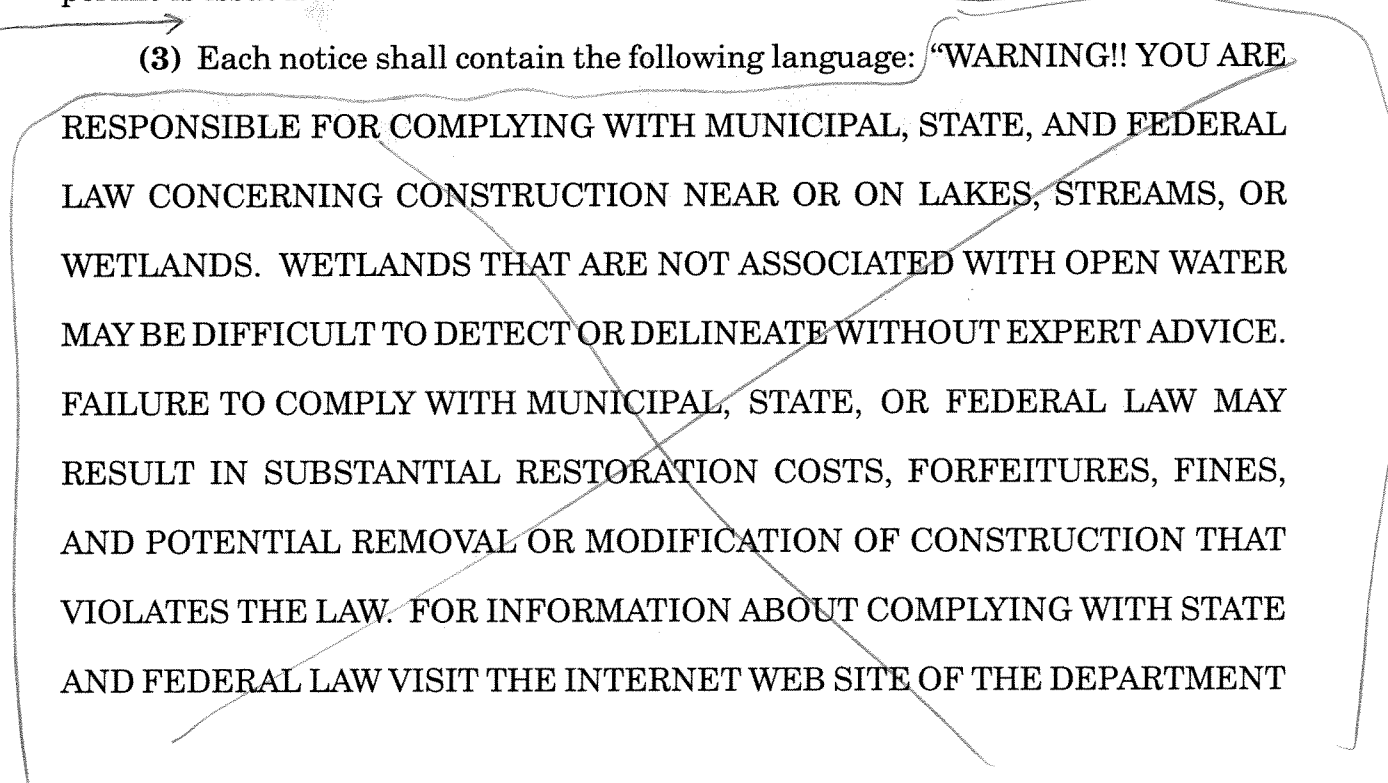
(2) ^{except as provided in para (b)} A city may not issue a building permit for a dwelling, or for a garage, shed, or other building that is an accessory building to the dwelling, to any person without giving the person ^(a) the written notice specified in ^(a) sub. (3) at the time the building permit is issued.

(3) Each notice shall contain the following language: "WARNING!! YOU ARE RESPONSIBLE FOR COMPLYING WITH MUNICIPAL, STATE, AND FEDERAL LAW CONCERNING CONSTRUCTION NEAR OR ON LAKES, STREAMS, OR WETLANDS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER MAY BE DIFFICULT TO DETECT OR DELINEATE WITHOUT EXPERT ADVICE. FAILURE TO COMPLY WITH MUNICIPAL, STATE, OR FEDERAL LAW MAY RESULT IN SUBSTANTIAL RESTORATION COSTS, FORFEITURES, FINES, AND POTENTIAL REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW. FOR INFORMATION ABOUT COMPLYING WITH STATE AND FEDERAL LAW VISIT THE INTERNET WEB SITE OF THE DEPARTMENT

insert 4-2

insert 6-15

Required notice on certain approvals (B)



✓
insert
4-2

1 OF NATURAL RESOURCES OR CONTACT A SERVICE CENTER OF THE
2 DEPARTMENT OF NATURAL RESOURCES.

3 (4) The notice ~~set forth~~ ^{required} in sub. (3) shall contain the electronic Web site address
4 that gives the recipient of the notice direct contact with that Web site.

5 (5) A city in issuing a notice under this section shall require that the applicant
6 for the building permit sign a statement acknowledging that the person has received
7 the notice.

✓
insert
7-7

8 SECTION 8. 709.03 (form) C. 28. of the statutes is created to read:

9 709.03 (form) C. 28.

10 C. 28. I am aware that the property, or portion of the
11 property, contains a wetland that has been
12 identified by the department of natural
13 resources.

✓
insert
7-13

14 SECTION 9. Initial applicability.

15 (1) BUILDING PERMITS. The treatment of section 59.691, 60.625, 61.352, and
16 62.232 of the statutes first applies to applications for building permits that are
17 submitted on the effective date of this subsection.

18 (2) REAL ESTATE CONDITION REPORTS. The treatment of section ~~709.03 (form) C.~~
19 ^{425.05(1)(b)} ~~28~~ of the statutes first applies to real estate condition reports that are ~~furnished~~
20 the effective date of this subsection.

21 SECTION 10. Effective date.

22 (1) This act takes effect on the first day of the 7th month beginning after
23 publication.

24 (END)

D-note

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3192/P2ins.
RNK:.....

l b j k

INSERT 3-1

¶ (2) Any person who owns or leases land may request that the department provide any of the following services for the fee specified in sub. (3):

¶ (a) A wetland map review that consists of a written evaluation, based upon a review of wetland maps prepared by the department under s. 23.32 or other information available to the department, of whether a parcel of land is likely to contain a wetland.

¶ (b) A wetland identification that consists of a written evaluation, based upon an on-site inspection of the land by the department, of whether a parcel of land contains a wetland. The department shall provide a wetland identification only for a parcel of land that does not exceed 5 acres.

* ¶ (c) A wetland confirmation that consists of a written statement, based upon an on-site inspection of the land by the department, of whether the department concurs with the boundaries of a wetland as delineated by a third person. The department shall provide a wetland confirmation only for a parcel of land that does not exceed 5 acres.

¶ (3) The department shall charge the following fee for services provided under sub. (2):

¶ (a) For a wetland map review under sub. (2) (a), \$50.

¶ (b) For a wetland identification under sub. (2) (b), \$50 for each acre inspected by the department.

¶ (c) For a wetland confirmation under sub. (2) (c), \$50 for each acre inspected by the department.

4 (4) (a) Except as provided under par. (b), the department shall do all of the following: ✓

4 1. Provide a wetland map review not later than 15 days after a person files a request for a wetland map review. ✓

4 2. Provide a wetland identification not later than 30 days after a person files a request for a wetland identification. ✓

4 3. Provide a wetland confirmation not later than 30 days after a person files a request for a wetland confirmation. ✓

***NOTE: What is disturbed land? What is the charge if the land is not disturbed?

* 4 (b) If snow or icy conditions prevent the department from completing an on-site inspection in sufficient time to comply with the deadline under par. (a), the department shall provide a wetland map review under sub. (2) (b) or a wetland confirmation under sub. (2) (c) not later than 30 days after the department completes its on-site inspection. ✓

INSERT 3-12

✓ ✓ ✓
(b) 1. A county is not required to give the notice specified in sub. (3) at the time that it issues a building permit if the county issues the building permit on a standard building permit form prescribed by the department of commerce. ✓

2. A county is not required to give the notice specified in sub. (3) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land. ✓

INSERT 4-2 (Insert 4-2 used 4 times)



NOA

“YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER MAY NOT BE APPARENT. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER.”

INSERT 4-15

✓ ✓ ✓
(b) 1. A town is not required to give the notice specified in sub. (3) at the time that it issues a building permit if the county issues the building permit on a standard building permit form prescribed by the department of commerce. ✓ under (2)

✓
2. A town is not required to give the notice specified in sub. (3) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land. ✓ under (2)

INSERT 5-14

✓ ✓ ✓
(b) 1. A village is not required to give the notice specified in sub. (3) at the time that it issues a building permit if the county issues the building permit on a standard building permit form prescribed by the department of commerce. ✓ under (2)

✓
2. A village is not required to give the notice specified in sub. (3) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity under (2)

including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land. ✓

INSERT 6-15

✓ ✓ ✓
(b) 1. A city is not required to give the notice specified in sub. (3) at the time that it issues a building permit if the county issues the building permit on a standard building permit form prescribed by the department of commerce. ✓

✓
2. A city is not required to give the notice specified in sub. (3) at the time that it issues a building permit or other approval if the building permit or other approval is for construction activity that does not involve any land disturbing activity including removing protective ground cover or vegetation, or excavating, filling, covering, or grading land. ✓

INSERT 7-7

✓
41 SECTION 1. 101.02 (23) of the statutes is created to read:

✓ 41 101.02 (23) The department shall include the following language on every standard building permit form prescribed by the department under this chapter:

NO 91 "YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER MAY NOT BE APPARENT. FAILURE TO COMPLY MAY RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE LAW. FOR MORE INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL RESOURCES SERVICE CENTER."

✓
SECTION 2. 452.05 (1) (b) of the statutes is amended to read:

✓ 452.05 (1) (b) Approve forms for use in real estate practice. The department may not approve a form for an offer to purchase real property unless the form includes the following language: “SELLER MAY NOT BE AWARE OF WETLANDS OR OTHER WATER FEATURES LOCATED ON THE SELLER’S PROPERTY. THE PROSPECTIVE BUYER IS STRONGLY ADVISED TO INDEPENDENTLY DETERMINE IF WETLANDS OR WATER FEATURES ARE LOCATED ON THE PROPERTY BECAUSE WETLANDS AND WATER FEATURES MAY AFFECT CONSTRUCTION ON, AND USE OF, THE PROPERTY.”

History: 1981 c. 94, 391; 1985 a. 305 ss. 1t, 7; 1987 a. 399; 1989 a. 307, 341; 1991 a. 39; 1993 a. 141; 1995 a. 27; 1997 a. 27; 2003 a. 168.

INSERT 7-13

4 SECTION 3. Nonstatutory provisions.

4 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department of natural resources are increased by 3.0 PR project positions for the period ending on June 30, 2012 and 1.0 PR position, to be funded from the appropriation under section 20.370 (4) (bi) of the statutes, for the purpose of providing wetland map review, identification, and confirmation services under section 23.321 of the statutes, as created by this act.

end of insert

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3192/P2dn

RNK:.....

Lbjk

Date

This redraft is based upon instructions I received from John Stolzenberg. The draft is still in preliminary form given the scope of the requested changes. Once you have approved the draft, I will prepare it in final form. Please let me know if you have any questions. ✓

Robin N. Kite
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3192/P2dn
RNK:bjk:pg

February 5, 2008

This redraft is based upon instructions I received from John Stolzenberg. The draft is still in preliminary form given the scope of the requested changes. Once you have approved the draft, I will prepare it in final form. Please let me know if you have any questions.

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