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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Environment and Natural
Resources (SC-ENR)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR ... bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (August 2012)

June-2014

Senate

Record of Committee Proceedings

Committee on Environment and Natural Resources

Senate Bill 553

Relating to: notices concerning construction near or on lakes, streams, or wetlands that are given to applicants for building permits and other construction approvals, requiring the Department of Natural Resources to furnish informational brochures about wetlands laws, requiring the Department of Natural Resources to provide evaluations and statements about whether certain land contains wetlands, and making an appropriation.

By Senators Miller, Wirsch, Cowles, Robson, A. Lasee, Risser and Lehman; cosponsored by Representatives Bies, Hebl, A. Ott, Townsend, Owens and Soletski.

February 29, 2008 Referred to Committee on Environment and Natural Resources.

March 3, 2008

PUBLIC HEARING HELD

Present: (5) Senators Miller, Jauch, Wirsch, Kedzie and Schultz.

Absent: (0) None.

Appearances For

- Mark Miller, Monona — Senator, 16th Senate District
- Mary Ellen Vollbrecht, Madison — Department of Natural Resources
- Erin O'Brien, Madison — Wisconsin Wetlands Association

Appearances Against

- Jeff Nania, Portage — Wisconsin Waterfowl Association

Appearances for Information Only

- Patrick Stevens, Madison — Wisconsin Builders Association

Registrations For

- Garey Bies, Sister Bay — Representative, 1st Assembly District

Registrations Against

- None.

Registrations for Information Only

- None.

March 11, 2008

EXECUTIVE SESSION HELD

Present: (5) Senators Miller, Jauch, Wirch, Kedzie and
Schultz.

Absent: (0) None.

Moved by Senator Kedzie, seconded by Senator Schultz that
Senate Amendment 1 be recommended for adoption.

Ayes: (5) Senators Miller, Jauch, Wirch, Kedzie and
Schultz.

Noes: (0) None.

ADOPTION OF SENATE AMENDMENT 1 RECOMMENDED,
Ayes 5, Noes 0

Moved by Senator Jauch, seconded by Senator Schultz that **Senate
Bill 553** be recommended for passage as amended.

Ayes: (5) Senators Miller, Jauch, Wirch, Kedzie and
Schultz.

Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 5, Noes 0



Elizabeth Bier
Committee Clerk

Vote Record

Committee on Environment and Natural Resources

Date: 3/11/08

Moved by: Kedzie

Seconded by: Schultz

AB _____ SB 553 Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 1
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Mark Miller, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Jauch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Dale Schultz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>5</u>	<u>0</u>	_____	_____

Motion Carried Motion Failed

Vote Record

Committee on Environment and Natural Resources

Date: 3/11/08

Moved by: Jauch

Seconded by: Schultz

AB _____

SB 553

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt 1

A/S Amdt ~~2~~ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

Passage

Adoption

Confirmation

Concurrence

Indefinite Postponement

Introduction

Rejection

Tabling

Nonconcurrence

Committee Member

Senator Mark Miller, Chair

Senator Robert Jauch

Senator Robert Wirch

Senator Neal Kedzie

Senator Dale Schultz

Aye

No

Absent

Not Voting

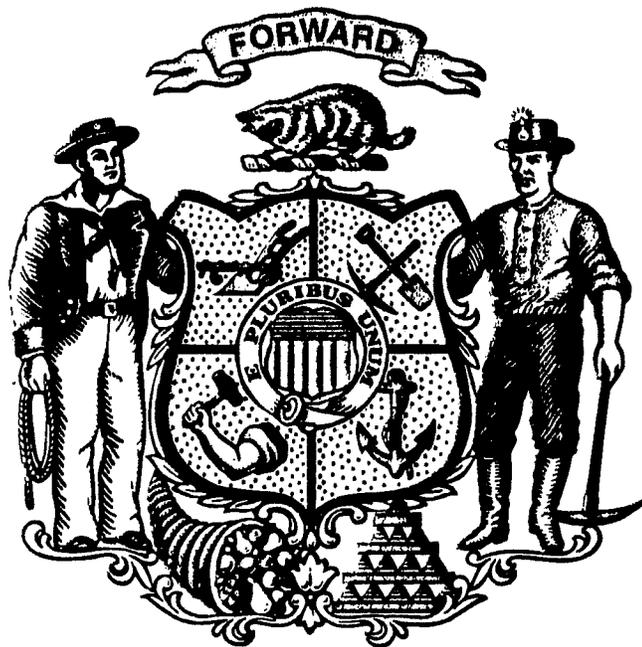
Totals:

5

0

Motion Carried

Motion Failed





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www.wiscwetlands.org

SB 553
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To: Members of the Joint Legislative Audit Committee:
July 26, 2007

From: Wisconsin Wetlands Association-- Becky Abel, Executive Director

RE: Audit Report 07-6: An Evaluation of DNR's Wetland Regulatory Programs.

Thank you for the opportunity to speak to you today. My name is Becky Abel and I am the Executive Director of the Wisconsin Wetlands Association.

The Wisconsin Wetlands Association, a statewide member-based nonprofit organization, has as its mission the protection, restoration and enjoyment of wetlands and their associated ecosystems through science-based programs, education and advocacy. Our more than 1500 members include hunters, anglers, wetland professionals, teachers, paddlers, and other outdoor enthusiasts.

The audit of DNR's wetland regulatory program was initially requested to provide:

1. A comparative review of the number of days and decision-making process to approve wetland fill permits across WDNR regions, and
2. A comparison of Wisconsin and Minnesota's wetland mitigation programs for ideas about how to create a more "business-friendly" wetland regulatory program.

The scope of the audit went well beyond the topics requested and provides the first in-depth accounting of Wisconsin's wetland permitting program since the inception of the program in 1991. This review will be extremely useful as we look for ways that DNR is and isn't adequately protecting our state's valuable wetlands.

WWA would like to comment on four main issues related to the audit:

Issue #1: Permit Compliance, Illegal Filling and Enforcement:

The DNR has been pressured to churn out wetland permits at a nearly impossible rate and, by their own admission, DNR's efforts to reduce processing times on wetland fill permit applications has hindered their ability to monitor permit compliance or identify and address unauthorized wetland fill. However, even with extremely limited time and money, WDNR identified more than 325 violations (i.e., unauthorized wetland fill or violation of permit conditions) during the 18-month window under review.

Deterrence of unauthorized wetland destruction **must** become a higher priority for WDNR. This means more and better communication about wetland regulatory requirements; increased emphasis on compliance monitoring, and better use of tools and mapping technology to identify and seek remedies for wetland violations.

Suggestions for improvement include:

- DNR produced brochures and other resources to help landowners determine if they have wetlands on their property and to help local governments advise on the likelihood of the presence of wetlands on privately-owned lands.
- Mandatory disclosure about wetland regulatory requirements in local zoning permits and real estate transactions.
- More resources for permit compliance monitoring and wetland regulatory enforcement.
- Uniform citation authority to allow conservation wardens to issue tickets and order work-stoppages for unauthorized wetland fill.
- Better tracking of both permitted and unauthorized wetland fill.
- More staff and money to complete the Wisconsin Wetland Inventory.

Issue #2: The push for business friendly permit options

The report explored numerous permitting options which, if pursued, could result in an increase in state-authorized wetland destruction and a reduction in the extent of review required to receive a permit to permanently fill a wetland. Current state *and federal* laws prohibit the issuance of wetland fill permits if alternatives exist to avoid and minimize wetland impacts. General permits, exemptions, or the promise of wetland mitigation should never be used to circumvent this requirement. The auditors' recommendation for the development of general permits failed to recognize that Wisconsin already has a robust General Permit program for activities that will not have a significant adverse impact on wetland acreage or function. Expansion beyond what's already allowed WILL have an adverse impact on wetlands.

The Wetlands Association will oppose exemptions to fill small wetlands or wetlands that are labeled as "low-quality". Small wetlands provide habitat for migratory waterfowl and songbirds and many of the state's endangered and threatened animals, and even wetlands with degraded plant communities may provide important ecological services such as flood control, water quality improvement, or groundwater/drinking water recharge.

With respect to wetland mitigation, it unfortunately does not usually look as good on land as it does on paper. All too often, wetland mitigation sites do not replace the type, quality or function of the wetlands lost. If someone cut a healthy 100 year old oak tree from your yard and replaced it with 2 spindly saplings that would require a tremendous amount of maintenance just to survive, would you feel as if you were better off because there were two trees instead of one? Many studies have documented poor ecological success rates and a systemic lack of accountability for wetland mitigation projects. WWA will conduct a cautious and skeptical evaluation of any proposed expansions to the state's wetland mitigation program to ensure that program modifications do not lead to a further loss of wetland acres or functions.

Issue #3 Permit timelines and wetlands lost:

The audit reports that in recent years, the DNR substantially reduced the amount of time required to approve permits to fill wetlands, while also reducing the acres of wetlands filled. However, some permits will always require more time to review. WWA supports the audit recommendation for the DNR to improve the clarity of application requirements and staff

communication with permit applicants and we would be happy to work with DNR to help them identify and remedy the common causes of permit review delays. However, we must keep in mind that longer permit review times often accompany projects with more substantial or complex wetland issues. *The primary purpose of the wetland regulatory program should be to protect Wisconsin's wetlands.* The program's effectiveness **must** be measured in terms of successful avoidance of wetland impacts rather than the rate of wetland fill approvals or the speed of permit processing. The public expects WDNR to conduct detailed review of the impacts of wetland development projects and strongly opposes a fast-food approach to the review of large or complicated projects.

DNR is processing permits faster, but the report still documented nearly 160 acres of state-authorized wetland fill by private interests each year. **The audit failed to acknowledge that the state directly destroys more than double the acres of wetlands filled by private interests annually to expand the state road system.** We were disappointed that the report also contained virtually no discussion about the ecological impacts of 350+ acres of annual wetland destruction.

Issue #4 There's a lot more to Wisconsin's Wetland Story:

The audit doesn't tell the whole story. As mentioned above, the report does not address the almost 200 acres a year that are filled for state transportation projects. The audit also fails to evaluate the many unregulated ways that the ecology of wetlands are destroyed—through removal of trees and vegetation, through dessication from water diversion to stormwater ponds, and through water level manipulation and groundwater withdrawal. And since there's also evidence that wetlands are being filled illegally at an alarming rate, the audit does not provide a snapshot of the most critical issue—just how many wetlands are being destroyed annually and how will the DNR protect our state's valuable and diverse wetlands when its funds and staffing are seriously limited and cookie cutter permit reviews are becoming the expectation.

Wisconsin has a tradition as an “early-adopter” of programs that recognize the need to protect and preserve valuable wetland resources. For example, we were the first state to pass Water Quality standards for wetlands as required under the federal Clean Water Act. We were also the first in the nation to adopt isolated wetland protections after the U.S. Supreme Court ruled these wetlands were not regulated under the Clean Water Act. These innovations received broad, bipartisan support because there was overwhelming public support for these actions by duck-hunters, anglers, bird-watchers, river advocates, clean drinking water advocates, flood managers and others.

Rather than enter the race for the bottom by weakening wetland regulations to match those of our closest competing state, the Wisconsin DNR should be charged with-- *and provided adequate funds for--* taking every measure to conserve wetlands for the use and enjoyment of Wisconsin residents and to support our thriving tourism industry.



SB 553
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Legislative Audit Committee Hearing – July 26th, 2007
Wetland Permit Program Audit Report Testimony – Secretary Scott Hassett

Acknowledgements

First of all, thank you to Senator Sullivan and Representative Jeskewitz for being here.

I'd also like to thank the Legislative Audit Bureau for its thorough and comprehensive look at the DNR's wetland permit program, specifically Janice Mueller and Paul Stuiber, as well as the rest of their staff:

- Jeff Ripp
- David Bajkiewicz
- Cara Coburn
- Jennifer Klippel
- and Allison La Tarte

Introduction

Wetlands' are critical to our ecosystem, quality of life and our state's economy. At the DNR, we take protection of these valuable natural resources seriously; but we also continually work hard to ensure that environmental protection and economic development can go hand-in-hand. We are proud of our performance to-date in successfully striking this balance.

We welcomed the Legislative Audit Bureau's analysis of our wetland permit program and appreciated the opportunity to take an in-depth review of this program with them.

Testimony

Specifically, we were very interested to learn what an independent review would show about how we are administering state and federal wetlands laws.

Overall, we believe our wetland protection program works – projects are allowed to move forward with minimal impact to the wetland resources of Wisconsin. The audit has affirmed that overall, these laws and our department's implementation of them are working well. It is especially gratifying to us, and should be to members of the Legislature as well, to see that two of the key goals of these laws are being met:

- We now issue wetland permits faster – report findings indicate we cut the permit process time in half and verified almost all applications are processed within the statutory timeframe;
- And we have decreased annual wetland loss by two-thirds.

With that said, we do agree that improvements can be made to make the Wetland Permit Program even better and we have already begun implementing many of the report's recommendations. Specifically,

Tracking wetland losses and permit timeliness

- For all wetland permits issued, we track not only wetland fill, but also wetland acres disturbed and restored.
- We analyze wetland permit data annually to determine where improvements are needed, make necessary changes, and track progress.
- As a result of the audit we have made additional database changes, updated database guidance and trained field staff.
- We will continue to assess permit data tracking needs and make the appropriate changes, specifically related to compliance monitoring and enforcement actions.

Developing a strategy for updating wetland maps and increasing their availability to the public

- We have remapped nearly all wetlands in the State since the original Wetland Inventory was created in 1984 and continue to update the wetland maps using the best available technology.
- 82% of the state's wetland maps (59 counties) are available on the DNR internal Surface Water Data Viewer for testing by staff prior to the release to the public. We hope to make the wetland maps available to the public as an internet mapping tool in late August.
- We work with the U.S. Fish and Wildlife Service, Southeastern Wisconsin Regional Planning Commission, Saint Mary's University and UW-Madison to update our wetland maps and determine the best available mapping technology. We are also working with Natural Resource Conservation Service to develop a "wet soils indicator" map to help the public determine if their property contains potential wetlands.
- Lastly, map resources are only good if folks use them. We have been working with Senator Miller and Representative Bies on the creation of a "wetland notification" bill for real estate transactions and local building permits, which will tell folks where to look to determine if a property contains a potential wetland and that state permits are required if a wetland will be impacted.

Increasing efforts to monitor compliance and ensure consistent enforcement practices.

- We have already begun to increase our compliance efforts over the past several years and will continue to do so.
- As mentioned above, modifications will be made to our database for compliance and enforcement tracking, which will accurately

reflect work being done by staff. This tracking has been made mandatory.

Creating more options for establishing permit fees that better reflect staff and resource costs.

- We are currently looking into ways to create a more equitable fee structure.

Increasing efforts to ensure regional staff are consistent in reaching decisions and providing permit applicants with additional guidance

- Our Wetland and Waterways Issues Team has discussed recommendation and guidance, and a checklist will be created and distributed to all field staff identifying specific data that must be documented in the file.
- In August, we plan to meet with folks that have experienced the wetland permit process to ask them what information DNR could provide applicants with that would make the permit process more understandable.

We are also researching the advantages and disadvantages of increasing the use of mitigation banks and look forward to reporting our findings to you in December.

- 67 percent of the mitigation projects we have approved went to a mitigation bank.
- The success of compensatory mitigation is questionable as found by the General Accounting Office and the National Academy of Sciences, which identified the pitfalls of the federal and other state programs. We have received our own EPA grant that will allow us to evaluate our mitigation approval sites to determine mitigation success in Wisconsin to date.
- However, it is important to remember that replacing wetlands in location other than in the area lost does not always remedy the very real impacts of the original wetland loss, such as flood retention and habitat loss.

We are working on your request regarding the feasibility of assuming responsibility for administering the federal wetland program.

- We have looked into assumption in the past and are in contact with EPA and Michigan to determine what is needed for State Assumption.
- We plan to assess the advantages and disadvantages of assumption, but one of the major considerations will be the lack of federal funding associated with the added State responsibility of assuming the Federal wetland permit program.

I will now turn this over to Todd Ambs, who most of you know is the Water Division Administrator for our agency. He will touch on a couple of our final comments.

Todd:

Thank you, Secretary Hassett, Senator Sullivan, and Representative Jeskewitz for giving me a chance to talk about a few of these items.

On the issue of illegal wetland fills and compliance concerns – it appears that Wetland violations are increasing, especially up north.

The good news is that our internal review of this problem is quite consistent with the Audit findings. In an effort to determine how to address rising wetland violations, I created a statewide Compliance Improvement Team last year (CIT) to provide recommendations. Many of the recommended actions from the Team's report to me are already underway. I thought that it was worth mentioning that this internal report identified many of the same solutions that the Audit found.

Those recommendations include:

- Increase Citation Forfeiture Amounts for Ch. 30 Violations;
- Improve Waterways and Wetlands Database;
- Increase Resources for Field Staff;
- Implement Wetland Communication Strategy, through partnerships, updated internet and broadcast communication, outreach to realtors, and streamlined regional approaches to public information on violations and protection;
- Make it easy for property owners to find out where wetlands are located;
- Require real estate disclosure for wetlands; and
- Update waterway and wetland web pages.

I also wanted to briefly address a few areas of the audit report and recommendations where we thought clarification may help:

Developing general permits for activities that have minimal impacts on wetlands

- 83 percent of our wetland permits are issued as general permits, which we call "confirmation letters".
- We intend to meet our statutory requirement to create non-federal (isolated) wetland general permits by March of 2008.

Improving coordination with federal agencies

- While we don't disagree with the recommendation and continue to improve coordination, this is an area where the audit report does not reflect how we operate.

- We already have several MOA's in place with the Corps and meet regularly to coordinate our efforts.

Todd conclude, take questions:

Again, I'd like to thank the LAB for its analysis and for the opportunity to take a thorough look at this very important program, and at this time, I'd be happy to open things up for questions, either for me or Secretary Hassett.



WISCONSIN STATE LEGISLATURE





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Wisconsin Wetlands Association Testimony on SB 553

March 3, 2008

Presented by Erin O'Brien, Wetland Policy & Conservation Specialist

My name is Erin O'Brien. I work as a Wetland Policy & Conservation Specialist for the Wisconsin Wetlands Association. Wisconsin Wetlands Association is a non-profit organization dedicated to the protection, restoration & enjoyment of Wisconsin's wetlands through science-based programs, education and advocacy.

Helping people to understand what wetlands are, why they matter, and why and how state and federal wetland protection laws are implemented and enforced is a major emphasis of our organization's activities. It is also our greatest challenge.

Private landowners recognize cattail marshes or bogs as wetlands, but many don't recognize that other community types such as fens, floodplain forests, hardwood swamps, sedge meadows, alder thickets and ephemeral ponds are wetlands too.

Private landowners also don't always know that if they do have wetlands on their property, state and federal laws require authorization prior to building in those wetlands. In cases where they do understand the laws, they often assume the laws don't apply to their land because they don't see cattails or standing water.

These problems are exacerbated by the fact that communication about wetlands and wetland laws is often poor, or entirely absent, during local building permit reviews and real estate transactions.

These challenges lead to unintentional violations of wetland laws by private landowners. This inadvertent, unauthorized wetland fill causes the unnecessary destruction of wetlands and can lead to substantial inconvenience or hardship for property owners. It also creates no shortage of headaches for legislators, conservation organizations and the Wisconsin Department of Natural Resources (WDNR).

SB 553 is a direct response to these wetland identification and communication problems.

My organization has been in discussions with Senator Miller's office, the Wisconsin Waterfowl Association, WDNR, and with Representative Bies and his staff since January 2006 trying to identify the best approach to address these problems. From these discussions, we understand the goals of this bill to include the following:

1. To improve communication between WDNR, local officials, and private landowners about how to identify wetlands and the steps landowners must take to ensure they don't inadvertently violate wetland laws.
2. To provide reliable assistance to help landowners understand if they have wetlands on their property.
3. To develop a process which, if followed, reduces or eliminates a landowner's liability if wetlands are subsequently found on their building site.

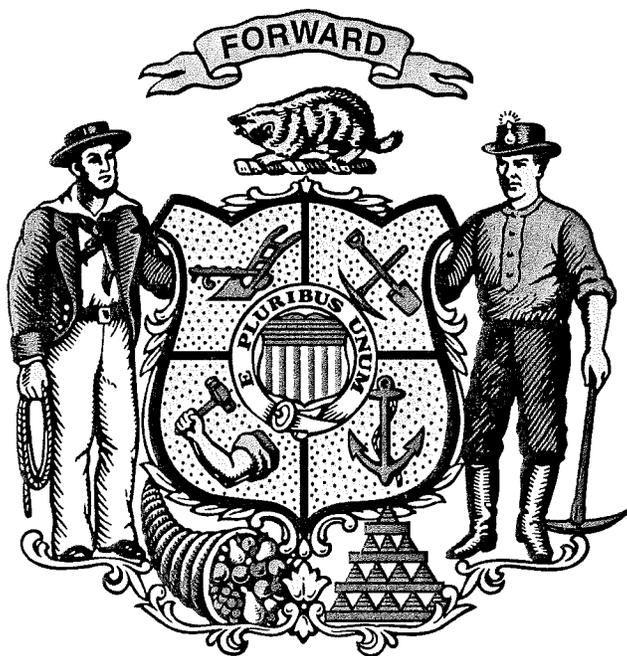
There is much to applaud in this bill:

1. SB 553 requires local governments to notify landowners that additional state and federal permits will be necessary if the project will result in wetland fill.
2. SB 553 requires WDNR to develop and make available wetland identification and regulation educational materials for local governments to distribute to building permit applicants.
3. SB 553 provides WDNR with the authority and resources to assist landowners in determining whether there are wetlands on their property.
4. SB 553 moves us beyond the fatally flawed, but frequently proposed, idea that "if it's not on a map it's not a protected wetland." It recognizes that a site visit is necessary to determine whether there are, are not, or may be wetlands on a property.
5. SB 553 recognizes that there is a difference between wetland identification and wetland delineation, and establishes a system for WDNR to help landowners understand the circumstances under which a more formal delineation of wetland boundaries may be required.
6. SB 553 acknowledges that federal jurisdiction over navigable wetlands limits the degree to which WDNR can protect a landowner from liability if a federally protected wetland is filled without federal authorization.

Each of these features speaks directly to one or more of problems we set out to address. For these reasons, Wisconsin Wetlands Association supports this bill. We are concerned, however, that there has not been enough time for WDNR to consult with the U.S. Army Corps of Engineers on how or if the Corps will agree to concur with WDNR's determinations. While we feel reasonably comfortable that the two agencies will be able to develop a framework for this coordination, we would be more comfortable if WDNR had been able to obtain at least verbal confirmation that this collaboration will occur before this bill was introduced.

Our last and final comment is to point out to the committee that addressing wetland regulatory tensions requires a great deal of thought, discussion and care. The problems are complex and there is rarely an easy solution. As Senator Miller's office can confirm, our organization, and others, have provided substantial input requesting that the language drafted to support the goals of this legislation be both comprehensive and precise. Anything less than this level of attention can inadvertently cause more problems for wetlands and wetland landowners than it solves.

On behalf of WWA, I'd like to thank Senator Miller and his staff for their efforts to move this legislation forward and for their efforts to consider and respond to our input. We remain committed to working together to ensure that SB 553 addresses as many of our shared wetland communications and identification concerns as possible.





*"Dedicated to the Conservation of
Wisconsin's Waterfowl and Wetland Resources"*

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March 3, 2008
Senate Committee on Natural Resources
State Capitol
Madison, Wi 53703

Dear Chairman Miller and Committee Members,

Thank you for allowing me to comment on SB553 regarding identification of wetlands. This bill became necessary because of an ongoing problem in Wisconsin. The issue concerned citizens of our state getting local building permits, going forward with their project only to find that they had violated state and/or federal wetland laws. These violations involved a subset of wetlands that are not usually wet at the surface and thereby more difficult to identify.

I have read over drafts of the bill and commented in writing through the drafting process. I believe that this is a very important piece of legislation. The importance is so great that I feel we need to make certain this law does everything possible to solve a current permitting problem and not create a new one.

The major issue for me is in regards to the on site wetland determination done by DNR staff. It is assumed that the DNR will use current protocols for wetland identification; this would be the use of the 1987 USACOE Manual for Wetland Delineation. This requires soils, vegetation and hydrology are evaluated for wetland characteristics.

Once this on site determination is made the applicant receives a written determination. The question is whether or not this determination will be concurred upon by the USACOE. A person may go forward get his/her township permit, county permit and then a wetland determination by DNR, then in good faith build their project only to find that they are in violation of federal law.

It is critical that DNR explore the possibilities of crafting a new MOA/MOU, or modifying an existing one to make certain that the USACOE will recognize the DNR wetland determination. Without this concurrence between agencies this process is of marginal value, and may actually recreate the same problem we currently have.

I have attached additional comments regarding the bill.

Sincerely,

Jeff Nania

Section 2

2 (a) Wetland mapping currently does not include wetlands (for the most part) less than 2 acres in size. Most violations are less than 10,000 square feet. Updating the current mapping would take years and cost millions. I don't believe that updating the map is practical or cost effective.

This would work better if:

Use the NRCS Soil Survey in combination with the Wetland Inventory Map

1) NRCS has all soil surveys for Wisconsin on line in a very easy to use format. The area in question is located by inputting addresses, township, sec, range, or GPS coordinates. These are the same locators that are used to identify mapped locations. Wisconsin has a hydric (wetland soil) list. Using this tool takes minutes. Now we have used two resources. Applicant answer: "There is no wetland indicated on the map of your site, however the Wisconsin Soil Survey indicates the presence of a wetland soil. You should check further."

Suggest:

(2) (a)

A wetland map review consists of a written evaluation, based upon a review of wetland inventory maps, county soils map, hydric soil list, flood plain maps and any other tools readily available to the department. Tools used will be specifically noted in the written review.

Suggest

All wetlands identified through any of the tiered processes will be located and noted on the current wetland inventory map. Delineations done by third parties and with DNR/USACOE concurrence, shall be required to submit exact boundary location data.

Wetlands are delineated all the time as part of development projects in Wisconsin. Most of these delineations are done by professional wetland delineators. Once the delineation is done and the DNR/USACOE concur it would be very simple to have the coordinates of the wetland submitted with the delineation and they could be added to the wetland inventory map. Little cost, expands the map with field confirmed wetlands. Adding to the existing database, making it more effective. This has little if any added cost.

(b) I do not understand what this means. The process for field identification of a wetland is very well defined. Currently the 1987 USACOE is the primary guideline. DNR has conducted many formal wetland delineation training sessions. This science based approach is the most accurate tool available. It is not uncommon for two wetland scientists to disagree on the exact location of the wetland boundary but they are usually able to reach concurrence.

Does this mean that a DNR employee will be doing a field delineation of the site?

Does this mean that DNR will be developing a wetland identification protocol that is different than currently accepted methods?

Will the USACOE recognize the field determination as proposed?

If they don't where does this leave the landowner?

How long is this determination good for? Currently a delineation is good for five years after agency concurrence is that the same thing here?

Who will submit the DNR delineation to the USACOE?

Suggest: Before implementation of this law DNR will enter into a memorandum of agreement with federal regulatory agencies to assure that wetland determinations offered to property owners by DNR will be recognized as valid by USACOE. Any determination done by DNR or a third party will be valid for a period of five years.

or approved

(c) The DNR has made great strides with highly trained wetland delineators. They have developed a delineator assurance program that says: "if you meet our standards we will except your delineation as accurate."

These delineations often include very large properties.

Question: Are you imposing an acre restriction?

(3)

(c) this is currently free.

Question: Are you imposing a new fee?

(4)

3. (b) There are many conditions that will affect someone's ability to make an accurate wetland assessment. Snow, ice, frozen ground, flooding etc. etc. This needs to offer DNR more latitude in deciding when conditions are good.

3. (b) Due to variable , unpredictable and seasonable weather changes in Wisconsin, DNR will use best professional judgment regarding when conditions are conducive to making accurate field determinations.

SECTION 3

Wetland information brochure.

It is my hope that this brochure will contain photos of areas that are in fact wetlands but would not be readily apparent. Photos of this small subset of wetlands would do a great deal to prevent violations.

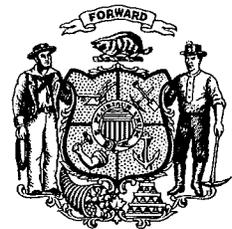
To address the needs and concerns of counties and towns particularly those that have small staff, I believe that DNR should schedule one day training sessions around the state to help bring these people up to speed on very basic wetland issues. It would be easy to do this at, for example the Towns Association Annual meeting/ Counties Association annual meeting.

Suggest: DNR will provide basic wetland training to any cities, counties, towns that may be involved in the issuance of permits for activities as noted in this bill.

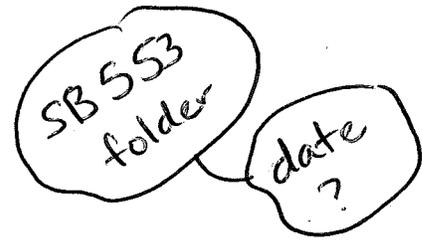
Training will be on an annual basis and may be conducted at statewide meetings. The training must have begun within one year of the implementation of this bill.



WISCONSIN STATE LEGISLATURE



Wetland Disclosure Bill
Comments



I have dealt with wetland issues regarding fill violations many times. I have worked as an objective third party at the request of DNR and USACOE as well as the violator. Our organization provides this service for free, when we can. This bill needs to solve a very real problem. Incidences will increase in frequency if nothing is done. In preparation for this bill at the request of legislators, I spent a fair amount of time talking to all principles involved in this issue, including county zoning, townships, DNR USACOE, and violators. The public needs a well-defined process instead of another nebulous enforcement program.

Most of the problems are occurring in a small subset of wetland types that are most often relatively dry at the surface.

We need to be certain that we are not setting up a circumstance just like the one we currently have. Current problem, "I got my township building permit and my county permit and then built my building. Two years later the DNR came out and told me I had built on a wetland and the building had to be moved." In this case the property thinks they have met all the requirements because they have received local permits. They do not realize that there is another level of jurisdiction.

Regarding wetlands there is also another level of jurisdiction that is the Federal government. The USACOE is charged with enforcing the Clean Water Act, even if you receive a go ahead, written or otherwise, from DNR you can still be cited by the USACOE if they determine you have committed a wetland violation. Some of my comments are in reference to this potential conflict.

Section 2

2 (a) Wetland mapping currently does not include wetlands (for the most part) less than 2 acres in size. Updating the current mapping would take years and cost millions.

An assembly bill says, "If it is not on the map it doesn't exist".

I don't believe that updating the map is practical or cost effective.

This would work better if:

Use the NRCS Soil Survey in combination with the Wetland Inventory Map

1) NRCS has all soil surveys for Wisconsin on line in a very easy to use format. The area in question is located by inputting addresses, township, sec, range, or GPS coordinates. These are the same locators that are used to identify mapped locations.

Wisconsin has a hydric (wetland soil) list. Using this tool takes minutes. Now we have used two resources. Applicant answer: "There is no wetland indicated on the map of your site, however the Wisconsin Soil Survey indicates the presence of a wetland soil. You should check further."

Suggest:

(2) (a)

A wetland map review consists of a written evaluation, based upon a review of wetland inventory maps, county soils map, hydric soil list, flood plain maps and any other tools readily available to the department. Tools used will be specifically noted in the written review.

add language similar to this

Suggest

All wetlands identified through any of the tiered processes will be located and noted on the current wetland inventory map. Delineations done by third parties and with DNR/USACOE concurrence, shall be required to submit exact boundary location data.

explore idea...

Wetlands are delineated all the time as part of development projects in Wisconsin. Most of these delineations are done by professional wetland delineators. Once the delineation is done and the DNR/USACOE concur it would be very simple to have the coordinates of the wetland submitted with the delineation and they could be added to the wetland inventory map. Little cost, expands the map with field confirmed wetlands.

Adding to the existing database, making it more effective. This has little if any added cost.

certified survey via GPS

(b) I do not understand what this means. The process for field identification of a wetland is very well defined. Currently the 1987 USACOE is the primary guideline. DNR has conducted many formal wetland delineation training sessions. This science based approach is the most accurate tool available. It is not uncommon for two wetland scientists to disagree on the exact location of the wetland boundary but they are usually able to reach concurrence.

Does this mean that a DNR employee will be doing a field delineation of the site?

Does this mean that DNR will be developing a wetland identification protocol that is different than currently accepted methods?

Will the USACOE recognize the field determination as proposed?

If they don't where does this leave the landowner?

How long is this determination good for? Currently a delineation is good for five years after agency concurrence is that the same thing here?

Who will submit the DNR delineation to the USACOE?

Suggest: Before implementation of this law DNR will enter into a memorandum of agreement with federal regulatory agencies to assure that wetland determinations offered to property owners by DNR will be recognized as valid by USACOE. Any determination done by DNR or a third party will be valid for a period of five years.

(c) The DNR has made great strides with highly trained wetland delineators. They have developed a delineator assurance program that says: "if you meet our standards we will except your delineation as accurate."

These delineations often include very large properties.

Question: Are you imposing an acre restriction?

(3)

(c) this is currently free.

Question: Are you imposing a new fee?

(4)

3. (b) There are many conditions that will affect someone's ability to make an accurate wetland assessment. Snow, ice, frozen ground, flooding etc. etc. This needs to offer DNR more latitude in deciding when conditions are good.

3. (b) Due to variable , unpredictable and seasonable weather changes in Wisconsin, DNR will use best professional judgment regarding when conditions are conducive to making accurate field determinations.

SECTION 3

Wetland information brochure.

It is my hope that this brochure will contain photos of areas that are in fact wetlands but would not be readily apparent. Photos of this small subset of wetlands would do a great deal to prevent violations.

59.691 (2) (b) (2) Does this mean that mowing is not allowed?

To address the needs and concerns of counties and towns particularly those that have small staff, I believe that DNR should schedule one day training sessions around the state to help bring these people up to speed on very basic wetland issues. It would be easy to do this at, for example the Towns Association Annual meeting/ Counties Association annual meeting.

Suggest: DNR will provide basic wetland training to any cities, counties, towns that may be involved in the issuance of permits for activities as noted in this bill.

Training will be on an annual basis and may be conducted at statewide meetings.

The training must have begun within one year of the implementation of this bill.

The proposed program should require that it be integrated in to existing programs. This program would be a workload issue but the real workload comes when a violation occurs.

I also feel that the notice warning should include some information stating that fines and costs can be imposed at both the state and federal levels.

Jeff Nania 608-697-7002

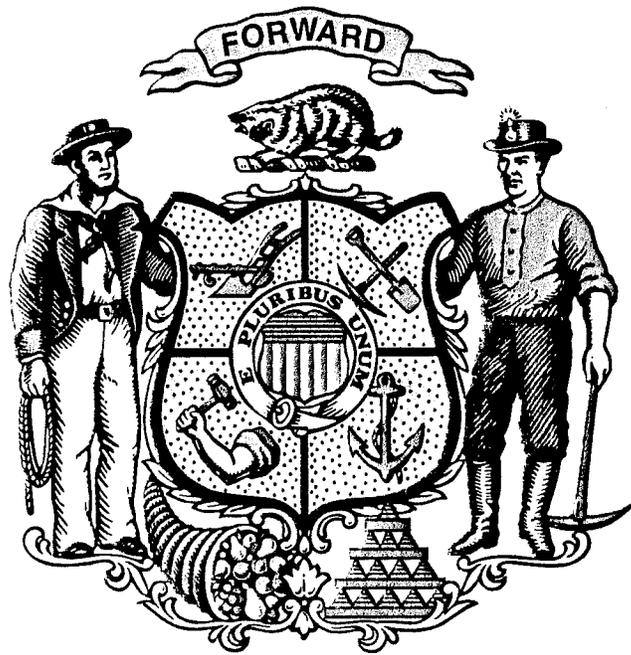
↳

↳ info work plans for water utility specialist

DNR and US Army Corps of engineers

↳ this section of the bill doesn't become law unless

↳ concurrence by the Army Corps of Engineers



BUILDING A HOME IN WISCONSIN?



HERE IS IMPORTANT INFORMATION ON WISCONSIN'S UNIFORM DWELLING CODE

The Division of Safety and Buildings does not discriminate on the basis of disability in the provision of services or in employment. If you need this printed material interpreted or in a different form, or if you need assistance in using this service, please contact us. Deaf, hearing or speech impaired callers may reach us through the Wisconsin Telecommunication Relay System (WI TRS).

SBD-7955-P (R.09/05)

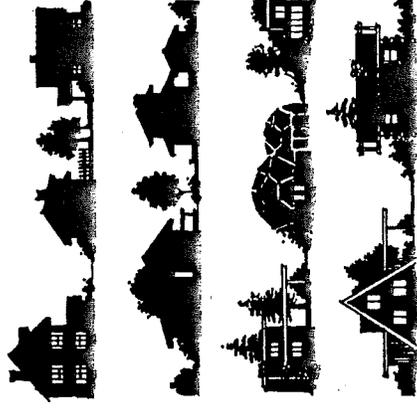
SB 553
folder

BUILDING A HOME IN WISCONSIN?

Madison, WI 53707
Before ordering, contact them at (608) 266-3358 to determine current fees which must be sent with your order. Telephone orders at 1-800-362-7253 are accepted when purchasing with a credit card. These codes are available for free on line at: www.legis.state.wi.us/rsb/code

In addition, the State Electrical Code adopts the National Electrical Code, available for purchase from:

National Fire Protection Association
One Batterymark Park
Quincy, MA 02269
Tel. 1-800-344-3555
www.nfpa.org



Q. If I have further questions, who should I contact?

A. Again, the UDC is a locally enforced code, so contact the local municipal building inspection department where the home will be built. Otherwise you may contact:

Safety and Buildings Division
P. O. Box 2658
Madison, WI 53707
(608) 267-5113

or: www.commerce.wi.gov/sb

An explanatory UDC Commentary is also available for free off of our website or for purchase from the Division.

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SBD-7955-P (R.09/05)

A. If it would be difficult to comply with a particular code provision because of special site or design considerations or you have a better method of compliance, then you may submit a petition for variance with the required fees to the State. Your variance must show an equivalence to the code provision by different means. (Forms are available from your local building inspector or the Safety and Buildings Division.)

Q. What if I have a problem with my home?

- A.** Every situation is different, but possible actions include:
- Contact the responsible general contractor and/or subcontractor for resolution.
 - Contact your homeowner's warranty program, if applicable.
 - Contact the local building inspector if the problems are code-related. (Note that orders may be written against you as the owner.)
 - Use the local homebuilder association's arbitration services, if applicable.
 - Obtain a consulting engineer or private building inspector's report.
 - Contact the Wisconsin Department of Agriculture, Trade and Consumer Protection (1-800-422-7128).
 - Contact an independent mediation/arbitration service.
 - Use the small claims court system.
 - Obtain a lawyer.

CODEBOOKS AND INFORMATION

Q. How do I get copies of the applicable codes?

- A.** Local zoning codes may be obtained from local government offices. The following State codes are needed if you will be involved in the design and construction of a home:
- State Uniform Dwelling Code Chs. Comm 20-25
 - State Plumbing Code Chs. Comm 81-87
 - State Electrical Code Ch. Comm 16

These are available from:
State Document Sales
P O Box 7840

liability insurance only - it does not test the technical competency of the builder.

- The plumbing work must be supervised by a master plumber and installed by licensed plumbers. (Only after the dwelling is legally occupied, may an owner install additional plumbing beyond the pre-requisite kitchen sink and full bathroom, unless prohibited by municipal ordinance.)
- All heating contractors must be state-registered. Owners maintaining existing HVAC systems on their own property are exempted.
- Municipalities may have additional licensing requirements as well as bonding or insurance requirements for contractors. In any case, we suggest that you:

- Check your contractors for proper liability and worker's compensation insurance to minimize your liability for injuries and damages to, or caused by, contractors.
- Check past customer references.
- Have a written contract.
- Obtain lien waivers from general contractor for their subcontractors and suppliers, so you are not financially responsible if your general contractor fails to pay them.

Q. What could happen if the code is not followed?

- A.** Failure to comply with the code could cause the following:
- Endangering the health and safety of self, family or guests.
 - Levying of fines and/or refusal to grant occupancy permit by local building inspection department.
 - Civil action by owners against builders.
 - Difficulty in selling the home.
 - Civil action by future owners or tenants against original owners or builders. (The average home is resold every 5 to 7 years.)
 - Difficulty in obtaining mortgage loans or property insurance.
 - Loss of building and community values.

Q. What if I am not able to exactly follow the Code?

This brochure is meant to assist homeowners and builders in getting started in designing and building a code-complying home. If you will be actually designing and building a home, it will be necessary to purchase the proper codebooks.

WISCONSIN'S UNIFORM DWELLING CODE (UDC)

The statewide code for newer homes in Wisconsin is the Uniform Dwelling Code (UDC), Chs. Comm 20-25 of the Wisconsin Administrative Code and its adopted references. It is a uniform building code that applies across the state. Municipalities may not adopt a more or less stringent code. The UDC was developed and is updated with input from a citizens' Dwelling Code Council.

The UDC is principally enforced by municipal building inspection departments and state-contracted UDC inspection agencies. The Wisconsin Division of Safety and Buildings facilitates uniformity of its enforcement through code development, code interpretations, special investigations, inspector training and certification, processing of petitions for variance and monitoring manufactured dwelling firms.

PURPOSE AND SCOPE OF THE UDC

- Q. What is the purpose of the UDC?**
- A.** The UDC is a uniform statewide code that sets minimum standards for fire safety; structural strength; energy conservation; erosion control; heating, plumbing and electrical systems; and general health and safety in new dwellings.
- Q. What buildings are covered by the UDC?**
- A.** The UDC covers new one- and two-family dwellings built since June 1, 1980 and their additions and alterations. This includes:
- Seasonal and recreational dwellings (Electrical, heating or plumbing systems are not required, but if installed they shall comply with the applicable codes. If a home is heated, then it shall be insulated. Local sanitary requirements may require certain plumbing systems.)

- One- and two-family condominium buildings.
- A single-family residence connected to a commercial occupancy.
- Community-based residential facilities with up to 8 residents.
- Manufactured, modular or panelized dwellings regulated by the State (but not mobile or manufactured homes regulated by the Federal Government).
- Additions to mobile or manufactured homes produced after June 1, 1980.
- A non-residential building, such as a barn, that is converted to a dwelling.

Q. What structures are not covered by the UDC?

- A.** The following are not covered:
- Dwellings built before June 1, 1980 or additions and alterations to such dwellings.
 - Mobile (manufactured) homes which are instead subject to Federal standards.
 - Multi-unit (three or more) residential buildings which are regulated by the State Commercial Building Codes.
 - Detached garages or accessory buildings.

Q. What about homes built before June 1, 1980?

- A.** The State does not have a construction or heating code for additions or alterations to older homes or any accessory structures or outbuildings. However, the State Plumbing, Electrical and Smoke Detector codes do apply to all dwellings, regardless of age.

For construction and heating standards for older homes, municipalities may adopt any or no code. Many use the UDC. Others use the Wisconsin Uniform Building Code, which is not a State code but rather a regional code in southeastern Wisconsin.

UDC ENFORCEMENT

Q. Who enforces the UDC?

- A.** The UDC is primarily enforced by municipal or county building inspectors who must be state-certified. In lieu of local enforcement,

municipalities have the option to have the state provide enforcement through state-certified inspection agencies for just new homes. To determine whether the municipality, county or state provides UDC enforcement, contact your municipality or the Division of Safety and Buildings (contact information at end of brochure). Note the option of no UDC enforcement for municipalities of less than 2500 population no longer exists as of January 1, 2005. Permit requirements for alterations and additions will vary by municipality. Regardless of permit requirements, state statutes require compliance with the UDC rules by owners and builders even if there is no enforcement.

BUILDING A UDC HOME

Q. What are the typical steps in building, adding onto or altering a code-complying home?

- A.** The steps to be taken by an owner or builder can be summarized as follows. (Some steps may not apply to alterations or additions):
- Make initial contact with local zoning and building inspection departments to get an Energy Worksheet, Building Permit Application, zoning rules and other basic information. Determine if your alteration requires a permit or if you need your property surveyed.
 - Design the home using standard design tables from the UDC or design a more customized home as long as it is demonstrated that the design meets the general engineering standards of the code. In addition to the UDC, the dwelling's design may also be subject to subdivision rules or restrictive covenants.
 - Obtain sanitary or well permits from the county or municipality if the home will use a private sewage system or well.
 - Obtain floodplain, zoning and land use approvals from the county and municipality having authority.
 - Obtain driveway or other local permits.
 - Obtain any necessary utility approvals.

- Submit complete plans including plot, erosion control, foundation, floor layout(s), building cross-section(s) and exterior building wall views (elevations); Energy Worksheet; Permit Application; fees and copies of the above permits to the municipal inspection department.
- Begin construction after plans are approved and building permit is issued and posted.
- Install erosion control measures.
- Call for inspections of each phase of construction at least 2 business days prior to when work is to be covered up (check the local inspector's instructions).
- Inspectors will check for compliance with the code. Cosmetic or non-code workmanship items will not normally be ordered corrected. However, inspectors may also check that the approved plans are being followed, including items above the code minimums. Deviations from the original plans may require submittal of revised plans.
- Take occupancy after receiving a final inspection in which no major health or safety violations are found. (Some municipalities will issue occupancy permits.) Also, the dwelling's exterior must be completed within two years after permit issuance.
- Correct any other code non-compliances, including stabilization by vegetation of any exposed soil.

Q. Who may do the work?

- A.** Following is a summary of applicable regulations:
- Anyone may design the home, other than for homes in a floodplain, which may require a state registered architect or engineer.
 - The construction and erosion control permits must be taken out by a state-certified contractor or by the owner who occupies the home currently or after completion. Note that State UDC Contractor Certification checks for general