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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2011-12

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Natural Resources...

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 ... 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: Stefanie Rose (LRB) (August 2013)

- Amber Meyer Smith, Madison — Clean Wisconsin
- Galen Smith, Madison
- Don Hammes, Middleton — Wisconsin Wildlife Federation
- Lori Grant, Madison — River Alliance of Wisconsin
- Nells Swenson, Oregon — Wisconsin Ducks Unlimited
- Cayrll Terrell, Madison — Sierra Club - John Muir Chapter
- James Doherty, Madison

Appearances for Information Only

- Ken Johnson, Madison — Wisconsin Department of Natural Resources
- Liesa Lehman, Madison — Wisconsin Department of Natural Resources
- Dave Seubert, Madison — Wisconsin Department of Natural Resources
- Rebecca Graser — US Army Corp of Engineers
- Madeline Gotkowitz, Madison — Wisconsin Geological Survey

Registrations For

- Neal Kedzie, Madison — Senator, 11th Senate District
- Bob Welch, Madison — Safari Club International
- Pat Goss, Madison — Wisconsin Transportation Builders Association
- Karen Gefvert, Madison — Wisconsin Farm Bureau Federation
- Duane Maatz, Antigo — Wisconsin Potato & vegetable Growers Association
- Ron Kulas, Oconomowoc — Wisconsin Bowhunters Association
- Pete Christianson, Madison — Veolia Environmental Services, Inc
- John Umhoefer, Madison — Wisconsin Cheese Makers Association
- Joel Haubrich, Milwaukee — WE Energies
- Curt Wytinski, Madison — League of Wisconsin Municipalities
- Bob Welch, Madison — Wisconsin Corn Growers Association
- Bob Welch, Madison — Operating Engineers Local 139
- Greg Hubbard, Madison — Waste Management
- Scott Meyer, Gleason — United Sportsmen of Wisconsin
- Jeff Schoenfeldt, Madison — National Solid Wastes Management Association
- Dean Hamilton, Waunakee — United Sportsmen of Wisconsin

Registrations Against

- Jeff Smith, Madison — Trout Unlimited
- Tod Highsmith, Madison
- Frances Rowe, Coloma — Pleasant Lake Management District
- Casey Eggelston, Madison — The Nature Conservancy
- Virgil Schroeder, Cottage Grove — Wisconsin Trappers
- Jennifer Giegerich, Madison — Wisconsin League of Conservation Voters
- Cheryl Nenn, Milwaukee — Milwaukee River Keeper
- Lisa Conley, Oconomowoc — Rock River Coalition
- Lisa Conley, Oconomowoc — Town and Country RC&D
- Mickey Beil, Madison — Dane County Executive Joe Parisi
- Oscar Bloch — Citizens Climate Lobby
- Jacinda Tessmann, Madison
- Shahala Werner, Madison
- Elizabeth Ward, McFarland
- Arlene Kanno, Wisconsin Dells
- Rose Meinholz, Madison
- Chris Taylor, 48th Assembly District — Representative
- Sharon Gaskill, Black Earth
- Peter Ostlind, Merrimac
- Mary Linton, Fort Atkinson
- Christine Sobocinski, Milwaukee
- John Ebsen, Madison
- Richard Reinke, Madison
- Laura Chern, Madison
- Erin Vennie-Vollrath, Madison
- Matt Krueger, Madison
- Helen Sarakinos, Madison
- Allison Werner, Madison
- Katie Beilfuss, Madison
- Andrea McMillen, Madison
- Scott Taylor, Stoughton
- Stephani Pescitelli, Madison
- Janet Jesberger, Sun Prairie
- Genie Ogden, Madison
- Peter Cannon, Madison
- Kim Wright, Madison
- Joan Braune, Madison
- Kathleen Dutilly, Stoughton
- Alexia Sabor, Madison

Registrations for Information Only

- None.

January 18, 2012

EXECUTIVE SESSION HELD

Present: (16) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.
Absent: (0) None.
Excused: (0) None.

Moved by Representative Rivard, seconded by Representative Steineke that **Assembly Amendment 1** be recommended for adoption.

Ayes: (14) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Danou, Clark and Milroy.
Noes: (2) Representatives Mason and Hulsey.

ASSEMBLY AMENDMENT 1 ADOPTION RECOMMENDED,
Ayes 14, Noes 2

Moved by Representative Molepske Jr, seconded by Representative Hulsey that **Assembly Amendment 2** be recommended for adoption.

Ayes: (6) Representatives Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 2 ADOPTION NOT
RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Molepske Jr, seconded by Representative Danou that **Assembly Amendment 3** be recommended for adoption.

Ayes: (6) Representatives Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 3 ADOPTION NOT
RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Molepske Jr, seconded by
Representative Milroy that **Assembly Amendment 4** be
recommended for adoption.

- Ayes: (6) Representatives Molepske Jr, Mason, Danou,
Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams,
Kleefisch, Nerison, Severson, Steineke,
Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 4 ADOPTION NOT
RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Molepske Jr, seconded by
Representative Mason that **Assembly Amendment 5** be
recommended for adoption.

- Ayes: (6) Representatives Molepske Jr, Mason, Danou,
Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams,
Kleefisch, Nerison, Severson, Steineke,
Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 5 ADOPTION NOT
RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Molepske Jr, seconded by
Representative Mason that **Assembly Amendment 6** be
recommended for adoption.

- Ayes: (6) Representatives Molepske Jr, Mason, Danou,
Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams,
Kleefisch, Nerison, Severson, Steineke,
Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 6 ADOPTION NOT
RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Molepske Jr, seconded by
Representative Mason that **Assembly Amendment 7** be
recommended for adoption.

Ayes: (6) Representatives Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 7 ADOPTION NOT RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Molepske Jr, seconded by Representative Mason that **Assembly Amendment 8** be recommended for adoption.

Ayes: (6) Representatives Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 8 ADOPTION NOT RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Molepske Jr, seconded by Representative Mason that **Assembly Amendment 9** be recommended for adoption.

Ayes: (6) Representatives Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.
Noes: (10) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens.

ASSEMBLY AMENDMENT 9 ADOPTION NOT RECOMMENDED, Ayes 6, Noes 10

Moved by Representative Milroy, seconded by Representative Mason that **Assembly Amendment 10** be recommended for introduction and adoption.

Ayes: (16) Representatives Mursau, Rivard, Williams, Kleefisch, Nerison, Severson, Steineke, Tiffany, Stroebel, Litjens, Molepske Jr, Mason, Danou, Clark, Milroy and Hulsey.
Noes: (0) None.

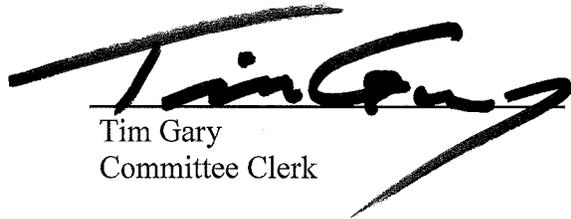
INTRODUCTION AND ADOPTION OF ASSEMBLY
AMENDMENT 10 RECOMMENDED, Ayes 16, Noes 0

Moved by Representative Rivard, seconded by Representative
Williams that **Assembly Bill 463** be recommended for passage as
amended.

Ayes: (10) Representatives Mursau, Rivard, Williams,
Kleefisch, Nerison, Severson, Steineke,
Tiffany, Stroebel, Litjens.

Noes: (6) Representatives Molepske Jr, Mason, Danou,
Clark, Milroy and Hulsey.

PASSAGE AS AMENDED RECOMMENDED, Ayes 10, Noes 6



Tim Gary
Committee Clerk

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Rivard

Seconded by: Steineke

AB 463 SB _____ 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>
Representative Jeffrey Mursau, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulse	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 14 2 _____ _____

Motion Carried Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Molepske

Seconded by: Danou?

AB 463 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 3
 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 Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Jeffrey Mursau, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulsey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 6 10 _____ _____

Motion Carried Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Molepske

Seconded by: Milroy

AB 463 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 4

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>
Representative Jeffrey Mursau, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulsey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>6</u>	<u>10</u>	_____	_____

Motion Carried

Motion Failed

Vote Record

Committee on Natural Resources

Date: January 18, 2012

Moved by: Molepske

Seconded by: Mason

AB 463 _____ SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 5

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>
Representative Jeffrey Mursau, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulse	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>6</u>	<u>10</u>	_____	_____

Motion Carried

Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Molepske

Seconded by: Mason

AB 463 _____ SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 6
 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>
Representative Jeffrey Mursau, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulsey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 6 10 _____ _____

Motion Carried Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Molepske

Seconded by: Mason

AB 463 _____ SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 7
 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>
Representative Jeffrey Mursau, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joel Kleefisch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Erik Severson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jim Steineke	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Thomas Tiffany	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Duey Stroebel	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Michelle Litjens	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske Jr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Cory Mason	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Chris Danou	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Fred Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Nick Milroy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulsey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>6</u>	<u>10</u>	_____	_____

Motion Carried

Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Molepske

Seconded by: Mason

AB 463 _____ SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 8

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>
Representative Jeffrey Mursau, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Erik Severson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Brett Hulse	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 6 10 _____

Motion Carried

Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Molepske Seconded by: MASON

AB 463 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 9
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Be recommended for:
 Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Jeffrey Mursau, Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Brett Hulsey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>6</u>	<u>10</u>	_____	_____

Motion Carried

Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Milroy

Seconded by: Mason

AB 453

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

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Other LRB a2139/1

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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>
Representative Jeffrey Mursau, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Brett Hulse	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>16</u>	<u>0</u>	_____	_____

Motion Carried

Motion Failed

Vote Record Committee on Natural Resources

Date: January 18, 2012

Moved by: Rivard

Seconded by: Williams

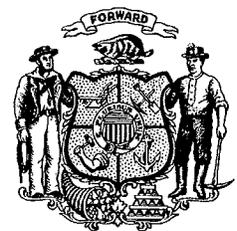
AB 463 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

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

Committee Member	Aye	No	Absent	Not Voting
Representative Jeffrey Mursau, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Roger Rivard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Louis Molepske Jr	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Nick Milroy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Brett Hulse	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>10</u>	<u>6</u>	_____	_____

Motion Carried Motion Failed





Our Mission:

"To educate and provide opportunities for people of diverse interests to work together to improve the environmental, recreational, cultural, and economic resources of the Rock River Basin"

January 9th, 2012

The Honorable Jeffrey Mursau
State Representative & Chair of the Committee on Natural Resources
P.O. Box 8953
Madison, WI 53708

RE: Assembly Bill 463

Dear Representative Mursau and Members of the Natural Resources Committee,

On behalf of the board of the Rock River Coalition, I ask that the Natural Resources Committee modifies AB 463 by (1) requiring applicants for wetland fill permits to first avoid and then minimize their impact to wetlands before gaining permission to mitigate those impacts by restoring or creating wetlands elsewhere, and (2) maintaining special protections for wetlands that are Areas of Special Natural Resource Interest (ASNRI).

We believe that removing the requirements to avoid and minimize wetland impacts will discourage real estate developers and others from taking simple steps to plan their activities, including purchase of property for development, to avoid wetland impacts. We understand that businesses are accustomed to planning in most aspects of their operations; therefore it is reasonable to expect them to plan to avoid and minimize wetland impacts.

As environmental professionals and outdoor enthusiasts, we are well aware that inherent differences exist among wetlands. Many, like sedge meadows and wet prairies, have escaped human disturbance and still show spectacular biological diversity. Fine-tuned by thousands of years of natural development, these wetlands cannot be re-created by man. They must be recognized and strictly protected. Designating these areas as ASNRI wetlands and extending extra protections to them is imperative.

We urge you to maintain the existing requirement that wetland permit applicants avoid and minimize wetland impacts, and to maintain existing protections for ASNRI wetlands.

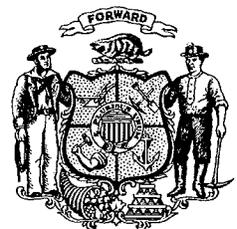
Sincerely,
Rock River Coalition, Inc.

A handwritten signature in black ink that reads "Scott Taylor". The signature is written in a cursive style.

Scott Taylor
President.



WISCONSIN STATE LEGISLATURE





TOWN & COUNTRY

Resource Conservation
& Development, Inc

January 10, 2012

The Honorable Jeffrey Mursau
Assembly Natural Resources Committee
Room 18 North, State Capitol
Madison, WI 53708

RE: Amend AB 463 – Wetland Permits and Mitigation

Dear Chairman Mursau and Members of the Natural Resources Committee,

Town and Country RC&D respectfully asks you to amend AB 463 to better protect our state's wetlands. In the recent past Wisconsin has experienced both terrible flooding and droughts, causing drastic changes in lake and stream levels that resulted in economic damages to businesses and property and impaired recreational use of our lakes and streams.

Our wetlands are a critical part of the natural flood control system, and we have already lost too many of these. Wetlands serve as sponges that soak up excess water, recharge our groundwater supplies, and release the water slowly in times of drought to equalize lake and stream levels.

With increasing development these wetlands become ever more important to protect our properties, surface and groundwater quality and quantity. Degraded or constructed wetlands simply do not have the wildlife value or hydraulic functions of higher quality wetlands.

We ask that this bill be amended to:

- Give stronger protection to high quality wetlands,
- Require developers to consider alternative sites that do not destroy wetlands, and use mitigation only as a last resort.
- Remove the automatic approval for wetland permits, especially at a time when the DNR budget has been cut and so many positions in the DNR are vacant. Or now, when winter conditions prevent assessment of plant communities. The most complex situations require more time.

Respectfully,

Lisa Conley, President

Town & Country RC&D builds partnerships and supports projects to enhance the health of our communities, our economy, and our environment.

Board of Directors

Lisa Conley, President
Rock River Coalition

Jeff Conn, President -Elect
Attorney and Farmer

Greg David, Past President
*Sustain Jefferson
Jefferson County Board*

Jennifer Hanneman,
Treasurer
*CPA, Attorney
Jefferson County Board*

Ruth Johnson, Secretary
*Retired DNR
Water Resource Specialist*

Susan Buchanan, Director
*Executive Director,
Tall Pines Conservancy*

Sue Marx, Director
Drumlin Area Land Trust

Earlene Ronk, Director
*Retired Administrator,
Countryside Home*

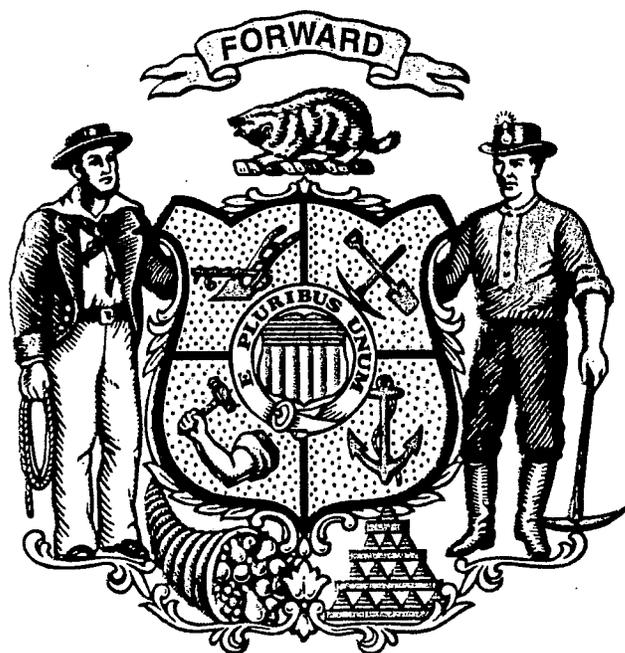
Peter Sorce, Director
Washington County Board

Dwayne Sperber, Director
Wudeward Products

www.tacred.com

PO Box 333, Jefferson, WI 53549-0333 (920) 541-3208

www.tacred.com



Testimony of Madeline B. Gotkowitz, regarding AB463 (relating to: permits for discharges into wetlands; wetland mitigation; wetland mapping and delineation; fees for permits and other authorizations or determinations by the Department of Natural Resources relating to structures, deposits, and other activities in or near navigable waters)

January 10, 2012

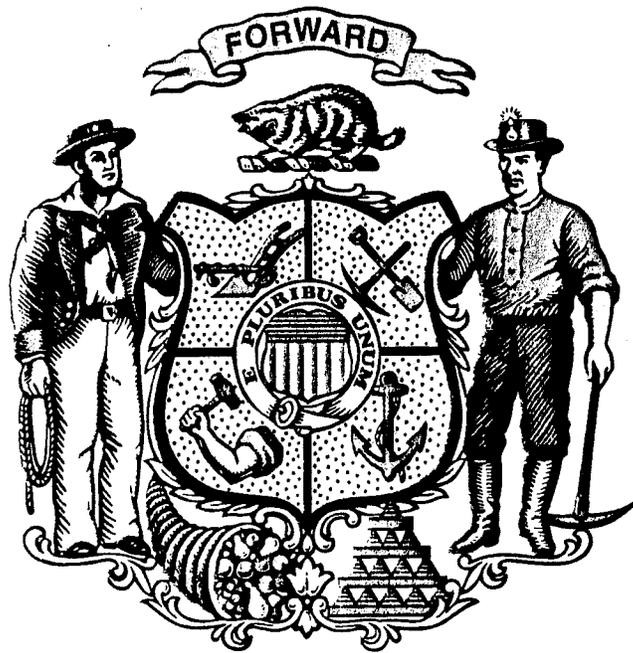
My name is Madeline Gotkowitz. I am a research hydrogeologist at the Wisconsin Geological and Natural History Survey and Professor in the Department of Environmental Science at the University of Wisconsin–Extension. I completed a study of the hydrogeology and groundwater resources of Sauk County, Wisconsin, in 2005. Since the flooding of 2008, I have focused much of my time on understanding the impacts of extreme precipitation on groundwater levels.

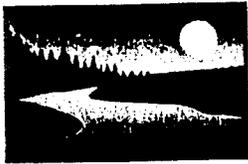
In June 2008 record rainfall caused the catastrophic draining of Lake Delton. Further south, about 4,400 acres of residential, commercial and agricultural lands flooded in the Town of Spring Green. Prolonged rainfall following a large amount of spring snowmelt caused this six-month long flooding of low-lying areas across the town. The flooded region was more than a mile from the Wisconsin River and its mapped floodplain. The flooding was not triggered by the river over-topping its banks. It was caused by water table rise and surface water runoff to low lying areas and historic wetland areas. Twenty nine homes within one subdivision were razed and the owners compensated with FEMA Hazard Mitigation funds. These homes were constructed on wetland soil types in an area that was clearly a historic wetland. By “historic wetland” I refer to an area that has been relatively dry in recent memory but contains hydric (wetland) soil.

Impacts of extreme wet periods and periods of drought can be forgotten during routine planning of developments. However, areas with wetland plants and wetland type soils indicate that high water table conditions were present in the historic past and can return due to a change in the weather, such as experienced in June, 2008. While such problems have been relatively rare, my office has been inundated by calls from frustrated homeowners and concerned local officials since 2008. At the Country Bliss subdivision in Waukesha County, high rainfall increased groundwater recharge and the large volume of groundwater flooded basement drainage systems, stormwater facilities, roadways, driveways, and covered park land in ponds of water. These conditions were surprising to homeowners because the conditions are unusual and occurred long after construction and long after their own significant investment in the property.

One reasonable course of action that would protect Wisconsin businesses and citizens is to require a flood risk assessment, including potential for surface water runoff and groundwater rise, on all mitigation projects. This would offer some protection to neighboring properties.

In summary, I urge you to consider what happens when homes and other developments are built on wetland soil. There may have been immediate economic gain at the time of development, but property value is destroyed when wetlands are reactivated during periods of heavy precipitation.





RIVER ALLIANCE of WISCONSIN

January 10, 2012

Representative Jeff Mursau, Chair
Assembly Committee on Natural Resources
Members of the Assembly Committee on Natural Resources
412 East
State Capitol

RE: AB 463, Wetlands

Dear Representative Mursau and Members of the Assembly Committee on Natural Resources:

The River Alliance of Wisconsin is a non-profit, non-partisan organization representing over 3200 members and supporting over 150 watershed groups around the state. We advocate for the protection and restoration of the state's flowing waters.

We are very disappointed in the complete reversal of long-standing wetlands protection embodied in AB 463 and strongly oppose passage. Federal and current state law requires that projects must first consider all practicable alternatives to avoid filling a wetland before DNR can grant a permit to fill. At both the federal and state level, avoidance is always considered better than "enhancement" of other wetlands, or mitigation for wetland loss, because like it or not, humans are a long ways from perfecting what took Mother Nature hundreds of years to do. This human shortcoming is also recognized in current law in that impacts to wetlands identified by Wisconsin as Areas of Special Natural Resource Interest must be avoided or minimized; mitigation is not an acceptable option.

In early 2001, there was some question as to whether these requirements applied to smaller wetlands physically disconnected from other surface waters. The state of Wisconsin resoundingly said yes, these wetlands are equally valuable and require equal protection. Brand new Republican Governor McCallum called a special session and 2001 Act 6 passed unanimously, both in the Democrat-led Senate and in the Republican-led Assembly to ensure the same protections applied to so-called isolated wetlands.

AB 463 obliterates these long-standing expectations that impacts to all wetlands should first be avoided, especially to ASNARI wetlands, and allows mitigation as the first option in exchange for filling an existing wetland. And the theoretical benefits of creating a new wetland somewhere else can outweigh consideration of protecting the affected wetland for its own sake.

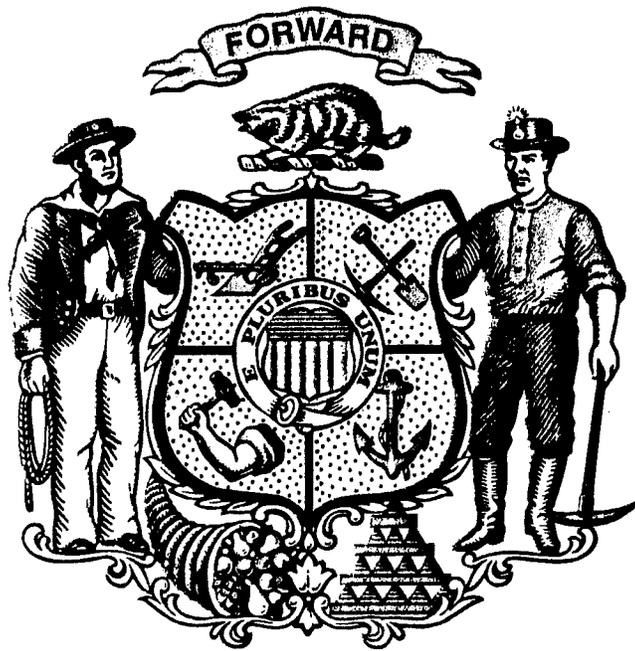
This bill is a far cry from the unanimously-approved, historic wetland protections of 2001 Act 6, placing the economic gain of developers ahead of the public good. We urge you to amend the bill as follows to protect the vital wetlands we have left in the state:

- Maintain protections for the state's most critical wetlands, the Areas of Special Natural Resource Interest; development impacts should be avoided or minimized, and mitigation should not be permitted.
- Maintain the long-established process for consideration of wetland development permits for all other wetlands - avoid the wetland first, figure out how to minimize impacts if there's no way to avoid it, and consider mitigation as a last resort.
- Do not allow automatic approvals for filling wetlands. The bill short circuits adequate review of impacts to complex wetland systems.
- Permits for development in wetlands should be gauged on protecting the wetland at stake. The bill instead gauges permits to fill wetlands based on theoretical benefits of creating a wetland elsewhere.

Sincerely,

A handwritten signature in black ink that reads "Lori Grant". The signature is written in a cursive style with a large, stylized star at the end of the name.

Lori Grant
Water Policy Program





N63W23075 State Hwy. 74
Sussex, WI
53089-2827
tel 414.566.6000

**ASSEMBLY COMMITTEE ON NATURAL RESOURCES
TESTIMONY OF PATRICK HENDERSON
QUAD/GRAPHICS, DIRECTOR OF GOVERNMENT AFFAIRS
January 10, 2012**

RE: Assembly Bill 463: Relating to permits for discharge into wetlands; wetland mitigation; wetland mapping and delineation; fees for permits and other authorizations or determinations by the DNR relating to structures, deposits, and other activities in or near navigable waters

Chairman Mursau and members of the committee, thank you for the opportunity to provide you my perspective as a former Deputy Secretary of the Department of Natural Resources. We hear a lot about the ability to balance environmental protection with economic development. I couldn't agree more and I give the authors of this bill credit for striving to strike that exact balance.

During my time serving in the DNR it was clear that one of the challenges of managing an agency that sprawls across the State of Wisconsin is consistency. Most environmental laws provide the agency with a tremendous amount of flexibility and discretion that is entrusted to the individual DNR staff. There are many positives to such an approach and generally it results in decisions that meet the mission of the DNR. However, one unintended consequence can be that the Department lacks consistency from one region to another and even from individual to individual. This is not only frustrating for the applicants but at times it is frustrating for the DNR staff as they are not provided clear guidance of what is expected of them and the legislative intent when the law was passed.

This bill provides all impacted parties with a clear understanding of what the standard of review will be which will lead to better and more complete applications from the beginning. This will undoubtedly lead to a better experience and reduce transaction costs for everyone involved.

In addition to providing timeframes and ensuring proper communication between the DNR and potential applicants the bill introduces the welcome concept of "net environmental impacts". There were times where the DNR would be forced to recommend a change in a project that would protect the wetlands in question but overall would lead to greater environmental harm or be forced to forego needed wetland restoration activities because the law simply hadn't caught up with today's standards for mitigating wetlands. There was a time when mitigating a wetland was a completely foreign concept but by the end of my tenure with the DNR there were complaints regarding how long it takes to get a wetland restoration permit approved – clearly times have changed.

There have been concerns raised that mitigation is being considered too early in the process and will be used as a justification for filling in wetlands. However, under the bill mitigation still must produce a net environmental benefit and therefore just the simple fact that mitigation is being proposed will not lead to more wetland permits being granted – unless the proposal as a whole will provide a net benefit for

the environment. In fact, with this standard in place granting the permit may in fact be the preferable option.

Finally removing the ASNRI designation will not leave wetlands vulnerable. There have been efforts to attempt to rank the quality of wetland classes but time and again these efforts have failed. Under this bill, regardless of whether or not the wetland is on an arbitrary list the key is for the DNR to determine the net environmental impacts of the project as a whole. If the mitigation being proposed does not meet the net benefit standard and the project will have a "significant adverse impact" then the permit legitimately should not be awarded...the only change is that they are not off limits entirely from even being considered for development. The wetlands will be protected with a higher standard not simply because today they were added to a statutory list but because of their individual virtue.

Thank you for your attention to this matter and I'd be happy to answer any questions.

Patrick Henderson
Director of Government Relations
Quad/Graphics, Inc.
414-566-2345



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON NATURAL RESOURCES

FROM: Larry A. Konopacki, Senior Staff Attorney

RE: Summary of 2011 Assembly Bill 463, Relating to Permits for Discharges Into Wetlands; Wetland Mitigation; Wetland Mapping and Delineation; Fees for Permits and Other Authorizations or Determinations by the Department of Natural Resources Relating to Structures, Deposits, and Other Activities in or Near Navigable Waters

DATE: January 10, 2012

2011 Assembly Bill 463 (the bill) changes the way that activities that impact wetlands are permitted by the Department of Natural Resources (DNR). This memorandum describes general wetlands permitting requirements under current law and summarizes the changes to these requirements proposed under the bill.

CURRENT LAW

Background

A person who proposes to place fill in wetlands in Wisconsin generally must obtain a permit. If the wetland is a "federal wetland," the applicant must obtain a permit from the U.S. Army Corps of Engineers (ACE) and the DNR must certify that the activity will not violate the state's water quality standards for wetlands, called a "water quality certification." Placing fill in non-federal wetlands¹ in Wisconsin also requires water quality certification from the DNR but is not subject to the ACE permit requirements. Numerous activities other than filling (such as draining or dredging) may also be evaluated based on their effects on wetlands as part of the review of any separate permit requirement for such an activity.

¹ Non-federal wetlands are "nonnavigable, isolated, intrastate wetlands," which were removed from the ACE's jurisdiction by the U.S. Supreme Court in *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

Water quality standards for wetlands are narrative standards that describe “beneficial uses” or “functional values”² of a wetland such as flood water retention, groundwater recharge or discharge, and fish and wildlife habitat. [ss. 281.15 and 281.36, Stats.; ss. NR 1.95 (3), chs. NR 102-105, and ch. NR 299, Wis. Adm. Code.] The DNR issues a water quality certification for a project only if it finds that the applicant has shown that no practicable alternative exists which would avoid adverse impacts to wetlands, all practicable measures to minimize adverse impacts to the functional values of the affected wetlands have been taken, and the activity will not result in significant adverse impacts to wetland functional values, significant adverse impacts to water quality, or other significant adverse environmental consequences. [s. 281.37 (2) (b), Stats.; s. NR 103.08 (4) (a), Wis. Adm. Code.]

Exemptions

Exempt activities in wetlands

Certain existing activities in non-federal wetlands are currently exempt from the wetland water quality certification requirements unless the activity may impair the flow or circulation of any non-federal wetland, the activity will reduce the reach of any non-federal wetland, or the purpose of the activity is to put all or part of the wetland into a new use. [s. 281.36 (4), Stats.] These activities include:

1. Normal farming, silviculture, or ranching activities.
2. Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a non-federal wetland.
3. Construction or maintenance of farm ponds, stock ponds, or irrigation ditches.
4. Maintenance of drainage ditches.
5. Construction or maintenance of farm roads, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the DNR, to ensure all of the following:
 - a. That the flow and circulation patterns and chemical and biological characteristics of the affected non-federal wetland are not impaired.
 - b. That the reach of the affected non-federal wetland is not reduced.
 - c. That any adverse effect on the aquatic environment of the affected non-federal wetland is minimized to the degree required by the DNR.

² For a description of wetland functional values as codified by the DNR, see ss. NR 1.95 (3) (b) and NR 103.03, Wis. Adm. Code.

Artificial wetlands

Artificial wetlands are currently exempt from wetland water quality standards unless the DNR determines significant functional values are present. [s. NR 103.06 (4), Wis. Adm. Code.]

Wetland Mitigation

The terms “wetland mitigation” or “compensatory mitigation” refer to actions taken to offset the negative impacts of a project on wetlands. These activities may consist of the restoration or enhancement of previously destroyed or degraded wetlands, the creation of new wetlands, or the purchase of credits from a wetland mitigation bank.³

Wetland mitigation may be part of a proposal that will adversely impact wetlands under both the ACE and the state processes. In issuing a permit for an activity that will have adverse impacts on a wetland, the ACE generally requires mitigation as a condition of the permit. The DNR is authorized under state law to consider mitigation in deciding whether to issue a permit or water quality certification. [s. 281.37 (2), Stats.]

As noted above, a water quality certification analysis for wetlands includes the evaluation of the overall impact of a proposal on wetland functional values. [s. NR 103.08 (2) and (4) (a), Wis. Adm. Code.] Where mitigation may be included in a proposal, the DNR may consider the positive affect of mitigation as part of its evaluation of wetland functional values. [s. NR 103.08 (4) (a) 3., Wis. Adm. Code.]

The authority of the DNR to consider mitigation projects does not *entitle* the applicant to a permit or other approval in exchange for conducting a mitigation project; rather, mitigation is intended to allow the DNR to approve permit applications that it might disapprove absent the opportunity to use mitigation to offset the negative impacts of a proposed project.

With limited exception, 1.5 acres of wetlands must be enhanced, restored, or created for every acre that is adversely impacted. [s. NR 350.06, Wis. Adm. Code.] In determining the credit a mitigation bank will receive for its activities, each acre restored is treated as one acre, each acre enhanced is treated as from zero to one acre, and each acre created is treated as 0.5 acre, with a limited exception. [s. NR 350.07, Wis. Adm. Code.]

Mitigation must occur within 1/2 mile of an impacted wetland, which is considered “on-site” mitigation, unless the DNR determines that it is not practicable or ecologically preferable that the mitigation occur on-site, in which case the DNR is required to allow mitigation to be performed as near as practicable to the location of the adversely impacted wetland. [s. NR 350.04, Wis. Adm. Code.]

³ “Mitigation project” means the restoration, enhancement, or creation of wetlands to compensate for adverse impacts to other wetlands. “Mitigation project” includes using credits from a wetlands mitigation bank. [s. 281.37 (1) (b), Stats.]

The DNR may not consider a mitigation proposal unless the applicant demonstrates that all appropriate and practicable measures will be taken to avoid and minimize adverse impacts on wetlands. [s. 281.37 (2) (b), Stats.; s. NR 103.08 (4) (a), Wis. Adm. Code.]

ASNRI Wetlands

An “area of special natural resource interest,” or “ASNRI,” is defined as an area that possesses significant ecological, cultural, aesthetic, educational, recreational, or scientific values. Sites designated as an ASNRI include the following:

1. A cold water community, including a trout stream and its tributaries, and a trout lake.
2. Lake Michigan, Lake Superior, and the Mississippi River.
3. A wild and scenic river, a wild river, and a scenic urban waterway.
4. A unique and significant wetland identified in specified ways.
5. A calcareous fen.
6. A habitat used by state or federally designated threatened or endangered species.
7. A state park, forest, trail, and recreation area.
8. A state or federal fish and wildlife refuge or fish and wildlife management area.
9. A state or federal designated wilderness area.
10. A state natural area.
11. Wild rice waters.
12. Surface waters identified by the DNR as outstanding or exceptional resource waters.
13. Any other surface water identified as an outstanding or exceptional resource water in ch. NR 102, Wis. Adm. Code.

[s. 281.37 (1) (a), Stats.; s. NR 103.04, Wis. Adm. Code.; see also, s. NR 103.02 (1), Wis. Adm. Code.]

“Wetlands in areas of special natural resource interest” (“ASNRI wetlands”) are further defined as wetlands both within the boundary of designated ASNRI and those wetlands which are *in proximity to or have a direct hydrologic connection to* such designated areas. [s. NR 103.04, Wis. Adm. Code.] The DNR is required to consider any potential adverse impacts to ASNRI wetlands when making determinations concerning wetlands impacts. [s. NR 103.08 (3) (f), Wis. Adm. Code.] However, nothing in current law *prohibits* the DNR from issuing a water quality certification for a project that will have an adverse impact on an ASNRI wetland.

Mitigation and ASNRI Wetlands

Even though the DNR may approve a project that will have an adverse impact on ASNRI wetlands, approval for such a project may be more difficult to attain than approval for a project that would not impact ASNRI wetlands. In part, this is because Wisconsin statutes and administrative rules prohibit the DNR from considering proposed mitigation as part of the review of an application for water quality certification for any part of a project that will adversely impact an ASNRI wetland. [s. 281.37 (2) (c), Stats.; s. NR 103.08 (4) (b), Wis. Adm. Code.]

2011 ASSEMBLY BILL 463

Wetland Water Quality Certification

The bill eliminates water quality certification for wetlands and replaces this procedure with wetland general permits and wetland individual permits.

Wetland general permits

The bill requires the DNR to establish wetland general permits for the following types of discharges:

- A discharge that is necessary for the treatment or disposal of hazardous waste or toxic pollutants, if the discharge does not contain hazardous waste or toxic pollutants and does not affect more than two acres of wetland.
- A discharge that is necessary for temporary access and dewatering, if the discharge does not affect more than two acres of wetland.
- A temporary or permanent discharge for routine utility construction and maintenance projects and activities.
- A discharge that is part of a development for industrial purposes, including development of a waste disposal site, if the discharge does not affect more than 10,000 square feet of wetland.
- A discharge that is part of a development for commercial purposes, if the discharge does not affect more than 10,000 square feet of wetland.
- A discharge that is part of a development for residential purposes, if the discharge does not affect more than 10,000 square feet of wetland.
- A discharge that is part of a development for agricultural purposes, if the discharge does not affect more than 10,000 square feet of wetland.
- A discharge that is part of a development for municipal purposes, if the discharge does not affect more than 10,000 square feet of wetland.

- A discharge that is part of a development for recreational purposes, if the discharge does not affect more than 10,000 square feet of wetland.
- A discharge that is necessary for the construction, reconstruction, or maintenance of a bridge or culvert that is part of a transportation project that is being carried out under the direction and supervision of a city, village, town, or county.

The bill also generally authorizes the DNR to issue other wetland general permits to regulate other discharges that affect wetlands located in this state. A wetland general permit is not required to be promulgated by administrative rule by the DNR. The DNR is required to impose requirements, conditions, and exceptions to general permits to ensure that the discharges will cause only minimal adverse environmental effects. The DNR is authorized to prohibit discharges under general permits into wetlands identified by the DNR as any of the following:

- Great Lakes ridge and swale complexes.
- Interdunal wetlands.
- Coastal plain marshes.
- Emergent marshes containing wild rice.
- Ephemeral ponds in wooded settings.
- Boreal rich fens.
- Calcareous fens.

The DNR is also required to issue wetland general permits that are consistent with federal general permits. This requirement is similar to a provision in current law requiring the DNR to issue general water quality certifications to mirror federal general permits.

Each wetland general permit is valid for five years, with opportunity for the DNR to renew, modify, or revoke a permit. The DNR is required to follow specified procedures, including related to public notification, comment, and hearing to issue, renew, modify, or revoke a general permit. An authorization to proceed with a discharge into a wetland under a general permit is valid for five years after the date of authorization.

A person who would like to discharge material into a wetland under a general permit must notify the DNR at least 30 days before starting the activity (unless DNR waives this requirement), pay a fee, and pay surcharge fee, if applicable. The person is required to provide information to the DNR describing the discharge, provide consent for DNR inspection, and provide an explanation of why the impact to the wetland cannot be avoided and how it will be minimized to the greatest extent practicable.

The DNR may request additional information from the person one time during this 30-day period. If the DNR does not either request additional information or inform the applicant that a wetland individual permit will be required within these 30 days, the discharge is authorized and must be carried

out in compliance with the general permit. If the DNR does request additional information, the 30-day period is tolled until the DNR receives all of the additional information.

The DNR may require a person seeking authorization for an activity under a general permit to apply for a wetland individual permit if the DNR has inspected the site and determined that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur.

In addition to the general permit application fee required under the bill and explained below, a person seeking to engage in a discharge under a general permit for certain types of activities must pay a surcharge fee, set on an annual basis by the DNR, that may not be more than 50% of the market price for the equivalent purchase of credits from a mitigation bank. These fees are to be used for the restoration and creation of wetlands.⁴ This surcharge fee applies to the general permits that the DNR is required to issue for discharges that are part of development for industrial purposes, commercial purposes, and residential purposes, and that do not affect more than 10,000 square feet of wetland.

Wetland individual permits

Under the bill, a wetland individual permit is required for a person to discharge dredged material or fill material into any wetland unless the discharge is authorized under a general permit or is exempt from permitting requirements.

The bill creates a process for a person to apply for an individual permit. The DNR is required to hold a meeting with a prospective applicant prior to application to discuss the details of the proposed discharge, the application requirements, and the requirements for delineating the wetland. An application must be accompanied by the applicable fee and must include an analysis of the practicable⁵ alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any other significant adverse environmental consequences.

The DNR has 30 days to determine whether the application is complete. If the DNR determines that the application is incomplete, the DNR may make only one request for additional information.⁶ The public information and application review period for the application begins on the day that the DNR provides notice to the applicant that the application is complete, or 30 days after the date of application

⁴ Any wetland that is restored or created using these fees must be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community.

⁵ "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project. This definition is comparable to the definition of "practicable alternatives" under s. NR 103.07 (2), Wis. Adm. Code.

⁶ The DNR may request additional information from the applicant if the information is within the scope of the original request, and may request information outside the scope of the original request with the consent of the applicant. A request for any such additional information does not toll the DNR's application review period.

if the application is initially complete or 10 days after DNR receives all additional requested information, whichever is earlier. This is referred to as the “date of closure” under the bill

The public information and application review period begins with public notice provided by DNR within 15 days of the date of closure and an opportunity for a public informational hearing to be requested within 20 days of the date of closure if the applicant did not request one with his or her application. The DNR may also decide to hold a public informational hearing within this 20-day period if it determines that there is a significant public interest in holding a hearing.

The DNR is required to provide a period for public comment on the application for 30 days after the DNR has provided a notice of pending application if no public informational hearing is held. If a hearing is held, the public comment period ends on the 10th day after the hearing. The DNR must issue its decision on the individual permit application within 20 days after the period for public comment ends if a hearing is held, or within 30 days after the public comment period ends if a hearing is not held.

In reviewing an application, the DNR is required to limit its review of practicable alternatives to those that are located at or adjacent to the site of the discharge if the applicant has demonstrated that the proposed project will result in a demonstrable economic benefit, that the proposed project is necessary for the expansion of an existing industrial or commercial facility that is in existence at the time the application is submitted, or that the proposed project will occur in an industrial park that is in existence at the time the application is submitted. The DNR must consider all of the following factors when it assesses the impacts to wetland functional values:

- The direct impacts of the proposed project to wetland functional values.
- The cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project.
- Potential secondary impacts of the proposed project to wetland functional values.
- The impact on functional values resulting from mitigation.
- The net positive or negative environmental impact of the proposed project.

The DNR is required to make a finding that a proposed project is in compliance with water quality standards and that a wetland individual permit may be issued if it determines that all of the following apply:

- The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.
- All practicable measures to minimize the adverse impacts to wetland functional values will be taken.
- The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

The DNR must establish a mitigation⁷ program that applies only to the issuance of wetland individual permits. The DNR may establish an “in lieu fee subprogram” as part of the mitigation program, in consultation with the army corps of engineers, under which payments are made to the DNR or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features.⁸ The mitigation program is required to allow mitigation to be accomplished by any of the following methods:

- Purchasing credits from a mitigation bank in this state.
- Participating in the in lieu fee subprogram, if established.
- Completing mitigation within the same watershed or within one-half mile of the site of the discharge.

The bill provides that purchasing credits from a mitigation bank located in this state and participation in the in lieu fee subprogram, if established, are the preferred types of mitigation. The DNR is required to establish mitigation ratios that are consistent with the federal regulations that apply to mitigation and mitigation banks. The minimum ratio shall be at least 1.2 acres for each acre affected by a discharge. The DNR must require mitigation for wetland individual permits it issues under the bill.

Under both current law and the bill, the DNR is required to promulgate rules to administer the wetlands mitigation program that govern various aspects of that program. Under current law, those rules must include requirements for the avoidance and minimization of adverse impacts to the wetland that will be affected by the permitted activity. This requirement is removed in the bill and replaced by requirements for the analysis of practicable alternatives as prescribed under the bill.

Wetland exemptions

The bill adopts the exemptions for specified existing activities that apply to non-federal wetlands under current law.

Application fees

Under current law, the DNR is allowed to charge a fee of \$100 for issuing water quality certification, unless increased by administrative rule. The bill creates a \$500 application fee for wetland general permits and a \$800 application fee for wetland individual permits. The bill also appears to be intended to allow the DNR to increase these fees if necessary to meet its costs in performing the activities for which the fee is charged. The bill also authorizes the DNR and charge a fee to cover the

⁷ “Mitigation” means the restoration, enhancement, or creation of wetlands to compensate for adverse impacts to other wetlands. This definition is similar to the definition of “mitigation project” under s. 281.37 (10) (b), Stats.

⁸ Under the in lieu fee subprogram, the wetlands that benefit from the program must be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, although the DNR may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community. The subprogram is required to be consistent with federal regulations.

costs to the DNR for reviewing mitigation that is conducted by mitigation banks. The bill contains other provisions relating to application fees for general and individual permits that are similar to the requirements for water quality certification fees under current law.

Penalties

Under current law, any person who violates the statutory sections governing water quality certification for non-federal wetlands or compensatory mitigation, or any rule promulgated or any plan approval, license, special order, or water quality certification issued there under, shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense except that while an order is suspended, stayed, or enjoined, this penalty does not accrue. The court may also award the Department of Justice the reasonable and necessary expenses of the investigation and prosecution of a violation, including attorney fees.

Under the bill, any person who violates any provision of the section governing permits for discharges into wetlands and wetland mitigation other than a wetland general permit shall forfeit not less than \$100 nor more than \$10,000 for the first offense and not less than \$500 nor more than \$10,000 upon being found in violation of the same offense a second or subsequent time. Any person who violates a wetland general permit shall forfeit not less than \$10 nor more than \$500 for the first offense and shall forfeit not less than \$50 nor more than \$500 upon being found in violation of the same offense a second or subsequent time.

The bill specifies that anyone "concerned in the commission" of a violation of the bill's wetlands permits and mitigation section for which a forfeiture is imposed is a principal and may be charged and found in violation even if he or she did not directly commit the violation and even if the person who directly committed it has not been found in violation. A person is concerned in the commission of a violation if the person directly commits the violation, aids and abets the commission of the violation, or is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it.

Under both current law and the bill, the court may order the defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

Infringement of Public Rights

Under current law, the DNR has broad authority to proceed against any possible violation of the statutes related to navigable waters or a possible infringement of the public rights relating to navigable waters if the DNR determines that the public interest may not be adequately served by imposition of a penalty or forfeiture. Such a proceeding may result in an order directing the responsible parties to perform or refrain from performing acts in order to fully protect the public interest and this type of order may be civilly enforced.

The bill extends this authority to possible violations of the statutes regulating discharges into wetlands, as amended by the bill, for which the DNR determines that the public interest may not be adequately served by imposition of a penalty or forfeiture.

ASNRI Wetlands

The bill removes the restriction that mitigation may not be considered in issuing permits for discharges into ASNRI wetlands and removes other statutory references to ASNRI wetlands.

Other Fee Provisions

Under current law, the DNR is authorized to collect an individual permit application fee for an activity related to navigable waters that is equal to the estimated time that the DNR will spend processing the application. No fee applies to authorizations to act under general permits related to navigable waters under current law. The bill imposes set fees for these types of general permits (\$300) and individual permits (\$600). The bill also allows the DNR to charge fees sufficient to cover costs incurred by the DNR for identifying ordinary high-water marks, for making determinations of navigability, and for other determinations.

Wetland Map Review

Under current law, a person who owns or leases land may, for a fee, request that the DNR provide various services related to wetlands. These services include review of wetland maps to determine whether a parcel of land is likely to contain a wetland (\$50), wetland identification (\$300 per acre; maximum five acres), and confirmation of the boundaries of a wetland delineation prepared by a third person (\$300 per 20 acres). These services must be provided within specified time limits.

The bill eliminates the wetland map review service. The bill also authorizes the DNR to charge a supplemental fee for the remaining services, in addition to the fees noted above, if the applicant asks for an expedited service and the DNR agrees with the request.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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