

ANDRÉ JACQUE

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

(608) 266-9870
Fax: (608) 282-3602
Toll-Free: (888) 534-0002
Rep.Jacque@legis.wi.gov

P.O. Box 8952
Madison, WI 53708-8952

TO: Members of the Assembly Committee on Environment and Forestry
FROM: Rep. André Jacque
DATE: Oct. 3, 2017
RE: Assembly Bill 388

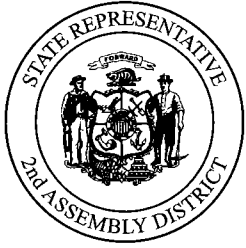
Chairman Mursau and Committee Members,

Thank you for the opportunity to testify before you today as the author of Assembly Bill 388, a vital and commonsense reform with the ability to significantly assist local economic development projects otherwise stopped or frustrated by delays as a result of man-made thin strips of wetlands. AB 388 removes the requirement to obtain fill permits and mitigation for these non-native artificial wetlands. The bill defines an artificial wetland as a wetland inadvertently created by human modifications to the landscape or hydrology and for which there is no prior wetland or stream history, but excludes from the definition a wetland created as a result of a mitigation or permitting agreement, or that is subject to federal jurisdiction, used as a passageway by migrating fish, or for spawning.

Wisconsin's natural wetlands serve a valuable purpose, yet a variety of projects for business or housing across the state have been derailed or otherwise negatively impacted as the result of artificial wetlands being discovered. An example of this from the 2nd Assembly District occurred with a parcel in the village of Wrightstown without any wetlands which was being graded for a project until the developer pulled out. Dirt piles at the site sat for a few years, and water ran off them in such a way that a few cattails sprung up, thus creating an "artificial wetland" area in the center of the parcel and making it undevelopable. Other issues involve thin strips of manmade wetlands created by abandoned railroad tracks, agricultural ditches, or even wheel ruts from heavy machinery, and non-native wetland species growing in an area where they were dumped as fill that otherwise lack the history and hydrology of native wetlands.

I have heard dozens and dozens of real life examples across Wisconsin that would be helped by the passage of this legislation. When I attended a listening session at UW-Parkside as a member of the DNR's Small Business Environmental Council, all three local government officials in attendance spoke to this as their most significant economic development challenge, and they weren't even aware of my legislation at the time. One of our colleagues in northwestern Wisconsin shared with me the story of a constituent who had a significant portion of his land rendered unbuildable after an artificial wetland was unintentionally created by placement of dirt piles by WisDOT near his property line.

I developed this legislation with the assistance of several local government officials and environmental engineers, including two of the roughly dozen assured wetland delineators in the entire state. While there are certainly other proposals in the legislature dealing with wetlands, there seems to be fairly



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widespread agreement that AB 388 will properly resolve a very large share of the related economic development issues at the local level without the controversy of broader legislative options. AB 388 is supported by the League of Wisconsin Municipalities, Wisconsin Economic Development Association, Green Bay Area and Fox Cities Chambers of Commerce, Progress Lakeshore, Wisconsin Farm Bureau Federation, WMC, Wisconsin Realtors Association, NAIOP and the Fox Valley Riparian Rights Association. I have had very positive discussions with the Wisconsin Wetlands Association and other stakeholders on this issue, and am pleased to note that I am unaware of any organizational opposition to AB 388 at this time.

Thank you for your consideration and the opportunity to testify today.



Van H. Wanggaard

Wisconsin State Senator

Testimony on Assembly Bill 388

Thank you Mr. Chairman and Committee Members for the hearing today on Assembly Bill 388.

Natural wetlands are valuable to the state and local ecosystems. However, over time there have been burdensome requirements regarding wetlands. There are artificial wetlands that have been inadvertently created by human interaction, that are now being treated as natural wetlands. However, these artificial wetlands do not serve the function of natural wetlands—they lack the history and hydrology that natural wetlands have.

Many sites that fall under this guidance are former developments that began activity, but stopped due to a downturn in the economy that began in 2008. Since then, jurisdictional wetlands have re-established or expanded in areas that had not been previously identified. Projects that didn't finish, or were stalled during the downturn would have been completed in compliance with the law.

As a result of these artificial wetlands being discovered, a variety of projects have been derailed, delayed or have been negatively impacted. For example; puddles from water runoff or other drainage, cattails that spring up, or other non-native wetland growth in an area where they were dumped as fill on the site could create isolated "wetlands" making it undevelopable under the current law.

This bill removes the requirement to obtain fill permits and mitigation for artificial wetlands that have not historically been a native wetland. Artificial wetlands that were created as a result of mitigation or permitting, are subject to federal jurisdiction, or used as a passageway by migrating fish or for spawning, will not be effected by the bill.

AB 388 has the support of the Fox Cities Chamber of Commerce & Industry, Fox Valley Riparian Rights Association, League of Wisconsin Municipalities, National Association for Industrial and Office Parks, Wisconsin Economic Development Association, Wisconsin Farm Bureau Federation, Wisconsin Manufacturers & Commerce, Wisconsin Realtors Association.

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Good Afternoon,

My name is Eric Rakers. I am the City Engineer for the City of De Pere. I am here to speak in support of Assembly Bill 388, the Discharge of Dredged or Fill Material into Artificial Wetlands. You will hear the term "artificial wetland" utilized several times. Please note that this term is used based on the definition of AB 388 and not NR 103, which only defines four artificial wetlands.

The City of De Pere is located in a part of the state that consists of predominantly clay soils with relatively flat slopes. With the combination of these two it is very easy to inadvertently create artificial wetlands when grading for road construction and new development.

Clay soils do not absorb a lot of water during rain events. If an area is not properly graded, it only takes a small drainage basin to create artificial wetlands. The artificial wetlands can grow in as little as a year due to the clay soils. The artificial wetlands are generally created under a few circumstances:

- First, swales/ditches are constructed for storm water management and road facilities. With clay soils, and even with maintenance through mowing, wetland vegetation will grow. Under NR 103, these can be considered artificial wetlands. However, with the current rules, the WDNR considers habitat for aquatic organisms, resident and transient wildlife, and values and uses when making an artificial wetland determination.
- Second, when a new street is built, there may be small areas behind the right of way that are lower than the graded terrace at the right of way. Many times for residential development, the lots behind the right of way are designed to be a little lower so that when foundations are dug, the home builder has a location to place material without trucking it. This practice saves the home builder/property owner money, while reducing environmental impacts by trucking away fill material. However, these small areas that do not drain can create artificial wetlands.
- Finally, artificial wetlands are created due to staggered development. For residential and commercial/business/industrial development, building construction can be scattered throughout a subdivision until the entire area is developed. The entire area may not be developed for several years. This scattered building construction tends to create ponding on side lots and back lots because buildings are built higher than the surrounding ground. Artificial wetlands can be created at these locations.

In order to minimize this, the City has modified design and construction of new developments to include additional side lot and back lot drainage and added in more storm sewer and inlets to collect water prior to the entire development being completed. Even with this, there is no guarantee that artificial wetlands will not be created.

There are several impacts to a municipality when artificial wetlands area created as follows:

- First, wetland permitting is required. Whether or not it is approved, this is additional staff time and expense for the City. This also requires WDNR staff time review for an artificial wetland. This permit includes the Wetland General Permit for Commercial, Residential, and Industrial Activities Alternatives Evaluation Template, where the applicant has to provide detailed

information on why the wetland cannot be practically avoided. This permit can be somewhat subjective and approval for the filling of an artificially created wetland is not guaranteed.

- If the permit is not approved, there are major impacts for a municipality.
 - The roads and utilities are designed and constructed based on wetland reviews and permits obtained. If an area is declared a wetland after construction due to poor grading practices, the City has lost out on potential tax base due to the loss of previously developable area.
 - Long term, the City has now constructed roads and utilities directly adjacent to areas that cannot be developed. This results in annual maintenance cost increases to plow roads, flush water main, clean sewers, etc,. Finally, the City will have higher construction costs when these facilities need to be replaced in the future and development occurred elsewhere due to the artificial wetlands.
 - Artificial wetlands that cannot be developed promote urban sprawl. If the development cannot occur on the lot due to the artificial wetlands, it will occur somewhere else. This will require the further extension of roads and utilities.

In summary, this bill will help the City as follows:

- Eliminate potential permits for maintaining storm water and road swales/ditches that are considered artificial wetlands.
- Minimize impacts to developable areas within the City, thus improving tax base and reducing City maintenance and construction costs.



***Wisconsin Wetlands Association Testimony on AB 388
Presented by Brian Vigue, October 3, 2017***

Thank you for the opportunity to offer our testimony on AB 388. I'm here on behalf of the Wisconsin Wetlands Association, a statewide, non-partisan, non-profit wetland conservation organization. We envision a state where wetlands are healthy, plentiful, and support ecological and societal needs, and where citizens care for, appreciate, and interact with these natural resources.

We understand the concerns that created this legislation, and feel that AB 388 presents an opportunity to address this issue and provide some clarity with regard to how certain wetlands are regulated throughout the state.

Federal and state laws and regulations recognize, and extend protections to, the valuable functions that wetlands provide. The two functions I'd like to briefly mention today deal with water quality and flood control.

Wetlands can help improve water quality. Wetlands can control or even eliminate sediment, nutrients and other materials that might otherwise drain into our waterways. Wetlands can also recharge and filter groundwater. If you rely on any type of well for your primary source of water, it's likely a wetland helped keep that water safe to use.

Second, wetlands help to control floodwaters. Wetlands manage the water that flows across our landscapes, reducing the size and flashiness of flood events by soaking up water, storing runoff, and slowly releasing it into our creeks, rivers, and lakes.

Artificial wetlands that were inadvertently created and have no prior wetland or stream history often lack many of the functions that natural wetlands provide. However, there are rare cases where filling an artificial wetland may introduce water, often through flooding, in areas that had not previously experienced it. Picture filling in an artificial wetland, and a new housing development downstream begins repeatedly flooding, costing the homeowners thousands of dollars to retrofit their houses to deal with it.

Filling an artificial wetland can also result in that wetland no longer recharging or serving as a filter for groundwater. Imagine filling in an artificial wetland and, as a result, businesses and homes in the area lose access to water they previously had, or their water quality is severely degraded.

To account for the rare circumstances where an artificial wetland has developed over time in a way that is providing substantial protective benefits to adjacent or downstream people, property, or public waters, we recommend the following changes:

Modify the provision on page three, line 12, to clarify that discharges to artificial wetlands are exempt *unless* the Wisconsin Department of Natural Resources (WDNR) determines that the wetland is providing significant functions that either:

1. Protect adjacent or downstream property or infrastructure from flooding; or,
2. Provide significant water quality improvement benefits to an adjacent or downstream water body.

To ensure decisions are made in a reasonable time frame, we recommend requiring WDNR to notify the applicant within 15 working days from when the department receives notice of the proposed project.

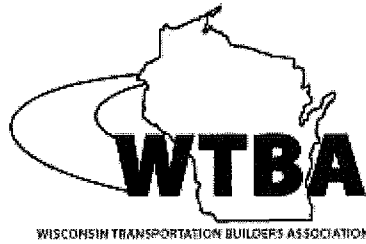
We appreciate the opportunity to provide this testimony today. To the members of this committee, please consider us a resource and know that we are available to help you and your staff craft policies that protect and restore wetlands while providing a smooth and streamlined process through which our businesses and communities can grow.

Please don't hesitate to contact us with any additional questions or concerns you may have.

Brian Vigue, Policy Liaison

brian.vigue@wisconsinwetlands.org

608-250-9971 (office), 608-843-6355 (mobile)



To: Members of the Assembly Committee on Environment and Forestry

From: Pat Goss, Executive Director

Date: October 3, 2017

Subject: WTBA Testimony in Support of Assembly Bill 388

On behalf of the members of the Wisconsin Transportation Builders Association (WTBA), we are pleased to submit testimony in support of Assembly Bill (AB) 388. We applaud Representative Jacque, Senator Wanggaard and the other co-sponsors of AB 388 for their efforts in drafting this common-sense reform.

The legislation strikes a balance by keeping environmental checks in place while at the same time making positive reforms to the current permitting process. AB 388 removes the requirement to obtain fill permits and mitigation for artificial wetlands, while keeping the protections in place for wetlands that are subject to federal jurisdiction under 33 USC 1344, or a wetland that serves as a fish spawning area or a passage to a fish spawning.

Anytime you eliminate an unnecessary step of the process, and keeping environmental protections in place, it will almost always produce positive results. This legislation will ultimately enable my member companies to spend more time focusing on getting projects done on time, on budget, instead of worrying or waiting for a government agency to turn around a fill permit.

Again, WTBA is happy to support AB 388. We are grateful to Chairman Mursau for holding a public hearing and are hopeful this legislation will continue to make its way through the legislative process. If you have any questions, please do not hesitate to contact me at 608-256-6891 or pgoss@wtba.org.

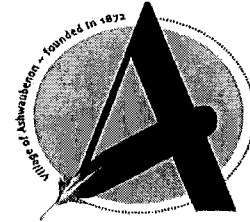
Village of
Ashwaubenon

DEPARTMENT OF ADMINISTRATIVE SERVICES

2155 Holmgren Way
Ashwaubenon, Wisconsin 54304-4605

Allison C. Swanson
aswanson@ashwaubenon.com

Phone (920) 492-2327 Fax (920) 492-2328
www.ashwaubenon.com



October 3, 2017

Representative Andre Jacque
P.O. Box 8952
Madison, WI 53708

Dear Representative Jacque,

Thank you for your support of AB 388 pertaining to the permitting requirements for artificial wetlands. This is an issue that significantly affects our community as you will note from our most recent experience in redeveloping a truck terminal site within the Village.

In 2014, the Village of Ashwaubenon began discussions with a private developer for 10.14 acre parcel owned by a third party on the corner of Holmgren Way and Morris Avenue, just a few blocks from Lambeau Field. The developer sought to construct a hotel, a residential care facility for seniors, a restaurant and other small office and retail uses. It was estimated to be a \$15 Million to \$20 Million development. In spring 2015, the Village and the developer agreed to terms for development including tax increment financing, construction of a roadway that would connect to additional Village owned property to the south. Thereafter, the developer began detailed design of the site only to find that there were wetlands on the site.

Neither the Village nor the third party that owned the property anticipated any wetlands as this was in the center of the Village within a traditional block street grid that had been originally developed several decades earlier. Historically, the property at issue was the home of a small trucking terminal in a largely industrial area of the Village. The traditional block street grid surrounding the area was been in place for more than 40 years. The truck terminal on the site was demolished sometime after 2000, but the concrete pad surrounding the building remains in place to this day. An adjacent semi-trailer storage lot to the west was redeveloped in 2003 as a large credit union corporate office.

Surface water drains from south to north in this area. With redevelopment to the west and fill placed on site since 2000 with little to no grading, the on-site catch basin was unable to properly drain the water on site. Due to lack of development activity on the site for 15 years and improper drainage, a wetland developed on the site. The largest was an irregular shaped oval running from north to south and contained about 35,000 square feet of new wetlands. Two additional smaller areas were also identified on the site for a total wetland area of just over 40,000 square feet. The largest piece also served to cut off another long narrow piece of dry land from the remaining acreage leaving the most westerly one acre undevelopable for the proposed project due to the irregular boundaries and narrow width.

The Village and developer reviewed this information with DNR staff, but were discouraged from applying to fill the entire site as it would not likely be approved. Aside from the cost and lengthy time period to go through the individualized permit process, the DNR did not feel it would likely meet their approval criteria even though most of the

area was poor quality wetlands. Although we felt this was an artificial wetland caused by human error on grading and filling the site, the DNR staff did not feel it met the current definition of artificial wetlands. After many trials and tribulations, the developer redirected their efforts to other projects and the project died.

Once the project died, the original property owner continued to work with the DNR on a wetland general fill permit so they would have the option to expand their parking lot in the future and hopefully be in a better position to address the situation with the next developer. They spent more than \$10,000 and one year obtaining a permit to fill less than 10,000 square feet of wetlands. They sold the remaining parcel last year to a private party who now seeks to develop the property into multi-family housing.

The current owner has now spent the last nine months and thousands of dollars to obtain their own wetland general fill permit. Again, thousands of dollars and nearly a year later and there is a second permit to fill less than 10,000 square feet. Please keep in mind that these permits are the "short" process for the DNR and considerably less costly and time consuming than the individualized permit that was discouraged for this site as DNR staff did not feel it would meet the approval criteria.

While there are now two permits approved, we have lost three years of effort and thousands of dollars. We have also lost a road connection to Village owned property to the south. We have tried numerous ways to incorporate this north-south connection but ultimately the wetlands are blocking this much needed connection. The roadway was to provide additional vehicle and pedestrian access into the core of our village to support the \$40 Million multifamily development on the Village owned properties to the south. We can no longer hold up development waiting for a solution that will never come. Therefore, we are currently approving planned unit developments for the properties with no roadway connection between them. A decision we will surely regret in an area so close to Lambeau Field that sees tens of thousands of people tracking through the area during Packer games.

Our situation is not unique. It will repeat itself throughout our Village and other communities across Wisconsin particularly as we attempt redevelopment of blighted properties. The stock piles of dirt that accumulated during the real estate crisis will come to haunt us as water no longer drains properly around these piles and creates "new" wetlands that require time and effort to mitigate. The Village does not feel that these were the type of wetlands that the DNR was intended to preserve and restore. Please adopt AB 388 so that artificial wetlands created by poor grading and inconsistent development do not block future development in our communities.

Thank you for taking time to understand and consider this important issue.

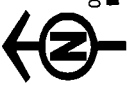
Sincerely,

A handwritten signature in black ink, appearing to read "Allison Swanson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Allison C. Swanson
Village Manager

Village of Ashwaubenon
Artificial Wetland Blocks
Holmgren Way / Morris
Avenue Redevelopment

	Village-Owned Redevelopment Parcels
	Delineated Wetlands
	Denied New Street



Wetland Delineation Prepared by Vierbicher
Map Prepared: 10/2017
Village of Ashwaubenon, WI

