



DEVIN LEMAHIEU

STATE SENATOR

Senate Committee on Elections and Utilities
Testimony on Senate Bill 406
October 12, 2017

Vice-Chairman Kapenga and Members,

Thank you for hearing testimony on Senate Bill 406, which provides consistency to the utility when seeking a wetland permit.

Under current law, the Department of Natural Resources (DNR) issues permits for the discharge of dredged material or fill into wetlands. Unlike other industries, utilities have specific standards that determine what type of permit they can operate under. Eligibility for the utility general permit must be at or below the following thresholds:

1. maximum fill area of 10,000 sq. ft.
2. construction mat use of no more than five (5) acres; and
3. forested wetland clearing may not exceed 10,000 sq. ft.

If one or more of the aforementioned limits are exceeded, the applicant must complete and comply with DNR's individual permit process and procedures, which include wetland mitigation requirements.

A utility is the only industry required to perform mitigation for points two and three, the removal of trees from wetlands and for the use of construction mats, used to protect wetlands. Senate Bill 406 simply provides that the issuance of permits for utility projects are subject to the same standards and restrictions as other businesses.

Thanks for your time. I am happy to answer any questions.



DAVID STEFFEN

STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

**Prepared Testimony by Rep. David Steffen before the
Senate Committee on Elections and Utilities
Senate Bill 406 re: Wetland mitigation requirements applicable to wetland individual
permits.
October 12, 2017**

Chair LeMahieu and Committee Members,

Thank you for providing me the opportunity to testify in favor of Senate Bill 406 relating to wetland mitigation requirements applicable to wetland individual permits. Senate Bill 406 establishes a more uniform set of guidelines by which the Department of Natural Resources (DNR) issues permits for the discharge of dredged material or fill into wetlands. Under current law, the utility industry is held to a substantially higher standard during this permitting process, as compared to other businesses and landowners, and ultimately Wisconsin ratepayers are left footing the bill.

The guidelines for a General Permit, which does not entail wetland mitigation requirements, include: maximum fill area of 10,000 sq. ft., construction mat use of no more than five acres, and forested wetland clearing may not exceed 10,000 sq. ft. If General Permit requirements aren't met, an Individual Permit must be obtained and wetland mitigation is involved. Additionally, in 2011 WI Act 118 established the Utility General Permit, requiring the DNR to issue a general wetland permit for projects involving utility and highway maintenance and construction.

Unfortunately, 2011 Act 118 also added use of construction mats and vegetation management as contributing factors requiring wetland mitigation on utility projects, whereas previously, mitigation had only been required when permanent wetland fill exceeded the 10,000 sq. ft. threshold. This has resulted in increased mitigation costs, which are passed along to ratepayers. Unlike in most other industries, where only permanently impacted wetland is used to determine the total fill area, for utilities the permanently impacted wetland plus use of temporary vegetative mats is used to determine total fill area/wetland impacted. This method is an added strain on utilities and forces them into compensatory mitigation more quickly than other industries—which are held to a much more practical standard.

Senate Bill 406 simply holds utilities and utility related projects to the same standard as other industries—meaning mitigation cannot be required unless more than 10,000 sq. ft. of permanent fill is required, which does not include temporary construction mats etc. in the calculation. SB 406 strikes the appropriate balance between protecting our wetlands and protecting our ratepayers.

Thank you for allowing me to testify in favor of SB 406. I encourage you to join me in supporting this important legislation.



***Wisconsin Wetlands Association Testimony on SB 406
Presented by Brian Vigue , October 12, 2017***

Thank you for the opportunity to provide testimony on SB 406. I'm Brian Vigue, a Policy Liaison with 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 have registered in opposition to this bill for three reasons.

First, this bill is very far reaching, and involves projects beyond transmission lines. Wis. Stat. 196.01(5) defines the term "public utility," and SB 406 covers any entity meeting that definition. Far from being restricted to power lines, this bill would include any public entity providing heat, light, water, power, sewerage or telecommunications services. The universe for projects that would involve wetland conversion without the need to mitigate would greatly expand.

Second, this bill changes the wetland permit review process to only consider the amount of a project's permanent fill, not its overall impact on wetland resources. Currently, the permit process considers the total impacts on wetlands by utility projects. Decisions are not solely based on the quantity of permanent fill.

Utility projects are different than other developments, they are largely linear and often take place over often great distances, yet involve little permanent fill. However, the DNR has, when appropriate, moved projects from a general permit process to an individual permit process. This is because of the large impact their operations have on wetlands, such as impacts involving alternation of landscape level hydrology and impacts to habitat due to activities such as large-scale removal of shrubs and trees.

Public utilities are currently receiving the same treatment as any other applicant whose project exceeds a threshold of eligibility for a general permit based on impacts to wetland functions. Keep in mind that a permit applicant can be moved from a general permit to an individual permit if their project affects 10,000 square feet of wetland. This decision is not necessarily dependent on the amount of permanent fill. Wis. Stat. 281.36 requires individual permits on projects with large wetland impacts

Third, both the DNR and U.S. Army Corps of Engineers general permits for public utilities are due for renewal. We fear this bill may complicate their collaborative work.

Our existing wetland statutes and regulations were often produced through a thorough process in which all stakeholders were able to participate. That does not mean, however, that those statutes and regulations can't be revisited to make them better. We ask that you set this bill aside and let the renewal process play out and address any remaining issues at that time. As always, we are here to help you navigate the complexities of wetlands.

Brian Vigue, Policy Liaison

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