

ROBERT L. COWLES

Wisconsin State Senator, 2nd Senate District

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Testimony on 2023 Senate Bill 254

Senator Robert Cowles
Senate Committee on Natural Resources and Energy
May 10th, 2023

Thank you, Committee Members, for allowing me to testify on 2023 Senate Bill 254. This bill codifies the assured wetland delineator pilot program at the DNR into law, making it a permanent program.

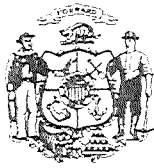
When developing anything from an access point for vehicles to farm fields all the way to hundred-plus acre industrial developments, persons requesting or leading the project may be required to have a wetland identification and delineation of their property. The identification and delineation is to determine if any wetlands are present, and if so, where and how much and many, to account for these features in permitting decisions.

Numerous options exist for project leaders to do wetland identifications and delineations, including the newest option where a highly-skilled third-party known as an ‘assured wetland delineator’ does the site work and submits a report to the Department of Natural Resources (DNR). This is the only wetland identification and delineation option which does not require a site visit from the DNR itself, saving time and money during development for persons who use this option and reducing the administrative burdens on DNR staff.

While this program has been operating effectively as a non-statutory pilot program for about 15 years, interested parties have been requesting an effort to make this program permanent. Senate Bill 254, drafted in collaboration with stakeholders over the past two-years following a recommendation from the Wetland Study Council, does just that by mimicking most aspects of the current program and transferring the pilot to statutes.

Under the legislation, an assured delineator must apply to the DNR and meet certain qualifications, including at least five-years of full-time experience as a wetland delineator and completion of a training course. If they qualify and are accepted, they may act as an assured delineator and service their clients in a professional and efficient manner unless they are found to have failed to comply with the statutorily-prescribed code of conduct. Some examples of a violation of the code of conduct include knowingly breaking state or federal wetland or waterway laws, knowingly falsifying wetland boundaries, misrepresenting another’s work as your own, and failing to finish continuing education. All delineation reports must be submitted in-time for any regulatory decision-making, but otherwise this qualified person may help developers skip the expensive waiting game for a DNR site visit.

Passage of Senate Bill 254 is necessary to ensure the continued success of the program by solidifying the lessons of the past few years from the pilot while cementing professional conduct requirements to satisfy potential concerns from federal government partners which share regulatory oversight of certain Wisconsin wetlands.



Jeff Mursau

STATE REPRESENTATIVE • 36TH ASSEMBLY DISTRICT

Senate Committee on Natural Resources and Energy SB 254- Wetland Assured Delineation Program

May 10, 2023

Committee Members:

Thank you for the opportunity to testify in support of Senate Bill 254, which directs the Department of Natural Resources to establish a wetland assured delineation program in Wisconsin.

In 2017, then Governor Walker, signed a bill into law that created the Wetland Study Council. One of the tasks of the committee was to review a pilot program at the DNR referred to as the “Assured Delineator Program”. The intent of the program was to create a private-public partnership that allowed private delineators to make accurate wetland boundary determinations that are in line with state and federal standards. Throughout the pilot program, the DNR provided technical assistance and oversight of the private delineators to ensure the program was operating within the highest standards.

The Wetland Study Council determined that the Assured Delineator Program had been successful and recommended that it continue and be codified in state statute and become a permanent program. The bill before you today is a result of working with stakeholders over the past two years to make that happen.

Senate Bill 254 would create an additional method under state law for which a person could delineate the boundaries of a wetland in a manner recognized by the DNR. A person would need to apply to the DNR to be certified as an assured delineator. A requirement of certification would include at least five years of full-time professional field experience in wetland field delineation and completion of a wetland delineation training course based on U.S. Army Corps of Engineers wetland delineation model. Once certified, a wetland delineation prepared by an assured delineator would have the same effect as a wetland identification or confirmation prepared by the DNR.

The bill is supported by the Wisconsin Realtors Association, Wisconsin Wetlands Association, and the Wisconsin Society of Land Surveyors.

Once again, thank you for holding a public hearing on this important piece of legislation. I am happy to answer any questions you may have.



Senate Committee on Natural Resources and Energy

Senate Bill 254

Wetland Assured Delineation Program

May 10, 2023

Good morning, Chair Cowles, and members of the Committee. My name is Dan Helsel, and I am the Director of the Waterways Program at the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Senate Bill 254 (SB 254), related to creating a wetland assured delineation program.

Wisconsin has a long history of protecting our state wetlands, which provide important public benefits for recreation, flood control, water quality improvement, and fish and wildlife habitat. Wisconsin also has a long history of providing opportunities for property owners, businesses, and municipalities to impact wetlands when unavoidable, in accordance with state law. An important step in complying with state wetland laws is determining the wetland boundaries and obtaining department concurrence or approval of those boundaries.

Existing Wisconsin State Statute 23.321 (2) specifies that the department will offer fee based services for wetland boundary identification or confirmations that a property owner may use. Understanding the precise location of wetlands helps property owners and businesses in project planning and allows projects to avoid or minimize impacts to wetlands, as well as to accurately calculate wetland loss. This proposed legislation offers another option for property owners, businesses, and municipalities to acquire a department approved wetland delineation – through a wetland assured delineation program.

The Waterways Program has been operating a pilot wetland assured delineation program since 2016, with demonstrated benefits to property owners, businesses, municipalities, environmental consultants, and the department. The pilot program currently has 45 environmental consultants who operate as assured delineators. These assured delineators submit around 700 delineation reports each year. The pilot program utilizes best management practices and field audits that give the department the confidence to approve these delineations without additional review by staff. This has streamlined the confirmation of project-specific wetland delineations for property owners and businesses and has been viewed as an asset within the Waterways Program and by multiple stakeholders.

The department had the pleasure of working with the members of the Wetland Study Council on this legislation and specifically, the qualifications an assured delineator must meet. These qualifications, specified in SB 254, include educational and training requirements and at least 5-years of full-time professional field experience. Consistent with current practices under the pilot program, SB 254 requires the department to review the performance of assured delineators on a recurring basis.

If a complaint is submitted to the department, then the work of assured delineators may be investigated to ensure confidence in the determined wetland boundary. If infractions or violations of the program standards are found, then the assured status of the individual delineator may be revoked.

SB 254 establishes fees authorized under s. 23.321(2d) of Wis. Stats to provide the staffing and funds to sustain the oversight, integrity, and quality of the program.

Department staff have found the assured delineation community to be a respected group of wetland ecologists and professionals with extensive expertise in their field. The pilot program has been an effective tool in streamlining the delineation approval process for property owners, businesses, and municipalities and instrumental in protecting wetland natural resources. SB 254 would allow the department to maintain this important service into the future.

In closing I want to thank the authors for including the department's feedback while drafting this bill, and for their continuous collaboration on this program.

On behalf of the Department of Natural Resources, we thank you for your time today. I would be happy to answer any questions you may have.



TO: Chairman Cowles & Members, Senate Committee on Natural Resources and Energy

FROM: Craig Summerfield, Director of Environmental & Energy Policy

DATE: May 10, 2023

RE: WMC testimony requesting amendment to Senate Bill 254, relating to the wetland assured delineator program

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify on Senate Bill 254, which sets statutory requirements for the wetland assured delineation program. WMC respectfully requests an amendment to delete the provisions in the bill establishing a complaint process that could impact wetland permitting and exemption decisions, as the provision may inject new regulatory uncertainty into projects impacting wetlands.

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. This mission includes advocating for cost-effective environmental regulations that are no more stringent than necessary to protect the environment.

WMC appreciates the efforts by bill authors Senator Cowles and Representative Mursau to establish a statutory framework for the DNR's wetland assured delineation program. Generally speaking, WMC welcomes the regulatory certainty associated with providing statutory requirements for this pilot program. Indeed, the concept of an "assured professional" initiative is one that may merit expansion into other environmental programs administered by the DNR.

However, WMC is concerned by a provision within SB 254 relating to complaints and investigations of wetland delineations. This provision stipulates any person may file a complaint with the DNR alleging inaccuracies in a wetland delineation completed by an assured delineator, allows the DNR to investigate, and provides that such an investigation can be used for wetland permitting and exemption decisions (though the data collected in such an investigation cannot be the sole basis to modify a permit).

WMC is worried about potential unintended consequences associated with this provision. Projects impacting wetlands are already often very lengthy and incredibly expensive. A late objection to a completed wetland delineation could trigger a DNR investigation, additional delays, and more uncertainty for construction projects.

To address these concerns, WMC suggests an amendment striking lines 8-20 on page 6 of Senate Bill 254. It should be noted that the bill would still retain other checks and balances for assured delineators, including a minimum of 5 years of experience, minimum education and training, and the submission of 6 representative wetland delineation reports from the last 2 growing seasons. In addition, the DNR would retain the authority to conduct performance reviews and audit wetland delineators, as well as revoke the certification of a delineator if warranted.

Thank you for the consideration of my testimony. I am happy to answer any questions.



To: Senate Committee on Natural Resources and Energy
From: Wisconsin Wetlands Association
Re: Testimony on Senate Bill 254
Date: May 10, 2023

Thank you for the opportunity to testify in support of Senate Bill (SB) 254, codifying the Assured Delineator Program into Wisconsin Statutes. We appreciate the leadership of Senator Cowles and Representative Mursau for introducing this legislation.

The Wisconsin Wetlands Association (WWA) is a statewide non-partisan, non-profit organization dedicated to the protection, restoration, and enjoyment of wetlands and associated ecosystems through science-based programs, education, and advocacy.

WWA supports SB 254 because it ensures the long-term continuation of the Assured Delineator Program by transferring the program to statute.

WWA's support for this bill recognizes that the Assured Delineator Program has for years created efficiencies for participating consultants, department staff, and project applicants. Participating consultants meet more stringent standards through the program and are able to submit wetland delineations not requiring Department of Natural Resources (DNR) confirmation. Department staff receive high quality wetland delineations at the start of potential projects, which results in more efficient review processes and cost savings related to on-site confirmations. Lastly, project applicants benefit because these results translate to shorter review and process timeframes while sustaining high-quality work.

Having application processes, qualifications, fees, and professional review practices outlined in statute also provides assured delineators with a clear and consistent basis upon which to understand program requirements. Importantly, the proposed program also establishes a reliable process for reviewing the performance of assured delineators to ensure program standards and expectations are being met.

Thank you for the opportunity to comment in support of SB 254.

Jennifer Western Hauser, Policy Liaison

Jennifer.westernhauser@wisconsinwetlands.org or 608-250-9971

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May 10, 2023

Sen. Rob Cowles
Chair, Senate Committee on Natural Resources & Energy
Room 118 South, State Capitol
Madison, WI 53707

Re: 2023 Senate Bill 254

Dear Chairman Cowles & Members,

Please accept my written testimony on 2023 Senate Bill 254, which would establish new statutory guidelines for the wetland assured delineation program. I submit these comments for information only to be considered by the Senate Committee on Natural Resources & Energy.

The WDNR already has a complaint hotline established for public concerns. It is my opinion that the proposed language on page 6 of Senate Bill 254, which appears to create a new and easier avenue for public complaints regarding wetland delineations, is problematic.

The current Assurance Program has stringent checks and balances for assured delineators which include, but are not limited to, a strict application process, reapplication each year to maintain assured status, and yearly report audits.

There are many areas that meet the regulatory definition of a wetland that rarely exhibit wetland characteristics to an untrained eye. If the legislation creates an easier process for anyone to complain about wetland delineations, I believe it will cause unnecessary reviews and delays which negates the purpose of the Assurance Program.

Sincerely,

Rob Wayne
WDNR Assured Delineator
Ayres Associates, Inc.

