

# **ROBERT L. COWLES**

**Wisconsin State Senator, 2nd Senate District**

**STANDING COMMITTEES:**

Natural Resources & Energy, Chair  
Transportation & Local Government, Vice-Chair  
Economic Development & Technical Colleges

## **Testimony on 2023 Senate Bill 255**

**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 255. This bill removes a requirement that public access is provided in the DNR's In-Lieu of Fee Wetland Mitigation Subprogram.

Under current law, if a person discharges into a wetland, they are responsible for mitigating the damage to that wetland. One of the three programs through which they may mitigate, the In-Lieu of Fee (ILF) Subprogram, allows the person to buy credits for a set amount which the Department of Natural Resources (DNR) will award at a later date to a qualified party to perform wetland activities in the same service area, the technical term for a watershed. The party doing the mitigation must meet certain requirements under current law, including making the site open to the public for hunting, fishing, trapping, cross-country skiing, or hiking.

In the process of choosing a site for a wetland mitigation project and preparing a wetland mitigation plan, there's already dozens of different factors to consider, and access can often be one of the bigger hurdles in site selection. Wisconsin's ILF Subprogram stands alone as the only state-managed program in the United States to require public access, with some states even prohibiting public access in their programs. Additionally, Wisconsin's other two wetland mitigation programs, banking and permittee-responsible mitigations, also don't require access.

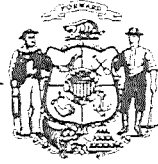
The primary purpose of the ILF Subprogram is to mitigate for the loss of wetlands and wetland functions resulting from development. Access should be viewed as a bonus, not a requirement. While at the time of implementation of the program, public access requirements may have seemed like an advantage, it's proven to inhibit the success of the program. The DNR has reported that this requirement has limited participation from some private landowners who may otherwise be interested in selling a conservation easement or fee title land for use in an ILF project. Thus, we should look to change course and improve the program.

Senate Bill 255 removes the requirement that public access is provided at an ILF site, but does not prohibit access. Additionally, instead of requiring access at all sites, we specify that the program's intent is to have no net loss of public access in Wisconsin. This legislation was drafted following a recommendation from the Wetland Study Council to change this section of statutes and ongoing discussions resulting from that recommendation.

When passing the recommendation, the Council listed a number of reasons to pursue this policy, including:

- 1) potential liability concerns for private landowners due to public recreation on or next to their property;
- 2) the lack of public access at the disturbed wetlands;
- 3) the fact that these are private dollars funding the restoration;
- 4) the ability to attract more landowners to the program and to help construct more functionally or ecologically high-value wetland mitigation projects closer to the site of the discharge, and;
- 5) the lack of compensation to the landowners for ongoing public access.

While passing Senate Bill 255 does remove the requirement for public access, Wisconsinites, particularly those near the mitigation site, will still benefit from the wetland through a healthier wildlife population, potentially reduced impacts from flooding, cleaner ground and surface waters, and more. In-fact, with the access strings removed, it's possible we'll see even greater benefits in these areas.



# Jeff Mursau

STATE REPRESENTATIVE • 36<sup>TH</sup> ASSEMBLY DISTRICT

Senate Committee on Natural Resources and Energy  
SB 255-Public Access to Wetlands Benefitting from the in Lieu Fee Subprogram  
May 10, 2023

Committee Members:

Thank you for the opportunity to testify in support of Senate Bill 255, which eliminates the requirement that wetlands that benefit from the in lieu fee subprogram be open for public access.

In 2017, then Governor Walker signed a bill into law that created a nine-member Wetland Study Council. The purpose of the council is to research and make recommendations on a variety of wetland issues. The bill before you today was drafted on a recommendation of the council.

Under current law, before the DNR may issue a wetland individual permit, it must require the restoration, enhancement, creation, or preservation of other wetlands to compensate for adverse impacts to a wetland resulting from the discharge, also known as mitigation. One way wetland mitigation can be accomplished is participation in the lieu fee subprogram where payments are made to the DNR or other entity to improve or preserve wetlands or other water resource features. One requirement of the wetlands that participate in the lieu fee subprogram is that they be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking. Senate Bill 255 would eliminate the requirement that public access is provided.

When selecting a site for a wetland mitigation project a number of factors need to be present and finding one with public access can be a major obstacle. Wisconsin's in lieu fee subprogram is the only state-managed program in the US that requires public access. In fact, the other two wetland mitigation programs in Wisconsin don't have the public access requirement.

The council listed a number of reasons for this recommendation including, liability concerns for private landowners and a lack of compensation to the landowners for ongoing public access; optional public access may attract more private landowners to the program; and, the in lieu fees are received from wetland permittees and no state dollars are involved.

The Wisconsin Realtors Association, Wisconsin Wetlands Association, and the Wisconsin Society of Land Surveyors support the bill.

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

### 2023 Senate Bill 255

### *Public Access to Wetlands Benefitting from the In Lieu Fee Subprogram*

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 255 (SB 255), related to public access to wetlands benefitting from the in-lieu fee subprogram.

In certain cases, Wisconsin law requires that citizens obtain a wetland individual permit to complete wetland mitigation. Wetland mitigation is the restoration of wetlands to compensate for permitted wetland impacts. One of the three mitigation options in Wisconsin is the in-lieu fee (ILF) program. The ILF program sells credits to permittees so they can comply with state law and obtain wetland permits. The program then funds wetland restoration projects to offset the permitted impacts. To date, the ILF program has completed over 850 acres of mitigation at more than 15 projects across the state. The program partners with municipalities, conservation groups, and private landowners to complete its projects.

Currently, Wisconsin State Statute 281.36(3r)(e) requires that all ILF sites be open to the public for recreation. SB 255 would make this public access requirement optional. The primary purpose of the ILF program is to meet its state and federal statutory requirements to mitigate for wetland losses. By making public access optional, SB 255 would increase opportunities for the ILF program to partner with private landowners who are not able to or interested in providing public access. This would in turn allow for more timely and higher quality mitigation to be conducted on the landscape.

Further, public access is not required for Wisconsin's private mitigation banks. Other states also do not require public access for their mitigation bank programs. In part, this is because ILF funds are received from wetland permittees and no state dollars are expended at these sites.

Finally, the ILF program has already provided a net increase of over 500 acres of new wetlands open to public access and restored an additional 350 acres that were already open to the public. Wetlands restored by the ILF program would continue to provide a variety of public benefits – flood control, wildlife habitat, and water quality improvement – even if they were not open for public access. SB255 would allow the ILF program to continue to improve the quality wetland mitigation that is already benefitting the watersheds and citizens of the State.

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 would like to thank you for your time today. I would be happy to answer any questions you may have.



To: Senate Committee on Natural Resources and Energy  
From: Wisconsin Wetlands Association  
Re: Testimony on Senate Bill 255  
Date: May 10, 2023

Thank you for the opportunity to testify in support of Senate Bill (SB) 255, which eliminates the public access requirement from the in-lieu fee (ILF) program and newly requires that the Department of Natural Resources work to ensure no net loss of public access to wetlands in the ILF program.

The ILF program serves as a mitigation option often when wetland mitigation banks are unavailable. If available, projects requiring mitigation may purchase ILF credits, which in turn are used to fund wetland restoration. In 2022, the program reported modest statewide acreage of just over 468 acres over the life of the program.

The ILF program's purpose is to mitigate the functional loss of wetlands and because of this, the [FY2022 Annual ILF Report<sup>1</sup>](#) describes selecting opportunities by focusing on the “greatest watershed need” and “working at a watershed scale.”

SB 255 will help ensure that restoration opportunities representing the greatest watershed need aren't lost due to a landowner objection to public access requirements. At the same time, SB 255 maintains the state's strong preference for the public to be able to access these lands for nature-based outdoor activities like hunting, fishing, trapping, hiking, and cross-country skiing.

Thank you for the opportunity to share these brief comments in support of SB 255.

**Jennifer Western Hauser, Policy Liaison**

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<sup>1</sup> Annual ILF Reports available at: <https://dnr.wisconsin.gov/topic/Wetlands/wwct>