



2009 ASSEMBLY BILL 818

March 9, 2010 - Introduced by Representatives BIES, ZIGMUNT, BERCEAU, MURSAU, PETROWSKI, TOWNSEND and ZEPNICK, cosponsored by Senators KREITLOW, A. LASEE, MILLER, COWLES, HANSEN, HOLPERIN, LEHMAN, ROBSON, TAYLOR and WIRCH. Referred to Committee on Natural Resources.

1 **AN ACT** *to amend* 20.370 (4) (bi); and *to create* 23.321, 23.323, 59.691, 60.625,
2 61.352, 62.232 and 101.02 (23) of the statutes; **relating to:** notices concerning
3 construction near or on lakes, streams, or wetlands that are given to applicants
4 for building permits and other construction approvals, requiring the
5 Department of Natural Resources to furnish informational brochures about
6 wetlands laws, requiring the Department of Natural Resources to provide
7 evaluations and statements about whether certain land contains wetlands, and
8 making an appropriation.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Natural Resources (DNR) to provide certain services relating to wetlands to persons who own or lease land. Under the bill, a wetland is an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and that has soils indicative of wet conditions. The bill requires DNR to provide, for a fee, a wetland map review, a wetland identification, or a wetland confirmation upon request by a person who owns or leases land.

Under the bill, a wetland map review consists of a written evaluation, based upon a review of wetland maps prepared by DNR or other information available to

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DNR, of whether a parcel of land is likely to contain a wetland. A wetland identification consists of a written evaluation, based upon an on-site inspection of the land by DNR, of whether a parcel of land contains a wetland. A wetland confirmation consists of a written statement, based upon an on-site inspection of the land by DNR, of whether DNR concurs with the boundaries of a wetland as delineated by a third person.

The bill provides that, if DNR furnishes a wetland identification or a wetland confirmation, that identification or confirmation is effective for a period of five years. The bill requires DNR to negotiate with the U.S. Army Corps of Engineers (Corps of Engineers) to enter into a memorandum of agreement that provides that the Corps of Engineers will concur with any written evaluation by DNR of whether a parcel of land contains a wetland for purposes of a wetland identification. The bill also specifies that DNR may not provide a wetland identification before the date on which it enters into such a memorandum with the Corps of Engineers.

The bill establishes deadlines under which DNR must provide these wetlands-related services after a person files a request for the service. The bill specifies that, if adverse weather conditions or other adverse conditions prevent DNR from conducting an accurate on-site inspection for a wetland identification or a wetland confirmation, DNR may provide the service as soon as possible after conditions allow DNR to conduct an accurate on-site inspection.

The bill also requires that each county, city, village, and town (municipality) that issues a building permit or other approval for construction activity must give the applicant a written notice that contains information about construction near or on wetlands including a statement that advises the applicant that the applicant is responsible for complying with state and federal laws concerning construction near or on wetlands, lakes, and streams. The bill requires the Department of Commerce (Commerce) to include this notice on every standard building permit form that it prescribes. The bill provides that a municipality is not required to give the notice if it issues a building permit on a standard building permit form prescribed by Commerce. If the municipality is required to give the notice, the bill provides that the municipality must require the applicant for the building permit to sign a statement acknowledging that the person has received the notice.

The bill also requires DNR to furnish an informational brochure to municipalities for distribution to the public that describes the laws that apply to wetlands.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 20.370 (4) (bi) *Water regulation and zoning — fees.* From the general fund, all
2 moneys received under ss. 23.32 (3), 23.321, 30.28, 31.39 and 281.22 for activities
3 relating to permits and approvals issued under chs. 30 and 31, water quality
4 standards under subch. II of ch. 281 and for wetland mapping under s. 23.32 and
5 wetlands services under s. 23.321.

6 **SECTION 2.** 23.321 of the statutes is created to read:

7 **23.321 Wetland map review, identification, and confirmation.** (1) In
8 this section, “wetland” has the meaning given in s. 23.32 (1).

9 (2) Any person who owns or leases land may request that the department
10 provide any of the following services for the fee specified in sub. (3):

11 (a) A wetland map review that consists of a written evaluation, based upon a
12 review of wetland maps prepared by the department under s. 23.32 or other
13 information available to the department, of whether a parcel of land is likely to
14 contain a wetland. The evaluation shall describe the method used by the department
15 to review the wetland maps.

16 (b) A wetland identification that consists of a written evaluation, based upon
17 an on-site inspection of the land by the department, of whether a parcel of land
18 contains a wetland. The department shall provide a wetland identification only for
19 a parcel of land, or a part of a parcel of land, that does not exceed 5 acres. The
20 department may not provide a wetland identification under this paragraph before
21 the date on which it enters into a memorandum of agreement with the U.S. Army
22 Corps of Engineers as specified in sub. (2m).

23 (c) A wetland confirmation that consists of a written statement, based upon an
24 on-site inspection of the land by the department, of whether the department concurs
25 with the boundaries of a wetland as delineated by a 3rd person. The delineation

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1 prepared by the 3rd person shall include the exact location and boundaries of the
2 wetland. If the department concurs with the boundaries of a wetland delineated by
3 a 3rd person, the department's statement under this paragraph shall also include the
4 exact location and boundaries of the wetland.

5 **(2m)** The department shall negotiate with the U.S. Army Corps of Engineers
6 to enter into a memorandum of agreement that provides that the U.S. Army Corps
7 of Engineers will concur with any written evaluation by the department of whether
8 a parcel of land contains a wetland under sub. (2) (b).

9 **(3)** The department shall charge the following fee for services provided under
10 sub. (2):

11 (a) For a wetland map review under sub. (2) (a), \$50.

12 (b) For a wetland identification under sub. (2) (b), \$300 for each acre inspected
13 by the department.

14 (c) For a wetland confirmation under sub. (2) (c), \$300 for each 20 acres
15 inspected by the department.

16 **(4)** (a) Except as provided under par. (b), the department shall do all of the
17 following:

18 1. Provide a wetland map review not later than 15 days after a person files a
19 request, in the manner and form required by the department, for a wetland map
20 review.

21 2. Provide a wetland identification not later than 30 days after a person files
22 a request, in the manner and form required by the department, for a wetland
23 identification.

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1 3. Provide a wetland confirmation not later than 30 days after a person files
2 a request, in the manner and form required by the department, for a wetland
3 confirmation.

4 (b) If adverse weather conditions, or other conditions at the site, prevent the
5 department from conducting an accurate on-site inspection under sub. (2) (b) or (c)
6 in sufficient time to comply with the deadline under par. (a), the department shall
7 provide a wetland identification under sub. (2) (b) or a wetland confirmation under
8 sub. (2) (c) as soon as possible after weather conditions, or other conditions at the site,
9 allow the department to conduct an accurate on-site inspection. Within 30 days after
10 determining that adverse weather conditions, or other conditions at the site, will
11 prevent the department from complying with the deadline under par. (a), the
12 department shall give notice to the person requesting the wetland identification or
13 wetland confirmation that adverse weather conditions, or other conditions at the
14 site, will prevent the department from complying with the deadline and giving notice
15 to the person that the department will provide the wetland identification or wetland
16 confirmation as soon as possible after weather conditions, or other conditions at the
17 site, allow the department to conduct an accurate on-site inspection.

18 (5) A wetland identification provided by the department under sub. (2) (b) and
19 a wetland confirmation provided by the department under sub. (2) (c) remain
20 effective for 5 years from the date provided by the department.

21 (6) If the department determines under this section that a parcel of land is
22 likely to or does contain a wetland, or that it concurs with the boundaries of a wetland
23 as delineated by a 3rd person, the department shall include this information on
24 wetland maps prepared under s. 23.32.

25 **SECTION 3.** 23.323 of the statutes is created to read:

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1 **23.323 Wetlands informational brochure.** The department shall furnish
2 an informational brochure to cities, villages, towns, and counties for distribution to
3 the public that describes the laws that apply to wetlands.

4 **SECTION 4.** 59.691 of the statutes is created to read:

5 **59.691 Required notice on certain approvals.** (1) In this section,
6 “wetland” has the meaning given in s. 23.32 (1).

7 (2) (a) Except as provided in par. (b), a county that issues a building permit or
8 other approval for construction activity, shall give the applicant a written notice as
9 specified in subs. (3) and (4) at the time the building permit is issued.

10 (b) 1. A county is not required to give the notice under par. (a) at the time that
11 it issues a building permit if the county issues the building permit on a standard
12 building permit form prescribed by the department of commerce.

13 2. A county is not required to give the notice under par. (a) at the time that it
14 issues a building permit or other approval if the building permit or other approval
15 is for construction activity that does not involve any land disturbing activity
16 including removing protective ground cover or vegetation, or excavating, filling,
17 covering, or grading land.

18 (3) Each notice shall contain the following language: “YOU ARE
19 RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS
20 CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND
21 STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER
22 CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN
23 REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE
24 LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT
25 THE DEPARTMENT OF NATURAL RESOURCES WETLANDS

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1 IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL
2 RESOURCES SERVICE CENTER.”

3 (4) The notice required in sub. (2) (a) shall contain the electronic Web site
4 address that gives the recipient of the notice direct contact with that Web site.

5 (5) A county in issuing a notice under this section shall require that the
6 applicant for the building permit sign a statement acknowledging that the person
7 has received the notice.

8 **SECTION 5.** 60.625 of the statutes is created to read:

9 **60.625 Required notice on certain approvals.** (1) In this section,
10 “wetland” has the meaning given in s. 23.32 (1).

11 (2) (a) Except as provided in par. (b), a town that issues a building permit or
12 other approval for construction activity, shall give the applicant a written notice as
13 specified in subs. (3) and (4) at the time the building permit is issued.

14 (b) 1. A town is not required to give the notice under par. (a) at the time that
15 it issues a building permit if the county issues the building permit on a standard
16 building permit form prescribed by the department of commerce.

17 2. A town is not required to give the notice under par. (a) at the time that it
18 issues a building permit or other approval if the building permit or other approval
19 is for construction activity that does not involve any land disturbing activity
20 including removing protective ground cover or vegetation, or excavating, filling,
21 covering, or grading land.

22 (3) Each notice shall contain the following language: “YOU ARE
23 RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS
24 CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND
25 STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER

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1 CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN
2 REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE
3 LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT
4 THE DEPARTMENT OF NATURAL RESOURCES WETLANDS
5 IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL
6 RESOURCES SERVICE CENTER.”

7 (4) The notice required in sub. (2) (a) shall contain the electronic Web site
8 address that gives the recipient of the notice direct contact with that Web site.

9 (5) A town in issuing a notice under this section shall require that the applicant
10 for the building permit sign a statement acknowledging that the person has received
11 the notice.

12 **SECTION 6.** 61.352 of the statutes is created to read:

13 **61.352 Required notice on certain approvals.** (1) In this section,
14 “wetland” has the meaning given in s. 23.32 (1).

15 (2) (a) Except as provided in par. (b), a village that issues a building permit or
16 other approval for construction activity, shall give the applicant a written notice as
17 specified in subs. (3) and (4) at the time the building permit is issued.

18 (b) 1. A village is not required to give the notice under par. (a) at the time that
19 it issues a building permit if the county issues the building permit on a standard
20 building permit form prescribed by the department of commerce.

21 2. A village is not required to give the notice under par. (a) at the time that it
22 issues a building permit or other approval if the building permit or other approval
23 is for construction activity that does not involve any land disturbing activity
24 including removing protective ground cover or vegetation, or excavating, filling,
25 covering, or grading land.

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1 **(3)** Each notice shall contain the following language: “YOU ARE
2 RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS
3 CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND
4 STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER
5 CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN
6 REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE
7 LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT
8 THE DEPARTMENT OF NATURAL RESOURCES WETLANDS
9 IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL
10 RESOURCES SERVICE CENTER.”

11 **(4)** The notice required in sub. (2) (a) shall contain the electronic Web site
12 address that gives the recipient of the notice direct contact with that Web site.

13 **(5)** A village in issuing a notice under this section shall require that the
14 applicant for the building permit sign a statement acknowledging that the person
15 has received the notice.

16 **SECTION 7.** 62.232 of the statutes is created to read:

17 **62.232 Required notice on certain approvals.** **(1)** In this section,
18 “wetland” has the meaning given in s. 23.32 (1).

19 **(2)** (a) Except as provided in par. (b), a city that issues a building permit or other
20 approval for construction activity, shall give the applicant a written notice as
21 specified in subs. (3) and (4) at the time the building permit is issued.

22 (b) 1. A city is not required to give the notice under par. (a) at the time that it
23 issues a building permit if the county issues the building permit on a standard
24 building permit form prescribed by the department of commerce.

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1 2. A city is not required to give the notice under par. (a) at the time that it issues
2 a building permit or other approval if the building permit or other approval is for
3 construction activity that does not involve any land disturbing activity including
4 removing protective ground cover or vegetation, or excavating, filling, covering, or
5 grading land.

6 **(3)** Each notice shall contain the following language: “YOU ARE
7 RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL LAWS
8 CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES, AND
9 STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN WATER
10 CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY RESULT IN
11 REMOVAL OR MODIFICATION OF CONSTRUCTION THAT VIOLATES THE
12 LAW OR OTHER PENALTIES OR COSTS. FOR MORE INFORMATION, VISIT
13 THE DEPARTMENT OF NATURAL RESOURCES WETLANDS
14 IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF NATURAL
15 RESOURCES SERVICE CENTER.”

16 **(4)** The notice required in sub. (2) (a) shall contain the electronic Web site
17 address that gives the recipient of the notice direct contact with that Web site.

18 **(5)** A city in issuing a notice under this section shall require that the applicant
19 for the building permit sign a statement acknowledging that the person has received
20 the notice.

21 **SECTION 8.** 101.02 (23) of the statutes is created to read:

22 101.02 **(23)** The department shall include the following language on every
23 standard building permit form prescribed by the department under this chapter:
24 “YOU ARE RESPONSIBLE FOR COMPLYING WITH STATE AND FEDERAL
25 LAWS CONCERNING CONSTRUCTION NEAR OR ON WETLANDS, LAKES,

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1 AND STREAMS. WETLANDS THAT ARE NOT ASSOCIATED WITH OPEN
2 WATER CAN BE DIFFICULT TO IDENTIFY. FAILURE TO COMPLY MAY
3 RESULT IN REMOVAL OR MODIFICATION OF CONSTRUCTION THAT
4 VIOLATES THE LAW OR OTHER PENALTIES OR COSTS. FOR MORE
5 INFORMATION, VISIT THE DEPARTMENT OF NATURAL RESOURCES
6 WETLANDS IDENTIFICATION WEB PAGE OR CONTACT A DEPARTMENT OF
7 NATURAL RESOURCES SERVICE CENTER.”

SECTION 9. Nonstatutory provisions.

8
9 (1) POSITION AUTHORIZATIONS. The authorized FTE positions for the department
10 of natural resources are increased by 3.0 PR project positions for the period ending
11 on June 30, 2014, and 1.0 PR position, to be funded from the appropriation under
12 section 20.370 (4) (bi) of the statutes, for the purpose of providing wetland map
13 review, identification, and confirmation services under section 23.321 of the statutes,
14 as created by this act.

SECTION 10. Initial applicability.

15
16 (1) BUILDING PERMITS. The treatment of sections 59.691, 60.625, 61.352, and
17 62.232 of the statutes first applies to applications for building permits that are
18 submitted on the effective date of this subsection.

SECTION 11. Effective date.

19
20 (1) This act takes effect on the first day of the 7th month beginning after
21 publication.

22 (END)