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Wisconsin Wetlands Association Testimony on SB 557
March 16, 2010
Presented by Policy Director Erin O'Brien

Wisconsin Wetlands Association has registered in support of Senate Bill 557 because we believe it will help to protect wetlands and the private landowners who own them. We are appearing before this committee to share our perspective on the problems this bill will help to address and to offer recommendations for minor modifications needed to ensure that the legislation meets its intended objectives.

Helping people understand what wetlands are, why they matter, and why and how state and federal wetland protection laws are implemented and enforced is a major emphasis of the Wisconsin Wetlands Association's work. It is also our greatest challenge.

While most people recognize cattail marshes or bogs as wetlands, many landowners are unfamiliar with other wetland types including floodplain forests, fens, hardwood swamps, sedge meadows, alder thickets and ephemeral ponds. Many landowners are also unfamiliar with the requirements of state and federal wetland laws which, combined, discourage development in all wetlands regardless of type, size, or location.

This lack of understanding leads to unintentional violations of wetland laws, causing unnecessary destruction of wetlands as well as inconvenience and financial hardship for property owners.

In response to these concerns, SB 557 proposes several important measures that will help protect wetlands and the private landowners who own them. Outlined below are our comments on the value and potential effectiveness of each of the proposed measures.

1. Required Notice on Certain Approvals: We strongly support the sections of the bill that require counties, cities, villages, and towns to notify permit applicants about wetland laws and DNR's wetland identification tools. Because many local governments use standard forms issued by the WI Department of Commerce (DOC), we also support the provision requiring DOC to amend their forms to include this information.

To strengthen this provision, we recommend including a deadline for the DOC to revise and reissue their forms. We also recommend that local governments be required to issue their own notification statements until DOC releases the revised forms and be required to secure a signature from the applicant acknowledging receipt of the notice regardless of

whether it comes on a DOC or locally-issued form (as written, the signature may only be required if the notification appears on a locally-generated form).

2. Wetlands informational brochure: We strongly support the requirement for WDNR to develop an informational brochure about wetland identification and wetland laws for local governments to distribute to permit applicants.

3. Wetland map review, identification, and confirmation: We agree that there is a need for WDNR to provide more assistance to help landowners identify wetlands on their property. We support some, but not all, of the methods proposed as follows:

Tier 1 – Wetland Map Review:

Because the public can already download wetland indicator maps for free through WDNR's web-site, we would like to see WDNR help the limited number of people who don't have internet access use computers (e.g., rural residents and seniors) to access this information for free. Charging a fee is appropriate in cases where WDNR will review and evaluate resources not readily available on the web (e.g., aerial photos).

In either case, it must be clear in the statute and in WDNR's communications about these services that a map review is not a definitive indicator of the presence or absence of wetlands for regulatory purposes. Site-visits are necessary to confirm the presence and location of wetlands on a property. We suggest the following language:

“Since the information provided will not be based on an on-site review, it will be useful for planning purposes only. The department will not use a map review to certify where wetlands are and are not specifically located on a given parcel.”

Tier 2 – Wetland Identification

We would prefer to see this section of the bill eliminated due to concerns about WDNR's capacity to provide the proposed service. It is work that is currently handled by the private sector where there is more experience and more time to be responsive to landowners' information needs.

If the provision remains in the bill, we recommend that the service be limited to smaller parcels (e.g., 1-2 acres) or a single project site (e.g., one structure and/or access road). The intent of the bill is to help individual landowners avoid inadvertently building in wetlands. Projects greater than 1-2 acres are typically managed by a professional developer. Developers should rely on private consultants, not public agencies, to complete their regulatory review work.

Tier 3 – Wetland Confirmation

We enthusiastically support the inclusion of this tier of service in this bill. Though a memorandum of agreement with the U.S. Army Corps of Engineers would be required for WDNR's confirmation decisions to be considered valid for federal regulatory purposes, we urge the legislature to require WDNR to provide this service for the specified fee regardless of whether the MOU is secured.

Confirmation of wetland boundaries is a service that wetland consultants, private developers, and many local governments want, and one that some WDNR staff formerly provided as their schedules allowed. As part of the Department's workload reduction plan to handle budget cuts, WDNR leadership recently informed staff that they were no longer allowed to provide this service. Confirmation of wetland boundaries is an important service for WDNR to provide to meet their obligations to implement and enforce state wetland laws and to provide good customer service to the regulated public.

Finally, because some sections of this bill have budget implications we recognize that it may be difficult to pass at this time. If that is the case, please consider immediate passage of the sections that do not have budget implications, specifically: a) the sections that require local governments to notify permit applicants about wetland identification tools and wetland laws and, b) the section that requires WDNR to develop an informational brochure for distribution by local governments to permit applicants.

We thank you for your consideration of these comments.

Wisconsin Wetlands Association is dedicated to the protection, restoration and enjoyment of wetlands and associated ecosystems through science-based programs, education and advocacy. WWA is a non-profit 501(c)(3) organization.

Questions about these comments should be directed to Wisconsin Wetlands Association's Policy Director, Erin O'Brien at 608-250-9971 / erin.obrien@wisconsinwetlands.org.

More information about Wisconsin's Wetlands can be found at www.wisconsinwetlands.org