

Wisconsin's Green Fire: Voices for Conservation

Analysis of proposal to remove state regulatory oversight of non-federal wetlands in legislation: AB547 / SB600

December 18, 2017

Legislation Description: The following is an excerpt of the analysis of AB547 / SB600 by the Legislative Reference Bureau (LRB).

“This bill exempts nonfederal and artificial wetlands from certain Department of Natural Resources wetland permitting requirements and, if the Environmental Protection Agency delegates to the state the authority to administer its own permit program for the discharge of dredge or fill material into navigable waters, authorizes DNR to assume that authority. Under current federal law, generally, a person must obtain a permit from the federal government for discharges to wetlands that are under the jurisdiction of the federal government. Federal law requires an applicant to submit with a permit application a certification from the state that the proposed discharge will comply with state water quality standards or that the state has waived such certification. In this state, DNR grants this certification by issuing a state wetland permit. Under current law, DNR must issue wetland general permits for discharges of dredged or fill material into certain wetlands and may require a person to apply for and obtain a wetland individual permit if DNR determines that conditions specific to the site require additional restrictions on the discharge in order to provide reasonable assurance that no significant adverse impacts to wetland functional values will occur. The bill exempts wetlands that are not subject to federal jurisdiction (nonfederal wetlands) from state wetland permitting requirements. Generally speaking, only wetlands that are adjacent to navigable waters are subject to federal jurisdiction. The bill continues to require the mitigation of impacts from a discharge to a nonfederal wetland, which under current law is required before DNR may issue a wetland individual permit. The bill also excludes artificial wetlands from the definition of a wetland, thereby exempting these wetlands from the permitting and mitigation requirements that apply to the discharge of dredged or fill material into a wetland.”

Background: The federally mandated Clean Water Act applies to wetlands adjacent to a navigable water body. Current Wisconsin law applies to *all* wetlands, regardless of their location in the landscape. Under both federal and state laws, before a wetland can be destroyed or filled, developers must first demonstrate that there is no practical alternative. Furthermore, if there is not an alternative, they must minimize the adverse impacts to the wetlands that will be lost. In addition, compensatory mitigation is required for wetland fills under an individual permit.

Wisconsin Green Fire has researched and evaluated legislative proposals to reduce state regulatory oversight of those wetlands that are not covered by the Clean Water Act. Assembly Bill AB547 and Senate Bill SB600, if enacted, would exempt non-federal wetlands from permitting requirements and would allow filling or destruction of these aquatic habitats without a permit or oversight by the Wisconsin Department of Natural Resources. The bill would require compensatory mitigation of filled non-federal wetlands, but how that mitigation would occur, for an activity that is exempt, is unclear.

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Impacts Synopsis: If enacted into law, AB547 / SB600 would result in degradation or outright conversion of wetland habitats, reducing Wisconsin's rich diversity of wetland habitats and the ecosystems they support. It removes protection for wetlands that provide many ecological services, including feeding downstream waters, supporting groundwater connections, trapping floodwaters, removing pollution, and providing fish and wildlife habitat. These wetland services support agriculture, recreation, and are key drivers of Wisconsin's tourism economy. According to the Department of Tourism, this sector contributes \$20 billion to Wisconsin's economy.¹ The rich diversity of wetland habitats supports hunting, fishing, wildlife watching, hiking, skiing, camping, and snowmobiling. *These ecosystem services are provided regardless of the wetland's proximity to a federally navigable waterway.*

WGF recognizes there are legitimate concerns regarding the regulation of created, artificial, and farmed wetlands, that are covered only by state wetland laws. We are willing to lend our expertise to help craft legislation to address these specific concerns. The current legislation is broad, and would likely result in adverse impacts or destruction of high quality wetlands important to the public interest.

Context: Wisconsin, prior to European settlement, had roughly 10 million acres of wetland habitat. About half, (5 million acres), was filled or destroyed as the state was developed and wetlands were converted to agricultural and urban-industrial uses. Of the remaining wetland habitat, approximately 4 million acres are covered under the Clean Water Act. Under current Wisconsin law, an additional 1 million acres are protected.² Under these regulatory systems, wetlands are routinely managed through a coordinated permit system that considers wetland functions and values. This system has been portrayed as inflexible and overly burdensome. However, several legislative measures have been implemented in recent years to make Wisconsin's wetland regulatory system more flexible for those proposing to fill wetlands for further development. Since 2012, Wisconsin has offered general permits for wetland fills up to 10,000 square feet, with no requirement for compensatory mitigation. In 2015, WDNR approved 91% of the general permit applications for wetland fills and 87% of the individual permit applications for larger wetland fills.³ As a result, 334 general permits and 39 individual permits for wetland fill were issued that year.

Natural Resources Impacts: Several examples of wetlands that would no longer be protected under state law under this legislation are depicted below. "Non-federal" wetlands occur across the entire state, and vary regionally in abundance, context, and wetland type.

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Central Wisconsin



Not all isolated wetlands are small. This complex of open bog and meadow occurs in central Wisconsin in an area formerly occupied by an enormous glacial lake.

Central Wisconsin



Non-federal wetlands include unique wetland types. When Glacial Lake Wisconsin drained, it left an area characterized by sandy soils, a high water table, and vast wetlands. The photo depicts an area of sandy ridges (some of them are ancient dunes), which are now vegetated with forests of oak and jack pine. Between the ridges are numerous isolated wetlands of marsh and meadow. The area is just west of the Necedah National Wildlife Refuge in Juneau County.

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Northern Wisconsin

"Isolated" wetlands aren't isolated. Rough end moraine topography northeast of Chippewa Falls contains a notably dense concentration of lakes and wetlands in a complex mosaic that includes many lakes and ponds as well as adjoining (federal) wetlands, along with isolated wetlands.



Northern Wisconsin

Glacial landforms such as ground moraine and outwash cover much of northern and eastern Wisconsin. Where drainage is impeded by fine-textured soils or bedrock, wetlands often occur. Although the isolated wetlands shown here (mostly conifer swamp in the foreground; mostly open bog or muskeg toward the back) occur on an island in Lake Superior, this situation is representative of many locations in northern Wisconsin.



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Southeast Wisconsin



Southeastern Wisconsin contains some of the Upper Midwest's best examples of glacial landforms, and these in turn support many examples of isolated wetlands. This ephemeral pond occurs between gravel ridges within the rugged terrain of the "kettle" interlobate moraine. Ephemeral ponds, though usually small, provide critical breeding habitat for frogs, salamanders, and many invertebrates, some of them highly specialized and occurring in no other wetland community.

Driftless Area - Southwestern and West Central Wisconsin

Wetlands are comparatively scarce in the un-glaciated Driftless Area. Among the key exceptions are the seepages, springs, and headwaters streams that provide a steady source of clean, cold, highly oxygenated water to the region's trout streams and large rivers.

Pictured here is a seepage area with skunk cabbage, marsh marigold, and alder at the base of a sandstone bluff.



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Great Lakes Northwestern and Eastern Wisconsin



Interdunal wetlands, such as this example in the Apostle Islands, have no surface water connections. They are extremely dynamic ecosystems that support rare species and provide feeding and resting areas for many migratory birds. The complex and sometimes extensive ridge and swale systems found along Lake Michigan (not pictured) are also of exceptionally high value. In northwestern Wisconsin, the poorly drained red clay soils near Lake Superior support a diverse array of wetlands of high importance to wildlife and rare plants.

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This analysis was prepared by members of Wisconsin's Green Fire Public Trust and Wetlands Workgroup. Members include retired staff from regulatory programs in the Wisconsin Department of Natural Resources and wetland scientists. Wisconsin's Green Fire: Voices for Conservation (WGF) is a newly formed independent nonpartisan organization. WGF supports the conservation legacy of Wisconsin by promoting science-based management of its natural resources. Members represent extensive experience in natural resource management, environmental law and policy, scientific research, and education. Members have backgrounds in government, non-governmental organizations, universities and colleges and the private sector. More information about WGF can be found at www.wigreenfire.org.

Photo Credits – Eric Epstein

References:

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2. REVERSING THE LOSS: A Strategy to Protect, Restore and Explore Wisconsin Wetlands Developed by the Wisconsin Wetland Team — June 2008, Wisconsin Department of Natural Resources Publication # PUB-WT-893-2008
3. DNR data analysis in "State of the Watershed Management Bureau 2015-2016." August 1, 2016. Prepared by the Bureau of Watershed Management, Wisconsin Department of Natural Resources.