



Van H. Wanggaard
Wisconsin State Senator

TESTIMONY ON SENATE BILL 169

Thank you Mr. Chairman and Senators for this hearing on Senate Bill 169.

This bill is about increasing wetland mitigation within areas of Wisconsin experiencing the greatest impact and disturbances to wetlands, and freeing up and actually using wetland mitigation credits. Under current law, while many wetland mitigation credits are purchased through the "In-Lieu" program, too few wetland mitigations actually occur, and too few new wetlands are created. Often, there is just not a suitable site under the current parameters to release the credits.

This bill will relieve the pressure on the In-Lieu Fee Program by increasing the number of banks in the state. While well-intentioned, the current program creates barriers to current actual mitigation efforts. By expanding the area in which wetland mitigation credits can be used, we can improve wetland restoration efforts and in turn, our environment, while still fostering economic growth. Importantly, this isn't carte blanche for mitigation banks. The bill mandates financial surety to the DNR to ensure completion of the approved mitigation bank and releases credits only as a wetland is properly restored or mitigated. This isn't just a pay-and-you're-good-to-go program. We want to be sure we are acting in an environmental prudent way.

By freeing up the mitigation banks to act, we will provide additional wetland protection to the state, and free up further economic development while properly sustaining wetlands in Wisconsin.

Thank you.

Serving Racine and Kenosha Counties - Senate District 21

State Capitol, P.O. Box 7882, Madison, WI 53707-7882 • (608) 266-1832 • Toll-free (866) 615-7510
E-Mail: Sen.Wanggaard@legis.wi.gov • SenatorWanggaard.com



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Testimony

on

Senate Bill 169

Senate Committee on Natural Resources & Energy

April 30, 2019

Mr. Chairman and members of the committee, thank you for hearing Senate Bill 169. This bill will incentivize the creation of wetlands in needed areas.

Under current law, satisfying a mitigation requirement is achieved by purchasing credits from a mitigation bank, participating in the In-Lieu Fee program, or completing mitigation within the same watershed or within one-half mile from the site of the discharge. This bill promotes the creation of mitigation banks in high-cost areas and requires mitigation occur as close as possible to the location of a discharge.

First, the bill incentivizes the creation of mitigation banks in high-cost areas. The release schedule for credits when a mitigation bank is created is back-heavy; most credits are not released until after two years.¹ This makes the creation of mitigation banks in developed and developing areas economically impractical. Mitigation banks in these areas would have significant, positive impacts such as: better filtration of groundwater; serving as critical habitat for waterfowl and other species throughout the state; and lessening flooding during extreme precipitation events. To incentivize the creation of wetlands in these high-cost, developed areas, this bill ties the credit release schedule to benchmarks during the establishment of a mitigation bank as follows:

- No more than 20 percent of the estimated credits after the DNR approves and executes the mitigation bank document establishing the specifications for the mitigation bank;
- No more than 65 percent of the estimated credits after the DNR issues a letter of compliance stating that construction and all corrective actions are complete;
- No more than 85 percent of the estimated credits after the department approves a monitoring report, but no sooner than 2 years after construction of the mitigation project;
- 100 percent of the estimated credits after the department approves the final monitoring report and determines all performance standards applicable to the mitigation bank are met.

These benchmarks will speed the availability of mitigation credits for purchase while also ensuring

¹ See NR 350.13 (7) (DNR may release up 10%, 20%, 30% and 100% of credits upon the completion of certain benchmarks).

real, concrete progress is being made toward the creation of wetlands in areas desperately in need of these ecological features.

Second, this bill requires mitigation occur in the same area impacted by a discharge. The bill requires the purchase of credits in the same "compensation search area" of a discharge, defined as the same geographic management unit of a wetland impacted by a discharge, the county of the impacted wetland, and the areas within a 20-mile radius from the impacted discharge. If no credits are available for purchase in that area, then credits may be purchased from within a 50 mile radius of the discharge. If credits are not available in that area, then credits can be purchased in the same basin as the discharge. Finally, if credits are not available in the same basin, then credits may be purchased from anywhere in the state. These requirements ensure mitigation will occur in the area closest to a discharge.

Additionally, the bill requires the DNR promulgate financial assurance rules. Financial surety will ensure that projects are completed if for any reason a mitigation bank developer decides not to complete a project.

Thank you for your time and consideration. These simple and straightforward changes will have meaningful impacts by incentivizing the creation of wetlands in needed areas and requiring, when possible, mitigation occur in the same areas as the initial environmental impact.

Comparison of Wetland Mitigation Methods

	Mitigation by the Discharge Permittee	Purchasing In-Lieu of Fee Program (Wisconsin Wetland Conservation Trust) Credits	Purchasing Wetland Mitigation Bank Credits	Purchasing Wetland Mitigation Bank Credits with Proposed Changes in SB 169
Mitigation Completed By...	Wetland discharge Individual Permit applicant	WWCT Grant Recipient (business, non-profit, DNR staff)	Certified bank sponsor	Certified bank sponsor
Ratio of Mitigation to Discharge, Unless Exempt	1.2 acres or greater restored, enhanced, and/or preserved per 1.0 acre impacted	1.2 acres or greater restored, enhanced, and/or preserved per 1.0 acre impacted	1.2 acres or greater restored, enhanced, and/or preserved per 1.0 acre impacted	1.2 acres or greater restored, enhanced, and/or preserved per 1.0 acre impacted
Necessary Steps by Discharge Permittee	Completes mitigation and monitoring	Pays into WWCT based on credit fee schedule	Finds certified bank with available credits and buys credits from wetland bank	Finds certified bank with available credits and buys credits from wetland bank
Geographic Location of Mitigation in Relation to Discharge	Same Watershed Service Area or within 1/2 mile of permitted wetland, or, if exempted by the DNR, in the same Compensation Search Area (CSA)	In one of twelve Service Areas established by the DNR and based on watersheds	Anywhere in the state according to statutes, and anywhere in the same CSA according to administrative rules	In the same CSA, or, if not available, within fifty miles of the discharge, or, if not available, in the same Great Lakes or Mississippi River Basin, and finally, if still not available, located in the state
Credit Release and Application	Immediately	Immediately upon purchase of advanced credits, and credits may become available again after mitigation	Estimated credits released in-part at 4 stages in the project with no more than 30% available until completion	Estimated credits released in-part at 4 stages in the project at a rate that's more reflective of investment and progress
Required Monitoring	Long-term by permittee	Long-term by grantee	Long-term by bank sponsor	Long-term by bank sponsor
Public Access Required?	No	Yes	Yes	Yes
DNR's Involvement in Mitigation	Oversight and approval of site plan and mitigation project	Collect and manage funds, judge and award grants, oversee mitigation projects, confirm completion	Certify bank, approve bank document, oversee mitigation, confirm the bank has met standards	Certify bank, approve bank document, oversee mitigation, confirm the bank has met standards
Acres/Credits Generated	Total unknown, but is likely hundreds of acres	229.74 acres	1,304.39 credits (not including DOT banks)	N/A

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



Senate Committee on Natural Resources and Energy
2019 Senate Bill 169
Wetland Mitigation Banking Requirements
April 30, 2019

Good morning Chairman Cowles and members of the Committee. My name is Amanda Minks, and I am the Waterway and Wetland Section Chief with the Wisconsin Department of Natural Resources. I am joined today by Todd Ambs, who is the Assistant Deputy Secretary for the DNR. Thank you for the opportunity to testify for informational purposes on Senate Bill 169 related to wetland mitigation banking.

Wetland mitigation is a regulatory tool to offset wetland losses associated with certain types of permitted and exempt activities. Mitigation is required by state and federal law and is jointly implemented by DNR and the United States Army Corps of Engineers (ACOE). Both agencies work hard to maintain a consistent approach to our regulatory programs for wetlands and this consistent approach is essential for the regulated community.

DNR supports the legislature's intent to enhance the mitigation banking program and is eager to work with the legislature, members of banking community, and other stakeholders to enhance this program. In fact, just recently, Governor Evers approved a scope statement to update administrative code NR 350, which is related to wetland mitigation. The purpose of this update is to align with current state and federal statutes enacted since the rule was crafted in 2002. We plan to work with a technical advisory group, the Wetland Study Council and others to find creative new solutions to implement and update our mitigation banking program.

Although we share this goal to enhance the mitigation program, we have some technical concerns with SB 169. Specifically, we believe the proposed bill deviates from federal requirements related to the credit release schedule and the geographic location where credits can be sold. If enacted, these discrepancies could limit DNR's ability to jointly implement this program with ACOE which could add significant complexity, cost, and confusion for the regulated public and mitigation bankers.

DNR would be happy to provide the committee and the bill's authors specific technical recommendations and details on our plans for updating NR 350 upon your request. We encourage the committee to consider ways to meet our shared goals while maintaining consistency with federal mitigation requirements.

On behalf of the DNR and the Bureau of Watershed Management, we would like to thank you for your time today and would be happy to answer any questions you may have.



Testimony on Senate Bill 169

Ron Grasshoff, Wisconsin Green Fire

April 30, 2019

My name is Ron Grasshoff and I am here representing Wisconsin Green Fire. I appear today for information only, but we hope if our concerns are addressed that we can change our position to support.

We like the fact that SB 169 emphasizes mitigating wetland losses from permit actions near to where the impacts occur. With mitigation banking, the goal should be to have an even distribution between the location of wetland losses including wetland types and compensation locations. This will assure that the environmental services (i.e. flood storage capacity, water quality protection, and wildlife habitat) that wetland systems provide will be maintained and ideally expanded. A watershed approach is the foundation for the Federal Clean Water Act and establishing a preference for mitigation in 22 watersheds (i.e. Geographic Management Units) is stronger application of the watershed approach to water resource management.

However, we do have significant concerns in the bill related to the release of credits. Our concerns are with items number 1 and 4 in the section on releasing credits.

The bill states a **developing mitigation bank** may sell under the mitigation program under sub. (3r) only if the mitigation bank has met the financial assurance requirements established by the department under sub. (3t)(g) And in accordance with the following schedule:

1. No more than 20 percent of the estimated credits after the department approves and executes the bank document.

The mitigation bank is an accounting system only and we believe releasing credits without construction of a mitigation site is risky even with a financial instrument (i.e. a performance bond). At a minimum 20 percent of the estimated credits should not be released until the mitigation site is constructed and as built plans are submitted and approved by the department.

4. No more than 85 percent of the estimated credits can be released from a restored site after the department approves of a monitoring report or after 2 years have passed.

wigreenfire.org

PO Box 1206, Rhinelander, Wisconsin 54501 | Info@wigreenfire.org | 715.203.0384



We believe this number is too generous. When wetlands are restored, it often takes at least 3 to 4 years for the wetland hydrology to reach an identifiable trend or equilibrium. This condition is because of the interactions between wetland vegetation as it develops and restored hydrology. Crediting all but 15 percent of the mitigation site could result in a negative balance for the site and complicate the regulatory process. The cumulative impacts could be significant if this trend were to continue with several mitigation bank sites. We recommend that mitigation sites should be monitored for at least 4 years before up to 85 percent of the credits are released. The bank sponsor will still be able to recover significant costs associated with bank site development at 65 percent (post construction stage). Perhaps the cost per credit could be adjusted slightly to account for a longer monitoring requirement.

Finally, we have a few minor suggestions on wording in the bill. It is important not to confuse the term mitigation bank which is an accounting system and the actual mitigation site where wetlands are restored. In most cases a mitigation bank will apply to a single mitigation site, but it may apply to any number of sites. Also it is important to note that both DNR and the U.S. Army Corps of Engineers (USACE) must approve the establishment of a mitigation bank.

In summary, we hope that you can make the changes we ask for so that we can support SB 169 that will streamline regulatory processes to assure wetland mitigation systems are developed without compromising the ultimate goal of protecting, restoring, and enhancing wetland resources in our state.

Thank you for allowing me to comment on the bill and I would be happy to answer any questions.

Wisconsin's Green Fire: Voices for Conservation (WGF) is an independent nonpartisan organization formed in 2017. 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.

wigreenfire.org

PO Box 1206, Rhinelander, Wisconsin 54501 | Info@wigreenfire.org | 715.203.0384



U.S. Army Corps
of Engineers
St. Paul District

ST. PAUL DISTRICT REGULATORY BRANCH (CORPS) COMPENSATORY MITIGATION INFORMATION



DISTRIBUTED TO THE WISCONSIN SENATE COMMITTEE ON
NATURAL RESOURCES AND ENERGY REGARDING 2019 SENATE
BILL 169

HEARING DATE: 30 APRIL 2019

The Corps appreciates the opportunity to submit testimony in response to Senate Bill 169 (Bill). Our agency has enjoyed a long history of working with the Department of Natural Resources (DNR) in Wisconsin to align our program requirements where possible. We believe alignment provides the public with a uniform set of requirements that reduces confusion, cost and complexity by offering a single method to satisfy both programs. We offer the following information to clarify how the current version of the Bill may impact stakeholders required to comply with federal and state wetland laws.

The Federal Mitigation rule¹ requires compensation follow a watershed approach: The Bill proposes a hierarchy for allowing bank debits to occur first within the CSA, then any bank within 50 miles, next the larger basin, and ultimately statewide. This hierarchy, and the composition of the CSAs proposed, does not ensure that debits will follow a watershed approach. As a result, there will be times when compensatory mitigation approved by the DNR will fail to comply with federal requirements. In such cases, an applicant would be required to seek two forms of compensation to satisfy both regulatory programs.

Compensation Service Areas are smaller than established Bank Service Areas: The Bill proposes that bank credits be preferentially debited from within a Compensation Service Area (CSA). The limits of CSAs are largely based upon geographic management units (GMUs), but also include the county boundary and a 20-mile radius from the impacted wetland. The limits of the CSAs proposed do not meet federal requirements because they allow for compensation which is not watershed based. Further, retention of the Bank Service Areas (BSAs) currently used by both agencies allows sales within a larger area compared to CSAs, a benefit to the banking community. This also provides consistency with the In-Lieu Fee program, which uses BSAs.

Credit release schedule for Developing Mitigation banks: The Bill proposes a maximum percent credit release for various milestones met by developing mitigation banks. The terminology and criteria proposed for these releases are not clear enough for our agency to determine if the end result will comply with federal requirements. Based on our reading of the Bill, we believe that the percent releases proposed, particularly the 65% and 85% releases, are unlikely to comply with federal requirements. Further, credit releases based on estimates from the sponsor alone, without agency agreement, may be inaccurate and require adjustment later in the process. Finally, both the DNR and the Corps currently approve bank credit releases to sponsors before site construction, provided that the mitigation bank instrument (MBI) is signed, and that financial assurances and site protections are secured. Federal requirements prohibit bank credit releases prior to signature of an MBI.

Ultimately, we believe that credit releases and sales which are supported by only one of the two regulatory agencies increases confusion and complexity for the public, and increases costs for applicants who will need to provide two forms of compensatory mitigation for a single project.

We thank the Committee for the opportunity to provide comment on the current version of the Bill. As you continue to consider this proposed legislation, our agency remains available to provide additional information about the Corps regulatory program. Please contact our Regulatory Program Manager for Wisconsin, Rebecca Graser, by phone at (651) 290-5728, or via email at rebecca.m.graser@usace.army.mil.

¹ 33 Code of Federal Regulations Part 332.



33 N. Dearborn., Suite 300
Chicago, IL 60602

Corporate Headquarters
6575 West Loop South, Suite 300
Bellaire, TX 77401
Main: 713.520.5400

April 30, 2019

Honorable Robert Cowles, Chair
Senate Committee on Natural Resources and Energy
118 South, State Capitol
Madison, WI 53707-7882

Re: Support for 2019 Senate Bill 169

Dear Senator Cowles,

Thank you for the opportunity to provide input at your Committee's hearing on Senate Bill 169 related to wetland mitigation banks. Resource Environmental Solutions, LLC (RES) supports Senate Bill 169. As a leading ecological solutions provider, RES believes strongly in maintaining high standards and an effective, efficient and robust set of guidelines to protect and enhance wetlands—which are the state's most critical environmental habitats. Overall, the goal of the proposed legislation is to provide greater transparency, consistency, and equivalency in the mitigation bank development process.

It is the Department of Natural Resources' responsibility of to promote a level playing field with respect to all mitigation solution providers. As such, we support the bill's revised credit release schedule and the strengthening of financial assurances requirements for all wetland mitigation banks. These are critical elements to ensure the long-term success and stewardship of wetland mitigation banks, as well as the protection of water quality and habitat for future generations.

The revisions to credit release schedule in the bill will support greater development of mitigation banks to meet the consistent demand of economic development projects. With language strengthening financial assurances, the bill addresses the performance risks associated with higher credit releases. Finally, retaining a certain percentage of the credits until the final monitoring report will ensure that all performance standards are adequately met.

Lastly, the proposed adjustment to the service areas will provide benefits to the environment by requiring mitigation bank providers to prioritize mitigation that is proximate to the location of the impacts while allowing for flexibility if the necessary credits are not available. This framework will allow economic development to proceed without undue delay from a lack of available mitigation credits, while still incentivizing the formation of new mitigation banks.

Thank you again for the opportunity to provide comments to the Committee and for your consideration of our input. If you wish to discuss any aspects of this letter, please do not hesitate to contact me (mhare@res.us or 225.772.2643).

Respectfully submitted,

Michael Hare
Director, Government Affairs, Communications, and Business Development
RES, LLC