



LOREN OLDENBURG

STATE REPRESENTATIVE • 96th ASSEMBLY DISTRICT

Assembly Bill 85

Relating to: a general permit for hydrologic restoration projects and creating a hydrologic restoration and management advisory council.

Assembly Committee on Environment

April 15, 2021

Good Morning, Chairman Kitchens & committee members. I want to thank you for your willingness to hear Assembly Bill 85.

The Assembly district that I represent consists of Crawford County, most of Vernon County, and about half of Monroe County. The rural 96th district is in the heart of the Coulee Region and is home to farms, businesses both big and small, and communities with enthusiasm for their heritage.

In about the middle of my district is the Village of Coon Valley. Coon Valley is the home of over 700 people, several small businesses, and a national landmark. The Village is close to the center of the 90,000 acre *Coon Creek Watershed*, the nation's first watershed project. Unfortunately, the Village has always experienced devastating floods that date all the way back to at least 1921, the watershed project was started in 1933. Old photographs from after the completion of the Coon Creek Watershed Project show that the conservation tactics put in place in the early 1930's helped with the flow of water and the management of soil, these natural, solution based tactics are what we need to continue implementing in areas like Coon Valley.

Although the 96th district as a whole is arguably the most beautiful district in the state, valley communities like Coon Valley, Chaseburg, Leon, Ontario, Hillsboro, La Farge, Viola, Readstown, and Gays Mills have been experiencing what are known as 100 and even 500 year floods on almost a yearly basis. Creating an easier way for permitting conservation tactics similar to those used in the 1930's to be used in wetland restoration today, is exactly what Assembly Bill 85 aims to do.

I firmly believe that Assembly Bill 85 is the start of a solution to the devastating floods Wisconsinites are facing. This bill requires the Department of Natural Resources (DNR) to issue a general permit that authorizes wetland, stream and floodplain restoration. The goal of this bill is that the streamlined permitting process will help with the health of the wetlands across the state. Currently the DNR can permit a person wishing to restore a wetland, but that activity must

also be sponsored by a federal agency. AB 85 would allow for the DNR to administer certain individual permits. The permit that is issued under this bill will be good for five years, or until the wetland restoration project is completed. The new general permit created under Assembly Bill 85 would be in place over any other permit or approval that has been previously needed for any state navigable water law, water quality law, or wetland law. Decreasing the amount of bureaucratic and citizen interaction that is needed in order to receive this wetland restoration general permit should help with the ease of the permitting process, and increase the number of wetland restoration projects that are able to be completed. The final thing that this bill does is allow for the creation of a Hydrologic Restoration and Management Advisory Council. This council will provide recommendations and generally assist the DNR with the implementation of the new general permit.

We can all agree that flooding is bad for communities and making a permitting process with a state agency easier is a good thing, but you may be wondering what the positive impacts of wetland restoration are on our invaluable resources like land and water. Projects that will be approved under this permit will return our wetlands to their natural state. By allowing wetlands to return to their natural state they can improve water quality, reduce runoff, reduce the peak of floods, increase storage at the top of a watershed, and allow floodplains to function properly.

Assembly Bill 85 promotes a holistic approach to wetland restoration and was drafted with the support of the Wisconsin Wetlands Association and the DNR. This bill will reduce the paperwork and fees associated with applying for previous hydrologic restoration permits. Wetland restoration is a solution oriented approach where we can use the land to fix the problems we are facing.



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Testimony on Assembly Bill 85 – a general permit for hydrologic restoration projects and creating a hydrologic restoration and management advisory council.

Assembly Committee on Environment

Thursday, April 15, 2021

Chairman Kitchens and members,

The consequences of flooding events around Wisconsin have cost our state in a number of ways. Not just in the form of financial loss, but also in the loss of property, homes and in some cases an individual's livelihood.

Knowing that hydrological restorative work can help mitigate, and in some instances actually prevent these major flooding events from occurring, I along with a handful of my colleagues set out to review the process taken to do some of this restorative work. Simply put, if there are individuals or groups that are looking to do good restorative work to help improve the hydrology or flow of water in an area, who is the government to stand in the way?

This streamlined mentality is the concept behind Assembly Bill 85.

AB 85 would establish a general permit through the Department of Natural Resources to help expedite the timeline for restoration projects that result in a net benefit to hydrological connections, conditions or functions. Projects of these sorts might aim to do things like: improve water quality, slow runoff, increase soil resilience, reduce flood peaks, or restore surface and groundwater interactions.

By reducing the red tape on the front end of these restorative projects, groups and individuals applying for these permits will be better able to focus their time and efforts on the task at hand and spend less time jumping over administrative hurdles.

Understanding that this new permit is likely to inspire an increase in the number of restorative projects taking place around the state, the bill also would establish an advisory council to help examine and highlight best practices – helping to ensure that lessons learned in one part of the state can be applied and utilized in communities throughout Wisconsin.

In closing, I'd like to thank the co-sponsors of this bill for their support and for the support we have received from a number of stakeholders in the development of this legislation. I believe that this bill will greatly help those looking to improve our state's hydrology and will inspire a number of restorative projects across Wisconsin.

Testimony on 2021 Assembly Bill 85

Senator Robert Cowles

Assembly Committee on Environment

April 15th, 2021

Thank you, Chairman Kitchens and Committee Members, for holding a hearing and allowing me to testify on 2021 Assembly Bill 85. This bill would require the DNR, in consultation with the Hydrologic Restoration and Management Advisory Council created by this bill, to establish a hydrologic restoration general permit.

As flooding becomes more common, many Wisconsin residents are searching for ways to decrease the number of flooding events and lessen the damage to homes, businesses, and farms. The search for these solutions has caused hydrologic restoration projects to pique the interest of many, but with no all-encompassing permitting program for these comprehensive landscape solutions to address watersheds in a more holistic manner, the hurdles to beginning a hydrologic restoration projects can be burdensome.

Assembly Bill 85 requires the Department of Natural Resources (DNR) to issue a general permit (GP) that authorizes wetland, stream, and floodplain restoration and management activities that will result in a net benefit to hydrologic connections, conditions, and functions. Projects authorized by these general permits shall be designed to return hydrology to a natural and self-regulating condition in order to:

- Reduce flood peaks;
- Increase flood resilience;
- Increase upper watershed storage;
- Slow the flow of runoff;
- Improve water quality;
- Increase soil resilience;
- Restore surface and groundwater interactions;
- Increase base flow, and;
- Increase groundwater infiltration.

The DNR may develop and has indicated their intent to create a quantification tool to determine if an activity will meet the standards highlighted above when issuing a GP. Several conditions are statutorily placed on the permit, including those that ensure projects will not injure the public's rights or the rights of any riparian owner, and certain other conditions may be developed by the Department.

With all of the broad language above, I thought it'd be helpful to briefly talk about what these projects look like in practice. One of the most well-known examples of hydrologic restoration-type activities in our state in my mind is the Little Plover River project near Stevens Point which has shown numerous successes since it started despite progress still being sought. While I'm not a hydrologic restoration expert, from my discussions in the past two-years with stakeholders, these projects generally could include re-meandering streams, widening or narrowing stream channels, restoring wetlands, flattening or adding more height to stream banks, providing larger clearances around obstructions like culverts or bridges, creating more stable stream banks, and more. In other words, projects can be quite different, and each will be specific to that watershed's needs.

Given that general permits are less intensive to receive than individual permits, the comprehensive landscape restoration projects through general permits under Assembly Bill 85 would reduce the regulatory complexity for the good actors looking to complete these voluntary projects. In other words, what may be one individual permit or several general or individual permits or other approvals across multiple statutory chapters under current law becomes one general permit under this bill if the conditions created by AB 85 are met. Encompassing all of the necessary statutory provisions, the single GP would be issued in lieu of multiple other permits or approvals. This one-stop shop reduces uncertainty for applicants by eliminating some of the paperwork and financial burden required under current law and practice.

While many of our districts have been faced with flooding events in the past few years, my district in Northeast Wisconsin also faces problems with flooding on the East River in Green Bay, Wolf River in Shiocton, and Duck Creek in Freedom. These communities have been looking for solutions for years, and sometimes decades to address their short and long-term concerns.

We're here today to offer another alternative to addressing flooding concerns in the long-run for localities in the 2nd Senate District and throughout the state by simplifying the permitting process for hydrologic restoration projects that are a net benefit to waterbodies, watersheds, and communities.

Better preparation for flooding events today can help to prevent millions of dollars in damages and hardship for hundreds, if not thousands of residents, small businesses, farmers, and industry tomorrow. This legislation simply ensures that, as a state, we're promoting preparedness through conservation while still ensuring that each project is in property owners', our community's, and our environment's best interest.

Assembly Bill 85 also creates a Hydrologic Restoration and Management Advisory Council with members of local governments and relevant state and federal agencies, tribal communities, and academic, nongovernmental and private sector partners. The Council will provide input to the Department on the new general permit, other policies and programs related to hydrologic restoration, ways to increase intergovernmental cooperation, and more. As our state continues to experience flooding events, having this set of experts convened will ensure the conversation on how to reduce the impacts of floods does not stop.

Overall, promoting hydrologic restorations will set our state on a course that will protect resident's safety, preserve our community's infrastructure, and improve environmental quality. This legislation was drafted with the support of the Wisconsin Wetlands Association and in consultation with the DNR, and has gained the support of local governments, conservation groups, and the Wisconsin Realtors Association. 2021 Assembly Bill 85 is a reintroduction 2019 Assembly Bill 701 and Senate Bill 631, as amended, which passed the Assembly on a voice vote and the Senate Committee with a unanimous vote.



SENATOR JANET BEWLEY WISCONSIN STATE SENATE

Assembly Committee on Environment

Public Hearing on Assembly Bill 85 April 15, 2021

Thank you, Chairman Kitchens and Committee Members, for providing me with the opportunity to speak in support of 2021 Senate Bill 91 which would establish a general permit for hydrologic restoration projects and create a hydrologic restoration and management advisory council. I also want to thank Senator Cowles and Representative Oldenburg for spearheading this effort both this session and last.

As some of you may know, the district I represent in Northern Wisconsin has been hit hard by repeated flooding. The cost is high, in terms of personal loss, economic disruption and environmental damage. As you will hear, this bill is a forward-looking effort to address all of these issues. I was thrilled when Senator Cowles approached me about working on this bill with him and proud to be the second author of this bipartisan proposal.

Others will provide specific details on the many ways this bill will benefit the state. I want to use my time with you to both recognize and encourage legislation like this that benefits the environment, lessens the burden on emergency responders and saves scarce community resources. This is one of those win-win solutions and I hope the Committee will send it to the floor soon.



25th Senate District

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Assembly Committee on Environment

2021 Assembly Bill 85

Hydrologic Restoration Projects and Management Advisory Council April 15, 2021

Good morning Chair Kitchens and members of the Committee. My name is James Brodzeller, and I am the Wetland Program Coordinator with the Wisconsin Department of Natural Resources. Thank you for the opportunity to provide testimony in support of Assembly Bill 85 (AB 85).

This bill highlights the importance of applying the best science to restorations of wetlands, streams, and floodplains, especially in these times where we are seeing more frequent flooding and more extreme rain events. Restoring wetlands in flood prone areas protects infrastructure investments, businesses and farms from extreme weather events, builds climate change resiliency, and can benefit all Wisconsin residents. Current recommendations from the scientific community surrounding stream, river and wetland ecology support the holistic restoration approach being proposed.

The Department of Natural Resources welcomes collaboration with experts and stakeholders on watershed management initiatives. The department would value the hydrologic restoration and management advisory council's technical input and recommendations regarding wetland, stream, and floodplain restoration and management activities that will result in a net improvement in hydrologic connections, conditions, and functions. The Wisconsin 2019 Act 157 Flood Risk Reduction Pilot Project and potential demonstration projects in Fancy Creek, Richland County and Yankee Hollow, Grant County, can provide examples of large-scale hydrologic improvements.

The new general permit can be another tool to assist statewide flood resiliency efforts and to promote the best science in wetland restoration efforts, which is why similar language is included in the Governor's proposed budget. This bill dually serves restoring the state's water resources and floodplain environments, and affords regulatory efficiency for communities to improve safeguards from loss of life, health and property due to flooding.

On behalf of the Department of Natural Resources, I would like to thank you for your time today. I would be happy to answer any questions you may have.



Wisconsin Wetlands Association Testimony on Assembly Bill 85

Jennifer Western Hauser, Policy Liaison

Thank you for the opportunity to testify in support of Assembly Bill (AB) 85. We appreciate the leadership of Representative Oldenburg and Senator Cowles in crafting and advocating for this bill. Last session, identical legislation passed unanimously in the Assembly Committee on Environment, Senate Committee on Natural Resources & Energy, and through the full Assembly. It did not have a chance to be taken up by the Senate before the session ended. Like last year, 2021 AB 85 has the broad, bipartisan support of 29 cosponsors.

The story of AB 85 begins with understanding that degraded hydrologic conditions intensify water related problems facing our communities, like flooding, water quality, and erosion. It follows that repairing degraded hydrology is fundamentally important to addressing these problems.

This bill facilitates and encourages hydrologic restoration, which reestablishes the landscape's natural capacity to hold and slow water. The restoration work in a specific location depends on the history of land use and alteration over time, but general involves reestablishing upper watershed wetlands to capture runoff and snowmelt, and reconnecting floodplains to store water and reduce erosion.

Many Wisconsin communities are interested in exploring hydrologic restoration and AB 85 helps in two ways.

General Permit for Hydrologic Restoration

AB 85 creates a general permit to facilitate wetland restoration and floodplain reconnection projects that improve hydrologic conditions, connections, and functions. Wisconsin has general permits to cover stream and wetland restoration and management activities that enhance fish and wildlife habitat, but none yet focus on restoring hydrology. Identifying a suite of hydrologic restoration practices that can be approved under a general permit will help accelerate the types of wetland, stream, and floodplain restoration activities needed to address the problems facing our communities.

The proposed general permit also offers an opportunity to better align state and federal permit policies for hydrologic restoration work because the proposed general permit is modeled after portions of Nationwide Permit 27. Further coordination with the U.S. Army Corps of Engineers in developing the permit will help achieve these efficiencies.

While general permits can simplify the review and approval process for applicants, they are by no means a blank check. The bill maintains all the existing safeguards currently in effect to ensure eligible projects will not injure public rights or interests in navigable waters, adversely affect adjacent or downstream landowners, or harm aquatic resources. The bill also maintains all existing local authorities.

Hydrologic Restoration Advisory Council

The bill also creates a Hydrologic Restoration Advisory Council of technical experts to study and recommend ways to better integrate restoration of upper watershed wetlands, and floodplains into state and local efforts to improve water quality and reduce flooding.

While the bill directs the DNR to convene the Council, it correctly identifies that collaboration between multiple federal and state agencies, local governments, restoration practitioners, and other experts is needed to develop and help implement shared strategies to restore hydrology at a meaningful scale and where it is needed most.

An interagency, interdisciplinary approach is needed because many agencies, organizations, and private businesses, are engaged in water management work. At the state level alone, DNR, DATCP, DOT, WEM, and DOA all run programs that seek to improve water management. But none have dedicated programs focused on hydrologic restoration and some may not yet have the capacity to identify and implement hydrologic restoration priorities. The Council will help them, and other partners address these needs.

Who will benefit from AB 85?

As proposed, the bill enjoys support from a broad array of stakeholders. That's because the policy objectives and provisions of this bill will benefit:

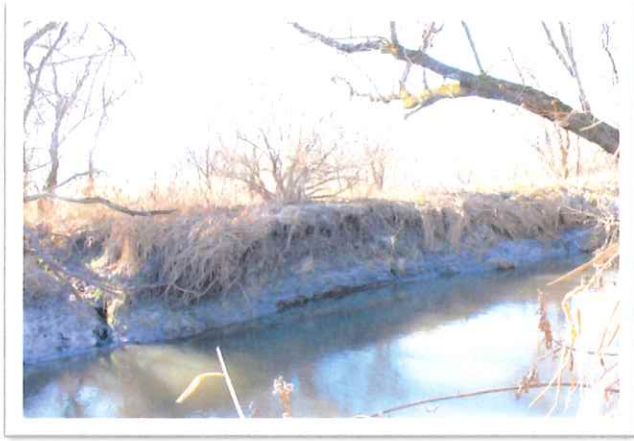
- **Wisconsin Communities** looking for cost effective strategies to help them reduce flood risks and damages, protect drinking water, prevent soil loss and erosion, and enhance fish and wildlife habitat.
- **Farmers and other private landowners** looking to implement voluntary practices to improve water management, soil conservation, and watershed health.
- **Restoration practitioners** looking to help landowners, municipalities and other clients implement upstream solutions to solve downstream problems.
- **Federal/state/local land and water program managers** charged with the difficult tasks of reducing flooding, improving water quality, and protecting people, private property, and public infrastructure from harm.
- **Policy makers** will also have access to the council to help explore cost-effective ways to allocate the state's limited restoration resources in the most beneficial ways.

While many actions are needed to promote and encourage a hydrologic approach to restoring Wisconsin's land and waters, this bill represents a positive first step in opening opportunities to get more hydrologic restoration happening in Wisconsin.

Jennifer Western Hauser, Policy Liaison

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Upper left: Channelized creek | Upper Right: Aerial view of meandering floodplain
Middle left: Head cut erosion | Middle right: Wetland drainage erosion
Lower Left: Upper watershed, low energy creek | Lower right: Restored stream and floodplain



April 11, 2021

Assembly Committee on Environment
Representative Kitchens, Chair
Representative Tusler, Vice Chair

RE: Wisconsin Trout Unlimited support for AB-85: Hydrologic Restoration
Due to concerns relating to the COVID19 Pandemic, I am unable to testify in person at this time, however, I do want to share our organizations support for AB 85.

Members of the Assembly Committee on Environment:

My name is Mike Kuhr, I live in Monona, where I'm a husband, father, small business owner, and volunteer for Wisconsin Trout Unlimited. I'm currently serving as our State Council Chair. Trout Unlimited is our Nation's leading cold water conservation organization. Here in Wisconsin, we're home to over 5,800 members and 21 local chapters dedicated to ensuring future generations' access to cold, clean, fishable water.

Our members value the recreational opportunities that Wisconsin's woods and waters provide. We understand that wetlands and healthy watersheds are vital to these pursuits. We take a watershed approach to stream restoration: protecting the headwaters, and reconnecting them to areas we restore downstream.

Wisconsin Trout Unlimited is supportive of AB 85 and its companion, SB 91. We are in favor of the creation of a hydrologic and restoration management and advisory council. We are also supportive of efforts to make these types of restoration projects less burdensome from a regulatory standpoint. Our organization shares many of the same goals that are stated in the bill: improve water quality, reduce runoff and soil loss, increase groundwater infiltration, improve connectivity, and increase flood resiliency.

Wisconsin TU recognizes the importance of functioning wetlands on our landscape. We're one of the founding organizations of the Sporting Coalition For Wetlands. Many of our coalition members have already expressed their support for AB 85. We are here to do the same.

We'd like to thank the bills authors and cosponsors for your work in finding solutions to make hydrologic restoration projects a priority in our State. We believe AB 85 will have a positive impact on our watersheds, our fish and wildlife, and our communities.

Thank you for your time and for your commitment to public service.

Sincerely,
Mike Kuhr
Wisconsin Trout Unlimited
State Council Chair
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The Wisconsin Council of Trout Unlimited ("WITU") is a 501(c) 3 non-profit organization which consists of approximately 5,800 volunteer members in 21 chapters in Wisconsin working to ensure that future generations have access to cold, clean, fishable water. In a typical year, WITU and its Chapters report over 50,000 volunteer hours, working on conservation projects, education and outreach events, and operating Service Partnership programs to support veterans and first responders.

Support of SB 91/AB 85 General Permit for hydrologic restoration and creating a hydrologic restoration and management advisory council.

Dear State Senators/State Representatives:

My name is Larry Meyer, and I am a member of the Wisconsin Trappers Association. The Wisconsin Trappers Association fully support SB 91/AB 85 authorizing a general permit for hydrologic restoration and creating a hydrologic restoration and management advisory council. As trappers we realized the problems of flooding in Wisconsin and its effect on Wisconsin wildlife, especially furbearers as their young are drowned in the spring by flash flooding, and the sediment and pollution that is washed into wet areas becoming dead zones for aquatic life. We also realize that flooding problems in Wisconsin could get much worse because of changing farm practices, more concrete and asphalt are laid down and the filling in of our small wetlands near our cities.

Preventing flood problems in Wisconsin is extremely complicated matter. It requires a lot of preparation from different organizations. In Jefferson County we have three rivers that come together east of Fort Atkinson (Scuppernong, Bark and Rock Rivers), when heavy rains come a couple thousand acres of farmland is flooded, sending sediment and fertilizers downstream and depositing them into Lake Koshkonong and putting all this farmland out of production. This is a good example of why we need a hydrologic restoration and management council to tackle these kinds of problems and to give sound advice.

So please pass SB 91/AB 85, as Wisconsin needs this.

Larry Meyer-representative for the Wisconsin Trappers Association

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