



## 2005 ASSEMBLY BILL 1043

February 20, 2006 – Introduced by Representatives BIES, ALBERS, GUNDERSON, F. LASEE, MONTGOMERY, MUSSER and OWENS, cosponsored by Senators A. LASEE, KANAVAS, STEPP and ZIEN. Referred to Committee on Natural Resources.

1     **AN ACT** *to create* 59.691, 60.625, 61.352, 62.232 and 709.03 (form) C. 28. of the  
2             statutes; **relating to:** issuing of building permits by cities, village, towns, and  
3             counties for building projects on land that may have an adverse impact on  
4             certain wetlands or certain poorly drained areas and making disclosures  
5             regarding certain real property that contains wetland areas.

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### ***Analysis by the Legislative Reference Bureau***

Under this bill, a city, village, town or county (local governmental unit) may not issue a building permit without first determining whether the project will have an adverse affect on certain wetlands (identified wetlands) or potential wetlands. Identified wetlands covered by the provisions are those that have been mapped by the Department of Natural Resources (DNR) on its final inventory map of wetlands, wetlands that have been identified by DNR as being a “nonfederal wetland,” and wetlands that are in an “area of special natural resource interest.” A “nonfederal wetland” is one that has been determined to be a nonnavigable and isolated wetland located entirely in the state under a 2001 United States Supreme Court decision but that is protected under state law from being filled unless the state has issued a water quality certification for the wetland certifying that the filling complies with all applicable water quality standards promulgated by DNR. “Areas of special natural resource interest” are areas that have significant ecological, cultural, aesthetic, educational, recreational, or scientific values, and include such waters as Lake Michigan, Lake Superior, the Mississippi River, the Lower Wisconsin State

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Riverway, trout streams, and rivers designated as wild under state or federal law. These areas also include state forests, state parks, state trails, and areas that contain threatened or endangered species. The bill defines a “poorly drained area” to be one that is identified on a soil survey map prepared by the federal Natural Resources Conservation Service, formerly called the Soil Conservation Service.

Under the bill, if the local governmental unit or DNR determines that the building project does have an adverse impact on an identified wetland, the local governmental unit may not take any action to modify or revoke the permit. These prohibitions on the issuing, modifying, and revoking building permits by local governmental units do not apply if the adverse activity to the wetland or poorly drained area has been approved by DNR or by the U.S. Army Corps of Engineers.

Current law generally requires a person who wishes to sell real property to provide within ten days after acceptance of an offer to purchase the property a real estate disclosure report to the buyer of the property. The report must list any condition that would have a significantly adverse effect on the value of the property. After receiving the report, the buyer, before the applicable deadline, may rescind the contract of sale if the report discloses such a condition. This bill requires a seller of real property that contains identified wetland areas to include this fact as in the real estate disclosure report.

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

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

1           **SECTION 1.** 59.691 of the statutes is created to read:

2           **59.691 Building affecting identified wetlands.** (1) In this section:

3           (a) “Area of special natural resource interest” has the meaning given in s.

4           281.37 (1) (a).

5           (b) “Department” means the department of natural resources.

6           (c) “Identified wetland” means any of the following:

7           1. A wetland identified on a final wetlands inventory map prepared by the  
8           department under s. 23.32.

9           2. A wetland that is identified as a nonfederal wetland under s. 281.36 (1m).

10          3. A wetland that is part of an area of special natural resource interest.

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1 (d) "Poorly drained area" means an area as being poorly drained that is  
2 identified on a soil survey map prepared by the federal Natural Resources  
3 Conservation Service.

4 (e) "Wetland" has the meaning given in s. 23.32 (1).

5 **(2)** (a) A county may not issue a building permit for a building project without  
6 first determining that the project will not have an adverse impact on an identified  
7 wetland. Notwithstanding the requirements of any ordinance enacted under s. 59.69  
8 (4) or 59.692, if the county or the department subsequently determines after the  
9 building permit is issued that the building project does have an adverse impact on  
10 an identified wetland, the county may not take any action to modify or revoke the  
11 permit.

12 (b) Paragraph (a) does not apply if the adverse impact to an identified wetland  
13 or poorly drained area has been authorized by the department or the U.S. Army  
14 Corps of Engineers.

15 **SECTION 2.** 60.625 of the statutes is created to read:

16 **60.625 Building affecting identified wetlands.** (1) In this section:

17 (a) "Area of special natural resource interest" has the meaning given in s.  
18 281.37 (1) (a).

19 (b) "Department" means the department of natural resources.

20 (c) "Identified wetland" has the meaning given in s. 59.691 (1) (c).

21 (d) "Poorly drained area" means an area as being poorly drained that is  
22 identified on a soil survey map prepared by the federal Natural Resources  
23 Conservation Service.

24 (e) "Wetland" has the meaning given in s. 23.32 (1).

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1           **(2)** (a) A town may not issue a building permit for a building project without  
2 first determining that the project will not have an adverse impact on an identified  
3 wetland. Notwithstanding the requirements of any ordinance enacted under s. 60.61  
4 (2) or 60.62 (1), if the town or the department subsequently determines after the  
5 building permit is issued that the project has an adverse impact on an identified  
6 wetland, the town may not take any action to modify or revoke the permit.

7           (b) Paragraph (a) does not apply if the adverse impact to an identified wetland  
8 or poorly drained area has been authorized by the department or the U.S. Army  
9 Corps of Engineers.

10           **SECTION 3.** 61.352 of the statutes is created to read:

11           **61.352 Building affecting identified wetlands. (1)** In this section:

12           (a) “Area of special natural resource interest” has the meaning given in s.  
13 281.37 (1) (a).

14           (b) “Department” means the department of natural resources.

15           (c) “Identified wetland” has the meaning given in s. 59.691 (1) (c).

16           (d) “Poorly drained area” means an area as being poorly drained that is  
17 identified on a soil survey map prepared by the federal Natural Resources  
18 Conservation Service.

19           (e) “Wetland” has the meaning given in s. 23.32 (1).

20           **(2)** (a) A village may not issue a building permit for a building project without  
21 first determining that the project will not have an adverse impact on an identified  
22 wetland. Notwithstanding the requirements of any ordinance enacted under s. 61.35  
23 or 61.351, if the village or the department subsequently determines that the project  
24 has an adverse impact on an identified wetland, the village may not take any action  
25 to modify or revoke the building permit.

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1 (b) Paragraph (a) does not apply if the adverse impact to an identified wetland  
2 or poorly drained area has been authorized by the department or the U.S. Army  
3 Corps of Engineers.

4 **SECTION 4.** 62.232 of the statutes is created to read:

5 **62.232 Building affecting identified wetlands. (1)** In this section:

6 (a) "Area of special natural resource interest" has the meaning given in s.  
7 281.37 (1) (a).

8 (b) "Department" means the department of natural resources.

9 (c) "Identified wetland" has the meaning given in s. 59.691 (1) (c).

10 (d) "Poorly drained area" means an area as being poorly drained that is  
11 identified on a soil survey map prepared by the federal Natural Resources  
12 Conservation Service.

13 (e) "Wetland" has the meaning given in s. 23.32 (1).

14 **(2)** (a) A city may not issue a building permit for a building project without first  
15 determining that the project will not have an adverse impact on an identified  
16 wetland. Notwithstanding the requirements of any ordinance enacted under s. 62.23  
17 (7) or 62.231, if the city or the department subsequently determines that the project  
18 has an adverse impact on an identified wetland, the city may not take any action to  
19 modify or revoke the building permit.

20 (b) Paragraph (a) does not apply if the adverse impact to an identified wetland  
21 or poorly drained area has been authorized by the department or the U.S. Army  
22 Corps of Engineers.

23 **SECTION 5.** 709.03 (form) C. 28. of the statutes is created to read:

24 **709.03** (form) C. 28.

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1 C. 28. I am aware that the property, or portion of the ....  
2 property, being transferred to the buyer con-  
3 tains a wetland that has been identified by  
4 the department of natural resources.

5 **SECTION 6. Initial applicability.**

6 (1) BUILDING PERMITS. The treatment of sections 59.691, 60.625, 61.352, and  
7 62.232 of the statutes first applies to applications for building permits that are  
8 submitted on the effective date of this subsection.

9 (2) REAL ESTATE CONDITION REPORTS. The treatment of section 709.03 (form) C.  
10 28. of the statutes first applies to real estate condition reports that are furnished on  
11 the effective date of this subsection.

12 **SECTION 7. Effective date.**

13 (1) This act takes effect on the first day of the 7th month beginning after  
14 publication.

15 (END)