



State of Wisconsin
2025 - 2026 LEGISLATURE

LRB-0468/1
EHS:amn&wlj

2025 BILL

1 **AN ACT** *to amend* 15.347 (22) (b) 9., 23.321 (5) (a) and 23.321 (5) (b) 1. (intro.);
2 **to create** 23.321 (2d) of the statutes; **relating to:** a wetland assured
3 delineation program, extending the time limit for emergency rule procedures,
4 providing an exemption from emergency rule procedures, and granting rule-
5 making authority.

Analysis by the Legislative Reference Bureau

This bill directs the Department of Natural Resources to establish a wetland assured delineation program.

Current law generally prohibits the discharge of dredged or fill material into a wetland unless a person is issued a wetland general permit or individual permit by DNR. Under current law, a person who owns or leases land may use the following methods to delineate the boundaries of a wetland in a manner recognized by DNR: 1) the person may request that DNR provide a wetland identification to determine if wetlands are located on a parcel, or part of a parcel, that does not exceed five acres; 2) the person may have a third person prepare a wetland delineation and request that DNR confirm the boundaries of the wetland as delineated by that third person, based on DNR's on-site inspection of the land; or 3) with respect to nonfederal wetlands, the person may have a qualified third person perform a

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wetland identification delineating the boundaries of a wetland and request DNR to confirm those boundaries, not based upon an on-site inspection of the land but rather based on a review of maps, aerial photographs, surveys, wetland delineations, and hydrophytic soil conditions. Under current law, nonfederal wetlands are wetlands that are not under the jurisdiction of the federal government, and a qualified third person is an individual who has completed basic and advanced wetland training and has a minimum of one year of field experience in wetland delineation.

The bill adds a wetland assured delineation program as a fourth method for delineating the boundaries of a wetland in a manner recognized by DNR. Under the program, a person may apply to DNR to be certified as an assured delineator. A wetland delineation prepared by an assured delineator has the same effect as a wetland identification or confirmation prepared by DNR, and a wetland delineation prepared by an assured delineator need not be confirmed by DNR. Under the bill, DNR must charge a \$900 annual certification fee to an assured delineator, must require a report of each wetland delineation an assured delineator prepares, and may charge a filing fee not to exceed \$20 for each report submitted.

The bill provides that a wetland delineation prepared by an assured delineator is effective for five years from the date upon which the wetland delineation report is submitted to DNR. This matches the general effective period for wetland identifications and confirmations of wetlands provided by DNR under current law. In an exception under current law, a wetland identification or confirmation provided by DNR is effective for 15 years from the date provided by DNR if the wetland is a nonfederal wetland and the parcel of land is subject to a storm water management zoning ordinance or a storm water discharge permit. The bill adds to this exception a wetland delineation by an assured delineator that meets these conditions, and changes this exception to be effective for 15 years from the date the U.S. army corps of engineers makes a determination regarding whether the wetland is subject to federal jurisdiction on the basis of the wetland identification, confirmation, or delineation.

The bill requires DNR to establish application and qualification requirements for assured delineator certification but includes some minimum requirements, such as certain educational degrees, specific amounts of full-time professional field experience in wetland delineation based on educational degree, and completion of a wetland delineation training course based on the U.S. Army Corps of Engineers wetland delineation manual. The bill also requires DNR to charge an application processing fee of \$500. The bill provides that an applicant whose application is not approved may reapply and requires DNR to accept applications no less than annually and at least during the period beginning September 15 and ending November 30 for applicants who wish to be certified beginning on March 15 of the next calendar year.

The bill requires DNR to review the performance of assured delineators on a recurring basis and authorizes DNR to perform in-field audits of specific wetland

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delineations submitted by assured delineators in the 12 months preceding the beginning of the audit. The bill allows DNR to investigate any person's complaint that an assured delineator may have failed to accurately identify wetlands on a property for which a report was submitted in the 12 months preceding the date of the complaint. If the data gathered in the investigation show substantial evidence that a wetland delineation was conducted in a manner not supported by the wetland delineation manual published by the U.S. Army Corps of Engineers, the bill requires DNR to so notify the assured delineator and require the assured delineator to correct the report. The bill provides that any deadline for DNR action with respect to a wetland general or individual permit is tolled on the date of that notification until the assured delineator submits a corrected report.

The bill prohibits DNR from using data gathered in the investigation to modify a wetland permit or exemption decision solely on the basis of that data. The bill allows DNR to use data gathered in the investigation to evaluate an assured delineator's compliance with assured delineation program requirements.

The bill allows DNR to revoke a person's certification as an assured delineator if it finds the person did any of a list of actions, for example knowingly falsifying or misrepresenting a wetland boundary. Under the bill, a person whose assured delineator certification has been revoked is entitled to a contested case hearing.

Under the bill, DNR must consider a person who is approved or certified as an assured delineator under an existing pilot program as certified as an assured delineator under the program created in the bill.

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

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

1 **SECTION 1.** 15.347 (22) (b) 9. of the statutes is amended to read:

2 15.347 **(22)** (b) 9. ~~The possibility of a professional, whose wetland delineation~~
3 ~~work is assured under the department of natural resources' wetland delineation~~
4 ~~professional assurance initiative, performing a wetland delineation confirmation~~
5 requirements for certification as an assured delineator and other matters related to
6 the wetland assured delineator program under s. 23.321 ~~on behalf of the~~
7 ~~department~~ (2d).

8 **SECTION 2.** 23.321 (2d) of the statutes is created to read:

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1 23.321 (2d) WETLAND ASSURED DELINEATION PROGRAM. (a) *Definition*. In
2 this subsection, “assured delineator” means a professional wetland delineator who
3 is certified by the department under par. (c).

4 (b) *Program*. 1. The department shall establish a wetland assured
5 delineation program under which individuals may apply to the department to be
6 certified as assured delineators. Under the program, the department shall ensure
7 that assured delineators delineate wetlands consistent with the wetlands
8 delineation manual described under s. 281.36 (2m). The department may
9 promulgate rules to implement this subsection.

10 2. Under the program, a wetland delineation prepared by an assured
11 delineator has the same effect as a wetland identification or confirmation prepared
12 by the department under sub. (2) (b) to (d). A wetland delineation performed by an
13 assured delineator is not required to be confirmed by the department under sub. (2)
14 (c) or (d).

15 3. The department shall require an assured delineator to submit to the
16 department a report of each wetland delineation the assured delineator seeks to
17 have accepted as an assured wetland delineation. The assured delineator shall
18 include in the report all items required in applicable joint guidance from the U.S.
19 army corps of engineers and the department. To be accepted as an assured wetland
20 delineation, the assured delineator shall submit the report under this subdivision
21 no later than March 15, unless an extension is approved by the department. The
22 department shall grant an extension request, except that a report under this
23 subdivision may receive only one extension, which may not extend more than 12

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1 months from the date the extension is granted. Any wetland delineation report or
2 other information related to the wetland delineation that is not submitted to the
3 department may not be considered an assured wetland delineation.

4 4. Under the program, assured delineators shall conduct assured wetland
5 delineations during the growing season. The growing season shall be determined
6 in accordance with the wetlands delineation manual described under s. 281.36 (2m)
7 and applicable supplements.

8 (c) *Application.* 1. A professional wetland delineator seeking to become
9 certified as an assured delineator shall submit a complete application and shall
10 follow the application procedures specified by the department.

11 2. The department shall, in consultation with the wetland study council,
12 determine what must be submitted by an applicant to constitute a complete
13 application. Once established, the department shall make those requirements
14 available on the department's website. The department may not determine an
15 application to be complete without submission of the application fee under par. (e)
16 1. a.

17 3. The department shall establish application and qualification requirements
18 for certification as an assured delineator, including at least all of the following:

19 a. An associate degree with at least 8 years of full-time professional field
20 experience in wetland delineation.

21 ag. A bachelor's degree with at least 5 years of full-time professional field
22 experience in wetland delineation.

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1 ar. A master's degree or doctorate degree with at least 3 years of full-time
2 professional field experience in wetland delineation.

3 b. Completion of minimum educational requirements or requirements for
4 commensurate experience, as determined by the department in consultation with
5 the wetland study council.

6 c. Completion of a wetland delineation training course based on the wetlands
7 delineation manual described under s. 281.36 (2m) and applicable regional
8 supplements for this state.

9 d. Submittal of at least 6 representative wetland delineation reports
10 completed within the 2 growing seasons preceding the date on which the
11 application was submitted.

12 4. Status as an assured delineator is valid unless revoked under par. (d).

13 5. If the department determines that the applicant does not meet the
14 minimum qualifications to be approved as an assured delineator, the applicant may
15 reapply in a future application process.

16 6. The department shall accept applications no less than annually and at least
17 during the period beginning September 15 and ending November 30 for applicants
18 who wish to be certified beginning on March 15 of the next calendar year.

19 7. The department may consider previous conduct and performance in scoring
20 a subsequent application for an applicant whose prior certification under the
21 program was revoked under par. (d). The department may not approve an
22 application if the applicant's certification was revoked within 3 years of the
23 application date.

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1 (d) *Performance review, auditing, and revocation.* 1. The department shall
2 review the performance of assured delineators on a recurring basis to ensure the
3 program standards and expectations are being met. As part of this review process,
4 the department may perform in-field audits of specific wetland delineations that
5 assured delineators have submitted in the 12 months preceding the beginning of
6 the audit.

7 2. Upon a complaint submitted by any person to the department that an
8 assured delineator may have failed to accurately identify wetlands on a property for
9 which a report under par. (b) 3. was submitted in the 12 months preceding the date
10 of the complaint, the department may investigate and gather information to
11 determine if the report fails to accurately identify the presence and boundaries of a
12 wetland on the property.

13 3. a. If data gathered under subd. 1. or 2. show substantial evidence that a
14 wetland delineation was conducted in a manner that is not supported by the
15 wetlands delineation manual described under s. 281.36 (2m) and applicable
16 regional supplements for this state in effect at the time the field work was
17 completed, the department shall so notify the assured delineator and require the
18 assured delineator to correct the report under par. (b) 3. Any deadline for
19 department action with respect to a wetland general or individual permit or
20 exemption under s. 281.36 is tolled on the date of that notification until the assured
21 delineator corrects and resubmits the report under par. (b) 3.

22 b. The department may not modify a permit or exemption decision under s.
23 281.36 on the basis of data gathered under subd. 1. or 2.

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1 c. The department may use the data gathered under subd. 1. or 2. to evaluate
2 an assured delineator's compliance with program requirements under this
3 subsection.

4 4. The department shall give notice to an assured delineator if the
5 department conducts an audit under subd. 1. or an investigation under subd. 2.

6 5. The department may revoke an individual's certification as an assured
7 delineator by providing to the individual written notice of the revocation and the
8 reason for the revocation if it finds the individual did any of the following, taking
9 into consideration the type and frequency of infractions:

10 a. Knowingly took part in an activity that results in the violation of state or
11 federal wetland or waterway laws or regulations.

12 b. Knowingly falsified or misrepresented a wetland boundary.

13 c. Failed to delineate all wetland resources within a wetland delineation study
14 area.

15 d. Misrepresented another's work as his or her own.

16 e. Failed to apply standard wetland delineation protocols in line with the
17 wetlands delineation manual described under s. 281.36 (2m) and applicable
18 regional supplements for this state.

19 f. Failed to meet continuing education expectations as set by the department.

20 g. Failed to submit an average of at least 3 delineation reports annually over
21 the prior 3 years, unless an exception is made by the department for extenuating
22 circumstances.

23 6. Any individual who receives notice under subd. 5. that his or her

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1 certification as an assured delineator has been revoked is entitled to a contested
2 case hearing under ch. 227 if the individual requests the hearing within 30 days
3 after receiving the notice.

4 7. An individual whose certification as an assured delineator is revoked is not
5 precluded from delineating wetlands under sub. (2) (c) or (d).

6 (e) *Fees.* 1. Except as provided under subd. 3., the department shall charge
7 the following fees:

8 a. To an applicant under par. (c), an application processing fee of \$500 to be
9 submitted with an application.

10 b. To an assured delineator, an annual certification fee of \$900.

11 2. Except as provided under subd. 3., the department may charge an assured
12 delineator a filing fee of \$20 for each report submitted under par. (b) 3.

13 3. The department may promulgate rules to increase the fees specified in
14 subds. 1. and 2. only if the increase is necessary to meet the costs of the department
15 in performing the activities for which the fee is charged.

16 **SECTION 3.** 23.321 (5) (a) of the statutes is amended to read:

17 23.321 (5) (a) Except as provided in par. (b), a wetland identification provided
18 by the department under sub. (2) (b) and a wetland confirmation provided by the
19 department under sub. (2) (c) remain effective for 5 years from the date provided by
20 the department. Except as provided in par. (b), a wetland delineation prepared by
21 an assured delineator under sub. (2d) remains effective for 5 years from the date
22 upon which the wetland delineation report under sub. (2d) (b) 3. is submitted to the
23 department.

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SECTION 4. 23.321 (5) (b) 1. (intro.) of the statutes is amended to read:

23.321 (5) (b) 1. (intro.) A wetland identification provided by the department under sub. (2) (b) ~~and~~, a wetland confirmation provided by the department under sub. (2) (c) or (d), and a wetland delineation prepared by an assured delineator under sub. (2d) remain effective for 15 years from the date ~~provided by the department that the U.S. army corps of engineers makes a determination regarding whether the wetland is subject to federal jurisdiction on the basis of the wetland identification, confirmation, or delineation~~ if all of the following conditions are met:

SECTION 5. Nonstatutory provisions.

(1) (a) The department of natural resources shall consider an individual who is approved or certified as an assured delineator under a pilot program in effect on the effective date of this subsection to be certified as an assured delineator under s. 23.321 (2d).

(b) The department of natural resources shall consult with the wetland study council on the department's progress in implementing this act's requirements and on all matters in this act requiring consultation with the wetland study council no later than the first day of the 7th month beginning after publication.

(2) Using the procedure under s. 227.24, the department of natural resources may promulgate rules authorized under s. 23.321 (2d) (b) 1. for the period before the effective date of any permanent rules promulgated under s. 23.321 (2d) (b) 1. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until January 1, 2027, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to provide evidence that promulgating a rule

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1 under this subsection as an emergency rule is necessary for the preservation of the
2 public peace, health, safety, or welfare and is not required to provide a finding of
3 emergency for a rule promulgated under this subsection.

4 **SECTION 6. Initial applicability.**

5 (1) (a) Except as provided in par. (b), this act first applies to an individual who
6 submits an application under s. 23.321 (2d) (c) on the effective date of this
7 subsection.

8 (b) Except for the initial application requirements under s. 23.321 (2d) (c), the
9 remainder of this act first applies to individuals described under SECTION 5 (1) (a)
10 of this act on the effective date of this subsection.

11 (END)