



THOMAS WEATHERSTON

STATE REPRESENTATIVE • 62ND ASSEMBLY DISTRICT

Testimony on AB 506 before the Committee on State Affairs and Government Operations December 12, 2013

Chairman Weininger and members, thank you for holding this hearing on AB 506, the Survey Modernization Act.

This bill makes a variety of changes meant to bring the land surveying profession into the 21st Century. The bill has been in the works for several sessions now and I think we are finally in a position to say that just about all the problems have been addressed. Because of the previous versions, there has been some confusion about what is or isn't in this bill.

The first change the bill makes, and which actually accounts for most of the bill's 56 pages, is to simply change the term "Register Land Surveyor" to "Professional Land Surveyor" wherever the term appears in the statutes – which turns out to be in quite a number of places. This change is to adopt the most common term used in this country to refer to the profession.

Secondly the bill makes several changes to Chapter 236, the platting statute – again aimed at bringing the law into the 21st Century. These changes have been worked out with the Plat Review Section at DOA among others. It simplifies plat approval by allowing for the electronic submission of the plat to the authorities.

It allows some flexibility in where survey monuments can be set, when dealing with road right of ways; it allows for narrower margins on maps, and clarifies how to tie the new parcels to existing surveys. It allows the Register of Deeds to accept any media for recording maps that they choose, such as a digital version. It allows Certified Survey Maps to be used to grant easements. The bill also makes legal the current practice of showing an estimated Ordinary High Water Mark on surveys along water. To assure that the bill makes no OTHER changes to the Ordinary High Water Mark, DNR has requested and we have agreed to Amendment 2.

Perhaps most importantly, this bill replaces an outdated and ambiguous definition of the practice of land surveying with an up to date and precise version. This definition – found on page 40 of the bill – was subject to numerous discussions to assure that we were not expanding the "turf" of land surveying. We have reached agreements with geodetic mappers (aerial photogrammetry and satellite images), with construction surveyors, with foresters, and others that we have no intention in this bill to carve out their activities and newly define them as land surveying.

If anything, this bill creates a narrower definition of when it is required to be a licensed professional surveyor. You will note on page 47, this bill creates some specific exemptions to address concerns raised during the development of this bill. In order to make sure that we



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completely took care of the forest industry, we have also introduced Amendment 1 to clarify that the recording of Managed Forest Law papers does not constitute the practice of surveying.

Lastly, the bill eliminates some old grandfather clauses to make sure that all those practicing land surveying do in fact have the training and expertise upon which the public relies. Because of concerns raised by the Utility industry, we are working on introducing a new amendment to address their issues. That amendment is being drafted right now with the cooperation of the Utilities. It will contain specific exemptions for public utilities and communication providers to perform certain tasks, instead of the previous blanket exemption.

Because surveying touches so many aspects of our lives, perhaps we will hear today that someone affected has been overlooked, in which case we pledge to work to make sure that all affected have a good understanding of the bill and to make sure that there are no unintended consequences.

Thank you again for listening and I look forward to answering your questions.

Wisconsin County Forests Association

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December 12, 2013

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Regarding: 2013 AB506

Mike Roiger
Director
Medford, Wisconsin

Representative Weininger:

Ed Kelley
Director
Florence, Wisconsin

Please accept the following comments on AB506 from the Wisconsin County Forests Association (WCFA). WCFA represents the forestry interests of 29 counties in Wisconsin with county forest lands established under state statutes §28.10 and §28.11. Collectively our member counties manage nearly 2.4 million acres of forests, the largest public land base in Wisconsin.

Graham Rankin
Director
Irma, Wisconsin

We fully realize the importance of using professional land surveyors. Our County Forest Administrators and their respective County Forestry Committees enlist the services of professional land surveyors for a variety of circumstances in managing the county forests. Many of our member counties have professional land surveyors under county employ. We are supportive of efforts to clarify instances where professional land surveyors and certified surveys are appropriate in order to more fully protect property rights. However, there are portions of AB506 that remain a concern and which we believe may lead to significant negative fiscal impacts and hardships to our member counties.

Paul Lokken, Sr.
Director
Eau Claire, Wisconsin

John Robinson
Director
Superior, Wisconsin

Tom Thompson, Jr.
Director
Mercer, Wisconsin

County Forests are actively managed for forest products and a wide range of recreational activities. This is required by statute and guided by our 15 year County Forest Comprehensive Land Use Plans. Revenue from county forest timber sales offsets tax levies, and the timber harvested provides jobs and raw material for Wisconsin's \$20 billion forest industry.

L.H. "Skip" Fiedler
Director
Minong, Wisconsin

Phil Schneider
Director
Sheldon, Wisconsin

Joe Waichulis
Director
Thorp, Wisconsin

Michael Luedeke
Director-at-Large
Spooner, Wisconsin

Henry Schienebeck
Director-at-Large
Butternut, Wisconsin

It is common for our professional foresters to establish forest practices (timber sales, timber stand improvement practices, reforestation, recreation trails) on tracts adjacent to private landowners. These land management and land use boundaries are established using survey notes, corners and other physical evidence. High technology GPS equipment is often used in the field and forest management boundaries are marked with flagging or paint on trees. Adjacent private landowners are notified so they can inspect these management boundaries by agreement. Foresters are clear in their communication that these boundaries are not certified survey lines or property boundaries but rather "lines by agreement" for management activities only. AB506 attempts to exclude these activities from requiring the services of a professional land surveyor. However, it

remains unclear if this is truly achieved through language contained in the proposed legislation. Proposed statute 443.135(1) – Other Exceptions (amended by Assembly Amendment 1) references “performing services related to timber management sales, including....” is generally worded and arguably would not exclude all of the land management activities common to a public forest. Assembly Amendment 1 does appear to encompass all the activities associated with a Managed Forest Law (MFL) order in Chapter 77, however the county forests are not all included or referenced under Chapter 77. Lands in the County Forest program are defined in ss. 28.11(2). Further, we would question whether the intent of AB506 is to require certified surveys for forest management activities on lands not participating in one of the forest tax law programs.

Proposed statute 443.01(6s) would require professional land surveying for “establishment or reestablishment” of boundaries for public or private easements and for “preparing maps” to depict those easements. What activities would be included in “establishment or reestablishment”? Would GIS maps that don’t convey real property rights be subject to licensure? In addition, proposed statute 443.135(2) attempts to exclude the requirement for “preparing maps for *temporary* trails, easements or other uses of the land” so long as a disclaimer is included on the map. It remains unclear what “temporary” would constitute and whether it would include some of the land use access agreements we grant to private landowners with inholdings on our county forests. Permanent easements are rare on county forests however individuals or groups are often issued land use agreements which are typically non-transferable and therefore not recorded with the Register of Deeds. If maps for this purpose are considered depicting an interest in real property as defined in 443.01(6s), the additional surveying expense and administrative time would be a substantial burden to the counties.

Several county forestry departments serve as recreational trail coordinators for development and maintenance of snowmobile and ATV trails in their respective counties. Most also develop and maintain recreational trails for bicycling, horseback riding, hiking, skiing and other recreational pursuits. Some linear recreation trails require crossing a great many parcels of privately owned land. Requiring professional land surveys to establish and prepare maps for these trails would add to costs, likely discourage cooperation from some of our private landowners and greatly hinder many of our recreation programs. WCFA remains opposed to the professional surveying requirement for these purposes.

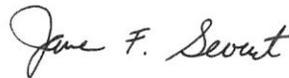
Due to the issues discussed above and the probable impacts of the proposed legislation on forest management and recreational activities on our county forests, we urge the committee to consider revisions to AB506 that would not hamper our professional resource managers and cause unnecessary financial burden to local governments. Reasonable exemptions that cover our successful day-to-day activities should be considered.

Thank you for the opportunity to provide this input on 2013 AB506. If we can be of any further assistance on this matter please do not hesitate to contact our office.

Sincerely,



Elroy Zemke, President
Wisconsin County Forests Association



Jane F. Severt, Executive Director
Wisconsin County Forests Association



To: Assembly State Affairs & Government Operations Committee

**From: Bill Skewes, Executive Director
Wisconsin Utilities Association**

Re: Support for Amendment to AB 506

Date: December 13, 2013

Good afternoon Mr. Chairman and members of the Committee. My name is Bill Skewes and I am the Executive Director of the Wisconsin Utilities Association (WUA), representing Wisconsin's investor-owned gas and electric utilities. Joining me is Jason Hogan of Alliant Energy to assist with questions of a technical nature. **We are here today to request your support for an amendment to AB 506, in order to provide an adequate exemption for utilities from the land surveyor's licensure bill.**

WUA has been working with the surveyor's association and co-ops on an exemption amendment that would allow utilities and co-ops to generally continue key functions of what we currently do, which is conduct limited survey work when constructing, repairing or maintaining utility facilities.

Under AB 506 as drafted, utilities would be exempt from the bill's provisions, but only until June of 2019, at which time the exemption would sunset. This would result in a requirement for utilities to pursue state licensure for all employees involved in survey work, however limited, increasing costs which are passed along to customers, making the cost of providing utility service more expensive. **WUA is opposed to increasing costs on customers.**

Under our amendment, the utility industry would be able to establish or re-establish boundaries on easements, mark locations in or on the ground to describe boundaries - including preparing maps - and continue with the practice of land surveying in connection with constructing and maintaining utility facilities.

However, all other practices related to surveying that are allowed under current law would now require state licensure, under the bill. In 2009 and 2011, similar bills were introduced; in both cases they were amended to allow utilities to continue doing what we do. The authors recognized that it was important to not increase costs for utility customers.

An amendment to AB 506 is currently in drafting. After meeting with the surveyors and discussing how it would work, **I believe the utilities, co-ops, and land surveyors have an agreement in principle.**

Once the amendment is drafted and we have concluded it adequately protects our customers, we hope the committee will approve the amendment. If that happens, WUA will support AB 506, as amended, with the inclusion of the utility exemption. **Please adopt the forthcoming utility exemption amendment to AB 506. Thank you.**

2013 Assembly Bill 506

Assembly Committee on State Affairs and Government Operations

Department of Natural Resources Testimony
Quinn Williams
Bureau of Legal Services

Position: For Information Only

Mr. Chairman and Committee Members:

My name is Quinn Williams and I am the Section Chief for Natural Resources in the Bureau of Legal Services at the Department of Natural Resources. I appreciate this opportunity to appear before you to be able to provide information from the agency's perspective relating to 2013 Assembly Bill 506 (the Bill).

Introduction

The challenges involved in the drafting of the Bill only serve to highlight the need for this legislation to bring the definition of the practice of professional land surveying into the 21st century. Over the course of the past 3 sessions, the Department has worked with various legislative sponsors, the Wisconsin Society of Land Surveyors (WSLS) and other stakeholders to communicate issues identified by the Department. The Department appreciates the Bill drafters and WSLS's ongoing willingness to work with the Department to address these issues for the Bill. As with any complex piece of legislation, it can be very challenging to make sure that all of the pieces work together.

Similar to past efforts, the Bill attempts to address some prior issues identified by the Department. The following is a brief summary of the remaining issues that the Department has identified. For the record, we should note that both Sen. Lasee and WSLS have been willing to discuss potential changes to meet some of these identified issues, and that those discussions are ongoing:

- 1) **The definition of "Ordinary High Water Mark" (OHWM) is not consistent with the definition established by case law and confuses the definition.**

Assembly Amendment 2 to AB 506, if adopted, would address most the issues identified by the Department, but should it be a desire of the legislature, further clarification to the public included under proposed 236.025(3) the required notice to appear on the face of maps, plats and surveys could also state that: "The ordinary high water mark depicted may not represent the actual or current ordinary high water mark."

- 2) **The new term "perennial streams" is not defined, and is confusing since there is no distinction between an intermittent navigable stream and a perennial.**

Assembly Amendment 2 to AB 506, if adopted, should address these issues.

3) The creating and recording of Managed Forest Land (MFL) maps by DNR staff and private cooperating foresters.

The issue is that there is no definition in the Bill of what constitutes “establishment or reestablishment of the boundaries of one or more tracts of land” for the purposes of the proposed Wis. Stat. s. 443.01(6s)(a) and (d) definition of what constitutes the “practice of professional land surveying,” which has implications not only for those who create these orders and maps, but implications as to whether or not they can even be filed at the register of deeds.

The proposed “Assembly Amendment 1 to AB 506” appears largely to solve the issues identified by the Department. However, this is the opportunity for the legislature to resolve any ambiguity related to the definition of “tract of land.”

4) Language intended to include exemptions for easements for recreational trails and public access easements is unclear, and is not similar to the exemption given to utilities in past legislative attempts.

The current Bill language would require that professional surveyors be used to establish recreational trail easements for the purposes of filing with the register of deeds or on the ground (although not the corresponding maps), which could prove to be a difficult burden for many recreational user groups and land managers to overcome, and could prevent many of these trails from being able to be established. This is also the opportunity for the legislature to resolve any ambiguity related to the definition of “easement,” and could use this term to include or exclude what it does not intend to have apply.

5) Needs to clarify the applicability of licensure to GIS or maps used for regulatory purposes.

There is no definition in the Bill for the terms “establishment or reestablishment” as it relates to the “establishment” of boundaries of “tracts of land” or the other enumerated interests in real property. While it appears that the intent is for “establishment or reestablishment” to mean “the formal legal establishment of a boundary that has the force and effect of law,” this is not clear anywhere in the Bill’s language or in case law. Without a definition, it is possible that GIS maps created by regulatory agencies that establish boundaries of certain property rights subject to regulatory restrictions (air and subsurface property rights) identified in proposed Wis. Stat. s. 443.01(6s)(a)2. that could arguably be pulled into licensure requirements under this Bill or other regulatory determinations that fall along boundaries of tracts of “tracts of land.”

This issue has also been fully addressed in past legislative attempts. Specifically, the language in both Assembly Substitute Amendment 1 to 2009 AB 271 (<http://www.legis.state.wi.us/2009/data/AB271-SA1.pdf>) Sections 2, 89, 90, 91, 100,

101, and 102 and Senate Amendment 1 to AB 271
(<http://www.legis.state.wi.us/2009/data/AB271-SA1.pdf>) Sections 2g, 2r, 11m, 64m,
101M and 102b.

6) **Unclear what the definition of “timber management” or “timber sale” means, which could lead to confusion regarding timber sale boundary establishment and other practices related to timber sales.**

While, unlike recreational easements, the proposed Wis. Stat. s. 443.135(2) language is broader (i.e. “performing services related to timber management or sales”), it is not a silver bullet. The term “timber management or sales” is not defined, and given the explicit, broad reach of the definition of the “practice of professional land surveying,” and the potential for both misinterpretation and misapplication of the definition, further clarification would be helpful. Additionally, it is unclear why these exemptions are not included under Wis. Stat. s. 443.14. This issue was largely address in language proposed in 2009 Senate Amendment 1 to AB 271
(https://docs.legis.wisconsin.gov/2009/related/amendments/ab271/sa1_ab271).

Conclusion

For all of the issues raised above, the Department would be willing to provide language or assist in reviewing language to provide clarification and consistency throughout the statutes on this important Bill.



Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Jennifer Gonda
Director of Intergovernmental Relations

December 12, 2013

**City of Milwaukee Testimony on AB 506 to Assembly Committee on State
Affairs and Government Operations**

Thank you to the Chair and the committee members for the opportunity to testify on AB 506. The City of Milwaukee is opposed to the bill as it is currently drafted and has three primary concerns.

First, it appears the bill shifts some work that is currently overseen by professional engineers to professional land surveyors. This is done by expanding the current definition of land surveyor to include the alignment and rights of way of roads or streets, public and private easements, placing, replacing, restoring or perpetuating monuments in or on the ground to establish boundaries, and performing construction surveying. The inclusion of construction surveying is our primary objection. Construction surveying is generally replacing a road or public utility that already exists.

In Section 126 of the bill, an exception for photogrammetry is defined as well as the use of other surveying methods such as topographic surveying, construction surveying, and geodetic surveying. We would suggest the title of the section should be expanded to be ***Exception for photogrammetry and other surveying methods*** to make that exception more clear. Additionally, if that exception exists why are construction and geodetic surveying included in the definition of what constitutes the practice of professional land surveying under Section 100, 443.01 (6s) (f)? We are seeking clarification of this issue.

Additionally, I would add that Milwaukee is mostly a built environment so it is not as if we are regularly platting a new subdivision. However, when that does occur we contract with a land surveyor for that work. As a first class city, we are given an exemption in Chapter 236.12 in the approval of plats, I would ask for a similar exemption for a first class city in all areas where the definition of land surveying has expanded to include activities related to the public rights of way.

Our second concern has to do with the licensing provisions of the bill. The bill would continue to make it very difficult for municipal workers who are currently performing survey related work to become licensed as a land surveyor. Normal municipal surveying work will only satisfy up to one third of the required field experience of the 10 years total required. The bill repeals several sections of the statutes where current experience qualifies as credit toward gaining licensure. It is concerning when on the one hand the bill expands the scope of what a land surveyor does, and then on the other hand, restricts the ability to use that experience to qualify for licensure.

Our final concern has to do with implementation. It's my understanding that DOT was given four years to implement as they recently instituted a policy requiring a land surveyor license for some employees. Similarly, the utilities have until 2019 to comply. We would ask at a minimum, if passed, for the effective date for municipalities to be July 1, 2015 since our municipal budgets for 2014 have already been adopted.

Thank you and I look forward to working with each of you on resolving our concerns.

For questions or for additional information please contact:

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