

Assembly Hearing Slip

(Please print plainly)

Date: 3/14

Bill No. AB 800 (As Amended)

Subject _____

(Name) Dorinda Floyd

(Street Address or Route Number) 200 E Wells St

(City & Zip Code) Mulhacoe 53202

(Representing) City of Mulhacoe

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: _____

Bill No. AS 500

Subject _____

(Name) Marcus Swartz

(Street Address or Route Number) W. Barre Rd 53913

(City & Zip Code) _____

(Representing) _____

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98

Bill No. AB 806

Of _____
Subject _____

ANN VABLONSKI

(Name)

2 EAST MILLIN ST.

(Street Address or Route Number)

MADISON VT 53703

(City & Zip Code)

League of Wm's Municipalities
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16/98

Bill No. AB 806

Of _____
Subject _____

CAROL TERRELL

(Name)

222 S Hamilton St #1

(Street Address or Route Number)

MADISON VT 53703-3201

(City & Zip Code)

SPERA CLUB JOHN MAIR CHAIRMAN
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98

Bill No. AR 806

Subject: Ross Kinzler

(Name) Ross Kinzler

(Street Address or Route Number) 202 State St

(City & Zip Code) Madison 53703

(Representing) WIS MARYASTORIA HOUSEWIVES ASSN

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16/98

Bill No. AR-806

Subject: Davis Cassirer

(Name) Davis Cassirer

(Street Address or Route Number) 16 W. Calumet St. S88810

(City & Zip Code) Wauwatosa 53703

(Representing) 1000 FRIENDS OF WJI

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98

Bill Nos. AB 806, ~~SB 808 & 810~~

Subject: PROPOSED SUBSTITUTE AMENDMENT TO WISCONSIN STATE BILL

(Name) Barbara J. Prohle

(Street Address or Route Number) 433 E. Washington St.

(City & Zip Code) Lake Mills, 53551

(Representing) LEAGUE OF WIS MUNICIPALITIES

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98

Bill No. Asst Bill 806

Of Subject Small Farms

(Name) Bill 2 - Box 282

(Street Address or Route Number) Marion Ave Chesham, Wt 53821

(City & Zip Code) Chesham, Wt 53821

(Representing) P.D.W.

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16

Bill No. AB 806

Of Subject Sen. Robert Strickland

(Name) Sen. Robert Strickland

(Street Address or Route Number) 147th Ave West

(City & Zip Code) Madison

(Representing) 147th Ave West

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-15-98

Bill No. AB 806

Of Subject Don Kuehn

(Name) Don Kuehn

(Street Address or Route Number) 2 E. Mifflin St.

(City & Zip Code) Madison, WI 53701

(Representing) Don Kuehn, Patsy Green

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98

Bill No. AB 806

Subject: Land use

(Name) Byron Hawkins

(Street Address or Route Number)

(City & Zip Code)

Laure States Lumber Assoc
(Representing) (LSLA)

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98

Bill No. AB 806 - (ASA 1)

Subject: Property Takings

(Name) Michael Two + Tom Larson

(Street Address or Route Number)

(City & Zip Code)

4801 Forest Run Rd.
Madison WI 53704
Wisc. Realtors Assoc.
(Representing)

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16/98

Bill No. AB 806

Subject:

(Name) Salma Dentle

(Street Address or Route Number)

(City & Zip Code)

1212 Deming Way
Madison WI 53717
WI Farm Bureau
(Representing)

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

X

Assembly Hearing Slip

(Please print plainly).

Date: 3-16-98

Bill No. AB806

Or Subject _____

(Name) Senny Beschawe

(Street Address or Route Number) _____

(City & Zip Code) _____

(Representing) 225. Builders Assoc

Speaking *in* favor:

Speaking against:

Registering *in* favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

*Revised hearing slip
ask to speak, instead
of just registering*

Assembly Hearing Slip

(Please print plainly).

Date: 3-16-98

Bill No. AB806

Or Subject Land Use

(Name) Alice O'Connor

(Street Address or Route Number) 217 S Hamilton St #201
Madison, WI - 53703

(City & Zip Code) _____

(Representing) TRP) Timber Producers Assoc. + Lake
States
Lumber

Speaking *in* favor:

Speaking against:

Registering *in* favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly).

Date: 3-16-98

Bill No. AB806

Or Subject Land Use

(Name) Nadine Bailey

(Street Address or Route Number) _____

(City & Zip Code) _____

(Representing) TRP) Timber Producers Assoc.

Speaking *in* favor:

Speaking against:

Registering *in* favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98
Bill No. AB 806
Of _____
Subject _____

~~League of Wisconsin~~ Dan Thompson
(Name)

202 State St
(Street Address or Route Number)

Madison WI 53703
(City & Zip Code)

League of Wisconsin
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3-16-98
Bill No. AB 806, ~~805, 808~~
Of _____
Subject _____

Michael Stapleton
(Name)

28002 Whitetail Dr.
(Street Address or Route Number)

Parkeville, WI 53954
(City & Zip Code)

Wis. County Code Administrators
(Representing) and Wis. Counties Association

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16/98
Bill No. AB 806
Of _____
Subject _____

Robert Bay
(Name)

7648 Hwy PD
(Street Address or Route Number)

Verona 53593
(City & Zip Code)

Wis. Dept. of Transportation
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16/98
Bill No. AB 806
Or
Subject _____

Asst. Attorney General JoAnne Kloppenburg
(Name)
Wis. Dept. of Justice
123 W. Washington Ave
(Street Address or Route Number)
Madison 53707-9859
(City & Zip Code)

Attorney General James Doyle
(Representing)

- Speaking In favor:
- Speaking against:
- Registering In favor:
- Registering against:
- Speaking for Information only:
- Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16/98
Bill No. AB 804
Or
Subject _____

Jim Kurtz
(Name)

DNR
(Representing)

- Speaking In favor:
- Speaking against:
- Registering In favor:
- Registering against:
- Speaking for Information only:
- Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 3/16/1998
Bill No. Amended to AB 806
Or
Subject _____

Alan Kent Russell Sr
(Name)

RR2 Box 270
(Street Address or Route Number)
Prarie du Chien Wis 5382
(City & Zip Code)
Private Landowners of Cedar
(Representing)

- Speaking In favor:
- Speaking against:
- Registering In favor:
- Registering against:
- Speaking for Information only:
- Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR
MARK D. BUGHER
SECRETARY

Mailing Address:
Post Office Box 7869
Madison, WI 53707-7869

AB806



March 13, 1998

Representative Sheryl K. Albers
P. O. Box 8952
State Capitol
Madison, WI 53708-8952

Dear Representative Albers:

Thank you for the copy of Assembly Substitute Amendment to AB-806, relating to the taking of private real property.

We have reviewed this bill from a DOA-workload perspective and note that the administrative and rule-making functions that the original bill language required of DOA have been completely removed. As amended, then, DOA would no longer have any responsibilities or direct costs under this bill. This means a revised fiscal estimate would eliminate 1.00 attorney and \$81,600 GPR annually from the appropriation under 20.505(1)(a). This was the resource requirement cited by DOA in its formal fiscal estimate.

I hope this information is useful to you and members of the committee at the upcoming hearing on Monday, March 16th.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles E. McDowell".

Charles E. McDowell
Administrator

cc: Edward Main

FISCAL ESTIMATE
DOA-2048 (R10/92)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

Subject

Taking of private real property as the result of governmental action

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Increase Existing Revenues
- Decrease Existing Appropriation
- Decrease Existing Revenues
- Create New Appropriation

- Increase Costs - May be possible to absorb
- Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

1. Increase Costs

Permissive Mandatory

Decrease Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

5. Types of Local Governmental Units affected:

- Towns
- Villages
- Cities
- Counties
- Others _____
- School Districts
- VTAE Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations
s. 20.505(1)(a)

Assumptions Used in Arriving at Fiscal Estimate

This bill requires that state and local governmental units prepare an assessment if certain proposed governmental actions may result in the taking of private real property. If an assessment is required and shows that the governmental action would result in the taking of private real property, the governmental unit may not take action until it passes a statute, ordinance or resolution by a three-fourths vote. The owner of the real property may ask the district attorney or the department of administration (DOA) to commence an action if the governmental unit does not conduct the assessment or comply with the procedures required under this bill. This bill also requires DOA to promulgate rules for the preparation of assessments and creates 1.0 FTE GPR attorney position in DOA.

The DOA attorney authorized in this bill would draft, promulgate and update rules for the preparation of assessments and would be responsible for overseeing state compliance with provisions of the bill. In addition, the individual in this position would receive, investigate and resolve complaints filed by private real property owners who believe a governmental unit has violated the provisions of this bill. The bill will require an increase of \$81,600 (\$58,200 salary, \$20,400 fringe, \$3,000 supplies and services, phone, space, etc.) to the DOA appropriation under s. 20.505(1)(a) to fund the 1.0 FTE GPR attorney position authorized by this bill.

Local government costs - Local units of government will be required to fund the cost of property assessments required by this bill. In addition, both the overall cost and length of time needed to implement land use decisions will increase as a result of the assessment requirement and the ordinance or resolution drafting and passage process. The total cost of this bill to local units of government can not be estimated reliably because it will depend on the number of actions defined as a "taking", the ultimate definition of fair market value and other factors.

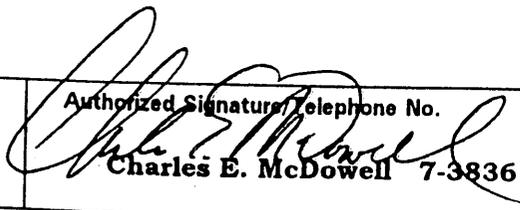
Long-Range Fiscal Implications

Unknown

Agency/Prepared by: (Name & Phone No.)

DOA/Tara Brunner 266-0016

Authorized Signature/Telephone No.


Charles E. McDowell 7-3836

Date

March 11, 1998

TESTIMONY ON SUBSTITUTE AMMENDMENT TO 1997 AB 806

march 16, 1998

I am speaking for Private Landowners Of Wisconsin in support of the ideas that created the substitute amendment to AB 806. As we understand it AB 806 was born out of the idea that government should follow the Constitution and pay compensation when it takes away any of the property rights guaranteed to an individual property owner.

On its face the amendment does not appear to do this when it states: "taking" means a governmental action that directly results in the reduction in the fair market value of a parcel of private real property to an amount that is LESS THAN 50% OF THAT VALUE.

We believe Representative Albers is a very courageous individual for undertaking this morally right but politically dangerous course of trying to get this state government to live up to the duty it has to obey the constitution. We realize that she has been forced to compromise her original intent to have any hopes of getting some property rights protection through the Assembly. We do not look down on her for this because we know her heart is in the right place.

It was very clear when the last testimony was heard that government, from the attorney general's office down to local government officials that have sworn an oath to uphold the constitution, do not want to pay ANY compensation when they are involved in stealing property rights through zoning, land use schemes, riverway designation or any of a multitude of other ways that have been dreamed up to fulfill governments agenda to totally control all property and the individuals that live upon it.

We also listened as the attorney general's representative told how the courts have ruled that government can take almost all the rights to property and not owe compensation as long as the so called owner can still walk on the land or have a picnic on it. I believe that the same person made a reference to some case where the court ruled that a landowner does not have a right to use his or her property for anything other than what it was designed for in its NATURAL STATE or something to that affect. It is no wonder that government has NO respect for private property when we hear this kind of perverted interpretation of the constitution by the courts and the attorney general's office.

I could discuss ALLODIAL RIGHTS, LAND PATENT RIGHTS AND other constitutional rights that were designed to protect property but it is obvious this is not the place for this because as in the past these statements will fall on deaf ears. An individual cannot expect the very system that is stealing property rights to stand up and admit it and pass a law to stop what is going on. The perceived consequences lawfully, financially and politically would be too costly for government so a strategy of covering up and defending the theft is mandatory for government officials at all levels if they want to maintain the status quo.

As long as this state government body, at all levels, is going to propel the idea that we live in a democracy rather than the constitutional republic guaranteed by our founding fathers then the attack on freedom and constitutional rights will continue until none remains.

Here is how I see it. In a constitutional republic the individual is sovereign. He is king in his own castle. In a democracy, mobocracy, the majority is sovereign and there are no inalienable rights. Individuals that produce wealth are penalized and while those who do not produce wealth are subsidized. A democracy will destroy itself every time because the majority will become parasitic. The free lunch syndrome. It can not survive when the wealth producing minority decide they have had enough and quit producing wealth.

It upsets me when government, our schools, and universities perpetuate the democracy theory and the theory that those who live on the land are only stewards and do not own the land. This can only mean one thing and that is that government is almighty and government owns the land.

Now you see why bills ^{not} actually protect property rights are going nowhere in this state.

Alan Kent Russell Sr.

Alan Kent Russell Sr.

Vice President of Private Landowners Of Wisconsin

RR 2 Box 270

Prairie du Chien, Wisconsin 53821



500 SOUTH STEPHENSON AVENUE
SUITE 301
IRON MOUNTAIN, MICHIGAN 49801-3456

PH: (906) 774-6767
FAX: (906) 774-7255

March 16, 1998

TO: Chairman Mike Powers and Members of the Assembly Land Use Committee

FM: Byron Hawkins, President

RE: Support Substitute Amendments on AB 806, AB 807, AB 808 & AB 810

I am unable to be present for today's executive session scheduled on several of the proposed land use bills being authored by Representative Sheryl Albers. As President of a statewide trade association that cares deeply about rationale zoning decisions made largely by local units of government, I testified on behalf of our industry at your February 26th committee hearing.

While we would appreciate a positive vote on the bills as they were originally introduced, we understand that the proposed substitute amendments have been offered in the spirit of passing these bills this session.

In the revised form that AB 806, AB 807, AB 808 and AB 810 are currently, what we are asking the legislature to largely support is rational decision making when local government actions are going to impact private landowners. All these bills address a more respectable, systematic notification process in some fashion so that the public can be armed with the necessary information they need to more actively participate in the land use decision making processes.

In the specific case of AB 810, the substitute amendment provides an individual who may have been harmed, some assurance that he or she would be able to recoup attorney's fees. Under current law, the cost and burden of proof must be borne entirely by the property owner -- even if it is proven the local government acted with gross negligence.

We respectfully urge the committee to vote favorably on these modest changes to current law. Please vote "yes" on passage of AB 806, AB 807, AB 808 and AB 810. These substitute amendments are very modest changes in current law. They would not be necessary if the current practices of local units of government and their policy making committees were adequately providing ordinary citizens with their democratic right to participate in policies that affect them personally.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: March 13, 1998
TO: REPRESENTATIVE MICHAEL POWERS
FROM: Mark C. Patronsky, Senior Staff Attorney
SUBJECT: Substitute Amendments to 1997 Assembly Bills 806, 807, 808 and 810

This memorandum contains a brief description of the differences between the draft Assembly substitute amendments to 1997 Assembly Bills 806, 807, 808 and 810. These four Bills were introduced by Representative Albers and were the subject of a public hearing by the Assembly Committee on Land Use on February 26, 1998.

Based on the discussion during the public hearing, a substitute amendment to each of these Bills has been prepared. This memorandum briefly summarizes the key differences between the substitute amendments and the Bills.

1997 Assembly Bill 806, Relating to the Taking of Private Real Property as the Result of Governmental Action

LRBs0587/1 deletes requirements contained in the Bill for:

- The Department of Administration (DOA) to promulgate rules for the preparation of assessments to determine if a taking has occurred.
- A governmental unit to prepare an assessment of the value of real property that is subject to a governmental action that may result in a taking of the real property, before the governmental action can be completed.
- A governmental unit to prepare an assessment of private real property to determine the effect of a governmental action upon the petition of 12 or more owners of real property.
- A 3/4 vote of all members of an elected body to implement a governmental action that results in the taking of real property and a requirement for the Department of Revenue to compile a list of such ordinances or resolutions.

- A prohibition on proceeding with the promulgation of rules if a state administrative agency determines by an assessment that the governmental action will result in the taking of real property.
- The owner of real property may request the district attorney and DOA to commence an action asking to avoid the governmental action, on the grounds that the governmental unit did not prepare the appraisal or take action by a 3/4 vote.
- An appropriation of one position to DOA.

The remainder of the substitute amendment contains provisions, somewhat modified from the original Bill. The substitute amendment retains the definitions of "governmental unit" and "governmental action" and "taking." A "taking" requires a diminution in value of real property of at least 50%.

If a governmental action results in a taking, the private real property owner whose property is taken may commence an action in circuit court asking that the governmental action be voided with respect to the owner's property. The substitute amendment directs the court to void the governmental action if a taking occurs unless the governmental units pays the private real property owner an amount equal to the reduction in value of the private real property.

1997 Assembly Bill 807, Relating to Requiring Notice to Persons Affected by Zoning Actions That Change the Allowable Use of Their Property

LRBs0600/1 requires the zoning agency of a county, town, village or city to provide a notice when a proposed ordinance or amendment will change the allowable use of any property. This notice must contain either a map showing the property affected or a description of the property affected and a statement that a map may be obtained from the zoning agency. The original Bill requires the notice to contain only a statement that the ordinance or amendment may affect the use of property and that the zoning agency will mail written notice to each person affected.

The substitute amendment requires the zoning agency to maintain a list of persons who wish to receive notice of an ordinance or amendment that affects the allowable use of the person's property. The zoning agency is required to send this notice in any reasonable form that is requested by the person and may charge a fee that does not exceed the approximate cost of providing the notice. If the zoning agency does not send the notice and the ordinance or amendment is enacted, the person may commence an action in circuit court for a declaratory judgment that the notice was not sent. If the court determines that the notice was not sent, the ordinance or amendment does not apply to and may not be enforced against the person or the person's property. If the zoning agency produces evidence that the agency has a list with the names of all persons who requested the notice and that the list includes the person's name, the court is required to presume that the notice was sent and the person will have the burden of proving that the notice was not sent.

The original Bill requires the zoning agency to identify each person whose property is affected and to mail written notice to each person. The Bill provides that any person who does not receive the written notice is not required to comply with the zoning ordinance.

1997 Assembly Bill 808, Relating to a Local Zoning Ordinance or Resolution That is Intended to Protect Environmental Sensitive Areas

LRBs0599/1 requires the county or town board or city council, when it enacts an ordinance or adopts a resolution to protect the natural values of an environmentally sensitive area, to prepare a record containing the following:

- A statement of its rationale for the newly created or amended ordinance or resolution.
- All information used as the basis of the newly created or amended ordinance or resolution.

In any judicial review of the ordinance or resolution, the substitute amendment requires the court to invalidate any part of the ordinance or resolution for which the board or council is unable to produce substantial evidence from its record to support the rationale for the ordinance or resolution. The substitute amendment does not add a definition of "environmentally sensitive area."

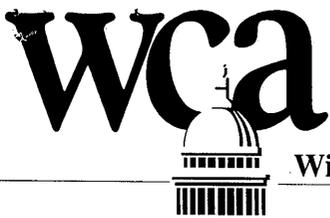
The provisions of the original Bill, which are modified by the substitute amendment, require the board or council to prepare a comprehensive written record to document its rationale for the ordinance or resolution, and require the court to invalidate any part of the ordinance or resolution if the board or council is unable to produce clear, satisfactory or convincing evidence from the written record to indicate the rationale for the ordinance or resolution.

1997 Assembly Bill 810, Requiring a Court to Award Litigation Expenses in Certain Appeals of Zoning Decisions

LRBs0588/1 retains the definition of "litigation expenses" from the original Bill. The substitute amendment deletes the provisions of the Bill that required the court to award costs under s. 814.04, Stats., to a person who prevails in an appeal of a zoning decision. It was correctly noted at the public hearing that this restates current law. The substitute amendment retains the provision in the original Bill that awards litigation expenses, than in lieu of statutory costs, to a person who prevails in a zoning appeal. The substitute amendment modifies the conditions for awarding litigation expenses so that the court must award litigation expenses if the board or council acted with gross negligence, in bad faith or with malice. The substitute amendment deletes "unreasonably."

If I can provide further information on these Bills, please feel free to contact me.

MCP:jt:ksm:rv;kjf



MEMORANDUM

TO: The Honorable Members of the Assembly Committee on Land Use
FROM: Kathy Markeland, Legislative Associate *Kathy Markeland*
DATE: March 16, 1998
RE: 1997 Assembly Bills 806, 807, 808 and 810

The Wisconsin Counties Association has reviewed Assembly Bills 806, 807, 808 and 810 and the substitute amendments as prepared and offered by Representative Sheryl Albers and the chairperson of the Assembly Committee on Land Use, Representative Mike Powers. We appreciate the opportunity to comment on the proposed amendments.

Assembly Substitute Amendment to 1997 Assembly Bill 806

Serving as a locally elected official is a difficult job. Individuals subject their private lives to public scrutiny, and engage in tedious and sometimes explosive debate on issues that affect the daily lives of their friends, family, neighbors and community.

County board supervisor is a part time position that requires a full time commitment. Supervisors must become knowledgeable on a broad range of policy issues, from human services to law enforcement, from erosion control to highway maintenance, from libraries to land use. Therefore, counties are supportive of state efforts through the development of the Wisconsin Land Council to develop tools, guidance and resources for local boards and committees. The state can best assist these public servants by providing them with resources to assist them in exercising their authority wisely, not by creating new penalties for taking action.

Counties are frequently required to implement state or federal land use regulations. By holding local government to an undefined standard of "reasonableness" with regard to that implementation, the state would be exposing counties to the risk of costly litigation. The exposure to litigation costs and the potential for making payments for the devaluation of property represents an unfunded mandate. Therefore, we oppose AB 806 as amended.

Assembly Substitute Amendment to 1997 Assembly Bill 807

Sound land use planning requires an extensive participatory process. Counties across the state which have begun to review, revise and recreate county land use plans have engaged the citizenry in active debate and established informational campaigns to

ensure that the public is aware of the process and that everyone who wishes to participate will have the opportunity to be heard. Ideally, zoning is an extension of the land use planning process and citizens take an active interest in the regulatory actions of their locally elected officials.

The amended proposal appears to address the concerns expressed by local government regarding whom must be contacted in various zoning matters. However, the development and maintenance of the voluntary list creates a new concern in light of the potential importance of the list in future litigation. The legislation does not require an individual to prove that he or she has requested to be placed on the notification list, therefore their absence from the list could make them eligible for a voiding of the ordinance.

Using the mailing and/or the mailing list, as a potential tool for voiding an ordinance does not enhance nor facilitate the communication that we believe to be the ultimate goal of the author. The right to register with the county for notifications and granting the county the authority to recover costs for notification would provide an additional mechanism for public information. However, it is important to note that there is no statutory limitation on local government preventing this type of notification now, and, as was noted in the previous hearing, many local governments currently engage in a rigorous notification process.

Assembly Substitute Amendment to 1997 Assembly Bill 808

The proposed modifications represent a minor language change from "a comprehensive written record" to a "record containing a statement of its rationale and all information used" as the basis for the local government decision. This amendment does not address our essential concern with the bill.

The legislation as proposed would shift the burden of proof regarding the validity of the ordinance from the plaintiff to the local government as defendant. The actions of representative, locally elected officials would be assumed to be invalid. This assumption undermines the thoughtful actions of elected boards. Counties are aware of the sensitivity of land use regulations and decisions. County boards do not take any land use related decision lightly, whether it involves an environmentally sensitive area or a new residential or commercial development.

Again, the ultimate exposure to increased litigation is a concern and therefore we continue to oppose the bill as amended.

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Assembly Substitute Amendment to 1997 Assembly Bill 810

The amendment to Assembly Bill 810 would still permit recovery of expenses over and above the statutory limitations established under 814.04 which would expose the county to an indeterminable additional cost should the court find that the board of adjustment acted with gross negligence. Given the potential for increased litigation costs, WCA continues to oppose AB 810 as amended.

In closing, the Wisconsin Counties Association believes that these discussions regarding the rights of publicly elected boards to take actions which impact individual properties as well as the immediate neighborhoods and communities surrounding those properties are central to the broader discussion of the future of land use in Wisconsin. We look forward to the opportunity to discuss these issues further as the Wisconsin Land Council begins its work over the next few years and we encourage the Committee to postpone action on these items until the broader spectrum of land use is addressed by the Council.



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**Director
Governmental Affairs**

Gerard Deschane

MEMORANDUM

TO: Members of the Assembly Land Use Committee

FROM: Jerry Deschane, Director of Government Affairs

DATE: March 16, 1998

RE: AB806, AB 807, AB808, AB810

On behalf of the more than 6,000 businesspeople represented by the Wisconsin Builders Association (WBA), we urge your support for these land use reform bills. Each of these bills is a practical effort to fix a real problem in the land use process. The author of these bills will be proposing amendments to correct issues raised during the hearing on the bills. We request that you support the amendments and the bills.

AB 806 gives a property owner the right to challenge a government decision that devalues his property by 50% or more. As amended, this bill strikes a balance between the rights of the land owner and the need of the municipality to regulate land use.

AB 807 requires local governments to notify property owners directly if a zoning change will alter the permitted uses of their property. At the hearing, municipal officials admitted the current notification system is inadequate. The City of Milwaukee routinely notifies property owners when zoning changes are being contemplated. The amendment creates a registry of interested property owners who need to be notified prior to zoning changes. We support this amendment.

AB 808 requires local governments to document the reasons for declaring an area environmentally sensitive and thus off limits to most productive uses. Many communities in Wisconsin designate environmentally sensitive zones, under a variety of names, typically "Primary Environmental Corridor," or "Conservancy." There are many areas that need to be protected and preserved, and AB808 does nothing more than require the local government to put the reasons for doing so on paper.

AB 810 awards legal fees to a property owner if the person can prove that the local government acted with gross negligence. Under current law, the cost and burden of proof that must be borne by a property owner is almost overwhelming. As a result, many individuals who are harmed by a zoning decision simply can't afford to challenge that decision.

Thank you for your consideration.



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