



*State Representative*

**Warren Petryk**

93<sup>RD</sup> ASSEMBLY DISTRICT



Date: January 23, 2014

To: Members of the Committee on Housing and Real Estate

From: Representative Petryk

Re: Testimony regarding Assembly Bill 430

Good Morning Chairman Murtha and members of the Committee. I appreciate this opportunity to come before the Committee today to speak in favor of Assembly Bill (AB) 430.

Senator Cowles brought this important piece of legislation to my attention. AB 430 is a simple bill that would require the disclosure of the ownership of a dam to potential real estate purchasers and updating disclosure reports for certain real property. For years, many properties have been sold to unsuspecting buyers who do not realize that they are now responsible and potentially liable for a dam they did not even know they acquired as part of their real estate transaction.

Being responsible for a dam comes with a significant financial burden if the dam requires maintenance. Also, when the ownership of a dam is not properly transferred between owners and recorded with the Department of Natural Resources (DNR), this can potentially result in expensive litigation.

Currently, when transferring the ownership of a dam, an inspection is required and any necessary repairs must be completed prior to the transfer. The potential buyer has to show that they are financially prepared to maintain the dam and take care of any other costs associated with the ownership of the dam. If these requirements are not satisfied before transferring ownership, the sale of the property and dam may be cancelled.

AB 430 would make the transferring of a dam more simple and straight forward by disclosing the ownership of the dam on the real estate condition report and on the vacant land disclosure report. AB 430 will ensure that anyone purchasing property that includes a dam is aware of the presence of a dam, the responsibilities of ownership, and the risk. AB 430 is a common sense, consumer protection piece of legislation and I hope that Senator Cowles and I can count on your support.

Thank you again for your time.

STANDING COMMITTEES:

Energy, Consumer Protection, and  
Government Reform, Chair

State and Federal Relations, Vice-Chair

Transportation, Public Safety,  
and Veterans and Military affairs



JOINT COMMITTEES

Joint Audit Committee, Co-Chair  
Joint Committee on Information Policy  
and Technology

**Assembly Committee on Housing and Real Estate**

**January 23, 2014**

**10:00am, 415, NW State Capitol**

**Testimony on AB 430 by Senator Cowles**

I want to speak briefly on Assembly Bill 430 relating to disclosing ownership of a dam to prospective buyers and updating disclosure reports. Many properties with dams have changed hands over the last 30 plus years, very often with the buyer not realizing the responsibility and potential liability that they were assuming as a dam owner. This trend is disturbing due to the stress, liability and financial burden it can place on unknowing dam owners. In addition, not having a dam properly transferred and recorded with the Department of Natural Resources and appropriate level of government can cause expensive litigation and confusion and lost time in emergency response situations.

Since 1981, Chapter 710.11 Wisconsin Statutes provide that a person may not accept the transfer or the ownership of a specific piece of land on which a dam is physically located unless the person complies with the Department's transfer or abandonment procedure outlined in s. 31.14 (4). Realtors, attorneys, and lenders typically will advise their clients of these requirements if they know there is a dam located on the prospective property; however, they are often not aware of the transfer requirement or presence of a dam.

Currently both the seller of property on which a dam is located, and the buyer of the proposed property, must cooperate to complete a dam transfer application. An inspection is required prior to transferring the property and dam, as well as any repairs needed to bring the dam into compliance

with safety standards. The buyer must show financial capability to maintain the dam and a permit may be required. If dam transfer requirements are not met, the real estate transaction may be nullified.

Assembly Bill 430 and Senate Bill 344 would make this provision easier to implement by providing dam disclosure on the real estate condition report and the vacant land disclosure report. Not only would owners with a dam on their property be required to disclose that information, but collective ownership by a homeowner association, Lake District or other group would also be brought to the prospective buyer's attention. Collective ownership can also require financial contributions for repair and maintenance and owner liability.

Owning, maintaining and operating a dam are complex processes and most owners need guidance and education to understand their responsibility to reduce risk. This bill simply allows buyers to understand that they would be purchasing a property with a dam or interest in dam ownership.

Thank you.



# Memorandum

**To:** All Legislators

**From:** Tom Larson, Vice President of Legal and Public Affairs

**Date:** January 21, 2014

**Re:** AB 430/SB 344 – Notification of Dam Transfer Application

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The Wisconsin REALTORS® Association (WRA) supports AB 430/SB 344, legislation that seeks to protect buyers and sellers of real estate serviced by a dam by notifying them about the requirement to complete a dam transfer application prior to the sale of the property.

**Background:** Since 1981, Chapter 710.11 of the statutes has required that a person may not accept transfer of the ownership of a specific piece of land on which a dam is located unless the person complies with the financial responsibility and dam transfer requirements in Chapter 31.

A dam owner must be familiar with the legal obligation to maintain a dam in a safe and reasonable condition. The general rule is that a dam owner is responsible for its safety, and liability can be imposed upon a dam owner for failure to maintain, repair or operate the dam in a safe and proper manner.

Both the seller of property on which a dam is located, and the buyer of the property, must cooperate to complete a dam transfer application. An inspection is required prior to transferring the property and dam, as well as any repairs needed to bring the dam into compliance with safety standards. The buyer must show financial capability to maintain the dam and a permit may be required. If dam transfer requirements are not met, the real estate transaction may be nullified.

**Proposed Legislation:** AB 430/SB 344 amends Wisconsin's Real Estate Condition Report and Vacant Land Condition Report to include a disclosure notifying the seller and buyer of the requirement to complete a dam transfer application prior to transferring ownership in property on which a dam is located.

**Why This Legislation Is Important:** AB 430/SB 344 is important to buyers and sellers of real estate for the following reasons:

- **Unaware of current law.** Buyers and sellers are often unaware of current law that requires a dam transfer application to be completed prior to the time of sale.
- **Penalties are harsh.** Failure to complete the transfer form can result in significant litigation costs and ultimately a nullification of the transaction.

- **Increased compliance.** Adding a notice to the Real Estate Condition Report and Vacant Land Condition report will help buyers and sellers become more aware of this requirement, which will hopefully result in greater compliance.

If you have questions on AB 430/SB 344, please feel free to contact us at 608-241-2047.

### Wisconsin's Dam Transfer Law

**710.11 Transfer of land where dam exists.** A person may not accept the transfer of the ownership of a specific piece of land on which a dam is physically located unless the person complies with s. 31.14 (4).

#### **31.14 Proof of ability to maintain dams required.**

(4) No person may assume ownership of a dam after October 21, 1961, or the ownership of that specific piece of land on which a dam is physically located after April 27, 1982, without first complying with sub. (2) or (3). The transfer of the ownership of a dam or the ownership of a specific piece of land on which a dam is physically located made without complying with sub. (2) or (3) is void unless a permit to abandon the dam was granted under s. 31.185 or unless the transfer occurred by operation of law. Every person who accepts ownership by operation of law is subject to this chapter.



**Testimony of DNR on AB 430  
Assembly Committee on Housing and Real Estate  
January 23, 2014**

Good morning, Mr. Chairman and committee members. This testimony is being provided on behalf of the Dam Safety Program for the Wisconsin Department of Natural Resources. Thank you for this opportunity to testify, for information only, on Assembly Bill 430, relating to the requirement to include language disclosing the presence of a dam structure on a property. This requirement also applies a property that does not contain a dam but the property is tied to the collective ownership of a dam and therefore the dam must be transferred with the property.

There are almost 4,000 permitted dams in Wisconsin. While many are owned by municipalities, state and federal agencies and corporations, over 50% are owned by private citizens. A dam owner has a legal obligation to maintain a dam in a safe and reasonable condition. The dam owner may be held liable for failure to properly maintain, operate, and repair the dam as necessary according to minimum safety standards.

Chapter 31.185 states that no person may transfer ownership of a dam or the ownership of the specific piece of land on which a dam is physically located without first obtaining a permit from the department. Created in 1981, Chapter 710.11 of the statutes has required that a person may not accept transfer of the ownership of a specific piece of land on which a dam is located unless the person complies with the dam transfer requirements, including financial responsibility, in Chapter 31 of the State statutes. Numerous properties with dams have changed hands since then and have not gone through the Chapter 31 transfer process. Oftentimes, the new owners do not even realize that they own a dam and have responsibility and liability associated with the structure.

Without notification, it is difficult for the DNR to track property transfers and we often do not know the transactions have occurred until the next scheduled inspection, or an inspection resulting from a complaint. This can be a problem during emergency situations as the DNR may not have the appropriate contact information and we can lose valuable response time trying to identify an owner. Many property owners have incurred significant costs to bring the dam into compliance or remove the structure because they were not aware of the work that needed to be done when buying the property. In the last few years we have seen more lawsuits filed between parties when dams have not been properly transferred.

Realtors, attorneys, and lenders typically will advise clients of these requirements when they are aware of the transfer requirement and the presence of a dam on a property. During the real estate transaction process, both the seller and buyer of the property must cooperate to complete the dam transfer application. An inspection is required prior to transferring the dam to determine the deficiencies that need to be addressed to bring the dam into compliance with safety

**standards. The buyer must show financial capability to maintain the dam and a DNR permit may be required. If the dam transfer requirements are not met, the real estate transaction may be nullified.**

**Adding a disclosure requirement for dams on the residential and vacant property forms will help assure that all parties in the transaction are aware of the financial responsibility and potential liability of owning a dam. The Department will be able to maintain records and contact information for dam owners. The requirement should also reduce the potential for litigation related to property transfers involving dams and lessen the amount of staff time spent helping dam owners resolve these issues.**

**We will continue to collaborate with the real estate community to provide assistance and training with regards to dams and dam transfer requirements. We are currently updating our application materials to improve the processing of transfer applications.**

**Thank you for your time in considering this bill. We would be happy to answer any questions you may have.**



## Fact Sheet

STATE OF WISCONSIN • DEPARTMENT OF NATURAL RESOURCES  
BUREAU OF WATERSHED MANAGEMENT

### OWNING A DAM IN WISCONSIN RESPONSIBILITY OF OWNERS

- DAM OWNERS MAY BE RESPONSIBLE FOR INJURIES, DEATH OR DAMAGES CAUSED BY THEIR DAMS
- SAFE DAMS PROTECT DAM OWNERS AND REDUCE OWNER LIABILITY
- THE PUBLIC AND THE RESOURCES BENEFIT FROM SAFE DAMS

Dam ownership carries significant legal responsibility. The dam owner must be aware of that responsibility and how to conscientiously deal with it. This fact sheet addresses general legal matters to help you, as the owner of a dam in Wisconsin, minimize exposure to liability due to ownership and/or operation. This fact sheet is intended to provide general guidance and is not intended to answer specific legal questions, nor should it be considered legal advice or counsel. Dam owners and operators are encouraged to obtain competent legal counsel when dealing with specific issues. Further information is available on our web pages <http://dnr.wi.gov/org/water/wm/dsfm/dams/index.html>.

**LIABILITY:** A dam owner must first be familiar with the legal obligation to maintain a dam in a safe and reasonable condition. The general rule is that a dam owner is responsible for its safety, and liability can be imposed upon a dam owner for failure to maintain, repair or operate the dam in a safe and proper manner. State law requires that an owner have a permit to construct, repair and/or operate a dam. Additional state or federal regulations for operation may apply if the dam is located on a navigable stream.

Dams create risk. The great energy stored in the water behind a dam can cause injuries and damage in the event of a dam failure. In addition to failure, dams can be hazardous to unwary boaters or adventurous children, who may try to go on, over or through the dam. Owners of dams must be responsible for maintaining a dam in a safe condition to reduce the risk a dam creates.

**INSPECTION:** Inspection is an integral part of proper maintenance for a dam. An owner is required to regularly inspect all parts of a dam, from the spillway to the embankments, from upstream to downstream and side to side. An owner of a large dam is also required to hire an engineer registered in the State of Wisconsin to

inspect the dam on a schedule established by the Department based on the hazard rating for the dam. A high hazard dam must be inspected every two years and a significant hazard dam must be inspected every 3-4 years. Low hazard dams must be inspected every 10 years. Our web pages have information about the inspection requirements and schedules, as well as how to hire an engineering consultant and what the inspections and reports should cover.

**ALTERATIONS OR ADDITIONS:** Modifications to a dam will require input from the DNR regional Water Management Engineer. Minor repairs that do not affect the structural integrity or hydraulic capacity of the dam are often approved with minimal paperwork, but most repairs, alterations and reconstructions require submittal of plans and specifications for review and formal approval prior to start of work. Alterations and additions include raising or enlarging the dam, creating or removing a spillway, or adding hydroelectric power generation facilities to an existing dam. Ch. 31.12, Wisconsin State Statutes, and Ch. NR 333, Wisconsin Administrative Code, provide standards for plans and specifications for construction of large dams. Please see

our web pages for links to these and other pertinent documents.

**BUYING OR SELLING PROPERTY WITH A DAM (DAM TRANSFER):** Both the seller of property on which a dam is located, and the buyer of the property, must cooperate to complete a dam transfer application. An inspection is required prior to transferring the property and dam, as well as any repairs needed to bring the dam into compliance with safety standards. The buyer must show financial capability to maintain the dam and a permit may be required. Realtors, attorneys, and lenders are required by law to advise clients of these requirements. If dam transfer requirements are not met, the real estate transaction may be nullified.

Our transfer requirements are available in Ch. 140 of our Water Regulation and Zoning Guidebook: <http://dnr.wi.gov/org/water/wm/dsfm/dams/publications.html>

**EMERGENCY ACTION PLAN/INSPECTION, OPERATION & MAINTENANCE PLAN:** An Emergency Action Plan (EAP) is required for the area downstream of the dam. This plan identifies affected downstream properties and resources available for responding to an emergency situation. It is required so that during flooding or imminent failure of the dam, a series of well-planned steps can guide the owner, operator, and emergency workers through a process to minimize the potential for loss of life or property damage.

An Inspection, Operation and Maintenance Plan (IOM) is required for all large dams in the State of Wisconsin. This plan should include water level orders and specifications, an operation schedule, a maintenance schedule, and the current names and telephone numbers of the operators and key people in the county and local municipalities. Maintenance should include all areas identified on the "Dam Inspection Checklists" which are used to inspect the dam.

**SUMMARY:** The DNR seeks to promote safe dams and prevent dam failures through inspections, voluntary maintenance by dam owners, and repair orders when necessary. Owning, maintaining and operating a dam are complex processes and most owners need guidance and education to understand their responsibility to reduce risk.

Examples and templates of both the EAP and the IOM are available on the dam safety web pages. We also have fact sheets available to provide more detail about EAPs and IOMs.

**LEVELS AND FLOWS:** As a dam owner, you are responsible for maintaining the pool elevation behind your dam within authorized levels. If no formal levels have been established, you must hold the pool at the historically maintained level. State law requires a minimum release of water through a dam, and in some cases a specific minimum flow rate has been established to protect fish and water quality. If a minimum flow has been established for your dam, you are responsible for meeting this requirement.

If water level complaints are received by the department, the DNR may hold a hearing to determine the appropriate minimum and maximum levels for the flowage. Chapter 130 of our Water Regulation and Zoning Guidebook, available on the DNR website, (<http://dnr.wi.gov/org/water/wm/dsfm/dams/publication.s.html>) summarizes your obligations to maintain levels and flows in more detail.

**DAM ABANDONMENT AND REMOVAL:** A DNR permit is required before you abandon your dam. A dam abandonment permit will be issued with conditions that require dam removal, and in most cases allows the public to comment on the application and environmental impacts of the removal. This permit and public process works to preserve any rights which may have been acquired on the flowage by riparian owners or the public, and to ensure minimum removal standards.

Dam abandonment and removal is a viable option for owners faced with potential major repairs to their dams. Dam removal has been found to be much less expensive to an owner than repair or reconstruction of a dam, and many owners are choosing to restore the streams to their pre-dam condition by removing aged structures. We have much additional information about dam abandonment and removal on our web pages, including case histories of recent dam removals and links to resources for help with funding dam removals.

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Visit the Wisconsin DNR  
on the web at <http://www.dnr.wi.gov>  
or the Dam Safety Program web page  
<http://dnr.wi.gov/topic/dams>