

## 2003 SENATE BILL 464

February 13, 2004 – Introduced by Senators WELCH and SCHULTZ, cosponsored by Representatives HUEBSCH, ALBERS, HAHN, HINES and KREIBICH. Referred to Committee on Homeland Security, Veterans and Military Affairs and Government Reform.

1     **AN ACT** *to repeal* 60.84 (3) (c) 1. and 2.; *to renumber and amend* 60.84 (3) (c)  
2           (intro.); *to amend* 59.46, 59.73 (1), 59.74 (1) (a), 59.74 (2) (a) 1., 59.74 (2) (a) 2.,  
3           59.74 (2) (b), 59.74 (2) (d) and 60.84 (4); and *to create* 59.74 (2) (dm) and 59.74  
4           (3) of the statutes; **relating to:** surveys, landmarks, and monuments and  
5           providing a penalty.

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

This bill makes technical changes to the law governing surveys, landmarks, and monuments. The bill also increases the forfeiture for failure of a county surveyor, municipal engineer, or land surveyor to perform a legal duty from between \$25 and \$50 to between \$250 and \$500 and changes the time period for notification of the destruction or removal of a landmark, monument, or corner post from at least 30 days before the act to at least 60 days. Finally, the bill shifts the cost of restorative work to landmarks from the county to the person causing the landmark to be disturbed, unless the person cannot be identified or does not have adequate resources to reimburse the county for the cost of the work.

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

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

**SENATE BILL 464****SECTION 1**

1           **SECTION 1.** 59.46 of the statutes is amended to read:

2           **59.46 Penalty for nonfeasance.** Any county surveyor, any city, village or  
3 town engineer, or any land surveyor who fails or refuses to perform any duty required  
4 of that person by law shall forfeit not less than \$25 \$250 nor more than \$50 \$500 for  
5 each such failure or refusal.

6           **SECTION 2.** 59.73 (1) of the statutes is amended to read:

7           **59.73 (1) HOW BEARINGS EXPRESSED IN SURVEYS.** In all surveys the bearings shall  
8 be expressed with reference to a magnetic, true or other identifiable line of the public  
9 land survey, recorded and filed subdivision or to the Wisconsin coordinate system.  
10 In all cases the reference selected shall be so noted as set forth in s. 59.45 (1) (a) 2.  
11 and if magnetic must be retraceable and identifiable by reference to a monumented  
12 line of the public land survey system.

13           **SECTION 3.** 59.74 (1) (a) of the statutes is amended to read:

14           **59.74 (1) (a)** If a majority of all the resident landowners in any section of land  
15 within this state desire to establish, ~~relocate~~ or perpetuate any section or other  
16 corner of any section, or in the same section establish or perpetuate a division line  
17 of the section, they may make a formal application in writing to the circuit judge for  
18 the county in which the land is situated. The circuit judge shall file the application  
19 in his or her court and shall within a reasonable time give at least 10 days' notice in  
20 writing to the owners of all adjoining lands, if those owners reside in the county  
21 where the land is situated and if not, by publication of a class 3 notice, under ch. 985,  
22 stating the day and hour when the circuit judge will consider and pass upon such  
23 application. The circuit judge shall hear all interested parties and approve or reject  
24 the application at that time. If the application is approved, the clerk shall notify the  
25 county surveyor who shall within a reasonable time proceed to make the required

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1 survey and location. If a corner is to be perpetuated, the surveyor shall deposit in  
2 the proper place a stone or other equally durable material of the dimensions and in  
3 the manner and with the markings provided under s. 60.84 (3) (c), and shall also erect  
4 witness monuments as provided under sub. (2). The surveyor shall be paid the cost  
5 of the perpetuation from the general fund of the county.

6 **SECTION 4.** 59.74 (2) (a) 1. of the statutes is amended to read:

7 59.74 **(2)** (a) 1. No landmark, monument, corner post of the government survey  
8 or survey made by the county surveyor or survey of public record may be destroyed,  
9 removed, or covered by any material that will make the landmark, monument, or  
10 corner post inaccessible for use, without first having erected witness or reference  
11 monuments as provided in subd. 2. for the purpose of identifying the location of the  
12 landmark and making a certified copy of the field notes of the survey setting forth  
13 all the particulars of the location of the landmark with relation to the reference or  
14 witness monuments so that its location ~~can~~ will be determined and perpetuated with  
15 a monument of durable material after its destruction or removal. The certified copy  
16 of the field notes shall be filed as provided under par. (b) 2.

17 **SECTION 5.** 59.74 (2) (a) 2. of the statutes is amended to read:

18 59.74 **(2)** (a) 2. Witness monuments shall be made of durable material,  
19 including cement, natural stone, iron or other equally durable material, except wood.  
20 If iron pipe monuments are used, they shall be made of ~~2~~ one inch or more ~~galvanized~~  
21 iron pipe not less than 30 inches in length having ~~an iron or brass~~ a cap fastened to  
22 the top and marked with a cross cut on the top of the cap where the point of  
23 measurement is taken. If witness monuments are made of cement, stone or similar  
24 material, they shall be not less than 30 inches in length nor less than ~~5~~ 3 inches in

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1 diameter along the shortest diagonal marked on the top with a cross where the point  
2 of measurement is taken.

3 **SECTION 6.** 59.74 (2) (b) of the statutes is amended to read:

4 59.74 **(2)** (b) 1. Whenever it becomes necessary to destroy, remove or cover up  
5 in such a way that will make it inaccessible for use, any landmark, monument of  
6 survey, or corner post within the meaning of this subsection, the person including  
7 employees of governmental agencies who intend to commit such act shall serve  
8 written notice at least ~~30~~ 60 days ~~prior to~~ before the act upon the county surveyor of  
9 the county within which the landmark is located. Notice shall also be served upon  
10 the municipality's engineer if the landmark is located within the corporate limits of  
11 a municipality. The notice shall include a description of the landmark, monument  
12 of survey or corner post and the reason for removing or covering it. In this paragraph,  
13 removal of a landmark includes the removal of railroad track by the owner of the  
14 track. In a county having a population of less than 500,000 where there is no county  
15 surveyor, notice shall be served upon the clerk. In a county with a population of  
16 500,000 or more where there is no county surveyor, notice shall be served upon the  
17 executive director of the regional planning commission which acts in the capacity of  
18 county surveyor for the county. Notwithstanding par. (c), upon receipt of the notice  
19 the clerk shall appoint a registered land surveyor to perform the duties of a county  
20 surveyor under subd. 2.

21 2. The county surveyor or executive director of the regional planning  
22 commission, upon receipt of notice under subd. 1., shall within a period of not to  
23 exceed ~~30~~ 60 working days, either personally or by a deputy, or by the municipality's  
24 engineer make an inspection of the landmark, and, if he or she considers it necessary  
25 because of the public interest to erect witness monuments to the landmark, he or she

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1 shall erect 4 or more witness monuments or, if within a municipality, may make 2 or  
2 more offset marks at places near the landmark where they will not be disturbed. The  
3 county surveyor shall make a survey and field notes giving a description of the  
4 landmark and the witness monuments or offset marks, stating the material and size  
5 of the witness monuments and locating the offset marks, the horizontal distance and  
6 courses in terms of the references set forth in s. 59.45 (1) (a) 2. that the witness  
7 monuments bear from the landmark and, also, of each witness monument to all of  
8 the other witness monuments. The county surveyor may also make notes as to such  
9 other objects, natural or artificial, that will enable anyone to locate the position of  
10 the landmark. The county surveyor upon completing the survey shall make a  
11 certified copy of the field notes of the survey and record it as provided under s. 59.45  
12 (1). The municipality's engineer upon completing the survey shall record the notes  
13 in his or her office, open to the inspection of the public, and shall file a true and correct  
14 copy with the county surveyor. In a county with a population of 500,000 or more, the  
15 certified copy of the field notes of the survey shall be filed in the office of the regional  
16 planning commission which acts in the capacity of county surveyor for the county.

17 **SECTION 7.** 59.74 (2) (d) of the statutes is amended to read:

18 59.74 (2) (d) The Except as provided in par. (dm), the cost of the work of  
19 perpetuating the evidence of any landmark under the scope of this subsection shall  
20 be borne by the county or counties proportionally, in which said landmark is located  
21 person causing the monument or landmark to be disturbed.

22 **SECTION 8.** 59.74 (2) (dm) of the statutes is created to read:

23 59.74 (2) (dm) The county or the counties in which the landmark is located shall  
24 bear proportionally the cost of the work under par. (d) if the county or counties cannot  
25 identify the person performing the work under par. (d) or if the county or counties

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1 have identified the person performing the work under par. (d) and the person does  
2 not have adequate money or other resources to reimburse the county or counties.

3 **SECTION 9.** 59.74 (3) of the statutes is created to read:

4 59.74 (3) IMMUNITY FROM LIABILITY FOR TRESPASS. A land surveyor and a  
5 surveyor's assistant who are engaged in the performance of a land survey or in  
6 perpetuating or using a corner of the public land survey system, a monument or  
7 landmark are not liable as trespassers and are liable only for actual damage done to  
8 land or property.

9 **SECTION 10.** 60.84 (3) (c) (intro.) of the statutes is renumbered 60.84 (3) (c) and  
10 amended to read:

11 60.84 (3) (c) To establish, ~~relocate~~ or perpetuate a corner, the surveyor shall set  
12 in the proper place a monument of durable material, as determined by the town  
13 board, ~~consisting of:~~

14 **SECTION 11.** 60.84 (3) (c) 1. and 2. of the statutes are repealed.

15 **SECTION 12.** 60.84 (4) of the statutes is amended to read:

16 60.84 (4) CERTIFICATE. The surveyor shall prepare a certificate setting forth a  
17 complete and accurate record of any survey under this section, including the exact  
18 bearings and distances of each monument from each other monument nearest it on  
19 any line in the town. The certificate shall be recorded in the office of the register of  
20 deeds of the county in which the surveyed land is located and a copy of the certificate  
21 shall be filed in the county surveyor's office.

22 (END)