

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on
Agriculture and
Insurance
(SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr_sb0188_SC-AI_pt01**

➤ Miscellaneous ... Misc

➤ **

Vote Record
Committee on Agriculture and Insurance

Date: 2-16-06

Moved by: Hansen

Seconded by: Miller

AB _____

SB 188

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- ☒ Passage ☐ Adoption ☐ Confirmation ☐ Concurrence ☐ Indefinite Postponement
☐ Introduction ☐ Rejection ☐ Tabling ☐ Nonconcurrence

Committee Member

Senator Dan Kapanke, Chair

Senator Neal Kedzie

Senator Ronald Brown

Senator Luther Olsen

Senator Jon Erpenbach

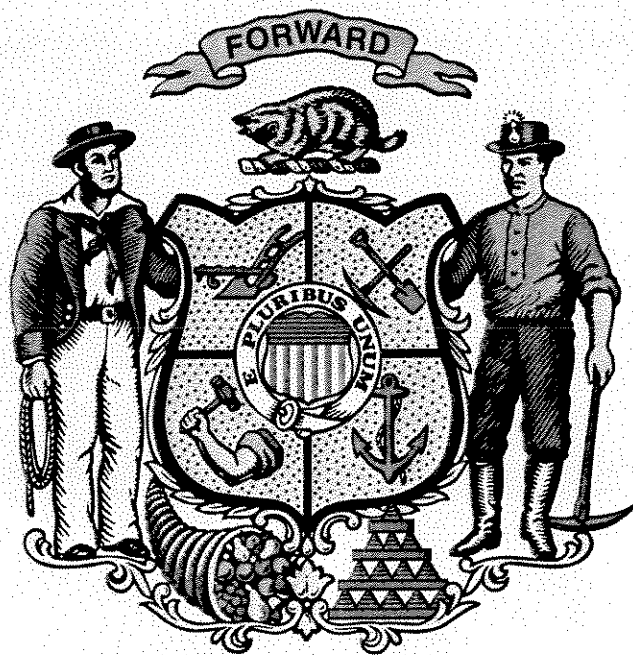
Senator David Hansen

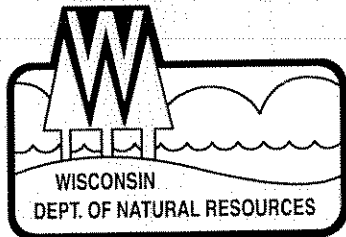
Senator Mark Miller

<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
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Totals: _____

☐ Motion Carried ☐ Motion Failed ☐ Motion Failed





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

2005 SENATE BILL 188

TESTIMONY FOR DNR

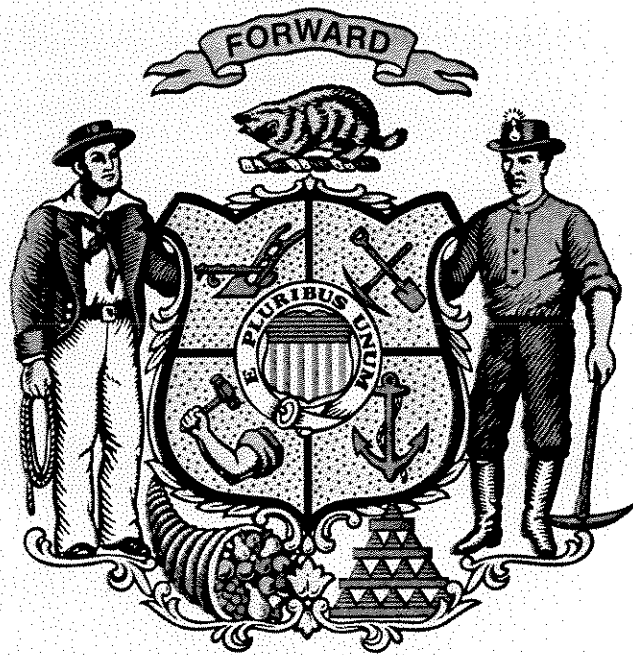
February 7, 2006

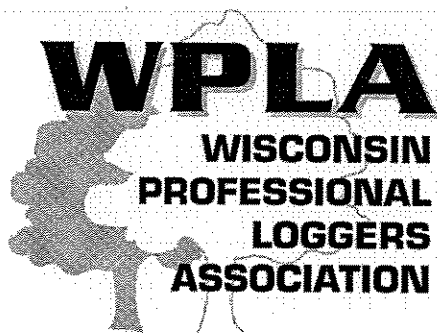
Good morning Mr. Chairman and members of the committee. My name is Rick Bucklew and I am the Division of Forestry's law enforcement specialist with the Department of Natural Resources. I am here representing the agency on this bill today.

The Department of Natural Resources is in support of the concept of this legislation. Department Foresters and Rangers have estimated there would be approximately 180 timber harvests annually where landowners are not properly compensated for their raw forest products and where this new law would be applicable. The passage of this bill would provide a better method for enforcement to help landowners recover delinquent payment. I would like to point out to the Committee that passage of SB 188 will create an additional workload for Forestry law enforcement officers, which is addressed in the fiscal estimate.

I would like to further note that the Division of Forestry has recently completed a two year study of the Forestry Program law enforcement needs as they relate to the Division, the Department and the landowners of the state of Wisconsin. Results of that study indicate there is already a shortage of manpower needed to address the Forestry law enforcement issues that currently exist.

I would like to thank you for the opportunity to address this issue with the committee and would entertain any questions or try to address any concerns that you might have.





February 7, 2006

Senate Committee on Agriculture and Insurance

Dear Committee Members:

I am writing on behalf of the Timber Producers Association (TPA) and the Wisconsin Professional Loggers Association (WPLA) regarding our concerns with Senate Bill 188.

SB 188 as written is fraught with ambiguity, open to a wide range of interpretation and provides little assistance beyond current law to a forest landowner involved in a fraudulent timber sale. In addition this bill places the burden of contract compliance between a forest landowner and the logging contractor on the Department of Natural Resources Forestry Division.

Under current law the DNR has the authority to investigate timber theft complaints and either take legal action or provide the landowner with advice on how to best proceed with civil action depending upon details of the case. Current trade and consumer protection laws as well as the criminal codes provide statutory authority by which a landowner defrauded in a timber transaction can pursue restitution. This bill basically requires the DNR to investigate an alleged contract violation and write a forfeiture citation which is remitted to the local justice program. The civil action is still the responsibility of the landowner. While the bill contains language that requires the court to award reasonable court costs, current civil court procedures already allow for claiming reasonable court costs.

This bill may appear reasonable on the surface, but how it is enforced is open to a wide range of interpretation. For example, timber sale contracts generally provide for specifications on how the timber is to be harvested as well as the estimated volume to be cut and an agreed upon value to be paid for each product cut. Volume estimates are just that. Few if any timber volume estimates are accurate. It is common for a forester to either under or over estimate volumes on a tract of timber and the volume estimates are used for bidding purposes only. Under this bill, if a landowner doesn't receive full payment for the estimated volume, he/she could demand that the DNR investigate the sale to determine if the volume estimate was accurate or not. An investigation could involve everything from witness interviews and mill investigations to physically measuring cut stumps. And it is not unreasonable for a gung hoe officer to initiate covert surveillance in a suspected contract violation. The bottom line is that with over 9000 private timber contracts executed every year in Wisconsin, the DNR workload could be exhaustive from frivolous complaints. As a DNR field forester with over 22 years of law enforcement experience I have personally investigated numerous alleged timber theft/contract violations and can attest to the extensive time commitment required in these investigations with little results. The fiscal estimate from my experience is significantly under estimated.

Our members have recognized the need to self police the logging profession and have established a code of practice that requires WPLA members to comply with ethical and environmental logging standards. Further we have established a popular Wisconsin Certified Master Logger Program® that requires periodic third party audits of their logging operations and a complaint line to insure compliance. We encourage inexperienced landowners seeking timber sale assistance to work with a private consultant forester to administer their sale or at a minimum seek advice from UW Extension and DNR foresters. Our goal is to persuade landowners to hire professional logging contractors and rid the

February 7, 2006

profession of those who are involved in dishonest practices. To that end we would welcome the opportunity to work with the bills author and co-sponsors to develop a strategy to improve the image of the logging profession, protect forest landowners during timber harvesting operations and provide recognition for logging contractors that are committed to sustaining our forests for future generations.

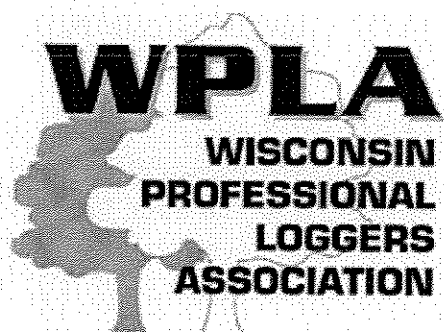
Thank you for your consideration and please contact me at 608 825-3964 if you have a questions or comments.

Sincerely,

Gene Francisco
Executive Director

Perlich, John H.

From: Gene Francisco [gfrancisco@charter.net]
Sent: Monday, February 06, 2006 11:46 PM
To: Sen.Miller; Sen.Kedzie; Sen.Brown; Sen.Erpenbach; Sen.Hansen; Sen.Kapanke; Sen.Olsen
Subject: SB188
Importance: High
Attachments: header.htm; header.htm; SB188.doc



February 6, 2006

Senate Committee on Agriculture and Insurance

Dear Committee Members:

I am writing on behalf of the Timber Producers Association (TPA) and the Wisconsin Professional Loggers Association (WPLA) regarding our concerns with Senate Bill 188.

SB 188 as written is fraught with ambiguity, open to a wide range of interpretation and provides little assistance beyond current law to a forest landowner involved in a fraudulent timber sale. In addition this bill places the burden of contract compliance between a forest landowner and the logging contractor on the Department of Natural Resources Forestry Division.

Under current law the DNR has the authority to investigate timber theft complaints and either take legal action or provide the landowner with advice on how to best proceed with civil action depending upon details of the case. Current trade and consumer protection laws as well as the criminal codes provide statutory authority by which a landowner defrauded in a timber transaction can pursue restitution. This bill basically requires the DNR to investigate an alleged contract violation and write a forfeiture citation which is remitted to the local justice program. The civil action is still the responsibility of the landowner. While the bill contains language that requires the court to award reasonable court costs, current civil court procedures already allow for claiming reasonable court costs.

This bill may appear reasonable on the surface, but how it is enforced is open to a wide range of interpretation. For example, timber sale contracts generally provide for specifications on how the timber is to be harvested as

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well as the estimated volume to be cut and an agreed upon value to be paid for each product cut. Volume estimates are just that. Few if any timber volume estimates are accurate. It is common for a forester to either under or over estimate volumes on a tract of timber and the volume estimates are used for bidding purposes only. Under this bill, if a landowner doesn't receive full payment for the estimated volume, he/she could demand that the DNR investigate the sale to determine if the volume estimate was accurate or not. An investigation could involve everything from witness interviews and mill investigations to physically measuring cut stumps. And it is not unreasonable for a gung hoe officer to initiate covert surveillance in a suspected contract violation. The bottom line is that with over 9000 private timber contracts executed every year in Wisconsin, the DNR workload could be exhaustive from frivolous complaints. As a DNR field forester with over 22 years of law enforcement experience I have personally investigated numerous alleged timber theft/contract violations and can attest to the extensive time commitment required in these investigations with little results. The fiscal estimate from my experience is significantly under estimated.

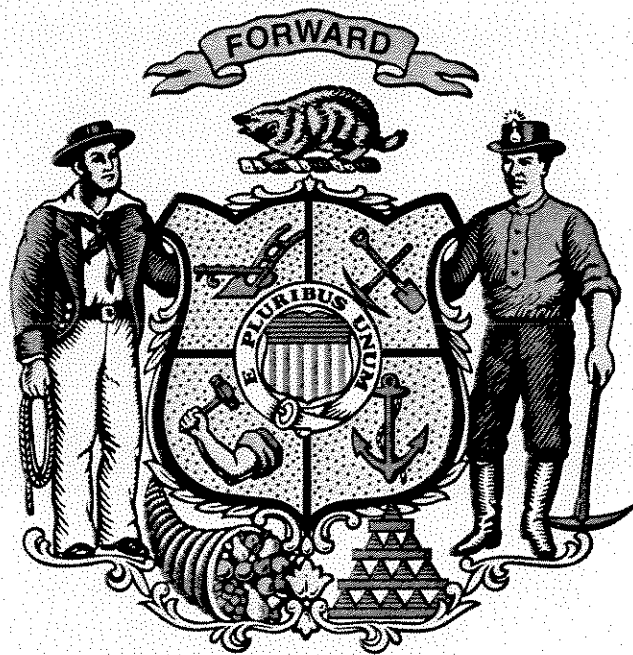
Our members have recognized the need to self police the logging profession and have established a code of practice that requires WPLA members to comply with ethical and environmental logging standards. Further we have established a popular Wisconsin Certified Master Logger Program® that requires periodic third party audits of their logging operations and a complaint line to insure compliance. We encourage inexperienced landowners seeking timber sale assistance to work with a private consultant forester to administer their sale or at a minimum seek advice from UW Extension and DNR foresters. Our goal is to persuade landowners to hire professional logging contractors and rid the profession of those who are involved in dishonest practices. To that end we would welcome the opportunity to work with the bills author and co-sponsors to develop a strategy to improve the image of the logging profession, protect forest landowners during timber harvesting operations and provide recognition for logging contractors that are committed to sustaining our forests for future generations. This bill does not meet that goal.

Thank you for your consideration and please contact me at 608 825-3964 if you have any questions or comments.

Sincerely,

Gene Francisco
Executive Director

"I have read many definitions of what is a conservationist...
the best one is written not with a pen, but an axe."
Aldo Leopold



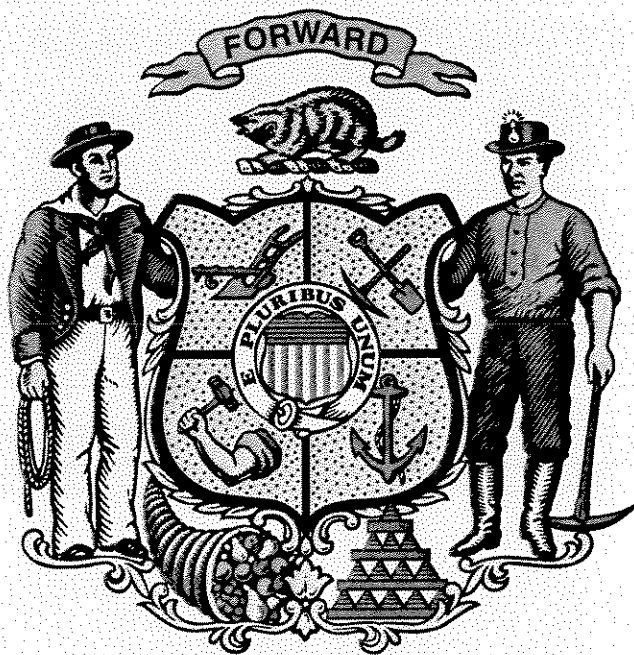
Testimony on Senate Bill 188
Senate Committee on Insurance and Agriculture
201 SE
9:00am., Thursday, February 16th, 2006

Senate Bill 188 was drafted on behalf of my constituent who is a landowner in Stevens Point. My constituent is concerned that unscrupulous loggers can misrepresent both the grade and the quantity of lumber that is transported and sold to a saw mill, and cheat the landowner on money due for their lumber. Senate Bill 188 mandates that the procedures of buying and selling private timber be similar to the DNR procedures on timber sales from public land.

Current law states that when a logger harvests logs on a landowner's property, that logger provides the landowner with what is termed "a bill of lading". In the bill of lading, the logger and landowner agree as to the approximate grade and amount of wood. There are a few different grades of wood; pulpwood, veneer, good and select woods. Upon delivering the wood to the sawmill, the logger gives the bill relating to the sawmill and the mill is then responsible for inspecting the logs and agreeing or disagreeing with the estimates made in the bill of lading. Unfortunately, some loggers have not been honest and misrepresent the amount and/or grade of lumber when they pay the landowner for the lumber sold to the saw mill.

Senate Bill 188 prohibits a logger from failing to pay the total amount of compensation to the landowner as required by the contract. The legislation states that if there is a dispute between a logger and a landowner on the amount of sale to the saw mill, that any civil action to recover the amount of compensation due, the court must award court costs and attorney fees to the successful party if the unsuccessful party refused to pay a demand for damages before the court action began.

Most loggers are ethical and honest businesspeople, but there are exceptions and this bill will help to protect landowners who enter into a timber sale contract in good faith.



Testimony on Senate Bill 188
Senate Committee on Insurance and Agriculture
201 SE
9:00am., Thursday, February 16th, 2006

Chairman Kapanke and Senate Insurance Members,

Thank you for the opportunity to provide testimony today on Senate Bill 188.

Senate Bill 188 was drafted on behalf of Senator Lassa's constituent who is a landowner in Stevens Point and who often uses loggers to sell his timber. The constituent is concerned that unscrupulous loggers can misrepresent both the grade and the quantity of lumber that is transported and sold to a saw mill, and cheat the landowner on money due for their lumber. Senate Bill 188 allows private timber transactions to be the same as those that the DNR uses on timber sales from public land.

Many loggers who harvest logs on a landowner's property provide the landowner with what is termed "a bill of lating". In the bill of lating, the logger and landowner agree as to the approximate grade and amount of wood. Upon delivering the wood to a mill, the logger gives the bill of lating to the mill and the mill is then responsible for inspecting the logs and agreeing or disagreeing with the estimates made in the bill of lating.

Bills of lating are not mandated by state law and some loggers and landowners do not have contractual agreements. Unfortunately, on a few occasions loggers are not honest and misrepresent the amount and/or grade of lumber when they pay the landowner for the lumber sold to the saw mill.

Senate Bill 188 prohibits and provides greater penalties for loggers who fail to pay the total amount of compensation due to a landowner after the landowners products are sold to a mill. The legislation states that if there is a dispute between a logger and a landowner on the amount of sale to the saw mill, any civil action to recover the amount of compensation due must award court costs and attorney fees to the successful party if the unsuccessful party refused to pay a demand for damages before the court action began. The bill also requires that the logger, if found guilty, repay the landowner for the difference between what the lumber was worth and what the landowner was originally paid.

Current law punishes a logger who violates Chapter 26's timber theft laws by a forfeiture of not less than \$100 nor more than \$10,000. Senate Bill 188 creates a new crime for those who knowingly cheat landowners under Chapter 943, anywhere from a Class A misdemeanor to a Class H Felony dependent on the amount of money involved.

Most loggers are ethical and honest businesspeople, but there are exceptions and this bill will help to protect landowners who enter into a timber sale contract in good faith.

Senator Lassa submitted a drafting request late yesterday for an amendment to Senate Bill 188. The amendment would mandate that a mill, whether a sawmill or papermill, mail a landowner a receipt for the transaction made between the logger and the mill within three months of the transaction. This amendment will allow a landowner to know the exact details of the transaction made between the logger and mill.

943.20 (3)(a)



(a) If the value of the property does not exceed \$2,500, is guilty of a Class A misdemeanor.

943.20 (3)(bf)



(bf) If the value of the property exceeds \$2,500 but does not exceed \$5,000, is guilty of a Class I felony.

943.20 (3)(bm)



(bm) If the value of the property exceeds \$5,000 but does not exceed \$10,000, is guilty of a Class H felony.

943.20 (3)(c)



(c) If the value of the property exceeds \$10,000, is guilty of a Class G felony.

943.20 (3)(d)



(d) If any of the following circumstances exists, is guilty of a Class H felony:

943.20 (3)(d)1.



1. The property is a domestic animal.

943.20 (3)(d)3.



3. The property is taken from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing or the proximity of battle.

943.20 (3)(d)4.



4. The property is taken after physical disaster, riot, bombing or the proximity of battle has necessitated its removal from a building.

943.20 (3)(d)5.



5. The property is a firearm.

943.20 (3)(d)6.



6. The property is taken from a patient or resident of a facility or program under s. 940.295 (2) or from a vulnerable adult.

943.20 (3)(e)



(e) If the property is taken from the person of another or from a corpse, is guilty of a Class G felony.

943.20 (4)



(4) Use of photographs as evidence. In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.