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☞ (FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Judiciary, Corrections and Privacy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

Senate

Record of Committee Proceedings

Committee on Judiciary, Corrections and Privacy

Senate Bill 425

Relating to: the authority of the Department of Justice and public nuisance actions.

By Senators Zien, Stepp, Lazich, Reynolds, A. Lasee, Darling, Kedzie, Brown and Grothman; cosponsored by Representatives Suder, Nischke, Pettis, Albers, Hahn, Lothian, F. Lasee, Ainsworth, Hundertmark, Ott, Hines, Ward, Owens, Krawczyk and LeMahieu.

November 08, 2005 Referred to Committee on Judiciary, Corrections and Privacy.

January 11, 2006 **PUBLIC HEARING HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and Risser.
Absent: (0) None.

Appearances For

- Dave Zien — Senator, 23rd Senate District
- Brad Boycks, Madison — Wisconsin Builders Association
- Scott Manley, Madison — WMC
- Bill Smith, Madison — NFIB

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Sabrina Gentile, Madison — Wisconsin Farm Bureau
- Scott Suder, Madison — Representative, 69th Assembly District
- Bill Skewes, Madison — WUA

Registrations Against

- Peggy Lautenschlager, Madison — Department of Justice

January 18, 2006 **EXECUTIVE SESSION HELD**

Present: (5) Senators Zien, Roessler, Grothman, Taylor and Risser.
Absent: (0) None.

Moved by Senator Roessler, seconded by Senator Zien that **Senate Bill 425** be recommended for passage.

Ayes: (3) Senators Zien, Roessler and Grothman.
Noes: (2) Senators Taylor and Risser.

PASSAGE RECOMMENDED, Ayes 3, Noes 2

Brian Deschane
Committee Clerk

Vote Record

Committee on Judiciary, Corrections and Privacy

Date: 1/18/06

Moved by: Rocss

Seconded by: Zien

AB _____ SB 425 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:

- | | | | | |
|---------------------------------------|------------------------------------|---------------------------------------|---|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Adoption | <input type="checkbox"/> Confirmation | <input type="checkbox"/> Concurrence | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Rejection | <input type="checkbox"/> Tabling | <input type="checkbox"/> Nonconcurrency | |

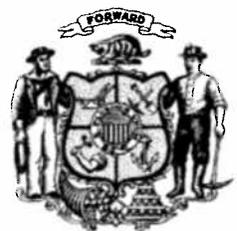
<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator David Zien, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carol Roessler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lena Taylor	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Fred Risser	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>3</u>	<u>2</u>	_____	_____

Motion Carried

Motion Failed



WISCONSIN STATE LEGISLATURE



Marcott, Susan

Subject: (Rescheduled to Oct. 26) ENVIRONMENTAL REG MEETING IN ZIEN OFFICE (TENTATIVE,
per DAZ 10/15)
Location: 15 South
Start: Tue 10/19/2004 11:00 AM
End: Tue 10/19/2004 12:30 PM
Recurrence: (none)

DAZ will invite participants: WMC, Menards, ACE, Farm Bureau, Cranberry Growers, NFIB

AGENDA: plan a joint hearing of Judiciary and Nat. Resources committees to deal with anti-business practices of DOJ and DNR.



Marcott, Susan

Subject: Environmental Regulation/Business Meeting
Location: Capitol Office
Start: Tue 10/26/2004 12:30 PM
End: Tue 10/26/2004 2:00 PM
Recurrence: (none)

Per DAZ, 10-18-04, scm

WMC - Jeff Schoepke will attend
Mark Timke from Foley and Lardner will also attend with WMC
Dawn Sands of Menards will attend by phone, will call at 12:35.
Bob Sather of Ace Ethanol will not participate.
NFIB - Bill Smith will attend
Farm Bureau - Paul Zimmerman will attend
Cranberry Growers - Jordan Lamb for Ron Kuehn
Builders - Jim Boullion can't make it
Susan will attend
Pete will attend

Attendees confirmed, 10/21 pjh



Marcott, Susan

Subject: Meeting on AG Regulatory Reform
Location: 201 SE

Start: Mon 03/07/2005 1:30 PM
End: Mon 03/07/2005 3:30 PM

Recurrence: (none)

Attendees who were invited:

Bill Smith -- 255-6083
Jeff Schoepke (confirmed)
Todd Palmer (confirmed)
Jordan Lamb -- 252-9358
Jerry Deschane -- 242-5151
Rick Chandler -- 628-0433
John Exner -- 255-9946
Tom Larson, Realtors
Bill Skewes -- 257-3151
Jim Bouillion (confirmed)
Ed Wilusz

2-24-05, scm

Per DAZ: Brian should bring application for WMC award for Menards (John Hogan filled out) to meeting with him to discuss with Jeff Schoepke 2-25-05, scm



Nuisance Law Suit

Testimony by Senator Dave Zien

Assembly Judiciary Committee

March 31, 2005 - 10:00 am

Good morning Mr. Chairman and distinguished members of the committee. Thank you for allowing me to testify before you today about Nuisance Law Suits, a provision laid out in AB 278.

Under current state statutes the attorney general may prosecute a claim on behalf of the state seeking to enjoin a public nuisance. The revisions we have proposed would prohibit such claims if the activity alleged to be a nuisance is not in violation of any statute, regulation, ordinance, permit, or approval governing the activity. Any activities that are not so regulated would be entitled to a presumption that they do not constitute a nuisance.

I have been working on this legislation for over three months, and it is the nucleus of a package of legislation I am working on in the Senate that would further limit the Attorney General from bringing frivolous lawsuits against hard working farmers, small business men and women, and land owners.

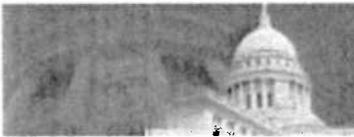
This concept was first brought to my attention when a cranberry grower from my area was sued by AG Peg Lautenschlager for his farming operation. This cranberry farm opened in the 1940's and has been operating for over 65 years, without a complaint. In fact, they didn't break ANY LAWS when the suit was filed! Neither the state Department of Natural Resources or the Department of Agriculture, Trade and Consumer Protection has cited the cranberry operation with violating any environmental or other regulations.

That's right, there was a lawsuit brought against these farmers even though they weren't in the wrong. I think you'll agree with me when I say enough is enough. When the government has the unchecked power to just sue whomever it likes, for whatever reason it cites – there is something wrong.

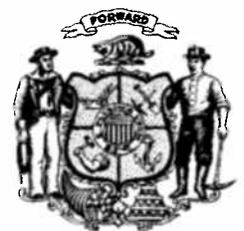
The cranberry growers are not the only people in our state affected by this reckless practice. Excel Energy was sued for their CO-2 emissions, even though those emissions aren't regulated in our state. In fact, the current AG brags that she has set a record for the most environmental claims receipts ever.

State-initiated nuisance lawsuits are bad for business, bad for farmers, bad for family, and ultimately bad for our state. Mr. Chairman, I encourage you and the members of the Assembly Judiciary committee to support AB 278, and ultimately the Nuisance Lawsuit legislation.

I hope committee members will listen to the compelling testimony that is about to be presented and do the right thing. Thank you again for the opportunity to speak, and I would be happy to entertain any questions you may have for me at this time.



WISCONSIN STATE LEGISLATURE





STATE SENATOR DAVE ZIEN

CHAIRPERSON

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

VICE CHAIRPERSON

COMMITTEE ON VETERANS, HOMELAND SECURITY, MILITARY AFFAIRS, SMALL BUSINESS AND GOVERNMENT REFORM

MEMBER

COMMITTEE ON JOB CREATION, ECONOMIC DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

JOINT LEGISLATIVE COUNCIL

BUILDING COMMISSION

PRESIDENT PRO TEMPORE

Nuisance Law Suit

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This concept was first brought to my attention when a cranberry grower from my area was sued by A.G. Peg Lautenschlager for his farming operation. This cranberry farm opened in the 1940's and has been operating for over 65 years, without a complaint. In fact, they didn't break ANY LAWS when the suit was filed! Neither the state Department of Natural Resources or the Department of Agriculture, Trade and Consumer Protection has cited the cranberry operation with violating any environmental or other regulations. That's right, there was a lawsuit brought against these farmers even though they weren't in the wrong. I think you'll agree with me when I say enough is enough. When the government has the unchecked power to just sue whomever it likes, for whatever reason it cites – there is something wrong.

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OFFICE: P.O. BOX 7882 • STATE CAPITOL • MADISON, WI 53707-7882
PHONE (608) 266 7511 • FAX (608) 267 8794 E-MAIL SEN.ZIEN@LEGIS.STATE.WI.US • Website: WWW.LEGIS.STATE.WI.US
SENATE DISTRICT: 505 S. DEWEY STREET, SUITE 214 • EAU CLAIRE, WI 54702 • PHONE: (715) 834 7723

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DONT TREAD ON ME



From: Deschane, Brian
Sent: Wednesday, April 13, 2005 11:24 AM
To: Nelson, Robert P.
Subject: Bill Drafting

Attachments: concepts.doc; Nuisance Law Suit.doc; piling on.pdf
Robert, attached are the concepts we would like drafted into one, large bill.

Thank you very much for your help. If you have any questions, please let me know.



concepts.doc (35
KB)



Nuisance Law
Suit.doc (48 KB)



piling on.pdf (13
KB)

Brian Deschane
Legislative Aid
Senator Dave Zien
266-7511





July 1, 2005

JUL 11 2005

BD
Send them to
4742
w/ our AG
agenda.

The Honorable David A. Zien
PO Box 7882
Madison, WI 53707-7882

Dear Senator Zien,

Because the actions of some activist state attorneys general are gaining national attention and are a growing cause for concern to the American business community, I am writing to share with you information released by the U.S. Chamber Institute for Legal Reform at a May 26 conference on the role of state attorneys general. Enclosed please find a fact sheet and press release describing the reports presented at the conference (*for the full text of these reports, please log on to <http://www.instituteforlegalreform.org/resources/papers.html>*).

Few days go by without another report detailing how a state attorney general has decided to sue a company or, an entire industry. In some instances these officials, under a thinly veiled threat of possible criminal charges, try their cases in the media and then demand wholesale restructuring of a company's business practices in order to settle the litigation. In other cases, attorneys general from multiple states join forces in nationwide actions that would once have been seen as the province of federal and state legislators and regulatory agencies. Our conference explored what the proper role of state attorneys general should be, as well as potential remedies.

I hope you will find these materials useful and informative. If you have any questions regarding the conference or ILR's efforts, please do not hesitate to contact me or my staff.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Rickard".

Lisa A. Rickard
President
U.S. Chamber Institute for Legal Reform



THE ROLE OF THE STATE ATTORNEY GENERAL

FACT SHEET

“AG activism is threatening to become a permanent condition. ... AG indictments are not filed to be litigated; like extortionate class actions, they are filed to exact settlements from defendants who cannot afford to bet the company.”

(Michael Greve; Government by Indictment: Attorneys General and Their False Federalism; Published by the American Enterprise Institute, May 2005)

- “Increasingly, state AG investigations and prosecutions of major corporations go beyond the objective of punishing individual wrongdoing or even of changing the conduct of corporate entities. Many AG campaigns – which increasingly take the form of multistate actions – attempt to ‘reform’ the internal operations and business models of major American industries.” *(Michael Greve; Government by Indictment: Attorneys General and Their False Federalism; Published by the American Enterprise Institute, May 2005)*
- Contrary to the well-established practices and policies of federal prosecutors and SEC investigators, some activist AGs use bad publicity and the threat of criminal prosecution to force civil settlements. These AGs should adhere to the same longstanding fair code of conduct followed by other prosecutors and investigators and embodied in codes of legal ethics. *(Tyrone Fahner; Remarks delivered at U.S. Chamber Institute for Legal Reform State Attorneys General Conference, May 26, 2005)*
- As state attorneys general have expanded their roles in prosecuting and regulating businesses, as well as in pursuing new industry policies and business practices, questions have arisen in the business community about the role of the National Association of Attorneys General (NAAG). It is widely believed that NAAG uses the settlement funds it receives from multistate litigation to investigate and commence, along with private contingency fee counsel, additional multistate litigation against business and industry. If this is the case, funds rightfully due to the states are being used to fuel new litigation against business. *(National Association of Attorneys General: An Overview; Published by the U.S. Chamber Institute for Legal Reform, May 2005)*
- “Over the past decade, the plaintiffs’ bar has emerged as an entrepreneurial, highly sophisticated litigation industry and as a cohesive, stupendously resourceful political force. AG activism is inextricably linked with that development... The incestuous relationship between the trial bar and the AGs is not a healthy development. It amounts to an institutionalized form of the liability explosion, which will prove substantially harder to check than the plaintiff bar’s unassisted exploits.” *(Michael Greve; Government by Indictment: Attorneys General and Their False Federalism; Published by the American Enterprise Institute, May 2005)*



THE ROLE OF THE STATE ATTORNEY GENERAL

- “The contingency suits [by state AGs and private attorneys] thus violate a central tenet of good government: that individuals should not have a personal stake in matters when they purport to represent the public... As the U.S. Supreme Court has noted, a ‘scheme injecting personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.’”
(John Beisner, Jessica Davidson Miller and Terrell McSweeney; *Bounty Hunters on the Prowl: The Troubling Alliance of State Attorneys General and Plaintiffs’ Lawyers*, May 2005)
- A solution to the contingency fee dilemma: State adoption of the ***Private Attorney Retention Sunshine Act*** would bring transparency to the process of contingency fee arrangements by:
 - Requiring open and competitive bidding processes when attorneys general enter into contracts with private attorneys;
 - Mandating legislative hearings on contingent fee contracts that exceed \$1 million;
 - Requiring a statement of hours worked, expenses incurred, and effective hourly rates at the end of any contingency fee case.

For a complete copy of the studies cited here, please log on to <http://www.instituteforlegalreform.org/resources/papers.html>



THE ROLE OF THE STATE ATTORNEY GENERAL

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FOR IMMEDIATE RELEASE – May 26, 2005

Contact: Linda Rozett/Sean McBride

Chamber: Rein in Activist State Attorneys General Curb ‘Regulation through Litigation’ and Contingency Fee Deals

[U1]

WASHINGTON, D.C.— At a conference on the proper role of state attorneys general, the United States Chamber Institute for Legal Reform (ILR) today released research showing the serious threat posed by activist state attorneys general and called for legislative reforms that will restore the public’s faith in government. The conference also featured remarks by three current state attorneys general, Steve Carter (R-IN), Thurbert Baker (D-GA) and Tom Corbett (R-PA).

“It is time to reign^[U2] in activist attorneys general,” said Lisa Rickard, president of ILR. “They operate with little regard for the authority of state and federal legislators, and their contingency fee deals with private plaintiffs’ attorneys undermine the public’s faith in government.”

At the conference, several important topics were explored, including the proper role of the state attorney general, the current and future role of the National Association of Attorneys General and whether or not attorneys general are undermining the rule of law.

In *Government by Indictment*, presented at the conference, AEI scholar Michael Greve warns of the dangers of AG activism and says that many AG indictments are filed without intent to litigate, but rather to extract settlements from defendants.

In *Bounty Hunters on the Prowl: the Troubling Alliance of State Attorneys General and Plaintiffs’ Lawyers* attorney John Beisner says that in many instances, plaintiffs’ attorneys approach state AGs with a proposed lawsuit, spearhead the effort and benefit financially from any settlement.

At today’s conference, ILR called upon state legislatures to adopt the “Private Attorney Retention Sunshine Act,” the American Legislative Exchange Counsel’s model legislation for regulation of contingency fee contracts between state AGs and plaintiffs’ attorneys. The Chamber also urged state legislatures to help curb AG activism by asserting their constitutional powers to regulate corporate behavior.

The mission of the ILR is to make America’s legal system simpler, fairer and faster for everyone. The U.S. Chamber of Commerce is the world’s largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

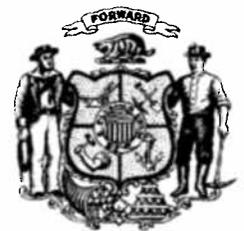
www.uschamber.com

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To view the studies, please log on to <http://www.instituteforlegalreform.org/resources/papers.html>



WISCONSIN STATE LEGISLATURE



Marcott, Susan

Subject: AG/Business/Regulatory Reform Meeting
Location: 201 SE
Start: Tue 08/16/2005 10:00 AM
End: Tue 08/16/2005 12:00 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Required Attendees: Deschane, Brian

Jeff Schoepke at WMC is confirmed to attend. SM sent invite to other members of the group 8-3-05, scm
Confirmed:
Jordan Lamb
Jim Boullian
Jeff Scheppke



Marcott, Susan

Subject: AG reform package press conference (CANCELLED)

Start: Mon 09/26/2005 9:30 AM
End: Mon 09/26/2005 11:00 AM

Recurrence: (none)

entered by JWH 9/22/05 4:25pm



Marcott, Susan

Subject: Business Reform Strategy Session
Location: 15 S.
Start: Wed 09/28/2005 8:30 AM
End: Wed 09/28/2005 9:30 AM
Recurrence: (none)
Meeting Status: Meeting organizer
Required Attendees: Deschane, Brian; Hogan, John

E-Mail from DAZ to members of the group: Now that our business reform legislation is out of drafting, our next step is to tell our story to the media.

I would like to have a strategy session at **8:30 a.m., Wednesday, Sept. 28** in my office, to discuss how to most effectively convey our message/story to the media. (Please note the new date and time change for the meeting).

I am also asking all of the groups to put together written examples of abuse for the press packet. The more concrete examples we can give to the media, the better our message is. If each group could put together a summary of egregious examples on their letterhead, my office will assemble them and have them ready for the press conference, which I'm hoping to have at 9 a.m., Tuesday, Oct. 4. We can discuss this further at the meeting on Wednesday.

Thank you, and I look forward to seeing you on Wednesday.

9-23-05, scm



Marcott, Susan

Subject: Business Regulatory Reform meeting
Location: 15 S.

Start: Tue 10/04/2005 1:00 PM
End: Tue 10/04/2005 2:00 PM

Recurrence: (none)

Meeting Status: Meeting organizer

Required Attendees: Deschane, Brian

Per BJD, 9-28-05, scm



Marcott, Susan

Subject: Regulatory Reform Press Conference
Location: Senate Parlor

Start: Thu 10/06/2005 10:00 AM
End: Thu 10/06/2005 11:00 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Required Attendees: Deschane, Brian

Per BJD, 9-28-05, scm



From: Sklansky, Ron
Sent: Thursday, September 29, 2005 9:13 AM
To: Deschane, Brian
Subject: RE: DOJ bill draft
Brian:

If passed by the legislature, the governor could not partially veto LRB-2762/P3. The governor would have two choices: (1) approve the whole bill as presented or (2) veto the entire package and return it to the house of origin with his objections.

Ron

From: Deschane, Brian
Sent: Wednesday, September 28, 2005 3:04 PM
To: Sklansky, Ron
Subject: DOJ bill draft

Ron,

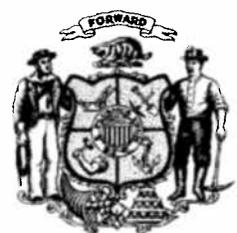
Attached is Senator Zien's bill re: the power of the Department of Justice and the Attorney General. I would appreciate it if you could review the bill to see if it would be subject to a line item veto. If you have any questions about the context of this bill please let me know.

Thanks Ron. << File: second draft.pdf >>

Brian J. Deschane
Office of Senator Dave Zien
brian.deschane@legis.state.wi.us



WISCONSIN STATE LEGISLATURE



October 5, 2005

MEDIA ADVISORY

Zien/Suder to Announce Fairness in Litigation Act

MADISON – Sen. Dave Zien (R-Wheaton) and Rep. Scott Suder (R-Abbotsford) are holding a press conference at 10 a.m., Thursday, Oct. 6 in the Senate Parlor to announce the Fairness in Litigation Act, which will curb unjust litigation brought by government against businesses and citizens. Zien and Suder will be joined by representatives from organizations representing business, manufacturing, farm, construction, and others to announce details of the legislation.

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WISCONSIN STATE LEGISLATURE



Fairness in Litigation Press Conference

Thursday, October 5, 2005

Good morning and thank you for coming today.

We're here this morning to talk about a piece cutting edge legislation that Representative Suder and myself are introducing. You're here as we unveil a package that will put a stop to the many documented abuses of power committed by the Department of Justice, and most noticeably, our Attorney General.

Joining me today are representatives of the business community, and other concerned groups from around the state. We have WMC, the Wisconsin Builders Association, The National Federation of Independent Businesses, The Cranberry growers, and the Wisconsin Farm Bureau. These groups are here because their members have become increasingly aware of the dangers an Attorney General creates by overstepping his/her constitutional duties.

I'm becoming increasingly more alarmed at some of the legislating from the bench that I see from the Department of Justice. The AG's campaigns are now reaching far beyond the realm of punishing wrongdoers and upholding the law. The AG's increasingly vigilante tactics are seeking to change the conduct of corporate entities, and revise the rules that large and small businesses alike play by.

Some call this regulation by litigation. Some call it AG activism. I call it unconstitutional.

A prime example of her Constitutional abuse is the case of *The State of Wisconsin vs. Zawistowski*. Mr. Zawistowski owns two cranberry marshes on Musky Bay in Sawyer County. This family-owned business started in 1940.

In 2002 a private group of landowners sued Mr. Zawistowski's farming operation, citing that his cranberry bogs were releasing a dangerous amount of phosphorous into the surrounding water. Federal Judge Barbara Crabb threw the case out of court. She found that the plaintiffs had no credible grounds to claim even the jurisdictional minimum damages to bring a lawsuit in federal court.

Despite the case being dismissed from court, in June 2004, the same plaintiffs started the lawsuit all over again in state court. This time, the state has joined as a plaintiff. It is important to note that the state DNR did not ask the AG to sue Mr. Zawistowski. Neither did the Department of Agriculture, Trade & Consumer Protection (DATCP). There have been no complaints by either the DNR or DATCP against Mr. Zawistowski. Instead, the decision to join in the lawsuit was made solely by the Attorney General. ***The AG alone decided to bring the suit.***

The AG admits that Mr. Zawistowski has not violated any laws or regulations. She admits that there have been no enforcement efforts against his operation and that there was no referral from any regulatory agency. Instead of suing for violation of the law, the AG claims that Mr. Zawistowski has created a "public nuisance."

A lawsuit for "public nuisance" is based upon common law. Common law is a set of rules made by judges, rather than the legislature, on a case-by-case basis. Common law has its place in preventing abuses against the public. It does that not have a place in the hands of the AG. I firmly believe that if you aren't breaking

the law, you shouldn't be able to be sued as though you are. This is just common sense. Plain and simple.

Mr. Zawistowski's case is set for late September, and we can only hope that the judge and jury uphold the law that the legislature and federal and local governments have set forth, not merely the whims of our AG.

As I am sure you can understand, there is a separation of powers for a reason. If we bypass the legislature and take innocent business owners straight to court, you're cutting the citizens of Wisconsin out of the rule-making process, and you're using their tax dollars to do it.

The Attorney General should not be allowed to use

litigation in lieu of legislation! I hope you agree.

Again, thank you for coming today. Myself, and the groups behind me would be happy to entertain any questions that you may have.





Wisconsin Builders Association

Dedicated to Preserving and Promoting the American Dream

President
Dan Schneider
Kiel

President-Elect
Frank Madden
Mequon

Treasurer
Mark Etrheim
La Crosse

Secretary
Jason Steen
Osseo

Past President
Mike Lotto
Green Bay

Associate Senior Officer
Ralph O. Kennedy, II

Associate Advisor to the Senior Officers
Judy Carpenter
La Crosse

Area Vice Presidents

2002-2005
Judy Carpenter
La Crosse

Mike Marthaler
Eau Claire

Jim Klappa
Milwaukee

Kevin Pitts
Green Bay

2003-2006
Bob Sarow
Janesville

Tracy Royer
Appleton

Julie Meyer
Racine

Dave Kautza
Antigo

Jim Selting
Eau Claire

2004-2007
John Anderson
Menasha

Greg Schaeffer
Madison

Mark Bootz
Green Bay

Tom Thompson
La Crosse

Ted Peotter
Wausau

Deputy Executive Vice-President
Jerry Deschane



MEMORANDUM

TO: State Senator Dave Zien

FROM: Jerry Deschane

DATE: October 6, 2005

RE: Legislation to curb nuisance lawsuit abuse

Thank you for taking the lead in addressing this important issue. The Wisconsin Builders Association believes that nuisance lawsuit abuses must be controlled for two reasons: 1) so that businesses operating in or considering Wisconsin know what the rules are, and 2) to preserve regulatory reform gains of the last legislative session.

Wisconsin builders and developers "play by the rules." Our members spend thousands of dollars hiring engineers, environmental consultants, and architects to make sure that the homes built in Wisconsin comply with all of the state's many rules. And that's not easy. As we all know, Wisconsin is a hyper-regulated state. Between local, federal, and state regulations, the Badger state can look like a red tape maze to new businesses. Nonetheless, businesses generally do a very good job of staying within those boundaries.

Allowing an activist Attorney General to sue a citizen or businessperson who hasn't violated the law throws the state's economy into chaos. What *are* the rules? What environmental standard should we design to, if the Attorney General can challenge the outcome, no matter how positive? How can we expect a business to locate jobs here if we cannot assure them that our Attorney General won't sue them tomorrow over a perceived shortcoming that is not covered by any law or regulation?

Last session, the legislature cast a bipartisan vote adopting the Jobs Creation Act, (Wisconsin Act 118), one of the most significant regulatory reform bills passed in Wisconsin in recent memory. Unfortunately, that work could be rendered meaningless by one nuisance lawsuit. Is the state's Green Tier law irrelevant, if any charter signed by the DNR can be challenged by the Attorney General?

These concerns are not hypothetical. The Attorney General's decision to sue the Zawistowski Farm in Sawyer County under a novel nuisance theory would make irrelevant the clear standards and processes written into Wisconsin's navigable water law by Act 118. The water law governs thousands of development projects that will be at risk under this new style of government second-guessing.

The democratic process allows the Wisconsin Legislature to pass environmental laws as tough as any in the world, if it chooses. Our industry, and other industries in Wisconsin, will comply with those legally-adopted rules. We cannot, however, comply with rules that do not exist, or that are written down only in the campaign manifesto of an activist state official.

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WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

To: Interested Colleagues

From: Senator Dave Zien
Representative Scott Suder

Date: October 6, 2005

Re: **LRB 2762/1 - The Fairness in Litigation Act**

The Fairness in Litigation Act will shield Wisconsin citizens, business owners and farmers against frivolous and public nuisance lawsuits brought for by the Attorney General and the Department of Justice. We have worked hard with private citizens and representatives from Wisconsin Manufacturers and Commerce, the National Federation of Independent Businesses, the Wisconsin Builders Assoc., the WI Farm Bureau, Wisconsin Cranberry Growers Assoc., the Wisconsin Realtors Assoc., and others to craft this legislation that responds to abuse by the Attorney General and the need for reform in the Department of Justice. This bill does not name our current, or any past AG. It is specifically designed to prevent abuses of power, and to restore the faith of Wisconsin's business and farming community, as well as private citizens in the our state's legal justice process.

Specifically, the act will prevent the DOJ and the publicly-elected AG from:

- Commencing in public nuisance lawsuits
- Starting a civil action against a party regarding any issue that is the subject of another civil action against that party
- Joining in any action that has been commenced by another state unless the governor requests that joinder
- Intervening in a civil action unless the governor or both houses request it, all parties agree to the intervention, or the department is required by statute to intervene
- Prohibit the attorney general from contracting with or appointing a private attorney as a temporary assistant attorney general unless the governor requests that the attorney general do so

To demonstrate the need for this bill, we've attached testimony from industry leaders such as Wisconsin Manufacturers and Commerce, The Wisconsin Farm Bureau, The National Federation of Independent Businesses, and the Wisconsin Builders Association.

We hope you will take a close look at this proposal and discuss it with your constituents and local industry leaders. Please let Senator Zien's office (6-7511) or Representative Suder's office (7-0280) know by **October 21, 2005** if you would like to be included as a cosponsor.

Attached you will find a copy of LRB 2762/1 and letters of support from the above mentioned organizations. If you have any questions, please contact Brian Deschane in my office.



FAIRNESS^{*in*} **LITIGATION**



AUTHORED BY
SENATOR DAVE ZIEN
REPRESENTATIVE SCOTT SUDER



WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

FOR IMMEDIATE RELEASE

October 6, 2005

Contact: Sen. Dave Zien, (608) 266-7511
Rep. Scott Suder, (608) 267-0280

Zien/Suder Announce Fairness in Litigation Act

MADISON -- Sen. Dave Zien (R-Wheaton) and Rep. Scott Suder (R-Abbotsford) are introducing legislation today to curb unfair litigation brought by government against businesses and citizens. The Fairness in Litigation Act will protect private citizens against frivolous and unfair lawsuits brought forth by an Attorney General (AG).

Zien and Suder said the legislation is needed to shield Wisconsin citizens and businesses against unfair lawsuits, which ultimately cost millions of dollars in economic development each year. Organizations representing farmers, businesses, cranberry growers, realtors, developers, utilities, and others showed the lawmakers case after case where the current AG has overstepped her bounds and abused her power as an elected official.

“The Attorney General is elected to be the chief law enforcement officer, but has also become a self-anointed lawmaker,” said Zien. “She has abused the power that voters placed in her through vigilante tactics aimed at private citizens and businesses.”

The Zien/Suder legislation will prevent the Attorney General from: bringing nuisance lawsuits against citizens and businesses that are not violating the law, piling on private party lawsuits without the Governor or Legislature’s approval, or joining in a lawsuit commenced by another state without the Governor’s order.

Suder said the AG’s zealous tactics are well known by businesses, farmers and private citizens in Wisconsin.

“In documented case after case the Attorney General has overstepped her bounds and harassed Wisconsin citizens,” said Suder. “In one case the Attorney General went after a family-owned farm and the Supreme Court threw out her case, saying it was completely without merit – this abuse has to stop.”

Zien and Suder said they’ve been researching the issue over the past year, meeting with groups and private citizens, and working to draft legislation to curb legal abuses by the AG, while still allowing the Department of Justice to do its job and go after real criminals.