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Details:

(FORM UPDATED: 07/12/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2007-08**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Agriculture (AC-Ag)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

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



Wisconsin REALTORS® Association  
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Roger Rushman, Chairman  
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William Malkasian, CAE, President  
e-mail: wem@wra.org

# Memorandum

**To:** Members, Assembly Agriculture Committee  
**From:** Tom Larson  
**Date:** March 27, 2007  
**Re:** Drainage District Bills (AB 115, AB118, AB 120)

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The Wisconsin REALTORS® Association (WRA) opposes AB 115, AB 118 and AB 120 (“the Drainage District Bills”) as they are currently drafted. However, we are working with the authors of the bills to address our concerns and will hopefully find some mutually agreeable solutions. Accordingly, we respectfully request that the committee refrain from voting on these bills until a compromise can be reached.

## Background

The WRA strongly supports providing buyers and sellers in real estate transactions with as much information as possible. More information helps to ensure that all parties are satisfied with the transaction and reduces the likelihood of lawsuits relating to information discovered after the transaction has closed.

Based upon our conversations with the authors, one of the primary goals of the Drainage District Bills is to make sure that buyers of property located in a drainage district are aware that (a) the property is located in a drainage district, and (b) such districts have the authority to impose special assessments upon that property. To accomplish this goal, the bills require a seller of property to disclose whether the property is located in a drainage district. The bills take two different approaches to disclosure -- one bill requires this disclosure to be added to the real estate condition report (AB 120), while another bill requires the seller to make a separate written disclosure (AB 118).

## Concerns with Bills

While requiring sellers to disclose whether a property is located in a drainage district sounds relatively harmless, it presents some practical difficulties for property owners, such as:



+ **Most property owners do not know whether they are located in a drainage district.** The only time property owners would know if they are located in a drainage district is if they have received notice of a special assessment. Additionally, because drainage districts are not part of local governments and do not have a full-time staff, most property owners don't know who to contact to gather this information. If a property owner is unaware that they are located in a drainage district, it is unreasonable to require them to disclose this information to prospective buyers.

+ **The real estate condition report (RECR) is not required in vacant land transactions.** Under current law, a RECR is required only in transactions involving 1 to 4 family dwellings. Because many of the transactions relating to drainage districts involve vacant land, the seller of such land is not required to use the RECR and, therefore, the buyer will not receive the disclosure.

+ **Requiring a separate written disclosure may create liability issues for sellers.** While the RECR is ineffective for vacant land transactions, a separate written disclosure buried in the Wisconsin Statutes will likely go unnoticed by sellers. Under the bills, failure to provide this notice could invalidate the transaction and may require the seller to compensate the buyer for any damages.

+ **Requiring the disclosure of a property's location within a drainage district will establish new precedent.** Wisconsin has numerous local taxing districts in Wisconsin including town utility districts, town sanitary districts, sewer utility districts, solid waste management board, and local professional baseball park district. However, sellers of property are not currently required to disclose that they are located within any of these districts. (Note – sellers are required to disclose any known pending special assessments.)

Again, we are working with the authors of the Drainage District Bills to address these and other concerns, and we are hopeful that a solution can be arrived at soon. If you have any questions, please feel free to contact us at (608) 241-2047.





# Memorandum

**Date:** April 4, 2007  
**To:** Members, Assembly Agriculture Committee  
**From:** John Kisiel –Wisconsin Builders Association  
**RE:** Proposed Legislation: AB 115, AB 118, AB 119, AB 120

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The Wisconsin Builders Association® (WBA) and its nearly 9,300 members oppose AB 115, AB 118, AB 119 and AB 120 as they are currently drafted. We have met with the authors of these bills to address our concerns and they have assured us that they will continue to work with us in possibly finding some commonground. We respectfully ask that the committee forgo a vote on these bills while discussions continue.

## Position

The members of the Wisconsin Builders Association are committed to fostering the dream of home ownership that is affordable for the people of Wisconsin. Our members know that a home represents the single most important purchase in a person's life. WBA supports attempts to ensure that buyers and sellers are well informed about all of conditions that may affect the transaction.

However, the members of this Association are concerned by any proposed legislation that creates additional layers of review that could potentially delay the approval process for a development or the issuance of a building permit. While our members recognize that some amount of delay is part of the overall process, these delays always translate to increased costs that often derail the dream of homeownership for those who are least able to pay any additional costs that additional delays can cause. These proposed pieces of legislation will potentially delay the regulatory approval process, add costs to the transaction, and give additional authority to a quasi- governmental body that is comprised of an unelected board. WBA is also concerned that adding either a separate standalone disclosure document related to the properties presence in the drainage district or rolling the disclosure into existing documents will dilute the significance and further complicate the existing disclosure document that is used in residential transactions.

## Background

We have met with the authors and understand that their intent is to require any political subdivision to send a written notice to the drainage district prior to taking any action that would allow the development of any structure in the drainage district. The district would then be able to request a delay in the approval process. This would allow some undetermined period for the district to complete a technical analysis of the potential impacts to the drain related to the

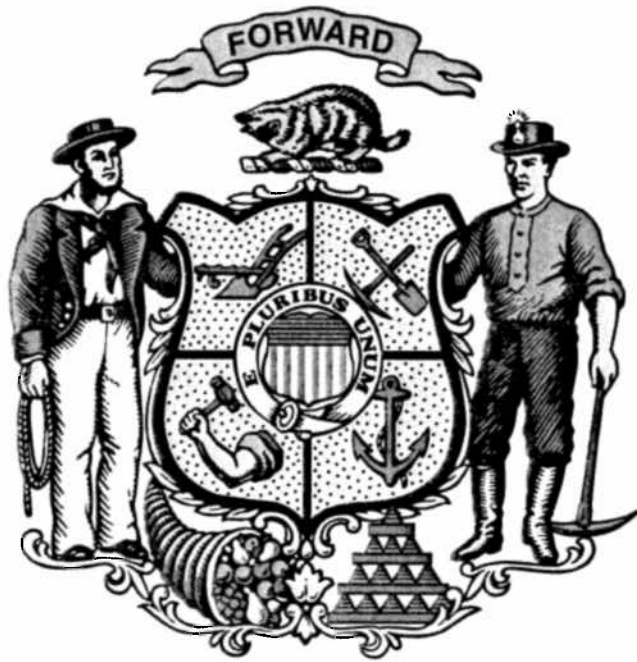
construction. The authors have also expressed that they want to mandate the use of an additional disclosure provided by the seller that would inform the buyer that the property is in a drainage district. This would presumably be a way of informing the buyer of the potential that the property may be subject to a special assessment in the future to help maintain the drain.

## Issues

The WBA is concerned about these bills for the following reasons:

- **Potential for Delay** – The proposed legislation requires any political subdivision to provide written notice to the drainage district prior to taking any action to allow the construction of a structure in the drainage district. The District could request that the subdivision delay the hearing process pending the receipt of an engineering study. There is no defined timeline for how long the drainage district has to make this request, how long the district has for securing the study, and who will be responsible for paying for the study. These all could add substantive time to the review process.
- **Additional Costs** – This legislation inserts the drainage district into the regulatory review process. It requires units of government to contact the drainage board whenever it is considering allowing “the development of any structure” within the drainage district or that may potentially impact the water flowing to the main drain. The board may request the approval process be delayed to conduct a study. There is no timeline defined for any of these actions. In any real estate transaction, time is money. Additional delays in an already lengthy regulatory process add to the cost of the transaction and impact the affordability of homes for the people of Wisconsin.
- **Additional Authority to Drainage Districts** – Drainage districts are not elected by the people who live in the district. They are an anomaly since they are purely the creation of the courts based upon a petition submitted to the court requesting creation of the district. The district is not defined by geographic boundaries and may contain all or some part of a property. Over 40% of the districts are currently inactive. There has been no justification provided as to why there is a necessity to give additional authority for reviewing permit requests, comprehensive plans, and zoning (AB 119) that will delay approvals for an undetermined period of time to an entity where nearly half of those currently in existence are currently listed as inactive.
- **Disclosure Dilution** – The proposed legislation requires the addition of language to the real estate condition report in one bill (AB 115) and a separate document under another (AB 118) that discloses the property is in a drainage district. The concern here is that since many of these districts are inactive or have not imposed special assessments, many sellers would not even know they are in a district. Requiring a seller to disclose a fact that even municipalities do not closely track puts the seller in the situation of unwittingly running the risk of liability for failing to disclose. This is patently unfair and a trap for the unwary that may result in litigation.

Our Association remains committed to working with the authors to try and address these concerns and have suggested ways in which the legislation could be changed to serve the authors’ original intent. We welcome the opportunity to provide input on this issue. If you have any questions or need additional clarification then please contact me at (608)242-5151.





State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

Public Hearing Testimony of  
David Jelinski, Director, Land and Water Resources  
Agricultural Resource Management Division  
Department of Agriculture, Trade and Consumer Protection

Assembly Committee on Agriculture  
AB 115, 116, 117, 118, 119, 120

April 5, 2007

Chairman Ott and Committee Members:

I am David Jelinski of the Department of Agriculture, Trade and Consumer Protection. The purpose of this testimony is to provide information related to the operation of county drainage boards and the maintenance of drainage districts. I believe this information is important as you consider the series of Assembly Bills before you regarding proposed changes to the related statutes.

The Department of Agriculture, Trade and Consumer Protection is required by law to assist county drainage boards with the supervision and operation of drainage districts under the provisions of Ch. 88, Stats, and ATCP 48, Wis. Adm. Code.

In order to understand the bills in front of you, it is also necessary to understand the role county drainage boards play in operating drainage districts in their county. Although in some cases, a county drainage board's jurisdiction may extend into another county because some drainage districts extend across more than one county. The county circuit court judge is responsible for appointing the members of the drainage boards, and delineating the boundaries of drainage districts. Beyond these well established court authorities, modern legislation enacted under ch. 88, Wis. Stats. has provided extensive authorities and responsibilities to county drainage boards to carry out their duties.

While only a circuit court can create or dissolve a drainage district, the county drainage board assists the court in creating new drainage districts. When a drainage district is created, the county drainage board is responsible for:

- operating and maintaining district drains and dams within district drains;
- levying assessments with landowners who benefit from the provided drainage;
- awarding damages, as appropriate, to landowners injured by the construction of district drains;
- inspecting the district drains and corridors;

*Agriculture generates \$51.5 billion for Wisconsin*



- making or recommending modifications to a drainage district; and
- resolving drainage disputes, subject to applicable law.

The drainage boards periodically meet with the landowners in the drainage district (at least once a year). If a drainage board determines that any work is needed in the district, the drainage board will send landowners in the district an assessment for costs. Some drainage boards wait many years to issue assessments to landowners; other drainage boards conduct annual assessments. In certain cases, small projects may be done by the landowners in the district with credits given to them for work they have performed. Assessment for costs may also be issued to individual landowners to pay for damages they have caused to district drains. This authority extends to landowners in or outside of the district boundary.

Drainage districts are special purpose units of government organized to drain land for agricultural and other purposes. While the districts are created through the court, they are formed following the filing of a petition with the court by land owners within the proposed district (Sec. 88.27, Wis. Stats.). There are approximately 200 drainage districts in 27 counties in Wisconsin. I have attached a map showing the counties with drainage districts. Some counties have only one district and others have over 30. The size of the districts varies from about 50 acres to over 55,000 acres. The number of landowners in each district can be a very few but some districts have thousands of land owners.

Land within a drainage district is drained by a system of ditches or tiles that cross individual property boundaries. Landowners pay the cost of constructing, maintaining, and repairing the district drains based on who benefits from drainage. The drainage board must conduct an assessment to determine who benefits from this drainage system. The greater the benefit, the greater amount paid. Any assessment that is needed to cover the cost of operating the drainage system must be based on these confirmed benefits.

Drainage issues can be very divisive. Drainage districts have major impacts on land use, and on rights of individual landowners. Drainage board actions (or inactions) may have serious long-term consequences. Actions by individual landowners may harm other landowners or the public at large. Developments outside a drainage district may also affect landowners in a district. For example, land use changes may increase storm runoff and flooding in district drains.

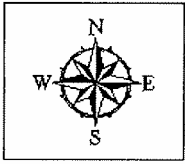
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
Finally, it is important to note that lands in drainage districts are some of Wisconsin's most productive farmland. By the very nature of drainage districts, the effects of floods and droughts are minimized and optimal water levels are maintained to enhance this production. As you know, Wisconsin is ranked first in the nation in the production of cranberries, third in the nation in the production of potatoes, and we are currently ranked first in the production of cheese. Much, but not all, of this multi-billion dollar production occurs in drainage districts along side of other important mint, sod and more traditional crops.

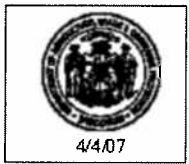
Any changes to the law need to enhance this production as well as the responsibilities of the county drainage boards to ensure orderly drainage, and appropriately resolve drainage disputes.

Thank you for allowing me to testify today, and I would be happy to answer any questions you might have for me concerning our drainage program.

# Location of Drainage Districts



 County with Drainage District(s)



Department of Agriculture, Trade and Consumer Protection  
April 5, 2007

AB-0115

**Purpose**

The seller of real property located in a drainage district must disclose that the property is in a drainage district.

**Comment**

For information purposes only: The Department believes that it is in everyone's best interest for the landowners in a drainage district to be well informed.

AB-0116

**Purpose**

The public contract minimum bid would be increased from \$10,000 to \$20,000.

**Comment**

Support: The cost of doing maintenance in a drainage district has increased since this bid amount was originally set in the statute. This change will help drainage boards run the drainage districts more efficiently.

AB-0117

**Purpose**

The installation or modification of a dam in a district or private drain would require the approval of all landowners affected.

**Comment**

Oppose: The department believes this bill applies to drains both in and outside of drainage districts. Currently, the drainage board already has the authority to set water levels, listen to the desires of landowners in the district, and establish a consensus on the procedures for installing, modifying, and operating dams affecting lands in the drainage district. The department believes this bill would negatively impact the ability of drainage boards to resolve conflicting land use requirements within a drainage district.

Department of Agriculture, Trade and Consumer Protection  
April 5, 2007

AB-0118

**Purpose**

The seller of real property located in a drainage district must disclose that the property is in a drainage district and require local governments to consider relationships with drainage districts in comprehensive plans.

**Comment**

For informational purposes only: The department believes that it is in everyone's best interest for the landowners in a drainage district to be well informed. This right to know should extend to drainage districts and comprehensive plans prepared by other governmental agencies.

AB-0119

**Purpose**

The drainage boards are allowed to impose setbacks or no-build zones for maintenance along district ditches. It also provides for recording an order to impose the setback.

**Comment**

For informational purposes only: The department believes this bill establishes protections similar to those already codified under the provisions ATCP 48.24 (Wis. Adm. Code).

AB-0120

**Purpose**

The seller of real property located in a drainage district must disclose that the property is in a drainage district and require local governments to consider relationships with drainage districts in comprehensive plans.

**Comments**

For informational purposes only: The department believes it is in everyone's best interest for the landowners in a drainage district to be well informed. This right to know should extend to drainage districts and comprehensive plans prepared by other governmental agencies.



What is a Drainage District under Chapter 88?

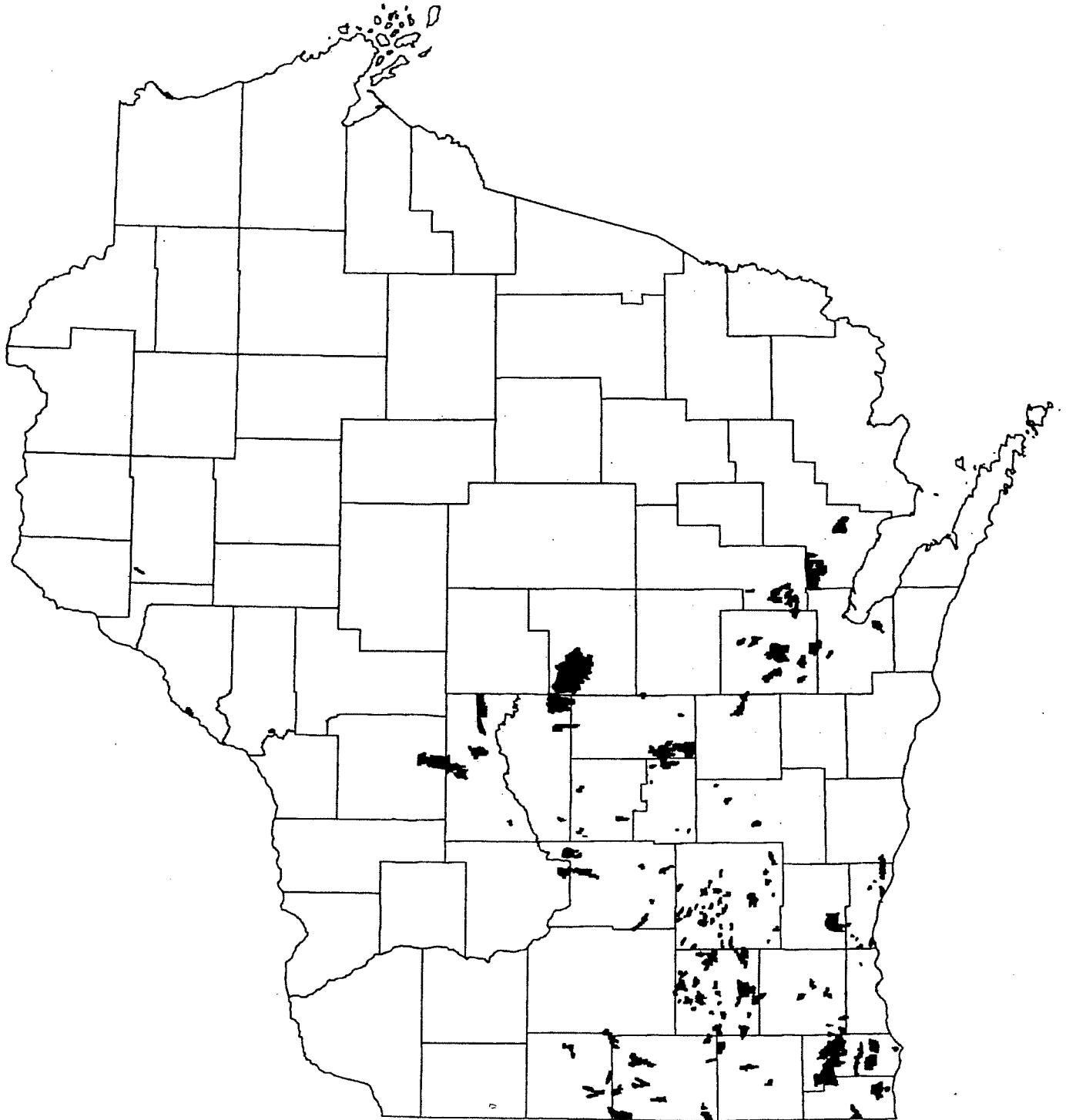
AB 115 ?  
Date ?

1. Special local unit of government
2. Group of landowners come together to petition their local circuit court to authorize the creation of the special district
3. Original Purpose: to drain land for agricultural use and thereafter for the purpose of controlling the flow of the water through the district to avoid material injury to the land (i.e. flooding)
4. Funding Mechanism: the drain district's governing board assesses a fee to the landowners; individual landowners pay a share of the assessment according to their parcel's benefit of the drain
5. Funding Use: to maintain the drain (i.e. dredging), engineering studies, meeting costs, etc.

What are some of the major issues facing Drain Districts?

1. Drain Districts are not consistently recognized by other local units of government (i.e. cities) as having planning jurisdiction
2. Nearly all Drain Districts are situated in the eastern part of the state where developmental pressure is the greatest
3. Because of increasing developmental pressure, Drain Districts desire to affirm their interest in preserving drains and they want impending land buyers to be aware of real estate drain district status so an informed decision can be made
4. Drains need to be preserved in order to control the flow of water to avoid material injury to land (i.e. water back-up, flooding)
5. If the ability of Drain Districts to maintain their respective drain is limited or restricted, the land will be subject material injury (i.e. flooding), whereby threatening the use and value of the land for agricultural purposes (original intention) or for developmental use such as sub-divisions

# Active and Stop Work / Suspended Drainage Districts in Wisconsin



Drainage Districts



Drainage District Program  
Agricultural Resource Management Division  
October 1999