

 **07hr_ab0116_AC-Ag_pt01**



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)
 - (**ajr** = Assembly Joint Resolution)
 - (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Vote Record Committee on Agriculture

Date: 5/3/07

Moved by: Williams

Seconded by: Molepske

AB 116

SB _____

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 checked="" 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"/> Nonconcurrence | |

Committee Member

	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Alvin Ott, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative John Murtha	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jeffrey Mursau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Gary Tauchen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Barbara Gronemus	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Amy Sue Vruwink	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Phil Garthwaite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Andy Jorgensen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 10 1 _____

Motion Carried

Motion Failed

Vote Record Committee on Agriculture

Date: 5/3/07

Moved by: Nerison

Seconded by: Williams

AB 116 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 AR _____ SR _____ Other _____

A/S Amdt 1
 A/S Amdt _____ to A/S Amdt _____
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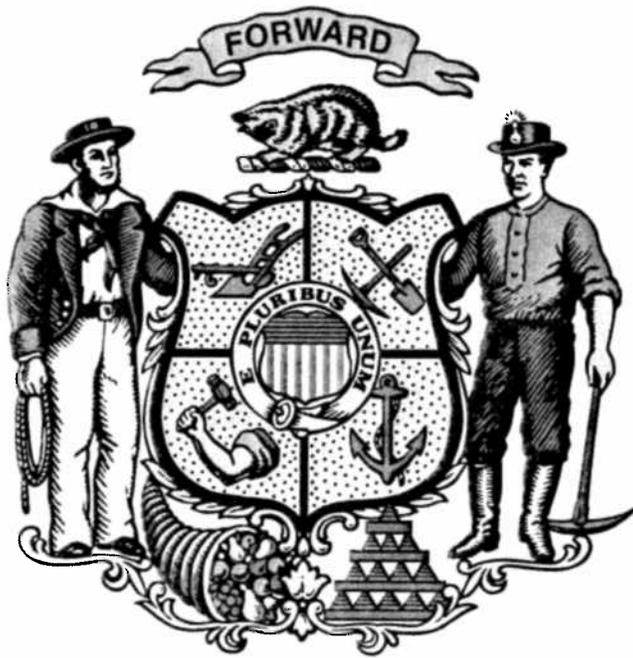
Be recommended for:

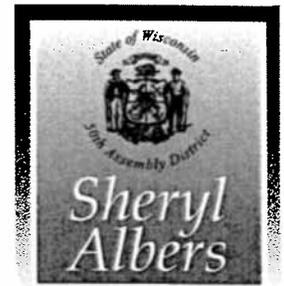
- Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Alvin Ott, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Representative Barbara Gronemus	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Amy Sue Vruwink	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Phil Garthwaite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Andy Jorgensen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>11</u>	<u>-</u>	_____	_____

Motion Carried

Motion Failed





Testimony of Rep. Sheryl Albers
Assembly Committee on Agriculture
Thursday April 5, 2007

Mr. Chairman and Members, thank you for allowing all of us to testify before you on what we believe is a very important package of proposals to firm up the authority of the state's Drain Districts. As you have already heard, these proposals are the result of hours and hours of meetings with Drain District representatives over the past year or more.

When a Drain District needs work done, the board authorizes a contract for bid and must advertise using a class 2 notice when the amount of work is \$10,000. Assembly Bill 116 increases the bidding threshold for drain-related contracted services to \$20,000. The work required to maintain a drain includes, but is not limited to dead tree removal, sediment removal through dredging, and hauling spoils.

Assembly bill 116 will make the first significant adjustment to the bidding threshold enacted in 1993 WI ACT 456. Although property owners often perform minor work along a main drain which either abuts or traverse their property, this proposed increase will provide boards and drain districts greater flexibility in carrying out their statutory functions.

Assembly Bill 116 is a simple change to the bidding threshold and we hope that you will give serious consideration to passing this bill out of committee.

Thank you

Assembly Bill 117 -

This bill requires a property owner who intends to construct or alter a dam to first obtain agreement from other property owners whose lands would be impacted by the construction or alternation of an existing dam. Under this bill, agreement needs to be reached between the permit applicant and other affected property owners in writing, and if such an agreement among affected property owners is unattainable, the DNR will be prohibited from issuing a permit for the proposed dam construction/alteration.

A comparable analogy would be: If the homeowner in the middle of a city street decided to cut off the sewage pipe to his neighbors up the street, the neighbors impacted by the shut off would want to be informed and have an opportunity for input (an avenue of administrative recourse). After all, no one wants sewage backed up in their home. Similarly, impacted property owners who farm upstream do not want water backing up on their property, nor do they desire to have a down stream property owner create a wetland that might alter water table levels or raise the ordinary high water mark. Such conduct could adversely impact crop production; alter land uses, both which could impact property values.





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.

DATCP Testimony
AB 115, 116, 117, 118, 119, and 120
April 5, 2007
Page Three

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.

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.



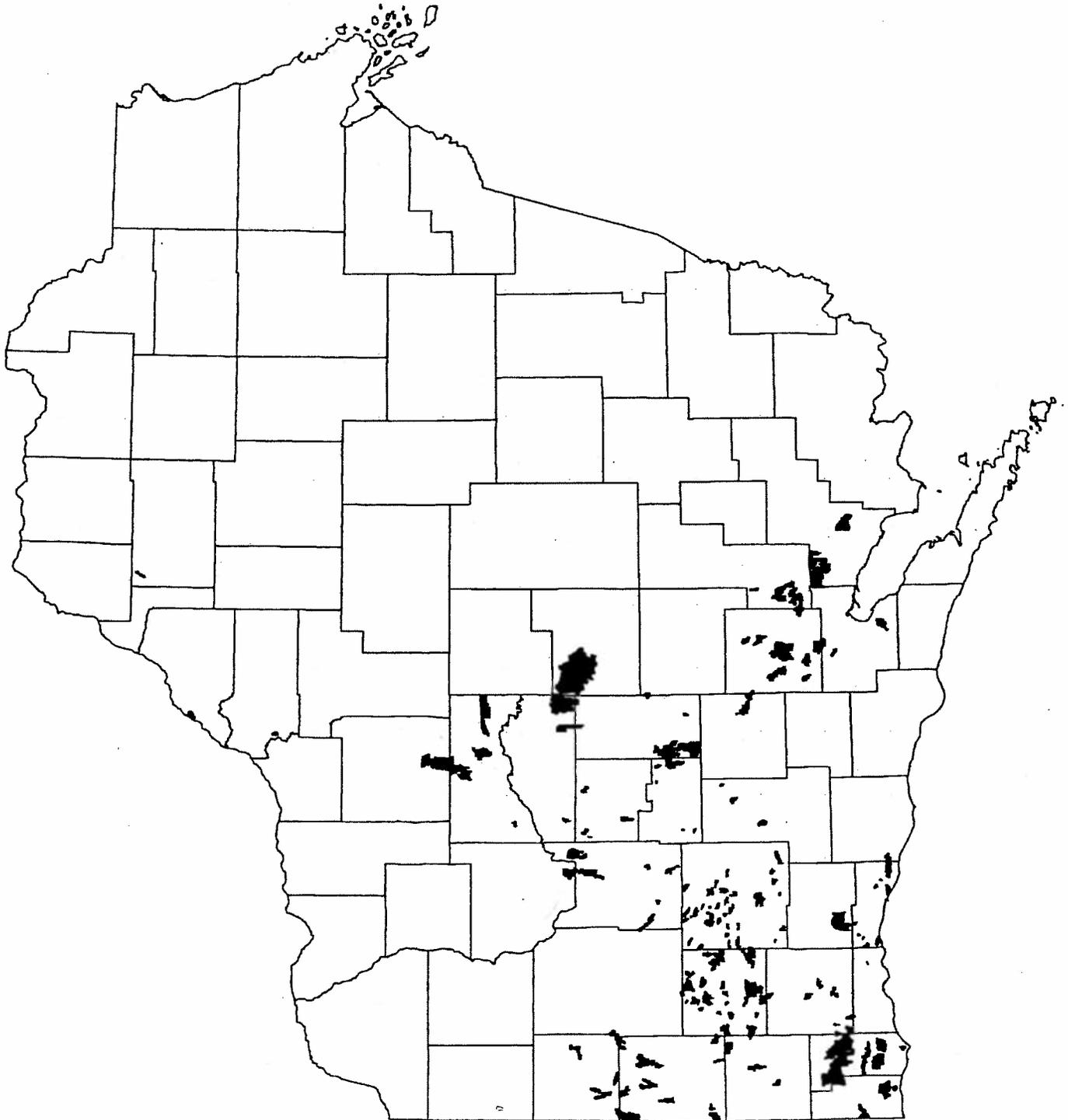
What is a Drainage District under Chapter 88?

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