

SA ✓

1 INSERT ANALYSIS A

boundaries

1. Measuring or analyzing a tract of land to determine the location of its boundary and boundary corners.
2. Designing or coordinating designs for the purpose of platting or subdividing land into smaller tracts.
3. Placing, replacing, restoring, or perpetuating monuments in or on the ground to evidence the location of a point that is necessary to describe the shape, area, and boundaries of one or more tracts of land or the subdivision or consolidation of one or more tracts of land or that is necessary to describe the boundaries of any of the following interests in real property: a) ~~The~~ layout and rights-of-way of roads or streets; b) ~~Air~~ or property rights; or c) ~~Public~~ or private easements.
4. Preparing maps that depict any interest in real property identified in item 3. for the purpose of establishing the boundaries of any such interest in real property.
5. Preparing any of the following: a) ~~An~~ official map of this state, including an official map established or amended by a city, established or amended by a village, or adopted by a town; b) ~~An~~ assessor's plat; c) ~~A~~ map or plat of cemetery lands; d) ~~A~~ subdivision plat, certified survey map, or correction instrument; e) ~~A~~ condominium plat or correction instrument; or f) ~~A~~ project and time-share plat.
6. Performing cartographic, construction, or geodetic surveying in connection with any of the practices specified in items 1. to 5.

2 INSERT ANALYSIS B

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The substitute amendment creates a ⁿ new exemption from licensure for employees of the Department of Agriculture, Trade and Consumer Protection (DATCP) who have been certified as provided under the substitute amendment and who are engaged in establishing the boundaries of easements acquired by DATCP under the Conservation Reserve Enhancement Program. The substitute amendment authorizes DATCP to establish by rule a program to train and certify its employees in certain practices related to identifying boundaries of tracts of land and interests in real property. DATCP must establish by rule accuracy standards for employees certified under the program to follow when conducting any of the practices for which training and certification is provided. also

Showing the boundaries of the shape and area of land designated as managed forest land by the

*

The substitute amendment exempts from licensure persons who prepare the following maps: a) a map used in connection with a regulatory program established by the state or a local unit of government; b) a map subject to an order of the Department of Natural Resources (in which land shown on the map is designated as managed forest land); and c) a map that identifies the boundaries or the shape and area of land or partial interests in real property for purposes unrelated to the transfer of interests in the tract of land or partial interest in real property.

*

The substitute amendment also exempts from licensure employees of state agencies and local units of government who operate a land information system (LIS) or geographic information system (GIS), provided that every product created by or hosted on the LIS or GIS includes the following disclaimer: "This product is for

informational purposes only and may not be suitable for legal, engineering, or surveying purposes. This product does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.”

1 **INSERT ANALYSIS C**

Finally, the substitute amendment exempts a professional land surveyor and an employee working under the direct supervision of the precessional land surveyor from civil liability for trespass occurring during the practice of professional land surveying or damage caused as a result of the surveyor’s approximation of high and low water elevations, provided the action of the surveyor or his or her employee were in good faith and not reckless, wanton, or involving intentional misconduct.

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2 **INSERT 4-12 A**

3 **SECTION 1.** 16.967 (3) (f) of the statutes is created to read:

4 16.967 (3) (f) Ensure that state agencies and local governmental units with
5 land information responsibilities include on every product created by a land
6 information system or hosted on a land information system the following disclaimer:

7 “This product is for informational purposes only and may not be suitable for
8 legal, engineering, or surveying purposes. This product does not represent an
9 on-the-ground survey and represents only the approximate relative location of
10 property boundaries.”

11 **INSERT 10-24**

12 **SECTION 2.** 93.75 of the statutes is created to read:

13 **93.75 Training and certification.** (1) Subject to sub. (2), the department
14 may by rule establish a training and certification program for employees of the
15 department that includes instruction in any of the following practices:

16 (a) Placing, replacing, restoring, or perpetuating monuments in or on the
17 ground to evidence the location of a point that is necessary to describe any of the
18 following:

- 19 1. The shape, area, and boundaries of one or more tracts of land.

****NOTE: The language of this subdivision differs from the language under the definition of land surveying. Specifically, this subdivision does not include language related to the subdivision or consolidation of one or more tracts of land. Okay?

- 1 2. The boundaries of any of the following interests in real property:
- 2 a. The layout and rights-of-way of roads or streets.
- 3 b. Air or property rights.
- 4 c. Public or private easements.
- 5 (b) Preparing maps that depict any interest in real property identified in par.

(a) for the purpose of establishing the boundaries of any such interest in real property.

If the department establishes a training and certification program under sub (1) by rule

8 (2) The department shall by rule establish accuracy standards for employees certified under this section to follow when conducting any of the practices described in sub. (1) (a) and (b). ✓

INSERT 17-1

SECTION 3. 443.01 (4) of the statutes is repealed. ✓ K

SECTION 4. 443.01 (6s) of the statutes is created to read: ✓

443.01 (6s) (a) Except as provided in par. (b), "practice of professional land surveying" means any of the following:

1. Measuring or analyzing a tract of land to determine the location of its

17 boundary ^{boundaries} and boundary corners.

2. Designing or coordinating designs for the purpose of platting or subdividing land into smaller tracts.

3. Placing, replacing, restoring, or perpetuating monuments in or on the ground to evidence the location of a point that is necessary to describe the shape, area, and boundaries of one or more tracts of land or the subdivision or consolidation

1 of one or more tracts of land or to describe the boundaries of any of the following
2 interests in real property:

- 3 a. The layout and rights-of-way of roads or streets.
- 4 b. Air or property rights.
- 5 c. Public or private easements.
- 6 4. Preparing maps that depict any interest in real property identified in subd.
- 7 ~~3. or~~ the purpose of establishing the boundaries of any such interest in real property.
- 8 5. Preparing any of the following:

for

****NOTE: The drafting instruction for this paragraph identifies maps and plats prepared under chapters 62 (official maps), 70 (assessor's plats), 157 (cemetery plats), 236 (subdivisions and certified survey maps), 703 (condominiums), and 707 (time share ownership) of the statutes. I eliminated the reference to "official plats" and instead identify, by statutory section or chapter, the plats referenced above. Okay?

✓ ✓ ✓
✓ ✓ ✓ ✓

- 9 a. An official map of this state, including an official map established or
- 10 amended under s. 62.23 (6), established or amended under the authority of s. 61.35,
- 11 or adopted under s. 60.61.

****NOTE: The definition of land surveying under current law includes the preparation of "official plats, or maps, of this state." As indicated in the previous NOTE, this draft eliminates from the definition of the practice of professional land surveying references to "official plats." I have the following questions about the new language regarding "official maps" in subdivision paragraph 5. a.:

1. Neither s. 62.23 (6), stats., s. 61.35, stats., nor s. 60.61 (2) (e), stats., specifically require that the official map of a city, village, or town be prepared by a professional land surveyor. Would you like to make that requirement more explicit by amending ss. 60.61 (2) (e) and 62.23 (6)?

✓ ✓ ✓
✓

2. Is it accurate to refer to an "official map of this state," or should this clause be eliminated from the draft? What does the phrase "official map of the state" mean? Does it include a map of all of the agricultural lands or forest lands or park lands in the state that is prepared by an agency? What about a map of all of the school districts in the state prepared by DPI? The state cartographer is authorized under s. 36.25 (12m) (e), stats., to "publish and distribute such special maps and map information as will promote the mapping of the state and preparation and use of maps by individuals, only to the extent, however, that such publication and distribution is not appropriately within the activities of any other state or commercial agency." Is a map prepared under this authority an "official map of the state?" Is the state cartographer necessarily a professional land surveyor? In sum, must any of the maps identified in this particular NOTE be prepared by a professional land surveyor?

✓

- 12 b. An assessor's plat under s. 70.27.

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c. A map or plat of cemetery lands under s. 157.07. ✓

d. A subdivision plat, certified survey map, or correction instrument under ch. 236. ✓

e. A condominium plat or correction instrument under ch. 703. ✓

****NOTE: Must a removal instrument, as that term is defined in s. 703.02 (14g), stats., be prepared by a professional land surveyor?

f. A project and time-share plat under s. 707.215. ✓

6. Performing cartographic, construction, or geodetic surveying in connection with any of the practices specified in subs. 1. to 5.

(b) "Practice of professional land surveying" does not include the establishment of an ordinary high water mark.

INSERT 17-12

or provide or offer to provide or hold himself or herself out as qualified to provide consulting services related to the practice of professional land surveying

INSERT 17-14

****NOTE: This s. 443.02 (4) has been amended to add language regarding performing "consultation services related to the practice of land surveying;" similar language had appeared as part of the definition of the practice of professional land surveying in 2009 AB 271. As amended, s. 443.02 (4) provides that no person may provide consultation services related to the practice of professional land surveying unless the person is licensed by the examining board. I moved the language to this particular section because, under 2009 AB 271, the language occurred in definition of professional land surveying, resulting in a somewhat circular definition ("the practice of professional land surveying means . . . performing consultation services related to the" practice of professional land surveying).

However, moving the language to this s. 443.02 (4) does not entirely eliminate the problem with this language. The language itself is vague, what exactly are "consultation services related to the practice of professional land surveying?" Does that phrase include, for example, an architectural firm which has chosen to hire a professional land surveyor as part of its staff? If so, then, regardless of whether the language appears in the definition or in s. 443.02 (4), the person who hires the professional land surveyor is now providing consultation services (in this case architectural consultation services) related to the practice of professional land surveying; thus, the person who hired the professional land surveyor may also be required to have a license issued by DRL. Is there a way to clarify what "consultation services" means?

INSERT 21-7

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as affected by 2007 Wisconsin Act 205
as affected by 2007 Wisconsin Act 205

1 SECTION 5. 443.10 (2) (b) of the statutes is amended to read:

2 443.10 (2) (b) The fees for examinations and licenses credentials, as defined in
3 s. 440.01 (2) (a), granted under this chapter are specified in s. 440.05, and the fee for
4 renewal of such licenses credentials is determined by the department under s. 440.03
5 (9) (a).

engage in the

History: 1979 c. 167 ss. 9, 10, 23, 24, 41, 42, 53; 1979 c. 221 s. 780; 1979 c. 355; 1981 c. 3; 1987 a. 27; 1991 a. 39; 1993 a. 463, 465, 491; 1995 a. 27; 1997 a. 27, 300; 2007 a. 20.

6 SECTION 6. 443.10 (5) of the statutes is amended to read:

7 443.10 (5) FEES; RENEWALS. The professional land surveyor's surveyor section
8 shall grant a certificate of registration as a professional land surveyor license to any
9 applicant who has met the applicable requirements of this chapter. The renewal date
10 for the certificate license is specified under s. 440.08 (2) (a), and the renewal fee for
11 the certificate license is determined by the department under s. 440.03 (9) (a).

license to practice of surveying

History: 1979 c. 167 ss. 9, 10, 23, 24, 41, 42, 53; 1979 c. 221 s. 780; 1979 c. 355; 1981 c. 3; 1987 a. 27; 1991 a. 39; 1993 a. 463, 465, 491; 1995 a. 27; 1997 a. 27, 300; 2007 a. 20.

12 INSERT 23-1

13 (2) Preparing any of the following:

14 (a) A map used in connection with a regulatory program established by the
15 state or a local unit of government, as defined under s. 16.957 (1) (k).

g in

16 (b) A map ^{showing the boundaries or the shape and area of one or more tracts of land} subject to an order under s. 77.82 (8). ✓

17 (c) A map ^{e that} which identifies or depicts the boundaries or the shape and area of
18 one or more ^s tracts of land or one or more interests in real property for purposes
19 unrelated to the transfer of interests in the ^s tracts of land or interests in real property.

****NOTE: The drafting instructions directed me to include language under this section 443.135 that exempts from licensure persons who create maps that "generally depict the boundary of an interest in property that is established by a legal description." Is it necessary that the interest in property be established by a legal description? If so, what do you mean by "legal description?" Do you mean a metes and bounds legal description? Must the legal description be incorporated onto the map somehow? Must the legal description itself be prepared by a professional land surveyor? ✓

20 INSERT 23-2

****NOTE: Is this last, "catch-all" paragraph necessary?

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SECTION 7. 443.14 (8) (b) of the statutes is amended to read:

443.14 (8) (b) Officers and employees of the federal government while engaged in the practice of professional land surveying for the federal government.

History: 1979 c. 167 ss. 5, 21, 40, 48; 1979 c. 355; 1983 a. 189 s. 329 (18); 1991 a. 309; 1993 a. 463, 465, 491; 1995 a. 227; 1997 a. 27, 300; 2005 a. 360.

INSERT 23-21

SECTION 8. 443.14 (15) of the statutes is created to read:

443.14 (15) An employee of the department of agriculture, trade and consumer protection certified under s. 93.75 who is engaged in determining the boundaries of an easement to be acquired by that department under the conservation reserve enhancement program under s. 93.70.

****NOTE: This exemption limits the certified person's authority to determining the boundaries of easements to be acquired by DATCP under CREP, but the person's training under the certification program appears to be broader. Is that discrepancy intentional?

Should a person certified under s. 93.75 be authorized to determine the boundaries of easements to be acquired under the purchase of agricultural conservation easements (PACE) program created under s. 93.73, stats., by 2009 Wisconsin Act 28?

Would a person who prepares a map under either CREP or the new PACE program be exempt from licensure under proposed s. 443.135 (2) (a), which exempts from licensure a person who prepares "[a] map used in connection with a regulatory program established by the state or a local unit of government, as defined under s. 16.957 (1) (k)?" In other words, is this exception necessary given the language in proposed s. 443.135 (2) (a)? Is proposed s. 443.135 (2) necessary? (a)

SECTION 9. 443.14 (16) of the statutes is created to read:

443.14 (16) An employee of an agency, as defined in s. 16.967 (1) (a), who operates a land information system, as defined in s. 16.967 (1) (c), or a geographic information system, if the employee includes on any product hosted on the land information system or geographic information system or created by the land information system or geographic information system the disclaimer required under s. 16.967 (3) (f).
employee using the system includes

or a local government unit, as defined in s. 16.977

****NOTE: Is the definition of agency at s. 16.967 (1) (a), stats., appropriate? That section reads as follows: (1090)



In the definition of "local governmental unit" s. 16.977(7) states: appropriate to local governmental unit means a political subdivision of this state or special purpose district in this state with instrumentality or corporate status or subdivision

NO TO Fix single quote

"Agency" means an office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority.

Note that authorities are not included within this definition of "agency." Is that okay? **INSERT**

****NOTE: In discussions at "stakeholder" meetings held about this bill, it became clear that there is no uniform or uniformly accepted definition for a "geographic information system." However, the absence of a definition for geographic information system is awkward given that land information system is defined. Should the reference to the definition for land information system be eliminated?

Note also that, because land information system is a defined term and geographic information is not, the language under this subsection is not identical to the disclaimer provision under s. 16.967 (3) (f). Proposed s. 16.967 (3) (f) only requires products created by or hosted on a land information system to contain the disclosure. Is that okay?

1 **INSERT 26-13**

2 *NO 9* and any employee of a professional land surveyor licensed under ch. 443 who
3 is working under the direct supervision of that professional land surveyor

4 **INSERT 26-22**

5 *NO 9* or employee of the professional land surveyor *working under the direct*
6 *supervision of the professional land surveyor*

7 **INSERT 27-1**

8 *NO 9* or an employee of the professional land surveyor working under the direct
9 supervision of the professional land surveyor

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 **INSERT 4-12B**

refer to maps that would comply with accuracy standards established for ~~maps~~

g.l. y
****NOTE: Is there a conflict between this provision governing disclaimers and the provision under s. 16.967 (7) (a) 3, which seems to indicate that employees of the Department of Administration's Land Information Program can prepare maps with documentation of accuracy for planning purposes?

IF

****NOTE: Is it possible that some of the documents "hosted by" a land information system would be maps and other documents prepared by professional land surveyors? Is so, would the disclaimer need to appear on such maps and documents?

2 **INSERT 22-18**

ce
****NOTE: These subsections, as amended, do not reference persons who hold a permit issued by the section. Should they?

3 **INSERT 25-22**

not licensed
****NOTE: This subsection refers to a professional land surveyor under ch. 443; because that term is defined in ch. 443 to include persons who hold a permit as a professional land surveyor, this subsection would authorize an owner to substitute information supplied by a person who is permitted, and not yet licensed, as a professional land surveyor. Is that your intent? See, also, s. 709.07, as amended below.

4 **INSERT 26-25**

****NOTE: Is it your intent that a person who is permitted as a professional land surveyor, but not yet licensed, will be able to avail him or herself of this liability exemption? ✓

If so:

1. The term, "licensed" should be removed from s. 895.477 (1) (intro.). See, also, the reference to "professional land surveyor licensed under ch. 443" in s. 943.13 (4m) (d), as amended by this substitute amendment. ✓

2. Is it your intent that employees of a person who is permitted as a professional land surveyor, but not yet licensed, will be able to avail him or herself of this liability exemption? ✓

5 **INSERT Z**

fix single quote
****NOTE: Is the definition of "local governmental unit" at s. 16.97 (7), stats., appropriate? That section reads as follows: "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing."

****NOTE: Is it possible that some of the documents "hosted by" a land information system would be maps and other documents prepared by professional land surveyors? Is so, would the disclaimer need to appear on such maps and documents?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0085/?dn

TKK:.....

93

license to engage in the

Representative Clark;

This substitute amendment to 2009 Assembly Bill 271 differs substantially from that bill. Specifically, there are substantial changes to the definition of the practice of professional land surveying and to the exemptions from licensure for persons preparing certain maps and working with geographic information systems and land information systems.

In addition, I have made a number of changes in the substitute amendment to the use of defined terms. For example, in this draft I replace, within chapter 443, a dozen or more inaccurate references to "land surveying," which is no longer a defined term, and substitute the term, "practice of professional land surveying." (See, for example, changes to ss. 443.06 and 443.14 (8)). I have also made a number of changes to the use of the term, "professional land surveyor," where that term is used in connection with the word, "licensed." Because a professional land surveyor is defined under the substitute amendment (and also the underlying bill) as a person who is licensed or permitted under chapter 443, the use of the word licensed is in some cases unnecessary. In some cases, I simply eliminated the word, licensed. (See, for example, s. 443.14 (11)). In other places, I substituted "practice of professional land surveying" for "professional land surveyor." (See, for example, s. 443.06 (2) (am), (bm), and (cm)).

Please carefully review this substitute amendment to be sure that I have accomplished your intent. Please contact me with any questions or concerns you might have or if you wish to make any changes to the draft.

I have several questions related to the drafting instructions, provided by e-mail from your office on July 17, 2009. These drafting instructions were included in a memorandum prepared by Attorney William O'Connor. I have other questions that arose as I incorporated changes that we discussed in a meeting on July 7, 2009. With the exception of the following, the questions are embedded in the draft itself.

The drafting instructions from Attorney O'Connor explain that certain changes to proposed s. 443.01 (6s) (a) 5. are "intended to specify that only statutory "official maps" and statutory surveys do require licensure as a professional land surveyor." These drafting instructions directed me to "amend proposed s. 443.05 (6s) (a) 5. to reference maps that require signature and seal of a surveyor under the statutes" and identified maps and plats prepared under chapters 62 (official maps), 70 (assessor's plats), 157

Finally, in some places I have

under AB 271

443.12(1)

where the word "engaged" is used in connection with "land surveying"

Surveyor's certificate

✓

✓

✓ ✓ ✓
(cemetery plats), 236 (subdivisions and certified survey maps), 703 (condominiums),
and 707 (time share ownership) of the statutes.

Perhaps I am misunderstanding the drafting instructions or the realities of the practice of professional land surveyors, but in my review of these chapters, only chapter 157 contains provisions that specifically require a plat or map of cemetery land to bear the signature and seal of a surveyor. Section 70.27, stats., when read together with s. 59.43 (8), stats., requires that an assessor's plat bear the signature and seal of a professional land surveyor because s. 70.27, stats., requires the assessor's plat, once prepared, to be recorded, and s. 59.43 (8), stats., prohibits the register of deeds from recording any plat, map, or other document identified in the definition of the practice of professional land surveying unless it bears the signature and seal of a professional land surveyor. However, while the remainder of the chapters identified by Attorney O'Connor do contain provisions dealing with maps and plats, under current law the maps and plats identified within those chapters must only bear the signature and seal of a professional land surveyor if those maps or plats are to be recorded with the register of deeds, as specified under s. 59.43 (8), stats. ✓ ✓ ✓

Is it your intent to require that the maps, plats, and other documents identified in the drafting instructions prepared by Attorney O'Connor must bear the signature and seal of the professional land surveyor even if the particular maps, plats, or documents are not to be recorded with the county register of deeds? If so, I believe I will need to amend the provisions of those chapters that relate to maps and plats in order to clarify that point. But, then, perhaps this is common practice already? ✓ ✓

I look forward to working with you on the next draft.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0085/P1dn
TKK:cjs:ph

July 31, 2009

Representative Clark;

This substitute amendment to 2009 Assembly Bill 271 differs substantially from that bill. Specifically, there are substantial changes to the definition of the practice of professional land surveying and to the exemptions from licensure for persons preparing certain maps and working with geographic information systems and land information systems.

In addition, I have made a number of changes in the substitute amendment to the use of defined terms. For example, in this draft I replace, within chapter 443, a dozen or more inaccurate references to "land surveying," which is no longer a defined term, and substitute the term, "practice of professional land surveying." (See, for example, changes to ss. 443.06 and 443.14 (8)). I have also made a number of changes to the use of the term, "professional land surveyor," where that term is used in connection with the word, "licensed." Because a professional land surveyor is defined under the substitute amendment (and also under AB 271) as a person who is licensed or permitted under chapter 443, the use of the word licensed is in some cases unnecessary. In some cases, I simply eliminated the word, licensed. (See, for example, s. 443.12 (1)). Finally, in some places I have substituted "license to engage in the practice of professional land surveying" for "land surveyor's certificate." (See, for example, s. 443.06 (2) (am), (bm), and (cm)).

Please carefully review this substitute amendment to be sure that I have accomplished your intent. Please contact me with any questions or concerns you might have or if you wish to make any changes to the draft.

I have several questions related to the drafting instructions, provided by e-mail from your office on July 17, 2009. These drafting instructions were included in a memorandum prepared by Attorney William O'Connor. I have other questions that arose as I incorporated changes that we discussed in a meeting on July 7, 2009. With the exception of the following, the questions are embedded in the draft itself.

The drafting instructions from Attorney O'Connor explain that certain changes to proposed s. 443.01 (6s) (a) 5. are "intended to specify that only statutory "official maps" and statutory surveys do require licensure as a professional land surveyor." These drafting instructions directed me to "amend proposed s. 443.05 (6s) (a) 5. to reference maps that require signature and seal of a surveyor under the statutes" and identified

maps and plats prepared under chapters 62 (official maps), 70 (assessor's plats), 157 (cemetery plats), 236 (subdivisions and certified survey maps), 703 (condominiums), and 707 (time share ownership) of the statutes.

Perhaps I am misunderstanding the drafting instructions or the realities of the practice of professional land surveyors, but in my review of these chapters, only chapter 157 contains provisions that specifically require a plat or map of cemetery land to bear the signature and seal of a surveyor. Section 70.27, stats., when read together with s. 59.43 (8), stats., requires that an assessor's plat bear the signature and seal of a professional land surveyor because s. 70.27, stats., requires the assessor's plat, once prepared, to be recorded, and s. 59.43 (8), stats., prohibits the register of deeds from recording any plat, map, or other document identified in the definition of the practice of professional land surveying unless it bears the signature and seal of a professional land surveyor. However, while the remainder of the chapters identified by Attorney O'Connor do contain provisions dealing with maps and plats, under current law the maps and plats identified within those chapters must only bear the signature and seal of a professional land surveyor if those maps or plats are to be recorded with the register of deeds, as specified under s. 59.43 (8), stats.

Is it your intent to require that the maps, plats, and other documents identified in the drafting instructions prepared by Attorney O'Connor must bear the signature and seal of the professional land surveyor even if the particular maps, plats, or documents are not to be recorded with the county register of deeds? If so, I believe I will need to amend the provisions of those chapters that relate to maps and plats in order to clarify that point. But, then, perhaps this is common practice already?

I look forward to working with you on the next draft.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Kuczenski, Tracy

From: Clark, Fred
Sent: Tuesday, August 25, 2009 12:31 PM
To: Kuczenski, Tracy
Subject: RE: Substitute Amendment to AB-271

Attachments: WSLs Comments to ASA 18 18 2009.pdf



WSLS Comments to
ASA 18 18 200...

Hi Tracy:

Welcome back.

Here are notes from Bill O'connor listing their concerns. I am meeting with Quinn Williams and Lisa Morrison from DATCP tomorrow at 9AM - before our scheduled meeting. Would you be available to join us at 9AM in my office prior to you and I reviewing changes?

Quinn is to be sending me a memo ahead of that and I'll ask him to CC you on his memo as I'll be out of the office this afternoon.

Fred

Fred Clark
42nd Assembly District Representative

Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-7746

-----Original Message-----

From: Kuczenski, Tracy
Sent: Tuesday, August 25, 2009 10:35 AM
To: Clark, Fred
Subject: RE: Substitute Amendment to AB-271

Hi Fred -

Is there anything you want me to review before our meeting tomorrow?

Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-9867
Tracy.Kuczenski@legis.wisconsin.gov

-----Original Message-----

From: Clark, Fred
Sent: Thursday, August 13, 2009 9:59 AM

To: Kuczenski, Tracy
Subject: RE: Substitute Amendment to AB-271

AOK - were on the calendar. Enjoy Moab.

Fred Clark
42nd Assembly District Representative

Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-7746

-----Original Message-----

From: Kuczenski, Tracy
Sent: Thursday, August 13, 2009 9:18 AM
To: Clark, Fred
Subject: RE: Substitute Amendment to AB-271

Hi Fred -

We are having a great trip! Spent yesterday in Zion NP and are heading to Moab today to visit Arches tomorrow. And I *had* forgotten all about land surveying!

I don't believe I have anything on the calendar for either of the dates you mention, and 10:00 on the 26th should work just fine. If you want to send the comments ahead, I can take a look at them before we meet.

Thanks much,
Tracy

-----Original Message-----

From: Clark, Fred
Sent: Thu 8/13/2009 8:35 AM
To: Kuczenski, Tracy
Subject: RE: Substitute Amendment to AB-271

Hi Tracy:

I hope your trip is going well.

We are getting lots of feedback which I have been compiling from the various interested parties, and it looks like we'll want to discuss a number of changes (which is no reflection on the quality of the product - just that we might have too many lawyers involved). I do not believe we are in any rush. I'd like to meet with you to review them together when you return. Would you have time on the 26th or 27th of Aug to meet? We might need 2 hours.

Let me know if 10:00 AM August 26th would work. I can send you the comments for a look ahead of that. Meanwhile I hope you'll forget about all this and enjoy the remainder of your trip.

Fred

WHEELER, VAN SICKLE & ANDERSON, S.C.
a Wisconsin Service Corporation

s 0085

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August 18, 2009

Representative Fred Clark
Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Wisconsin Society of Land Surveyors
Comments on Assembly Substitute Amendment to AB-271

Dear Representative Clark:

This letter is to provide you with WSLs' comments on a preliminary draft substitute amendment (LRBs0085/P1) to Assembly Bill 271. The comments are organized by subject with reference to the affected sections of the preliminary substitute amendment.

1. **GIS/LIS Exemption.** WSLs recognizes that the statutes do not include a precise definition of "geographic information systems" and that the definition of "land information systems" in s. 16.967 may not describe the entire range of activities conducted by LIS and GIS staff. Although WSLs would not oppose further revisions aimed at more comprehensively defining these terms, we feel that the broad exemption for LIS and GIS in Section 74 of the draft substitute amendment adequately addresses this concern.

2. **Disclaimer for GIS maps products.** WSLs supports the concept of a mandatory disclaimer for maps produced through GIS systems which present a material risk of misuse by consumers. WSLs would not oppose amendment of proposed s.

16.697(3)(f) to limit the mandatory use of the disclaimer by replacing the word “product” with “map” on line 8, page 5 and inserting the phrase “that depicts an approximate boundary of an interest in property” on after “map.” We would also suggest that the word “by” be replaced by “using” after the word “created” on that same line. WSLs would not oppose language permitting “substantially similar language” to the disclaimer proposed in s. 16.967(3)(f). In response to the first drafter’s note on page 5, we do not believe this requirement would conflict with the referenced section. Could the drafter be referring to subsection 16.967(7)(a)2? In response to the second drafter’s note on page 5, WSLs understands that some computer based land information systems do provide access to electronic versions of subdivision plats, certified survey maps and similar survey documents. We would support language permitting the continued production of these without the disclaimer. Perhaps this could be accomplished by amending the language of Section 2 to exempt from the disclaimer requirement: “facsimiles of unaltered documents that bear the seal and signature of a professional land surveyor.”

3. **DATCP/CREP exemption.** WSLs continues to believe that surveyor licensure should be required by any person who establishes a new land boundary by creation of a map or the setting monuments, including CREP, PACE and other easement boundaries. In response to the drafter’s note on page 27, if you conclude that an exemption is warranted, we would suggest that Section 22 be modified to limit the agency’s certification authority to the specific activity made exempt in Section 73. (This would involve deletion lines 9 through 17 on page 12 and substituting after “describe” on line 8 of page 12, “the boundaries of an easement to be acquired by the Department under s. 93.70.” In addition, we would suggest that the word “establishing” be substituted for the word “determining” on line 13, page 27 to more accurately reflect the described activity. In response to the second drafter’s note on page 27, WSLs does not support expansion of any DATCP exemption to include perpetual easements under the newly authorized PACE program. We believe this would undermine the interests of landowners and the agency in establishing precise boundaries of perpetual interests in property. In response to the third drafter’s note on page 27, WSLs understands that DATCP purchases easements under the CREP and PACE programs and that these are not regulatory programs subject to the proposed exemption s.443.135(2)(a).

4. **Definition of “cartographic surveying.”** WSLs agrees with WLIA that the phrase “or compiling maps” was not properly placed at the end of this definition in Section 37. However, we believe that clause “and making maps of” should be inserted after “collecting” on line 20 on page 16 in order to accurately describe cartographic surveying.

5. **Definition of the “practice of professional land surveying.”** The revised and consolidated definition included in Section 42 is very helpful. We agree with the language proposed, except for subsection 443.01(6s)(a)5a , which we propose be amended to read as follows:

“5. Preparing any of the following:

a. An official map ~~of this state, including an official map established or amended~~ under s. 62.23 (6), established or amended under the authority of s. 61.35,”

This amendment would clarify that this provision is limited to specific “official map” referenced in s. 62.23(6). In response to the drafter’s notes on this section, WSLS understands that an official map under s. 62.23(6) must be prepared by a licensed surveyor. The amendment we propose would clarify that this provision is limited to the specific “official map” referenced in that section and the maps and plats referenced in the sections that follow. In response to the final drafters note on page 18, a “removal document” simply removes property described in a condominium plat from the condominium act. Such a document does not require the services of a professional land surveyor.

6. **Consistent use of the term “professional land surveyor”.** We suggest the drafter search for statutory references to “surveyors” or “land surveyors” that have not been amended to “professional land surveyor.” In particular, such corrections appear necessary in Chapter 703.

7. **“Comfort” exemptions.** The complexities of the practice of surveying and the extent of map making by others make the definitions in this area of professional practice regulation challenging. For that reason, WSLS supports the drafter’s proposed s. 443.135 which clarifies that certain activities (including regulatory mapping and Managed Forest Law mapping) *do not require* surveyor licensure. In response to the first drafter’s note on page 26, WSLS urges that proposed subsection s.443.135(2)(c) be revised to read as follows:

“A map that includes a disclaimer substantially similar to that set out in s. 16.967(3)(f). ~~identifies or~~ and that depicts the approximate boundaries or the shape and area of one or more tracts of land or one or more interests in real property that

is legally described in an instrument of conveyance under s. 706.05(2m).” for purposes unrelated to the transfer of interests in the tracts of land or interests in real property.”

This revision would authorize the use of maps that generally depict the boundaries of property that are established in a written legal description. In response to the second drafter’s note on page 26, WSLs believes the “catch all” exemption in proposed s. 443.135 and revised s. 443.14 is unnecessary.

8. **Permit holder vs. licensee.** In response to the drafter’s note on page 30, WSLs would support language to provide equal rights and privileges for licensees and holders of temporary permits to practice professional land surveying. In response to the drafter’s note on page 32, WSLs would support appropriate language to include permit holders under the immunity provisions of Section 81.

9. **Consulting Services.** WSLs is satisfied with the language proposed in Section 44 of the draft substitute amendment. In response to the drafters note on that section, we suggest the possibility that insertion of the phrase “or a person acting on behalf of the person” could be inserted after “person” on line 17, page 19 to permit a firm to market surveying surfaces to be performed by a licensee, even though the firm itself may not be licensed.

10. **Ordinary High Water Mark.** WSLs has also reviewed the comments you shared that had been provided by Attorney Paul Kent regarding the sections of the bill addressing lake and stream plats and the ordinary high water mark. We generally agree with Attorney Kent’s recommendations and suggest the following amendments to the bill. Amend s. 236.025 to substitute the word “determined” for the word “identified” on lines 19 and 20 of page 13. Further amend that section to require that: (a) a plat that shows an approximate OHWM state on its face that that boundary is shown for reference only is subject to correction or modification by WDNR or by law and (b) a plat that shows an OHWM determined by WDNR or by law reference the source and date of that determination. Amend s. 236.20(6) as follows: after the word “mark” on line 22, insert “of a navigable lake or stream.” Further amend s. 236.20(6) as follows: after the word “law” on line 25, insert “or the owner’s title.” I met recently with WDNR staff (Lisa Lehmann Kerler and Attorney Megan Correll) and understand that the Department agrees with these proposed modifications.

11. **WDNR Comments.** WSLS has also reviewed comments included in DNR Attorney Quinn Williams' August 6 email to you and offers the following response which references the items as numbered in Attorney Williams' email:

DNR 1. WSLS does not support a revision of current law or the substitute amendment that would generally permit unlicensed persons to perform surveying services provided that the products of their work are not intended to be "filed and recorded at the register of deeds or county land surveyor." This proposal would allow unqualified people to set monuments and prepare land surveys that establish new property boundaries, as long as the preparer does not seek to submit these as public records. It would also allow for the preparation of recording of deeds that incorporate new property boundaries established by monuments set by unlicensed persons. It is not clear to WSLS how this proposal relates to WDNR's statutory responsibilities. We believe this would effectively replace longstanding regulatory policy governing of land surveying and restore "the buyer beware" as the State's approach to protecting consumers in property transactions.

DNR 2. Although the definition incorporated by reference in proposed s. 443.135(2)(a) seems appropriate, WSLS would not oppose the use of a different definition of "local unit government" that broadly includes units that exercise regulatory powers.

DNR 3. See paragraph 9, above.

DNR 4. WSLS does not see a problem with this section.

DNR 5. See paragraph 5, above.

DNR 6. WSLS does not understand how the substitution of "a person who is registered land surveyor" with "a person who is licensed under ch. 443 as a professional land surveyor" could be construed to change legal liability under s. 26.09. WSLS does not propose to change the substantive effect of that section, but would support any clarifying amendment the drafter feels is warranted.

Rep. Fred Clark
August 18, 2009
Page 6


Please feel free to contact me if you have any questions about WSLS' comments on the draft substitute amendment. Thank you again for your diligence in pursuing the resolution of these somewhat complicated regulatory matters.

Best wishes.

Very truly yours,

WHEELER, VAN SICKLE & ANDERSON, S.C.

William P. O'Connor

 *Quinn L. Williams*

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From: Paul Kent [mailto:pkent@andersonkent.com]
Sent: Wednesday, August 05, 2009 1:45 PM
To: Williams, Quinn L - DNR
Subject: OHWM Bill

Quinn,

At long last I have reviewed the OHWM bill and I hope it is not too untimely. I have several concerns.

① First, my primary concern is that section 23 of the bill allows a surveyor to "approximate" the OHWM and incorporate that into a survey. Yet, the certification statement in section 30 of the bill makes no distinction between an OHWM that is approximated and one that is identified by DNR or by law. In my view this will create far more confusion and liability than it will solve. Assume a buyer purchases land relying on the OHWM in the survey and then when it comes time for building setbacks or Chapter 30 permits the DNR concludes the approximated OHWM is wrong. The bill absolves the surveyor from liability so what remedy does the buyer have? This is a major defect in the bill. In my opinion it is a problem as big or worse than the confusion that now exists on the Wisconsin wetland inventory. My suggestion would be to change the certification to clearly indicate whether the OHWM is identified by DNR or approximated by the surveyor and if the latter to have a disclaimer that the actual OHWM could be different.

② Second, I am also concerned that a surveyor could in some cases define an OHWM for a stream that is non-navigable. As you know the designation of navigability is part art part science. Again there is a problem with the certification. Section 30 states, "any land below the ordinary high water mark is subject to the public trust in navigable waters ...". That is true for navigable waters it is not true for non-navigable waters. In my opinion the certification would be clearer if states, "any land below the ordinary high water mark of navigable waters is subject to the public trust in navigable waters..."

③ Third, although a finer point, the second sentence in the certification could also be misleading. It states, "The owner of the real property that abuts such land has exclusive use of that land when it is exposed, except as otherwise provided by law." That is generally true, but there are situations where a deed limits title to the water's edge or to the OHWM. This is fairly common in the Wisconsin Valley Improvement flowages for example, but *Bino v. Hurley* is another case where that occurs. You could probably conclude "except as otherwise provided by law" could cover that, but limitations by deed are not generally what comes to mind by that phrase. As a result, I would change the sentence to say, "...except as otherwise provided by law or by the title."

Of these issues, the most important in my opinion is the first. Let me know if you have any questions.

Paul

8/27/2009

Clark, Fred

From: Williams, Quinn L - DNR [Quinn.Williams@Wisconsin.gov]
Sent: Thursday, August 06, 2009 8:47 AM
To: Clark, Fred
Cc: Pike, Janel - DNR; Haag, Douglas J - DNR; Nielsen, Carol K - DNR; Nelson, Kathryn J - DNR; Steffel, Sherry M - DATCP; Morrison, Lisa A - DATCP; Heinen, Paul H - DNR; Moll, Keeley A - DATCP
Subject: RE: ASA 1 - AB 271

Rep. Clark,

Thank you for sending me the language. Although I am on vacation, I'll be reviewing this over the week and weekend to get you some substantive comments and suggestions.

The proposed draft does address some concerns, but there a number that remain (highlighted by Attorney Kuczenski). The remaining issues are likely going to center around

- 1) the continued attempt to define GIS/LIS in order to exempt those activities (as opposed to our suggestion to simply use the "filed and recorded at the register of deeds or county land surveyor" language) (443.14(16);
- 2) The definition of agency/local unit of government regulatory programs (443.135(2)a.) and agencies;
- 3) the definition of consultation services (443.02(4));
- 4) defining what constitutes "establishing the boundaries of interests in real property," (443.01(6s)(a)4.);
- 5) definition of "official maps of the state" (443.01(6s)(a)5.a.)
- ★ 6) the treatment of those individuals who reasonably relied on a "registered" land surveyor's work for the purposes of damages in 26.09(3)(b)1. (i.e., does this invalidate prior surveyed boundaries since they were not done by a licensed professional land surveyor - perhaps include in the "initial applicability section" under section 85 of the bill).

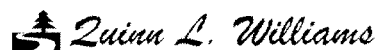
I will work with DNR staff and with our partners at DATCP to identify other issues and proposed solutions.

I think another meeting after we get you our comments would be appropriate, although without Attorney Kuczenski, we may lose some of the discussion points.

Finally, is WLIA getting a copy of the language? They explicitly asked to be included in any language discussions, but I would like to get your permission to send it to their primary representatives prior to doing so.

Thank you again for including us in this process.

Sincerely,

 Quinn L. Williams

Staff Attorney
 Bureau of Legal Services
 Wisconsin Department of Natural Resources
 (☎) phone: (608) 266-1318
 (☎) fax: (608) 266-6983
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8/26/2009

Kuczenski, Tracy

From: Williams, Quinn L - DNR [Quinn.Williams@Wisconsin.gov]
Sent: Tuesday, August 25, 2009 3:54 PM
To: Clark, Fred
Cc: Kuczenski, Tracy; Renville, Joe W - DNR; Steffel, Sherry M - DATCP; Morrison, Lisa A - DATCP; Pike, Janel - DNR; Nielsen, Carol K - DNR; Heinen, Paul H - DNR; Moll, Keeley A - DATCP
Subject: RE: ASA 1 - AB 271
Attachments: DATCP and DNR Comments.pdf

Rep. Clark,

Attached are DATCPs and DNRs summary comments on the ASA 1 - AB 271 for tomorrow's discussion.

Look forward to meeting with you, and thank you for the opportunity to comment on this important legislation.

Sincerely,

 *Quinn L. Williams*

Staff Attorney
Bureau of Legal Services
Wisconsin Department of Natural Resources
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From: Clark, Fred [mailto:Fred.Clark@legis.wisconsin.gov]
Sent: Tuesday, August 25, 2009 12:33 PM
To: Williams, Quinn L - DNR
Subject: RE: ASA 1 - AB 271

Quinn: Can you CC Tracy Kuczenski on the memo you send today? I will ask her to join us.

Fred

Fred Clark
42nd Assembly District Representative

8/25/2009


Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-7746

From: Williams, Quinn L - DNR [mailto:Quinn.Williams@Wisconsin.gov]
Sent: Tuesday, August 25, 2009 9:51 AM
To: Clark, Fred
Cc: Steffel, Sherry M - DATCP; Morrison, Lisa A - DATCP; Williams, Quinn L - DNR
Subject: RE: ASA 1 - AB 271

Thanks Fred,

I'll send those out this afternoon (still finalizing them). It will probably be Lisa Morrison and Sherry Steffel that will come with me.

Sincerely,

 *Quinn L. Williams*

Staff Attorney
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From: Clark, Fred [mailto:Fred.Clark@legis.wisconsin.gov]
Sent: Tuesday, August 25, 2009 9:49 AM
To: Williams, Quinn L - DNR
Subject: RE: ASA 1 - AB 271

Hi Quinn: That will be acceptable – Sherry or another DATCP representative is welcome to attend. I have tomorrow 9AM at 418N.

The only specific comments I have from you are from an e-mail dated 8-6. It would be very helpful if you can provide me a summary of comments prior to the meeting.

Fred

8/25/2009


Fred Clark
42nd Assembly District Representative

Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-7746

From: Williams, Quinn L - DNR [mailto:Quinn.Williams@Wisconsin.gov]
Sent: Monday, August 24, 2009 4:37 PM
To: Clark, Fred
Subject: RE: ASA 1 - AB 271

Rep. Clark,

DATCP has asked that their attorney or another DATCP representative attend the Wednesday morning meeting with me. Will that be acceptable, or would you want to meet with them separately?

 *Quinn L. Williams*

Staff Attorney
Bureau of Legal Services
Wisconsin Department of Natural Resources
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(☎) fax: (608) 266-6983
(✉) e-mail: quinn.williams@wisconsin.gov

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8/25/2009

DATCP and DNR Comments Preliminary Draft - Assembly Substitute Amendment 2009 Assembly Bill 271

DATCP and DNR generally agree with the intent of the Bill to clarify and better define the practice of professional land surveying for consumers. However, the current language does not achieve this intent, and, we believe, in its current form will further confuse and burden private individuals and governmental units alike.

What activities or products require someone to have a surveying license? Since our first discussion about this bill, DATCP and DNR have asked for a clear description of the activities and products that require a surveying license. We have also consistently stated that the following criteria are necessary in the bill to help answer this question.

Recording and Filing Documents/Maps with the Register of Deeds or County Surveyor

One activity that helps clarify when a surveying license is required is the filing/recording of specific products with the Register of Deeds or County Surveyor. This includes activities such as:

- Filing U.S. Public Land Survey monument records with the County Surveyor
- Preparing and filing documents/maps that establish legal property boundaries with the Register of Deeds for various types of plats, certified survey maps, and property transfers

NOTE: The term “official maps,” as used in the ASA, expands the practice of professional surveying to include zoning maps, planning maps, and official maps of cities. It should be removed and only the relevant plat and certified map references included.

Disclaimer on Maps Filed by an Exempt Person

- DATCP and DNR support the consistent requirement for a disclaimer on a map created by an exempt person that depicts an interest in real property attached to a written legal description that is filed/recorded at the Register of Deeds.
- It is unreasonable and impractical for all GIS users to be required to disclaim ALL of their products are NOT survey-level. The vast majority of maps created by state agencies do not include data that could ever be confused with “surveyed” data.
- DATCP and DNR support a requirement for a disclaimer on GIS maps and web applications that depict property boundaries (i.e., parcels) that might be confused with “surveyed” data. In fact, most counties and state agencies do this already, so the bill should also allow for a “substantially similar” disclaimer.

Exemptions from Licensure

- What is the reason for removing the state agency exemption?

- Why is a training/certification requirement added for one program in one state agency?
- Expanding survey-level accuracy requirements to easements and property rights will affect others not currently exempted.

Kuczenski, Tracy

From: Clark, Fred
Sent: Thursday, August 27, 2009 8:53 AM
To: Kuczenski, Tracy
Subject: RE: AB-271 proposed DATCP provision

Thanks Tracy - this is good. I'll review with Bill.

Have fun at the open house.

Fred

Fred Clark
42nd Assembly District Representative

Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-7746

-----Original Message-----

From: Kuczenski, Tracy
Sent: Thursday, August 27, 2009 8:43 AM
To: Clark, Fred
Subject: AB-271 proposed DATCP provision

Good morning, Fred.

As promised, here is a summary of the proposed new DATCP "consumer protection" practice governing maps prepared in connection with the CREP program:

DATCP employees who have determined CREP boundaries would be required to do all of the following with the product of their work:

1. Include a disclaimer on the written legal description and any map prepared from that written legal description (as I understood from our discussion yesterday, this is common practice). To the extent that the disclaimer currently provided is not sufficient (and I don't believe we discussed whether this is the case), the disclaimer must at a minimum indicate ... (details to be provided is necessary)
2. In addition, on or attached to the map described above, the DATCP employee would be required to include a notice to the consumer (customer) which includes all of the following:
 - a. A statement that the map is to be used only for purposes related to the CREP program
 - b. A statement that describes the methodology / accuracy standards used to prepare the legal description and map.
 - c. A statement indicating that in the event of any inconsistency between the written legal description and the map, the legal description controls.
 - d. A statement indicating that the landowner consult a professional land surveyor if the landowner has any questions regarding ... (I wasn't sure under what circumstances a land surveyor would need to be consulted)
3. In addition, I would amend the statutes (probably under s. 93.70, which governs the CREP program), to include a reference to the protocol / accuracy standards used by DATCP to prepare CREP easements with a reference to federal law.

Section 22 of the bill regarding training and certification of DATCP employees (on p. 12, lines 3-21) would be eliminated.

Section 73 of the bill regarding the exemption for DATCP employees would be modified to incorporate the requirements in 1. and 2. above.

I hope this summary accurately captures our discussion yesterday. I will be in the office after 10:00 this morning (2nd grade open house at Franklin Elementary).

Tracy

Kuczenski, Tracy

From: Clark, Fred
Sent: Wednesday, July 22, 2009 3:52 PM
To: Kuczenski, Tracy
Subject: AB-271 "Survey Modernization" feedback

Hi Tracy:

See Jim Lacy's note below. Can you incorporate his first two suggestions? Please let me know if that is a problem or creates one.

Thanks

Fred

Fred Clark
42nd Assembly District Representative

Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Rep.clark@legis.wisconsin.gov

(608) 266-7746

From: Clark, Fred
Sent: Wed 7/22/2009 3:49 PM
To: Jim Lacy
Subject: RE: In response to your request on AB-271 "Survey Modernization" feedback

Hi Jim:

Thanks for your detailed comments. I have asked our drafting attorney to re-work the bill, and re-order the sections for easier reading, so they will now appear in the sequence they will as statute. We are also much more tightly defining the practice of surveying, which I hope will provide comfort to people who have been concerned about excessive scope.

With regard to GIS / LIS practice, we have offered to specifically exempt those activities, however i understand the lack of an agreed definition from the profession may be a problem.

Finally, I like your two first suggestions for 443.01(g) and 443.01 (6s)(5), and will ask Tracy to make those changes.

Thanks Jim and stay in touch. I'll share a review draft with you before we go back out with this.

Fred

Fred Clark

9/6/2009

42nd Assembly District Representative

Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Rep.clark@legis.wisconsin.gov

(608) 266-7746

From: Jim Lacy [mailto:lacy@wisc.edu]
Sent: Wed 7/22/2009 12:59 PM
To: Rep.Clark
Cc: Topp, Jessica
Subject: In response to your request on AB-271 "Survey Modernization" feedback

Fred-

Sorry for all the phone tag. Since we're having trouble connecting, I thought I would send you some feedback via email. This message grew longer than I intended, but I want to be complete.

First, as you may already understand, folks in the Wisconsin mapping/GIS community perceive AB-271 as a threat to their livelihood. Specifically, if passed as worded, they worry a surveying license would be required for them to perform certain aspects of their jobs. Clearly, however, the land surveying community does not want to "take over" GIS/mapping, they simply want to improve the definition of what they do. The issue at hand is the wording of the bill versus the original intent.

That said, I offer you the following five ideas:

- 443.01(g). I suggest removing "and compiling maps" from the definition of cartographic surveying. The wording is ambiguous, and broadens the definition to effectively say "Cartographic surveying means.... compiling maps." This statement is the source of much angst for the mapping/GIS folks.
- 443.01(6s)5. Suggest removing "or maps" in the phrase "preparing assessors' or official plats, or maps, of land in this state." Again, ambiguous statement.
- 443.01(6s)(a)6. I understand this statement is being considered as an administrative rule. I agree with that approach; seems more appropriate given the intent of the surveying community.
- I understand the bill drafters are looking to specifically define GIS, and then exempt activities associated with the very broad field of mapping/GIS. This is a slippery slope that will cause more confusion. Instead, I recommend sticking with the original intent which is to more clearly define the duties of land surveying. Although I don't agree with defining and then exempting GIS in AB-271, you should be aware that LIS (nearly synonymous with GIS) is already defined in 16.967(1)(b) and (c).
- The bill as a whole contains circular references, such as 443.135(1), which I feel has directly led to confusion and misunderstanding. I highly recommend the drafters take a second look at how the bill is worded and presented.

I am aware that you've had discussions with the Wisconsin Land Information Association leadership in recent weeks. In the spirit of full disclosure, I should mention that I am a WLIA member, but my thoughts above do not represent WLIA.

Finally, I am neutral on the even more controversial issues of establishing easements, rights-of-way, and state agency exemptions. These are legal issues beyond the scope of my expertise.

If you have any questions, or if I can be of any assistance, please do not hesitate to ask.

Best wishes,

9/6/2009

Jim

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** These views are my own, and do not represent the University of Wisconsin. The information above is provided for information and educational purposes only. **

Kuczenski, Tracy

From: Clark, Fred
Sent: Wednesday, August 26, 2009 12:55 PM
To: Kuczenski, Tracy
Subject: FW: AB-271

FYI - no additional changes needed from what we have already discussed in my opinion, but additional background.

Fred Clark
42nd Assembly District Representative

Room 418 North
State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-7746

-----Original Message-----

From: Jim Lacy [mailto:lacy@wisc.edu]
Sent: Thursday, August 13, 2009 7:52 AM
To: Clark, Fred
Subject: RE: AB-271

Great! Here are some additional comments:

Page 5, Line 6: Section 2. 16.967 (3)(f) Requiring a disclaimer on "every product created by a land information system" is nearly impossible to implement, impossible to enforce, and simply unnecessary. As worded, any thematic map created by an LIS that appears in an agency report, for example, would need a disclaimer. The state highway map produced by DOT would need the disclaimer. A simple map that only shows county names and boundaries would need the disclaimer. I wonder if this addition to 16.967(3) is actually an unintended mistake? Suggest removing this entire section.

Page 18, line 4 "official map of the state"
The statement "An official map of the state" is ambiguous, and therefore could apply to almost anything. Also, as worded, it implies that only surveyors could create and maintain "official maps" as defined in 62.23(6). This statement would restrict the development of "official maps" to land surveyors. If enacted, this clause would not permit cartographers to create "official maps" of their own jurisdictions. The State Cartographer (who I happen to represent) does not produce any "official maps" of any sort. Regardless, I suggest striking item (a).

Page 26, lines 4 and 5
Yes, I think the catch-all is necessary.

Page 28, lines 3 and 4
Reference to disclaimer. See above.

Page 28, line 4 comment
Should LIS be deleted? No. Suggest deleting Geographic Information System. The two are synonymous in my mind, and since LIS is already defined, keep it simple.

Thanks for the opportunity,
Jim

~~~~~  
James P. Lacy, GISP

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