



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2009 Assembly Bill 271

**Assembly Substitute
Amendment 1, as Amended,
and Senate Amendment 1**

Memo published: March 25, 2010

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CURRENT LAW

Under current law, with certain exceptions, a person may not practice land surveying or represent that he or she is a land surveyor unless the land surveyor section (section) of the examining board of architects, landscape architects, professional engineers, designers and land surveyors (board) has issued a certificate of registration or permit to the person. "Land surveying" is defined as determining the location of land boundaries and boundary corners; preparing maps that show the shape and area of tracts of land or subdivisions or the layout of roads, streets, or rights-of-way; or preparing official plats or maps of land in this state.

ASSEMBLY SUBSTITUTE AMENDMENT 1 TO 2009 ASSEMBLY BILL 271

Assembly Substitute Amendment 1 does the following:

1. Replaces "land surveying" with the term "practice of professional land surveying" and defines the term as any of the following:

- Any service comprising the determination of the location of the boundaries of one or more tracts of land or 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.
- Designing or coordinating designs for the purpose of platting or subdividing land into smaller tracts.
- 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 interest in real property identified in the first bullet-point, above.

- Preparing maps that depict any interest in real property identified in the first bullet-point, above, for the purpose of establishing the boundaries of any such interest in real property.
- Preparing any of the following: (a) 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 timeshare plat.
- Performing cartographic, construction, or geodetic surveying in connection with any of the practices specified in the items above.

2. Replaces the certificate of registration requirement under current law with a licensure requirement. Therefore, under the substitute amendment with certain exceptions, a person may not engage in the practice of professional land surveying or represent that he or she is a professional land surveyor unless the person is issued a license or permit by the section.

3. Changes the name of the section to the professional land surveyor section and changes the name of the board to the examining board of architects, landscape architects, professional engineers, designers and professional land surveyors.

4. Replaces various references under current law to "registered land surveyor," "land surveyor," and "surveyor" with "professional land surveyor."

5. Requires employees of this state and public utilities to obtain a license or permit to engage in the practice of professional land surveying. This applies after July 1, 2018. Under **current law**, such employees are **exempt** from the certificate of registration and permit requirements.

6. Creates a new exemption from licensure for employees of a cooperative association organized under the laws of this state for the purpose of producing or furnishing heat, light, power, or water for its members while the employees are engaged in the practice of professional land surveying. This exemption from licensure does not apply after July 1, 2018.

7. Creates an exemption from licensure for employees of the Department of Agriculture, Trade and Consumer Protection (DATCP) who are engaged in establishing the boundaries of easements acquired by DATCP under the Conservation Reserve Enhancement Program (CREP), **if** the DATCP employees include on any map prepared in connection with a CREP easement a written disclaimer indicating that the map has not been prepared by a professional land surveyor licensed under ch. 443, Stats., and has been prepared using protocols established by the Federal Department of Agriculture under the Wetlands Reserve Program, 16 U.S.C. ss. 3837 to 3837f.

8. Exempts from licensure employees of state agencies and local units of government who operate a land information system or geographic information system and who prepare maps on that system **if**: (a) the maps show approximate property boundaries; and (b) the maps contain the following or a substantially similar disclaimer:

This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. This map is provided for informational purposes only and may not be sufficient or appropriate for legal, engineering, or surveying purposes.

9. Exempts from licensure persons who prepare any of the following maps:

- A map used in connection with a regulatory program established by, or in connection with the exercise of police powers by, or in connection with the enforcement of the public trust doctrine or any other constitutional authority by, the state or a local unit of government; or
- A map showing the boundaries or the shape and area of land designated as forest cropland or as managed forest land by the Department of Natural Resources (DNR), if the map includes a disclaimer substantially similar to the disclaimer required under the substitute amendment on certain maps prepared by employees of state agencies and local units of government who operate land information systems and geographic information systems.

10. Revises current law relating to the ordinary high water mark (OHWM) of a lake or stream and land surveying. Under **current law**, a professional surveyor who prepares a lake or stream shore plat must show certain dimensions as measured from the OHWM of the lake or stream.

The substitute amendment:

(a) Authorizes a professional land surveyor to incorporate an OHWM that has been determined by the DNR or that has otherwise been determined by law or to approximate the OHWM.

(b) Requires that statements be included on the face of certain plats or maps that explain that: (1) the land below the OHWM of a navigable water is subject to the public trust doctrine for navigable waters; and (2) exposed land between the OHWM and the water's edge is to be used exclusively by the owner of the adjacent waterfront property, unless otherwise provided by law or by the owner's title.

11. Exempts a professional land surveyor and an employee working under the direct supervision of the professional 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 an OHWM or 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.

12. Revises recording requirements. Under **current law**, with limited exceptions, a county register of deeds may not record a map, plat, survey, or other document within the definition of land surveying unless the map, plat, survey, or other document contains the signature and seal of the land surveyor under whose charge the document was prepared. This limitation on recording does not apply to a deed, contract, or other recordable document prepared by an attorney, or to a transportation project plat prepared by a state agency if the plat conforms to the requirements established for transportation project plats under current law.

The **substitute amendment** requires that a map, plat, survey, or other document within the definition of the practice of professional land surveying **bear the signature and seal** of the professional land surveyor in order for the map, plat, survey, or other document to be recorded with the county register of deeds, and creates the following **two additional exceptions** to the signature and seal requirements. The signature and seal of a professional land surveyor is **not required** on any of the following documents:

- A map 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 if either a legal description of the tract or tracts of land or interest or interests in real property, or a map, survey, plat, or other document that depicts the tract or tracts of land or interest or interests in real property and that bears the signature and seal of the professional land surveyor who prepared the map, plat, survey, or other document is incorporated into or attached to and submitted for recording with the map.
- A map that depicts the boundaries of CREP easement acquired by DATCP if the map is prepared in accordance with the requirements established in this substitute amendment.

The **general effective date** of the bill if enacted into law is the first day of the fourth month after enactment, but several provisions take effect on the first day of the 13th month after enactment.

ASSEMBLY AMENDMENT 1 TO ASA 1

Assembly Amendment 1 (AA1) to ASA 1 adds the following persons to the list of persons exempt from ch. 443, Stats.:

- Employees of a provider of broadcast service.
- Employees of a provider of cable service.
- Employees of a public utility.
- Employees of a telecommunications provider.
- Employees of a cooperative association organized for the purpose of producing heat, light, power, or water to its members.

In order to be exempt, these employees must be engaged in establishing and depicting on a map the location of easements necessary for the provisions of services by the employer and the map must include all of the following:

- A legal description of each tract of land affected by the easement as defined in s. 706.01 (7r), Stats., except that, notwithstanding s. 66.0217 (1) (c), Stats., internal references to any other document may be used to establish and depict the location of the easement.
- The width of the easement.

- The identification of each point at which the easement intersects each boundary of each tract of land affected by the easement.

ASSEMBLY AMENDMENT 1 TO AA 1 TO ASA 1

Assembly Amendment 1 to AA 1 to ASA 1 (AA 1 to AA 1) adds employees of video service providers to the list of persons exempt from ch. 443, Stats. The requirements regarding maps applicable to AA 1 would also apply to employees of video service providers.

ASSEMBLY AMENDMENT 2 TO ASA 1

Generally, under current law, s. 59.43 (8), Stats., specifies that it is unlawful for the register of deeds of any county to record a map or other document within the definition of land surveying which does not have the signature and seal of a land surveyor under whose charge the map or document was prepared. As described in detail above, ASA 1 creates an exception to that section for maps depicting approximate boundaries or tracts of land or interests in real property if any of the following are incorporated or attached to the map:

- A legal description of the tract of land or interest of real property.
- A map or other document of the tract or interest that has the signature and seal of a professional land surveyor under whose charge the map or document was prepared.

Assembly Amendment 2 (AA 2) to ASA 1 amends the exceptions to refer to incorporation or attachment of a legal description or map other document of *specific* tracts or interests of real property *shown more generally on a map depicting approximate boundaries*.

SENATE AMENDMENT 1

DOA Policies on Geographic Information Systems

Under current law, s. 16.966, Stats., permits the Department of Administration (DOA) to develop and maintain geographic information systems relating to land in this state for the use of governmental and nongovernmental units.

Generally, Senate Amendment 1 directs DOA to develop written policies, technical standards, and best practices on the use of geographic information systems, including disclaimers relating to the preparation of maps using a geographic information system by employees of an agency or local governmental unit who are not professional land surveyors. Senate Amendment 1 also directs the department to provide assistance to agencies and local governmental units with regard to the policies, standards, and practices, described above.

Maps Created by Employees of State Agencies and Local Governmental Units

Generally, the bill permits an employee of a state agency or local governmental unit, who is not a professional land surveyor, to create a map using a land information system or geographic information

system if the map includes a disclaimer indicating that the map was not prepared by a professional land surveyor and may not be sufficient or appropriate for legal, engineering, or surveying purposes.

Senate Amendment 1 revises this exception to permit either of the following:

- A qualified map that includes a disclaimer.
- The creation of a map without a disclaimer, if the agency or local governmental unit establishes policies, not inconsistent with the DOA policies described above, regarding the omission of the disclaimer.

A disclaimer may not be omitted under this section on a map prepared in connection to the Conservation Reserve Enhancement Program, administered by the Department of Agriculture, Trade, and Consumer Protection. Maps created by persons who are not professional land surveyors under that section are subject to disclaimers and statements described in s. 93.70 (1m).

Register of Deeds – Signature and Seal Requirements

With certain exceptions, current law, s. 59.43 (8), Stats., and that section as amended by the bill, specify that it is unlawful for the register of deeds of any county to record a map or other document within the definition of land surveying which does not have the signature and seal of a land surveyor under whose charge the map or document was prepared.

Senate Amendment 1 creates an exception to the signature and seal requirement for a map incorporated into, or attached to, and submitted with an order under the Managed Forest Law program or under the Forest Croplands Law program.

Definition of “Practice of Professional Land Surveying”

Under Senate Amendment 1, s. 443.01 (6s) (a) 1., a subdivision of the definition of “practice of professional land surveying,” would include:

- (1) Any service comprising the *establishment or re-establishment* of the boundaries of one or more tracts of land or the boundaries of one or more tracts of land or the boundaries of any of the following interests in real property:
 - (a) The layout and rights-of-way of a road or streets.
 - (b) Air or *subsurface* property rights.
 - (c) Public or private easements.

[Senate Amendment modifications in *italics*.]

Exemption of Activities Related to Natural Resource Management

Senate Amendment 1 adds the following item to the list of activities that may be practiced by persons not licensed as professional land surveyors under s. 443.135:

Locating the approximate boundaries of one or more tracts of land and preparing a map of the approximate boundaries of the tract or tracts of land for the purpose of conducting natural resource management.

Senate Amendment 1 also defines “natural resource management” to mean:

[A]ctivities related to soil and water conservation, the maintenance or restoration of natural areas, aquatic life, forests, wildlife, plants or animals, bees, or habitat, the control, as defined in s. 23.22 (1) (a), of invasive species, as defined in s. 23.22 (1) (c), and the cultivation or harvesting of raw forest products, as defined in s. 26.05 (1).

Exemptions for Certain Industries

Under certain conditions, *Assembly Amendment 1 to Assembly Substitute Amendment 1* and *Assembly Amendment 1 to Assembly Amendment 1 to Assembly Substitute Amendment 1* add the following persons to the list of persons exempt from ch. 443, Stats.:

- Employees of a provider of video service.
- Employees of a provider of broadcast service.
- Employees of a provider of cable service.
- Employees of a public utility.
- Employees of a telecommunications provider.
- Employees of a cooperative association organized for the purpose of producing heat, light, power, or water to its members.

Senate Amendment 1 would expand these references to include contractors working for the types of companies listed.

Technical Revisions

Senate Amendment 1 renumbers two subsections of s. 443.14, Stats., relating to two exemptions under Assembly Substitute Amendment 1, in order to reconcile the bill with the enactment of 2009 Wisconsin Act 142. Senate Amendment 1 also modifies certain disclaimer cross-references throughout the bill to refer to the disclaimers and policies described in s. 443.14 (16m), as amended by the Senate Amendment.

LEGISLATIVE HISTORY

At an executive session on October 21, 2009, the Assembly Committee on Consumer Protection introduced and adopted Assembly Substitute Amendment 1 to the bill on a vote of Ayes, 9; Noes, 0. The committee then recommended passage of the bill, as amended, on a vote of Ayes, 8; Noes, 1.

Representative Clark introduced AA1 to ASA 1, AA 1 to AA1 to ASA 1, and AA 2 to ASA 1. On October 27, 2009, the Assembly adopted AA 1 to AA1 to ASA 1, AA 1 to ASA 1, AA 2 to ASA 1 and ASA 1, and passed Assembly Bill 271 on a series of voice votes.

Senator Risser introduced Senate Amendment 1 on March 24, 2010. The Senate Committee on Economic Development adopted Senate Amendment 1 on a vote of Ayes, 7; Noes, 0, and recommended concurrence in Assembly Bill 271, as amended, on a vote of Ayes, 5; Noes, 2.

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