

July 19th, 2017

To: Sheboygan County Conservation Association (member clubs)
Sheboygan County Residents
Other concerned Wisconsin Citizens

From: Retired (Sheboygan County) State Conservation Wardens
Roy Kalmerton
Gus Ernst
Ron Preder
Mark Pearce

Subject: AB411/SB321 (Statute change to limit the ability of Conservation wardens to enforce DNR Regulation on private lands).

The four of us wanted to share some information concerning the above statute changes that are being proposed by our Wisconsin Legislature. Today the Assembly Natural Resource and Sporting Heritage Committee had a hearing and took testimony concerning AB 411. The state senate has a companion bill SB321 which may also see action during this legislative session. If passed these changes would raise the threshold for conservation wardens to enter onto private property to “reasonable suspicion” that a violation of law exist. It is our understanding that some or all of our local representatives have either signed on as sponsors to these bills or have indicated some support.

All four of us are currently retired and are residents of Sheboygan County. All of us spent the majority of our career working in Sheboygan County and the southeast part of our state as conservation wardens. We felt it important to share our concerns about the above legislative changes because of the negative impacts we would expect to see. Together the 4 of us have over 100 years of service to the citizens of this community and the state of Wisconsin in working to protect this state’s resources and the public when they are enjoying our resources.

Currently conservation wardens have the authority (scope of duties or responsibilities) to enter onto private property while enforcing all Wisconsin statutes and Administrative codes that they are empowered to enforce (Fish and Game, Health and Safety, Recreational Safety, and Environmental). This is the same authority all other Wisconsin law enforcement officer have when entering onto private property. The authority (open fields doctrine) is well established both in federal and state law and reaffirmed by Attorney General's opinions. If an investigation progresses beyond the “open fields” into a person “curtilage” then a warrant would be required (4th amendment protections). Again conservation wardens follow the same standards established by the Department of Justice that pertain to all Wisconsin law enforcement officers.

From our perspective and experience this change would result in at least some of the following negative impacts (not inclusive) to our natural resources and the public health and safety of the people of this state.

- Fish and game enforcement will be compromised. The bulk of our state's natural resources and in turn recreational use exists either on or adjacent to private property. License compliance checks by wardens will be curtailed significantly and revenue would suffer. (Simply seeing an individual hunt or fish on private property would not rise to the threshold for entry onto private property proposed by this change).
- Captive wildlife enforcement, disease and invasive species enforcement and management, timber theft, illegal dumping, and littering would all be negatively affected by this change. While a citizen complaint to a conservation warden concerning any of these types of possible violations may warrant entry onto private property under the “open fields doctrine” that may not necessarily be the

case under this proposed change. *Undoubtedly it would give a defense attorney more to argue about in any type of enforcement case.*

- Cooperation and work with local and state law enforcement could be negatively affected. LE officers in this state are also designated by statute as deputy conservation wardens while working with and assisting the Department. Depending on where you are at in the state there is a lot of cross agency work on recreational enforcement and accident investigation. *Setting different standards of conduct for LE officers in this state depending on what agency they work for and the type of work they do will increase the overall cost and effectiveness of the enforcement effort and would not be in the public's interest.*
- Environmental enforcement in this state would be further compromised. *It is interesting to note that two early lobbying groups that signed up in support of this change represent business (special) interest. One is left to wonder, if special interests can limit the state's ability to enforce regulations there may not be the need for the same amount of effort by special interests to pursue specific legislation to further weaken existing statutes or rules.*

Some of the public information that we have seen and read concerning this bill and SB 321 (including responses from sponsors of these bills) indicate that these changes deal primarily with fish and game enforcement and would have little effect on the daily work of conservation wardens. Our experience would suggest otherwise.

We have also heard it implied that the changes are necessary because the conservation warden force does not respect the constitutional protections (specifically 4th amendment) afforded to the citizens of this state. Those types of implications are disappointing to hear, are not warranted, and fly in the face of the almost 150 years of service that the conservation warden service has provided to the citizens of this state.

If you have concerns (either pro or con) concerning this proposed legislative change we encourage you to contact your local representatives. We have also included a copy of the testimony Larry Bonde (Chairman of the Wisconsin Conservation Congress) prepared for the public hearing today.

Thank you for your time.

[Wisconsin Conservation Congress](#)

[July 18 at 5:57pm](#) ·

Below is the testimony that will be given at the hearing for AB411 Chairman Kleefisch and Assembly Natural Resource and Sporting Heritage Committee members

As Chair of the Wisconsin Conservation Congress I would like to thank you for the opportunity to come before you and testify on this important bill. I want to send an extra thanks to Chairman Kleefisch for posting the hearing well enough in advance so we could get an understanding of the possible impact of this legislation. Unfortunately, I am here before you because the Wisconsin Conservation Congress is strongly opposed to AB411.

Proponents of this bill have suggested there is some need for this legislation due to a Supreme Court Ruling in a Lafayette Co case in which the defendant was awarded a new trial by the high court. It is our understanding that the Supreme Court's ruling, was on ruling on the details of that particular case and not some mandate to change current law. Further, it is our understanding there is no other evidence to suggest that the courts, on any level have had to deal with increasing numbers of cases dealing with a Conservation Wardens abuse of Wisconsin citizens 4th Amendments rights. Conservation Wardens throughout the state make over 130,000 contacts a year pertaining to fish and game, with most of them being on private land, and there is just not evidence that abuse of their authority is occurring to warrant this legislation.

Another argument that we have heard, is that currently there are other states that have similar laws to that of AB411. What I would ask of that is how many of those states have over 80% of their landmass privately owned? In Manitowoc Co. where I reside, there is only 3% of the land that is open to the public. We believe it is unreasonable to restrict a Conservation Warden to be able to patrol only 3% of an entire county and less than 80% of our state. The other concern we have is how many of those states who have similar laws to AB 411 have over 600,000 hunters go afield in one day as we in Wisconsin do on the opening day of the firearm deer season?

One of the very successful tools Conservation Wardens use are tips that come in on the DNR hotline or tipline. According to an open records request I did on hotline calls, the 5year average is 25% of all calls are anonymous. If AB411 were to become law all the anonymous tips that are called in would not be able to be followed up on because anonymous tip would not rise to the level of reasonable suspicion unless there was some other collaborating tip or evidence that a crime may be taking place. This would severely limit the Conservation Warden ability to do their job. Think of the frustration this would cause with citizens who use the hotline but want to remain anonymous for fear of reprisal.

The Wisconsin Conservation Congress has always been strong supporters of our Conservation Warden force. It is our belief that current law on the "Open Field Doctrine" offer adequate protection of this states fish and wildlife, which are owned by all people, but also offer adequate protection of the citizens of this of states 4th Amendment rights. For these reasons we ask that you do not advance this legislation.

Respectfully:

Larry Bonde WCC Chairman