

# *The Land Steward* LLC

## *Wildlife Habitat and Forest Management Assistance*

*Residence, Farms, Campuses, Churches, Parklands, Camps, Workplaces*

*Private, Public & Commercial Consultant*

November 11, 2013

Honorable Michigan Senators  
Farnum Building  
Lansing, Michigan 48909

**RE: REGISTERED FORESTER (Senate Bills 481, 482, 483, 484, House Bills 4379, 4380, 4381)**

**Dear Senators:**

I am writing to you to express my support of the Registered Forester licensure currently administered by the Department of Licensing and Regulatory Affairs, and hence my opposition to the deregulation of the profession of Forestry through the above Senate and House Bills, or any future bills.

I am a consulting forester and wildlife biologist, primarily providing forest and wildlife habitat management assistance for private forest landowners and for managers of municipal, college and other public lands. I have been a Registered Forester in Michigan since 2001, and am a member of the Association of Consulting Foresters, Michigan chapter. I will take this opportunity to:

- explain the importance of the Registered Forester licensure, and
- evaluate some of the major reasons given by the Department of Licensing and Regulatory Affairs (LARA) Occupational Licensing Advisory Rules Committee (OLAR Committee) and by Senator Jansen for its elimination.

### **Michigan Registered Forester Requirements**

Registered Forester is an occupational code. It describes minimum qualifications for persons wanting to operate as licensed professional foresters in Michigan. These are:

**EDUCATION** – An applicant for a forester’s registration must provide educational transcripts documenting completion of a baccalaureate degree from a college or university and the completion of a forestry curriculum including course work totaling not less than 30 semester hours/45 quarter hours in forest biology, forestry in the social context, forest resources inventory, forest ecosystem management and forest resources administration.

Possession of a baccalaureate degree from a program accredited by the Society of American Foresters (SAF) shall constitute prima facie evidence of completion of the educational requirement for a forester's registration.

**PROFESSIONAL EXPERIENCE** – An applicant for a forester's registration must provide documentation of not less than 2 years of experience in professional forestry work by way of 3 Experience Verification Forms from professional foresters who can attest to the applicant's experience.

In addition to these minimum qualifications, the following language is in the current administrative rules for Registered Foresters (which would be eliminated if Senate Bills 481-484 are passed into law):

R 339.18035 Representations and standards of practice.

Rule 35. (1) A registrant shall fully disclose personal or financial interests in any public and private project undertaken where there is a potential conflict of interest.

(2) A registrant shall not accept compensation or expenses from more than 1 client or employer for the same service, unless the parties involved are informed and consent.

(3) A registrant shall not make exaggerated, false, misleading, or deceptive statements in advertising, brochures, or written or verbal representations, including the valuation of individual trees, timber, or timberlands in the conduct of professional practice.

(4) A registrant shall clearly and accurately represent his or her qualifications, the extent of the services offered, and the basis for charges to be made.

(5) A registrant shall not offer or make bribes or unlawful persuasions to those responsible for letting contracts.

(6) A registrant shall not interfere with competitive bidding, including making false representations or misleading statements about bidders, prospective bidders, or competitors.

(7) A registrant shall not present the work of another person as the registrant's work and shall not endorse work not done by, or under the personal supervision of, the registrant.

(8) A registrant shall provide services in a manner that will assure the public health, safety, and welfare, and where, in the professional judgment of the registrant, any of these are endangered, the registrant shall notify the client or employer of these circumstances. If the client or employer fails or refuses to follow his or her instructions or recommendations, the registrant shall notify the regulatory responsible governmental department or agency of the problem and the possible danger that will result therefrom.

(9) A registrant shall not violate or act to conceal violations of the law, including articles 1 to 6 and article 21 of the act or these rules, and shall not knowingly permit others to do so. Violations of the act or these rules shall be reported to the department.

(10) A registrant shall not conspire or collude to restrain trade through price arrangement with other registrants or firms and shall not engage in price-fixing activities.

(11) A registrant shall not take funds under false pretenses and shall not abandon a project without notifying the client or employer.

These standards of practice are a code of ethics for Registered Foresters, built into the administration for this licensure. They hold all Registered Foresters to a high professional

standard. These standards apply equally to consulting foresters who work primarily for private landowners and public land managers for a fee, and therefore **have a fiduciary responsibility to their clients**, as well as to procurement foresters whose primary responsibility is to the sawmills, paper mills and logging companies they work for. This is very significant. We consulting foresters who are members of the Association of Consulting Foresters (ACF) are also held to an additional code of ethics. However, without the standards of practice above for Registered Foresters, those procurement foresters who are not Registered Foresters have no particular standards of practice beyond what their individual companies require of them. These minimum requirements and standards of practice for Registered Foresters were established primarily to provide the best quality of services to landowners wishing to productively and sustainably manage their forest resources. They also were established to protect the interests and forest assets of forest landowners from poor or no silvicultural applications in timber management, such as high-grading or diameter-limit cutting, price fixing among cooperating logging companies or timber buyers, removal of more and different trees than the landowners agree to and are paid for, and other unscrupulous forest practices. There are also procedures in place to investigate and deal with complaints or grievances filed against Registered Foresters.

### **OLAR Committee Recommendations**

The reasons given by the LARA OLAR Committee for their Recommendation #B7 to de-regulate the occupation of foresters included the following:

*The Department currently oversees the registration of approximately 226 registered foresters, which is quite a low volume of licensees. There were 7 complaints filed against foresters in the last 5 years. Unfortunately, Article 21 lacks a clear scope of professional practice by foresters, thereby creating registration without any regulatory responsibility.*

*Given the lack of professional responsibility and the low volume of registrants, it appears that there is very little protection of public safety accomplished through the regulation of this occupation. Rationale for Change: The registration of foresters does not provide a public health and safety benefit sufficient to warrant use of public resources to regulate them.*

There are seven (7) criteria provided by LARA in their *Guidelines and Criteria for Evaluation of Proposed Regulatory Initiatives for Michigan* for evaluating the need for regulation. The recommendation #B7 above deals primarily with three criteria, Risk for Harm to the Consumer, Economic Impact, and Distinguishable Scope of Practice. I agree somewhat that the scope of professional practice by foresters is described in Article 21 in rather vague and piecemeal sections, as if the persons who wrote the Article originally were not very familiar with the forestry profession. The licensure of foresters in Michigan does include the code of ethics listed above, and procedures to deal with Registered Foresters who violate that code, therefore there is regulatory responsibility in place. The occupational code should be re-written, with substantial input from current foresters and faculty at Michigan's forestry schools, to improve regulatory responsibility of Registered Foresters. Criterion Five: Distinguishable Scope of Practice states the scope of practice is clearly distinguishable from other licensed, certified and registered occupations, in spite of possible overlapping of professional duties. The profession of forestry may overlap slightly with certified arborist, wildlife biologist and botanist, which apparently are

not licensed, certified and registered occupations in Michigan, but forestry is still a distinct profession unto itself.

Criterion Three: Economic Impact, states that the economic costs of regulating the occupational group are *revenue neutral*. The administrative costs are borne by the profession through regulatory fees. This is indeed the case with regulation of foresters in Michigan, as you will see below in the Fiscal Analysis of Senate Bills 481 and 484. Thus regulation of 226 Registered Foresters produces an annual intake to LARA of \$9,040, while the cost of administering this licensing amounts to \$5,340.

Criterion One: Risk for Harm to the Consumer, has apparently been misread by the OLAR Committee when they evaluated the registration of foresters. Following are some of the pertinent questions in the Guide which address this criterion:

- *The unregulated practice of the occupation will harm or endanger the public health, safety or welfare.*
- *Harm can be personal, emotional, mental, social, economic or financial.* The OLAR Committee's recommendation above is based on protection of public health and safety. Harm incurred by forest landowners by fraudulent practices is primarily economic or financial, in both the short-term and long-term health and economic viability of their forests.
- *The harm is recognizable and not remote or dependent on tenuous argument.* Stumps of trees illegally or fraudulently removed by loggers, for example, are very recognizable, as is a forest where all the largest and best quality trees have been removed, leaving only poor quality and young trees (high-grading).
- *Has there been evidence of specific public harm due to the activity of unregulated providers? Can the relative harm be quantified?* As a group ACF members and other consulting foresters have numerous examples of fraudulent practices experienced by forest landowners in Michigan.
- *Specific harm is attributed to which of the following:*

*Lack of skills; Lack of knowledge; Lack of ethics:* What Registered Foresters provide to forest landowners are skills and knowledge necessary for sustainable forest management, governed by a code of ethics, neither of which are necessarily present or inherent in unregulated forest industry workers.

Based on this examination of reasons given for recommending de-regulation of foresters, I would conclude that the OLAR Committee either made only a cursory evaluation of the registration of foresters, or were not familiar enough with the profession of forestry to be capable of meaningful evaluation. Therefore I ask you, Senators, to request or require the OLAR Committee to re-evaluate the registration of foresters in Michigan **after** they have requested and received information and testimony from ACF members, other current Registered Foresters, forestry

schools in Michigan, Michigan Forest Association and other forest organizations in Michigan, and from regulatory agencies in other states where foresters are registered or licensed.

## Senate Regulatory Reform Committee justification for de-regulating forestry profession

The author(s) of Senate Bills 481, 482, 483 and 484 propose to eliminate the licensing of foresters within LARA and replace it in part with a listing of Qualified Foresters maintained by the Department of Agriculture and Rural Development (DARD). DARD requires landowners who seek the tax exemption granted in the Qualified Forest Program to obtain a forest management plan written by a Qualified Forester. Besides Michigan Registered Foresters, the Qualified Forest Program recognizes 3 other classifications of “foresters” as Qualified Foresters:

1) Technical Service Providers (TSP) through Natural Resources Conservation Service (NRCS) have technical expertise in conservation planning and design for different conservation activities. For forest management planning this requires 1) a certified full membership in **ACF** or to be a Certified Forester with SAF, **AND a current Forestry License as required by law in the state of practice**; or 2) at least a baccalaureate degree in a forestry-related natural resource with a concentration in forestry **OR a current Forestry License as required by law in the state of practice**, plus 5 years experience in planning, design, layout, inspection or management of forestry or agroforestry practices. TSP certification also requires training in NRCS methods of, for example, forest management planning, and development of a conservation activity plan that meets the criteria for forest management plans. Eliminating Registered Forester licensing in Michigan would actually eliminate the first option for persons wishing to become forestry TSP’s here, which I would regard as a professional embarrassment to foresters **and legislators** in Michigan.

2) Certified Forester (CF) with Society of American Foresters (SAF). This requires at minimum a baccalaureate degree in a related natural resources field (such as environmental studies, wildlife management, range management or ecology) with a minor or associates degree in forestry. This also requires passing an extensive examination, and continuing education to maintain competency. *(Please note that the CF program may supplement or complement state programs to register or license foresters; however, a CF is not a substitute for such programs. The Society of American Foresters supports state credentialing requirements for foresters implemented through state licensing and registration mandates. Source: SAF Certified Foresters website at (www.SAFnet.org) Nov. 1, 2013).*

3) Forest Stewardship Program (FSP) certified plan writer through MDNR. This requires having a four-year degree in Forestry or related Natural Resources field, **OR** having a 2-year degree in Forestry or related Natural Resources field with approved experience. Certified plan writers are required to acquire continuing education annually to maintain competency. There are wildlife biologists, ecologists and other natural resources professionals that are certified plan writers in FSP.

The most important point here is that these bills would eliminate Registered Forester licensing by the State, an occupational code which includes high standards of practice, and substitute this licensing with a listing of Qualified Foresters that include a professional credential (CF) or minimum qualifications to work with specific programs (TSP or FSP). This change would reduce the professional requirements and possibly the reliability of persons in Michigan who wish to provide forest management services to forest landowners or forestland managers. It

matters not whether these bills substitute the term Registered Forester for Qualified Forester as some Senators have proposed; the effect will still be to substitute lesser qualifications and standards for those currently required of Registered Foresters, and to potentially lessen the credibility of the science and practice of forestry in Michigan. **Standards for Registered Forester would be improved with addition of a continuing education requirement to maintain competency.**

In April, 2013 Governor Snyder convened a Forest Products Summit to stimulate conversations for growing the state's forest products industry. One of the results of this summit was a package of 9 bills to improve the Qualified Forest Program and encourage private forest landowners to enter their forestlands into the program. Governor Snyder signed these bills into law on June 6, 2013. As explained above, landowners wishing to enter their forestlands into the program are required to have a forest management plan written by one of 131 "Qualified Foresters" currently in the DARD database. Of the 90 Registered Foresters in this database, 55 have no other certification (CF, FSP plan writers or TSP) that allows them to be Qualified Foresters for DARD. Thus if SB 481, 482, 483 and 484 are passed into law, they would effectively eliminate 42 percent of the work force now available to implement this improved program endorsed by Governor Snyder and many others. Nine steps forward with Qualified Forest Program bills signed into law in June, seven steps backward with the proposed changes in SB 481-484 and HB 4379-4381. This is incomprehensible. It appears that the Senate Regulatory Reform committee is driving the full Senate to follow the cursory and apparently uninformed recommendation of the OLAR Committee to deregulate forestry, while ignoring measures being taken by the Governor and the Legislature to otherwise improve the forest products industry.

Forest landowners will be the primary group who stand to lose or be harmed by these lowered standards. A 2011 survey conducted by Michigan ACF found that in 2011 consulting foresters: provided services in every county; served 2,750 landowners; completed at least 540 forest management plans covering 202,930 acres; assisted 1,250 landowners with active forest management, resulting in 60,480 acres harvested; assisted MDNR with timber sales on 5,788 acres of state lands; and provided timber sale and inventory assistance to Michigan's national forests. There were approximately 120 consulting foresters providing services in Michigan, many of whom were Registered Foresters (how many is not known since Registered Foresters are not asked to state who they work for – I checked). **Without Registered Forester licensing, forest landowners will not have assurance that persons offering forestry services will be actual foresters with forestry education and professional experience.** Also townships and other municipalities that have Registered Forester requirements in their tree and landscape ordinances will need to revise their ordinance language, which will have the cumulative effect of costing Michigan's municipalities many thousands of dollars. As a Planning Commissioner for our village of Ortonville, I know what it takes and what it costs to revise ordinance language. These are unnecessary financial burdens that will be placed on municipalities for no valid reasons whatsoever.

Some of Senator Mark Jansen's testimony in the Regulatory Reform committee on October 10, 2013 in support of his bills to deregulate the Forestry industry, as reported by Gongwer Michigan, included the statements that the relevance of the licensure in the industry is vague and the regulation is essentially unsustainable. He is quoted as saying "We're trying to make sure

that if we do license (people), those folks are paying for the cost. This one is not being sustained. In fact, there is a federal process you can go through and it has stricter requirements... so we're duplicating." I believe I have explained the relevance of the licensure in the forest management/timber products industry in this letter, the most important aspects being a means of assuring high quality forest management services to forest landowners or forestland managers, and protection of these landowners from unscrupulous forest management practices. I've also provided information above about the value brought to private landowners, state lands and national forests, and the timber industry in Michigan by consulting foresters. The question of sustainability of this particular licensure is answered in the committee's own Floor Summary and Committee Summary on Senate Bills 481 and 484. Following is the statement of Fiscal Impact from these summaries:

### **FISCAL IMPACT**

The bills would cost the Department of Licensing and Regulatory Affairs approximately \$3,700 annually, and have no fiscal impact on local units of government. The bills would eliminate the licensure of foresters, who currently pay a registration fee of \$80 every two years. The Department has indicated that the fees paid by foresters are sufficient to cover the costs of doing the work associated with regulating the profession, and that the revenue generated by licensing the profession exceeds costs by \$3,700 annually.

Date Completed: 10-14-13

Fiscal Analyst: Josh Sefton

As described above, these bills if enacted would have some fiscal impact on local units of government due to the need to rewrite relevant ordinances. The main point of citing this fiscal impact analysis is that, contrary to the claim that licensure of foresters is not being paid for by those being licensed, and is not being sustained, LARA has indicated that the fees paid by foresters are sufficient to cover the costs, with an excess of \$3,700 annually generated by those fees.

As for the statement "there is a federal process you can go through and it has stricter requirements ... so we are duplicating", none of us in ACF are aware of any federal process for licensing foresters. If the Senator was referring to the certified forester (CF) program through SAF, this is a private professional organization, not a federal agency. As quoted above, SAF does not consider CF to be a substitute for, and actually supports, state registering or licensing of foresters. If he was referring to NRCS' plan writer qualification for TSP or other plan writing for Farm Bill programs, the educational qualifications are less and the plans generally provide less information, sometimes substantially less information, than a standard forest management plan. This would not be a suitable substitute for Registered Foresters in Michigan.

### **Conclusions**

There seem to be no valid reasons for deregulating foresters in Michigan, and ample reasons to support continuation and improvement of the Registered Forester licensure. In addition to the Michigan chapter of ACF, Governor Snyder's Michigan Timber Advisory Committee (see resolution below), Michigan Forest Association, Michigan Forest Products Council, and Michigan State University Forestry Department support the continued licensing of Registered Foresters by the State of Michigan.

**WHEREAS**, The Michigan Timber Advisory Committee (TAC) was appointed by the Governor to provide advice and counsel to the Governor, the Michigan Department of Natural Resources (Department), Michigan Economic Development Corporation (MEDC) and the Michigan Department of Agriculture and Rural Development (DARD) on policy, procedure, issues, and concerns related to timber management in this state AND to provide advice to the Governor, Department, MEDC and DARD on how to foster the growth of the timber industry in the State thereby improving the State's rural economy; **and** **THEREFORE BE IT RESOLVED**, the TAC request the Department of Licensing and Regulatory Affairs, Office of Regulatory Reinvention and the Governor reconsider its intention to eliminate the Michigan Registered Forester professional designation.  
This resolution was passed on this 31st day of May, 2012, at a regular meeting of the Michigan Timber Advisory Committee.

\_\_\_\_\_  
Chairperson

In consideration of the above information, and for the benefit of Michigan's private landowners, I request that you, Senators, not support Senate Bills 481, 482, 483 and 484, and House Bills 4379, 4380 and 4381, and that further you impose upon Senator Jansen to withdraw his bills to deregulate the profession of forestry in Michigan from consideration by the Senate. I also request that you require the OLAR Committee to re-evaluate regulation of foresters in Michigan. Please let me know how you have decided to proceed on this matter. I appreciate the opportunity to comment on this important matter before the Senate. Thank you very much.

***Rick McAvinchey***

*B.S. Forestry, M.S. Wildlife Biology - Michigan Reg. Forester No. 3301045967*

*Association of Consulting Foresters; Forest Stewardship Plan Writer, Certified; American Tree Farm Inspector, Certified*

*300 Woodbridge Lane, Ortonville, Michigan 48462*

*Phone: 248-627-7109 Fax: Same Mobile: 248-462-3524 [thelandsteward@frontier.com](mailto:thelandsteward@frontier.com)*

