

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: **06/25/99**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Assembly Democratic Caucus**

By/Representing: **Mielke**

This file may be shown to any legislator: **NO**

Drafter: **nilsepe**

May Contact: **LFB**

Alt. Drafters: **rmarchan**

Subject: **Environment - miscellaneous**

Extra Copies: **RCT**

**Pre Topic:**

No specific pre topic given

**Topic:**

Restore public intervenor

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 06/26/99			_____			
/1	rmarchan 06/26/99	ygeller 06/26/99	martykr 06/27/99	_____	gretskl 06/27/99	lrb_docadmin 06/28/99	

FE Sent For:

<END>

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1?	traderc 06/26/99 rmarchan	16/26 jcg	6/26	<i>[Handwritten signature]</i>			

FE Sent For:

<END>

Environment Package

Contact: Spencer Black (H) 233-0317  
(W) 266-7521

Jon Mielke (H) 284-6220  
(W) 266-5609

These are all to be drafted separately.

To Sub

- 1.) Restore public intervenor (AB162, except delete an appropriation)
- 2.) Independence of DNR Secretary (AB 82)
- 3.) Return to JFC action on Stewardship Fund.
- 4.) Return to JFC action on Metallic Mining - JFC #938
- 5.) Retain statewide recycling requirement, reverse action taken by republican caucus in provision 9 of their environmental package, authored by Johnsrud/Powers/Duff/Kedzie (Call Spencer if you have any questions about the intent of this provision)



State of Wisconsin  
1999 - 2000 LEGISLATURE

1  
LRBb1297R  
PEN & RJM:.....

ADC

5001

Jlg RMR

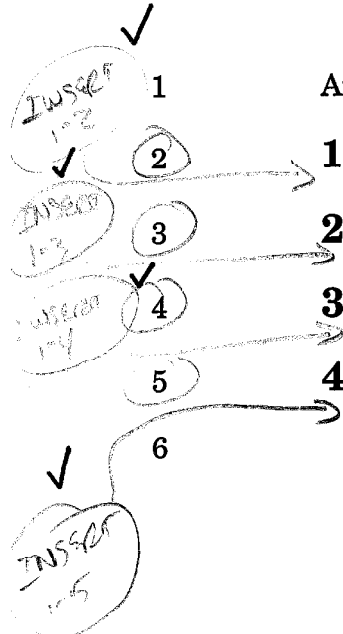
DNOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY AMENDMENT,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133

At the locations indicated, amend the substitute amendment as follows:

- 1. Page 65, line 9: after that line insert:
- 2. Page 1174, line 2: after that line insert:
- 3. Page 1426, line 20: after that line insert:
- 4. Page 1541, line 10: after that line insert:

(END)



**ASSEMBLY BILL 162**

2) Act as an interested party in actions in which he or she intervenes, with full power to present evidence, subpoena witnesses, cross-examine witnesses file briefs and do any other acts appropriate for a party to the proceedings.

3) Appeal administrative rulings to the courts.

The bill requires DNR personnel to notify the public intervenor of all administrative proceedings under the environmental protection chapters and to make such investigations, studies and reports to assist the public intervenor either before or during such formal intervention.

The bill also requires the attorney general to appoint a public intervenor advisory council consisting of seven to nine members who have a background in or demonstrated experience or records relating to environmental protection or natural resource conservation. In addition, at least one member must have working knowledge of business and at least one member must have knowledge of agriculture. The advisory committee must hold open, publicized meetings and must advise the public intervenor consistent with his or her duties.

The bill requires DNR to transfer to DOJ all assets, liabilities and tangible personal property, including records, of the public intervenor that were transferred from DOJ to DNR by 1995 Wisconsin Act 27.

The bill authorizes two attorney positions in DOJ and appropriates \$482,800 to DOJ for the 1999-2001 fiscal biennium for the purposes of the public intervenor.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

INSERT 1-2

1 (B)

124

SECTION 18.13 (4g) of the statutes is created to read:

2 18.13 (4g) PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public  
3 intervenor does not have authority to initiate any action or proceeding concerning  
4 the issuance of obligations by the building commission under this chapter.

5 (B)

2705K

SECTION 165.07 of the statutes is created to read:

INSERT  
1-3

6 165.07 Assistant attorney general — public intervenor. (1) The attorney  
7 general shall designate an assistant attorney general on the attorney general's staff  
8 as public intervenor. Written notices of all proceedings under chs. 30, 31, 281 to 285  
9 and 289 to 299, except s. 281.48, shall be given to the public intervenor and to the  
10 administrators of divisions primarily assigned the departmental functions under



INS 1-3

1 chs. 29, 281, 285 and 289 to 299, except s. 281.48, by the agency head responsible for  
2 such proceedings. A copy of such notice shall also be given to the natural areas  
3 preservation council.

4 (2) The public intervenor shall formally intervene in proceedings described in  
5 sub. (1) when requested to do so by an administrator of a division primarily assigned  
6 the departmental functions under chs. 29, 281, 285 or 289 to 299, except s. 281.48.  
7 The public intervenor may, on the public intervenor's own initiative or upon request  
8 of any committee of the legislature, formally intervene in all proceedings described  
9 in sub. (1) whenever such intervention is needed for the protection of "public rights"  
10 in water and other natural resources, as provided in chs. 30 and 31 and defined by  
11 the supreme court.

12 (3) Personnel of the department of natural resources shall, upon the request  
13 of the public intervenor, make such investigations, studies and reports as the public  
14 intervenor may request in connection with proceedings described in sub. (1), either  
15 before or after formal intervention. Personnel of state agencies shall at the public  
16 intervenor's request provide information, serve as witnesses in proceedings  
17 described in sub. (1) and otherwise cooperate in the carrying out of the public  
18 intervenor's intervention functions. Formal intervention shall be by filing a  
19 statement to that effect with the examiner or other person immediately in charge of  
20 the proceeding. Thereupon the public intervenor shall be considered a party in  
21 interest with full power to present evidence, subpoena and cross-examine witnesses,  
22 submit proof, file briefs or do any other acts appropriate for a party to the  
23 proceedings.

24 (4) The public intervenor may appeal from administrative rulings to the courts.  
25 In all administrative proceedings and judicial review proceedings the public



INS 1-3  
cont

1 intervenor shall be identified as "public intervenor". This section does not preclude  
2 or prevent any division of the department of natural resources, or any other  
3 department or independent agency, from appearing by its staff as a party in such  
4 proceedings.

5 (B) 2276n SECTION 165.075 of the statutes is created to read:

6 165.075 Assistant attorney general; public intervenor; authority. In  
7 carrying out his or her duty to protect public rights in water and other natural  
8 resources, the public intervenor has the authority to initiate actions and proceedings  
9 before any agency or court in order to raise issues, including issues concerning  
10 (B) constitutionality, present evidence and testimony and make arguments.

11 2286g SECTION 165.076 of the statutes is created to read:

12 165.076 Assistant attorney general; public intervenor; advisory  
13 committee. The attorney general shall appoint a public intervenor advisory  
14 committee under s. 15.04 (1) (c). The public intervenor advisory committee shall  
15 consist of not less than 7 nor more than 9 members. The members shall have  
16 backgrounds in or demonstrated experience or records relating to environmental  
17 protection or natural resource conservation. At least one of the members shall have  
18 working knowledge in business. At least one of the members shall have working  
19 knowledge in agriculture. The public intervenor advisory committee shall advise the  
20 public intervenor consistent with his or her duty to protect public rights in water and  
21 other natural resources. The public intervenor advisory committee shall conduct  
22 meetings consistent with subch. V of ch. 19 and shall permit public participation and  
23 public comment on public intervenor activities. )

INSERT 1-4

24 (B) 3093m SECTION 814.245 (2) (d) of the statutes is amended to read:



INS 1-4  
CONF

1 814.245 (2) (d) "State agency" does not include the public intervenor or citizens  
2 utility board."

3 ~~SECTION 6 Nonstatutory provisions.~~

4 (11c) (4) TRANSFER OF PUBLIC INTERVENOR PERSONNEL AND EFFECTS.

5 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and  
6 liabilities of the department of natural resources that on October 1, 1997, were  
7 primarily related to the functions of the public intervenor, as determined by the  
8 secretary of administration, shall become the assets and liabilities of the department  
9 of justice.

10 (b) *Tangible personal property.* On the effective date of this paragraph, all  
11 tangible personal property, including records, of the department of natural resources  
12 that on October 1, 1997, was primarily related to the functions of the public  
13 intervenor, as determined by the secretary of administration, is transferred to the  
14 department of justice.

15 (c) *Contracts.* All contracts entered into by the department of natural resources  
16 in effect on the effective date of this paragraph that are primarily related to the  
17 functions of the public intervenor, as determined by the secretary of administration,  
18 remain in effect and are transferred to the department of justice. The department  
19 of justice shall carry out any such contractual obligations unless modified or  
20 rescinded by the department of justice to the extent allowed under the contract.

21 (d) *Rules and orders.* All rules promulgated by the department of natural  
22 resources in effect on the effective date of this paragraph that are primarily related  
23 to the functions of the public intervenor, as determined by the secretary of  
24 administration, remain in effect until their specified expiration dates or until  
25 amended or repealed by the department of justice. All orders issued by the



INS 1-5  
CONT

1 department of natural resources in effect on the effective date of this paragraph that  
2 are primarily related to the functions of the public intervenor, as determined by the  
3 secretary of administration, remain in effect until their specified expiration dates or  
4 until modified or rescinded by the department of justice.

5 (e) *Pending matters.* Any matter pending with the department of natural  
6 resources on the effective date of this paragraph that is primarily related to the  
7 functions of the public intervenor, as determined by the secretary of administration,  
8 is transferred to the department of justice and all materials submitted to or actions  
9 taken by the department of natural resources with respect to the pending matter are  
10 considered as having been submitted to or taken by the department of justice. "

11 **SECTION 7. Appropriation changes.**

12 (1) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the  
13 statutes for the appropriation to the department of justice under section 20.455 (1)  
14 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by  
15 \$241,400 for fiscal year 1999-00 and the dollar amount is increased by \$241,400 for  
16 fiscal year 2000-01 to increase the authorized FTE positions for the department by  
17 2.0 CPR attorney positions on the effective date of this subsection for the purposes  
18 of the public intervenor.

19 ~~SECTION 8. Effective date.~~

20 11 " (a) ~~This act takes effect on July 1, 1999, or on the day after publication,~~  
21 whichever is later. "

INSERT

PUBLIC INTERVENOR.

The treatment of sections 18.13 (1/3), 165.075, 165.076  
and 84.245 (2)(d) of the statutes and SECTION 7(1) of  
this act

(END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb1297/1dn  
PEN & RJM:.....

↑  
Jlg

The attached draft restores the office of the public intervenor, effective on the day after publication. 1999 AB<sup>4</sup>162 contained a delayed effective date of July 1, 1999, or the day after publication, whichever is later. Because it is unlikely that the budget bill will be effective by July 1, 1999, I have eliminated the reference to a delayed effective date.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb1297/1dn  
RJM:jljg:km

June 26, 1999

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