



2011 ASSEMBLY BILL 216

August 9, 2011 – Introduced by Representatives HONADEL, BIES, BROOKS, KESTELL, LEMAHIEU, MURSAU, NERISON, NYGREN, SPANBAUER, STASKUNAS, STONE, STRACHOTA, TIFFANY, VAN ROY, VRUWINK, WEININGER and WYNN, cosponsored by Senators GROTHMAN, DARLING, LASEE, MOULTON, OLSEN and SCHULTZ. Referred to Committee on Transportation.

1 **AN ACT** *to repeal* 84.305 (1) (c), 84.305 (1) (d), 84.305 (1) (f), 84.305 (1) (g), 84.305
2 (1) (j), 84.305 (1) (k), 84.305 (2) (a) 1., 84.305 (2) (a) 2., 84.305 (2) (a) 4., 84.305
3 (2) (b), 84.305 (3) (c), 84.305 (3) (f), 84.305 (5) (b) and 84.305 (5) (c); *to renumber*
4 *and amend* 84.305 (3) (e); *to consolidate, renumber and amend* 84.305 (2)
5 (a) (intro.) and 3.; *to amend* 84.305 (1) (h), 84.305 (3) (a), 84.305 (3) (b), 84.305
6 (3) (d), 84.305 (3) (g), 84.305 (5) (a), 84.305 (6) and 84.305 (7); and *to create*
7 84.305 (5) (d) and 84.305 (5) (e) of the statutes; **relating to:** maintenance and
8 removal of vegetation obstructing the view of outdoor advertising signs along
9 highways under the jurisdiction of the Department of Transportation.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Transportation (DOT) is responsible for maintenance of the highway right-of-way on highways that, for maintenance purposes, are under its jurisdiction, which are generally state trunk highways (including interstate highways) but do not include connecting highways. DOT must provide for the care and protection of trees and other roadside vegetation. DOT must also cut, trim, or remove, or allow others to cut, trim, or remove, trees and other vegetation in order to provide safety to highway users. Current law generally

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prohibits a person from cutting, trimming, removing, or planting a tree or other vegetation within the right-of-way of a state trunk highway without DOT's consent.

The federal Highway Beautification Act requires states to restrict advertising along interstate and federal-aid primary highways, which includes state trunk highways and connecting highways, and current state law incorporates these requirements. Current law prohibits, with certain exceptions, the erection or maintenance of outdoor advertising signs (signs) within 660 feet of, or beyond 660 feet but visible (and erected for the purpose of being visible) from, the main-traveled way of an interstate or federal-aid primary highway. Exceptions to this prohibition include, with some restrictions, signs advertising activities conducted on the property on which the signs are located; signs located beyond 660 feet of the highway in urban areas; and signs located within 660 feet of the highway in certain business, industrial, or commercial areas.

Under current law, DOT administers a permit system for the maintenance and removal by sign owners of vegetation obstructing the view of signs along state trunk highways, including interstate highways. DOT may issue permits to sign owners for the trimming, removal, or relocation of vegetation in the highway right-of-way if, within various specified distances along the highway, the vegetation obstructs motorists' view of the face of a sign. A permit authorizes the sign owner, or a third-party contractor employed by the sign owner, to trim, remove, or relocate obstructing vegetation to the extent necessary to eliminate the obstruction and restore an unobstructed view of the sign for the applicable specified distance along the highway. A permit must specify the vegetation or the portion of the highway right-of-way to which the permit applies. Each permit must require a sign owner that removes planted vegetation to either relocate the planted vegetation or reimburse DOT for the value of the planted vegetation. DOT must present to the sign owner DOT's calculation of the value of the planted vegetation, and the sign owner may elect to relocate the planted vegetation or to reimburse DOT in the amount calculated by DOT.

This bill makes various changes to DOT's permit system for maintenance and removal of vegetation obstructing signs, including the following:

1. The bill replaces various sign viewing standards with a single standard: that a sign owner is eligible for a permit to trim or remove vegetation if, for a distance of 500 continuous feet within the 1,000 feet distance motorists travel immediately before reaching the sign, the vegetation obstructs the view of any portion of the face of the sign. The bill also eliminates an exception that allowed DOT to issue a permit for a noncontinuous 500 feet viewing distance.

2. The bill specifies that DOT must issue permits to eligible applicants. Also under the bill, DOT permits authorize the trimming or removal, but not the relocation, of obstructing vegetation.

3. The bill eliminates the requirement that a permittee that removes planted vegetation must either relocate the planted vegetation or reimburse DOT for the value of the planted vegetation. The bill replaces this requirement with the requirement that a permittee that removes vegetation with a diameter of four inches or more must plant replacement vegetation to compensate for the vegetation

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removed. DOT must determine where the replacement vegetation is to be planted, but it must be planted in the highway right-of-way within ten miles of the location where the vegetation was removed.

4. The bill eliminates a requirement under current law that, under certain conditions, a sign owner applying for a permit must, at the time of the application, provide written notice of the application to any adjacent property owner and to the applicable municipality. The bill also eliminates a provision of current law requiring DOT, within 30 days of receiving an application, to determine whether the application is complete and to return it to the applicant if incomplete.

5. The bill eliminates a provision of current law that a permit may not authorize the trimming, removal, or relocation of vegetation in existence prior to the erection of the sign obstructed by the vegetation. The bill replaces this provision with a provision that DOT may not issue a permit to trim, remove, or relocate vegetation obstructing the view of a sign that is less than five years old (calculated from when DOT first collected the sign's permit fee).

6. The bill eliminates a provision of current law allowing DOT to require as a condition or restriction under a permit that the work authorized under the permit meet standards established by DOT. However, the bill retains current law that DOT has authority to supervise and determine how the work authorized under a permit is carried out.

7. The bill expands the definition of "vegetation," for purposes of the bill, to include grass. The bill also eliminates the distinction between various other types of vegetation, including "natural vegetation," "planted vegetation," and "specimen trees."

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:

1 **SECTION 1.** 84.305 (1) (c) of the statutes is repealed.

2 **SECTION 2.** 84.305 (1) (d) of the statutes is repealed.

3 **SECTION 3.** 84.305 (1) (f) of the statutes is repealed.

4 **SECTION 4.** 84.305 (1) (g) of the statutes is repealed.

5 **SECTION 5.** 84.305 (1) (h) of the statutes is amended to read:

6 84.305 (1) (h) "Vegetation" means any tree, shrub, hedge, or other woody plant,

7 and ~~includes planted vegetation, natural vegetation, and specimen trees.~~

8 ~~"Vegetation" does not include or~~ grass.

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1 **SECTION 6.** 84.305 (1) (j) of the statutes is repealed.

2 **SECTION 7.** 84.305 (1) (k) of the statutes is repealed.

3 **SECTION 8.** 84.305 (2) (a) (intro.) and 3. of the statutes are consolidated,
4 renumbered 84.305 (2) and amended to read:

5 84.305 (2) Notwithstanding ss. 66.1037 and 86.03, and subject to sub. (2m),
6 upon application, the department ~~may~~ shall issue permits to sign owners for the
7 trimming, or removal, ~~or relocation~~ of vegetation that is located in the right-of-way
8 of a highway under the jurisdiction of the department for maintenance purposes and
9 that obstructs a sign if any of the following applies: ~~3. Subject to par. (b), within a~~
10 distance of 500 continuous feet along any portion of the viewing zone, any portion of
11 the face of the sign is not viewable because of an obstruction to sight by ~~natural~~
12 vegetation in the highway right-of-way.

13 **SECTION 9.** 84.305 (2) (a) 1. of the statutes is repealed.

14 **SECTION 10.** 84.305 (2) (a) 2. of the statutes is repealed.

15 **SECTION 11.** 84.305 (2) (a) 4. of the statutes is repealed.

16 **SECTION 12.** 84.305 (2) (b) of the statutes is repealed.

17 **SECTION 13.** 84.305 (3) (a) of the statutes is amended to read:

18 84.305 (3) (a) Subject to pars. (d) to (g) and sub. (4), a permit issued under this
19 section authorizes the permittee to trim ~~obstructing vegetation~~ or remove ~~or relocate~~
20 ~~obstructing individual plants~~ vegetation to the extent necessary to eliminate the
21 obstruction and ~~remedy any condition specified under sub. (2) (a) 1. to 4.~~ provide an
22 unobstructed view of a sign for 500 continuous feet within the viewing zone. A permit
23 issued under this section shall specify the vegetation or the portion of the highway
24 right-of-way to which the permit applies.

25 **SECTION 14.** 84.305 (3) (b) of the statutes is amended to read:

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1 84.305 (3) (b) An application for a permit under this section shall specifically
2 describe the work proposed by the applicant. The department shall grant or deny an
3 application for a permit under this section, and notify the applicant of the
4 department's decision, within 60 days of receipt of the application. ~~Within 30 days~~
5 ~~of receipt of the application, the department shall determine whether the application~~
6 ~~is complete and, if not, the department shall return the application to the applicant~~
7 ~~and inform the applicant of what information, specifically described, must be~~
8 ~~provided by the applicant to complete the application. The department may not deny~~
9 ~~an application for a permit under this section based solely upon receipt by the~~
10 ~~department of an objection or complaint from a property owner or municipality~~
11 ~~receiving notice under par. (c), but the department may consider the objection or~~
12 ~~complaint in determining whether to grant or deny the application for a permit. If~~
13 ~~the department denies an application for a permit under this section, the department~~
14 ~~shall notify the applicant of reasons for the denial.~~

15 **SECTION 15.** 84.305 (3) (c) of the statutes is repealed.

16 **SECTION 16.** 84.305 (3) (d) of the statutes is amended to read:

17 84.305 (3) (d) A permit issued under this section may not authorize trimming,
18 or removal, ~~or relocation~~ of vegetation located within a municipality and within 10
19 feet of the nearest edge of the highway pavement without prior approval for the
20 trimming, or removal, ~~or relocation~~ from the municipality.

21 **SECTION 17.** 84.305 (3) (e) of the statutes is renumbered 84.305 (2m) and
22 amended to read:

23 84.305 (2m) ~~A permit issued under this section may not authorize the~~
24 ~~permittee to trim, remove, or relocate vegetation in existence prior to the erection of~~
25 ~~the sign obstructed by the vegetation. Nothing in this paragraph prohibits the The~~

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1 department ~~from issuing~~ may not issue a permit under this section authorizing the
2 trimming, or removal, ~~or relocation~~ of vegetation that, ~~at the time the sign was~~
3 erected, ~~did not obstruct~~ obstructing the view of the a sign if the department first
4 collected a permit fee under s. 84.30 (10m) for that sign within the immediately
5 preceding 5 years.

6 **SECTION 18.** 84.305 (3) (f) of the statutes is repealed.

7 **SECTION 19.** 84.305 (3) (g) of the statutes is amended to read:

8 84.305 (3) (g) A permit issued under this section may not authorize the
9 permittee to clear-cut any highway right-of-way. The permit authorizes the
10 permittee to trim, or remove, ~~or relocate~~ only the vegetation specified in the permit,
11 or only vegetation within the area of the right-of-way specified in the permit, in
12 accordance with the terms of the permit.

13 **SECTION 20.** 84.305 (5) (a) of the statutes is amended to read:

14 84.305 (5) (a) Each permit issued under this section shall require a permittee
15 that removes ~~planted vegetation to either relocate the planted vegetation or~~
16 ~~reimburse the department for the value of the planted vegetation. The department~~
17 ~~shall present to the permittee the department's calculation of the value of the planted~~
18 ~~vegetation, and the permittee may elect to relocate the planted vegetation or to~~
19 ~~reimburse the department for the value of the planted vegetation as determined by~~
20 ~~the department~~ any tree with a diameter of 4 inches or more as measured at 3 feet
21 from the ground, or any other vegetation with a diameter of 4 inches or more, to plant
22 comparable replacement vegetation to compensate for all such vegetation removed,
23 in compliance with the requirements under pars. (d) and (e).

24 **SECTION 21.** 84.305 (5) (b) of the statutes is repealed.

25 **SECTION 22.** 84.305 (5) (c) of the statutes is repealed.

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1 **SECTION 23.** 84.305 (5) (d) of the statutes is created to read:

2 84.305 **(5)** (d) 1. In planting replacement vegetation under par. (a), the
3 permittee shall determine the diameters of all trees with a diameter of 4 inches or
4 more, as measured at 3 feet from the ground, and of all other vegetation with a
5 diameter of 4 inches or more, that was removed and shall calculate the sum total of
6 these diameters for each category of vegetation, such as for trees, for shrubs, and for
7 hedges. In calculating the sum total of these diameters, the permittee shall not
8 include in the calculation the diameter of any vegetation that was dead, diseased, or
9 determined to be an invasive species at the time of its removal.

10 2. The permittee shall plant sufficient replacement vegetation with a diameter
11 of at least 2 inches so that the sum total of the diameters of the replacement
12 vegetation, for each category of vegetation, at least equals the sum total of the
13 diameters as calculated under subd. 1. for that category.

14 **SECTION 24.** 84.305 (5) (e) of the statutes is created to read:

15 84.305 **(5)** (e) 1. Subject to subd. 2., the department shall determine where
16 replacement vegetation required under this subsection is to be planted.

17 2. Replacement vegetation required under this subsection shall be planted in
18 the highway right-of-way not farther than 10 miles from the location of the removed
19 vegetation being replaced. Replacement vegetation may not be planted in front of
20 a sign.

21 **SECTION 25.** 84.305 (6) of the statutes is amended to read:

22 84.305 **(6)** The department shall have authority to supervise and determine
23 how the work authorized under a permit issued under this section is carried out. The
24 ~~department may require as a condition or restriction under any permit issued under~~

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1 ~~this section that the work authorized under the permit meet standards established~~
2 ~~by the department.~~

3 **SECTION 26.** 84.305 (7) of the statutes is amended to read:

4 84.305 (7) Nothing in this section prohibits a sign owner and the department
5 from voluntarily negotiating for, and the department from authorizing without the
6 issuance of a permit under this section, the trimming, or removal, ~~or relocation~~ of any
7 vegetation in a highway right-of-way in order to provide an unobstructed view of a
8 sign, except in situations where sub. (3) (d) would apply if a permit were issued under
9 this section. Nothing in this section restricts the department's authority with respect
10 to departmental maintenance operations in the rights-of-way of highways under
11 the department's jurisdiction.

12 **SECTION 27. Effective date.**

13 (1) This act takes effect on the 30th day after the day of publication.

14 (END)