

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB216)

Received: **01/04/2012**

Received By: **agary**

Wanted: **As time permits**

Companion to LRB:

For: **Jerry Petrowski (608) 266-1182**

By/Representing: **Derek Panches**

May Contact:

Drafter: **agary**

Subject: **Transportation - highways**

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Rep.Petrowski@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Vegetation maintenance in state trunk highway right-of-way related to obstruction of view of outdoor advertising signs

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>
/?	agary 01/13/2012	csicilia 01/19/2012		_____			
/P1			jmurphy 01/19/2012	_____	mbarman 01/19/2012		
/P2	agary 02/02/2012	csicilia 02/03/2012	jfrantze 02/03/2012	_____	sbasford 02/03/2012		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	agary 02/08/2012	csicilia 02/09/2012	phenry 02/09/2012	_____	mbarman 02/09/2012		
/1	agary 02/10/2012	kfollett 02/10/2012	phenry 02/10/2012	_____	sbasford 02/10/2012	sbasford 02/10/2012	

FE Sent For:

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2/10

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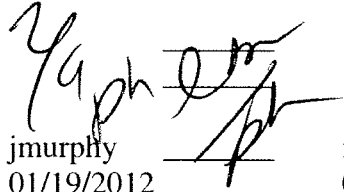
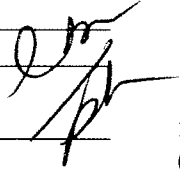
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P3 gjs 2/9
12

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Handwritten notes:
/P2
js 2/3
12 2/3
JL 2/3
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1?	agary	<i>Pligs 1/19</i> <i>12</i>	<i>Jm</i> <i>1/19/12</i>	<i>Jm+RS</i> <i>1/19/12</i>			

FE Sent For:

<END>

Gary, Aaron

From: Gary, Aaron
Sent: Monday, January 09, 2012 10:44 AM
To: Punches, Derek
Subject: RE: Draft Request: Substitute Amendment to LRB-1679/1

Hi Derek,

I started working on this substitute amendment and am finding the instructions rather confusing. I have inserted some questions and/or comments below, in blue. Thanks for any guidance you can provide.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

1/11 H/c w/ Tim & Rep. Petrowski.

① sites - can deny or conditions; rest: conditions, not denial

② NSF: trees & plants that hold back snow from highway; can trim but not below certain height (4/5 feet)

③ add new piece: permit for signs on buildings/structures w/in 100 feet of ROW - DOT ~~must~~ must have permits, even if "new" sign

From: Punches, Derek
Sent: Wednesday, January 04, 2012 4:22 PM
To: Gary, Aaron
Subject: Draft Request: Substitute Amendment to LRB-1679/1

Good afternoon, Aaron:

Rep. Petrowski would like to have a substitute amendment drafted for AB 216 [LRB-1679/1]. In addition to the provisions listed below, please include those that were incorporated in LRBa2006, an Assembly Amendment to AB 216 from Rep. Honadel.

If you have any questions, please do not hesitate to contact me here at the office.

Best regards,
Derek

-
- Retain permit process as described in current bill.
 - Permittee chooses the 500-foot viewing window. (current bill provision)
 - Signs are eligible for vegetation removal / trimming permits if the sign was originally permitted under 84.30(10m) at least five years ago. (current bill provision)
 - DOT retains discretion to deny, or to place conditions upon, a permit application for the following: Aaron: As far as I can tell, the bullets below seem to apply only to conditions on a permit, not to denial of a permit (unless the word "deny" refers only to "cuttings proposed at sites that are" - see 3rd bullet below).
 - Operational or Safety Considerations.
 - Permit should contain conditions 'customarily required for work on highway right-of-way'. Feds and operational safety require it. Because permits must have explicit authority for any conditions, tie the operational safety conditions back to the 'work on ROW' permit.
 - Trimming of trees must comply with ANSI standards. If a tree cannot be trimmed to ANSI standards, it should be removed and replaced as provided in the bill.
 - Cuttings proposed at sites that are:
 - Archeological
 - Indian sites
 - mapped habitat of endangered or threatened species
 - illegal signs or signs subject to removal orders
 - junkyard screens

- trees not owned by state (highway lies on easement, planted by locals, etc);

Aaron: This bullet doesn't make sense to me. How are these particular cuttings sites intended to be treated? Is this what the word "deny" refers to above? I need clearer instructions as to what happens if the application proposes cuttings at these sites.

- Preservation of Natural Snow Fence. The Department must authorize the trimming of natural snow fence trees taller than five feet provided such trimming meets ANSI standards. If such trimming cannot be accomplished within ANSI standards, the Department may place conditions on the permit, preventing the trimming or removal of the trees. Aaron: I don't know what "natural snow fence" or "natural snow fence trees" means. Does this term need to be defined or better described? I'm also not sure what this provision is intended to accomplish - per the second bullet above, all trimming must meet ANSI standards. Is this intended to allow additional conditions on the permit that are beyond the conditions customary for ROW permits? Or prohibit removal of the trees where they would otherwise be removable under the second bullet above?
- Bill would further require:
 - The current provision related to the replacement of trees removed under the permit. (current bill provision)
 - Removal of stumps (to just below grade level) and cuttings resulting from vegetation removals.

Derek PUNCHES
Office of Representative Jerry Petrowski
86th Assembly District
(608) 266-1182

Gary, Aaron

From: Fiocchi, Tim
Sent: Friday, January 13, 2012 10:50 AM
To: Gary, Aaron
Cc: Punches, Derek
Subject: RE: Draft Request: Substitute Amendment to LRB-1679/1

One further clarification – we will need to account for/ allow the owners of the signs on the sides of the buildings to receive the permits without regard to how long the sign has been in place. Since they don't apply for permits, they would have no way to demonstrate how long the sign has been there.

From: Gary, Aaron
Sent: Friday, January 13, 2012 8:19 AM
To: Fiocchi, Tim
Cc: Punches, Derek
Subject: RE: Draft Request: Substitute Amendment to LRB-1679/1

Thanks.

From: Fiocchi, Tim
Sent: Thursday, January 12, 2012 4:09 PM
To: Gary, Aaron
Cc: Punches, Derek
Subject: RE: Draft Request: Substitute Amendment to LRB-1679/1

Hi Aaron,

It's my understanding that because these are not "permitted signs" – or official signs as such - that they are not eligible for the permits at all right now. What we are after is allowing them to apply for and receive the permits in the same way a billboard owner could. So, what we're after is eligibility/ equal treatment for those types of signs.

Let me know if I've been wrongly informed or if you have other questions.

Thanks,

Tim

From: Gary, Aaron
Sent: Thursday, January 12, 2012 3:43 PM
To: Fiocchi, Tim
Cc: Punches, Derek
Subject: RE: Draft Request: Substitute Amendment to LRB-1679/1

Tim,
I made all the changes below, but I am having trouble with the new piece that we discussed by phone (signs on buildings and similar structures).

Under the sub, a sign includes any outdoor advertising sign, including signs on buildings. DOT must issue a permit to trim or remove obstructing vegetation in the highway right-of-way (ROW) if the 500 feet viewing standard is met (with a few exceptions, such as for archaeological sites, etc. and signs less than 5 years old), but DOT can impose conditions on the permit. Presumably a building with a sign on it is not in the highway ROW but vegetation in the ROW may still block the view.

According to my notes, you want to require DOT to issue the permit for trimming or removal of vegetation within the ROW if the sign at issue is on a building that is within 100 feet of the highway ROW. Since DOT is already generally required to issue the permit, I'm trying to figure out what this provision is intended to overcome. Is it intended to override DOT's ability to deny the permit for signs less than 5 years old? Is it intended to override the 500 feet viewing standard? Is it intended to override DOT's ability to impose conditions on the permit (ie conditions customarily included in the ROW permit mentioned below)? Other?

Thanks for any additional clarification you can provide.

Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

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Derek Punches
Office of Representative Jerry Petrowski
86th Assembly District
(608) 266-1182



State of Wisconsin
2011 - 2012 LEGISLATURE

in 1/13



S/278/P1

LRB-16794-
ARG:cjs:md

Assembly Substitute Amendment,
TO **2011 ASSEMBLY BILL 216**

wanted
by
1/19

RMNR

stays

D-note
insects

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

SA ✓
1/13/11

Car Cat

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

ASSEMBLY BILL 216

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.

substitute amendment

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. *with limited exceptions*

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. *insert ANAL-A*

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

ASSEMBLY BILL 216

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. *insert ANAL-B*

3.4 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. *for a perm.*

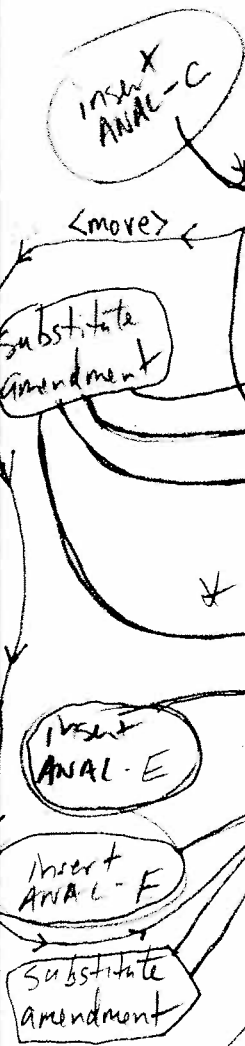
5. The bill eliminates a provision of current law that a permit may not authorize the trimming, removal, or relocation of vegetation in existence prior to the erection of the sign obstructed by the vegetation. The bill replaces this provision with a provision that DOT may not issue a permit to trim, 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). *insert ANAL-D*

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.

9.4. 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." *The substitute amendment*

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

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.

ASSEMBLY BILL 216

SECTION 6

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

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

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

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

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

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

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

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

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

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

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

Insert 4-16

subs. (2m) (b) and (c)

(h) and (g) and (4)

ASSEMBLY BILL 216

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) ^(a) and
22 amended to read:

23 84.305 (2m) ^(a) ~~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

ASSEMBLY BILL 216

SECTION 17

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.

Insert 6-5

Insert 6-12

Insert 6-12

Insert 6-23

ASSEMBLY BILL 216

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~~

Insert
7-21

X

ASSEMBLY BILL 216

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)

D-Note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0278/P1ins
ARG:.....

1 **INSERT ANAL-A:**

(no R) The substitute amendment also requires all trimming to be performed in compliance with applicable standards of the American National Standards Institute. ✓

2 **INSERT ANAL-B:**

(no R) The substitute amendment specifies that a permittee that removes vegetation must also remove the vegetation's stump and must dispose of all vegetation removed. ✓

4 **INSERT ANAL-C:**

4. Under the substitute amendment, DOT's permit system for the maintenance and removal of vegetation obstructing the view of a sign also applies to any sign that is attached to a building or similar structure and that is within 100 feet of the highway right-of-way.

5 **INSERT ANAL-D:**

(no R) , except a sign attached to a building or similar structure within 100 feet of the highway right-of-way

6 **INSERT ANAL-E:**

(no R) Instead, under the substitute amendment, DOT may impose any condition or restriction on a permit that DOT customarily imposes in connection with work performed on highway rights-of-way.

7 **INSERT ANAL-F:**

7. Under the substitute amendment, DOT may deny an application for a permit, or impose conditions or restrictions on the permit, under certain circumstances, including that the application seeks authorization for the trimming or removal of vegetation at an archaeological site or with respect to an illegal sign. The substitute amendment also includes provisions specific to a natural snow fence, which is defined as vegetation in a highway right-of-way that functions as a berm or barrier to inhibit the accumulation of snow on the highway during the winter season.

* (no R) Under the substitute amendment, all trimming and removal of vegetation, as well as all planting of replacement vegetation, must be conducted between 9:00 a.m. and 4:00 p.m. unless different hours are authorized by DOT.

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INSERT 3-1:

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e i s

SECTION 1. 84.305 (1) (cm) of the statutes are created to read:

84.305 (1) (cm) "Natural snow fence" means vegetation in a highway right-of-way that functions as a berm or barrier to inhibit the accumulation of snow on the highway during the winter season.

INSERT 3-2:

x

SECTION 2. 84.305 (1) (e) of the statutes is amended to read:

84.305 (1) (e) "Sign" has the meaning given in s. 84.30 (2) (j), but also includes any sign that is attached to a building or similar structure and that is within 100 feet of a highway right-of-way.

History: 2005 a. 465.

INSERT 4-16:

SECTION 3. 84.305 (2m) (b) and (c) of the statutes are created to read:

84.305 (2m) (b) The department may deny an application for a permit under this section, or impose on the permit any condition or restriction determined to be necessary or suitable by the department, if the application seeks authorization for the trimming or removal of vegetation at or with respect to any of the following:

1. An archaeological site or site of a federally recognized American Indian tribe or band.
2. A location that is part of a known habitat of endangered species or threatened species under s. 29.604.
3. An illegal sign or sign subject to a removal order of the department.
4. Vegetation that serves as a junkyard screen, as described in s. 84.31.
5. Vegetation not owned by the department or ^{an} other state agency.

1 (c) Except as provided in pars. (a) and (b), the department may not deny an
 2 application for a permit under this section authorizing the trimming of vegetation
 3 that has a height greater than 5 feet and that serves as a natural snow fence if the
 4 trimming can be performed in compliance with applicable standards of the American
 5 National Standards Institute, but the department may, in issuing the permit, impose
 6 conditions or restrictions pertaining to the natural snow fence. Notwithstanding
 7 sub. (3) (g), if the vegetation serving as a natural snow fence cannot be trimmed in
 8 compliance with applicable standards of the American National Standards Institute,
 9 this vegetation may not be removed and replaced.

10
11 **INSERT 6-5:**

12 (no 9) This paragraph does not apply with respect to a sign that is attached to a
 13 building or similar structure and that is within 100 feet of a highway right-of-way

14 **INSERT 6-12:**

15 (no 9) All trimming of vegetation authorized under a permit shall be performed in
 16 compliance with applicable standards of the American National Standards Institute,
 17 but if the trimming cannot be accomplished in compliance with these standards, the
 18 vegetation may be removed and replaced as provided in sub. (5).

19
20 **INSERT 6-23:**

21 **SECTION 4.** 84.305 (5) (am) of the statutes is created to read:

22 84.305 (5) (am) Each permit issued under this section shall require a permittee
 23 that removes vegetation to also remove the vegetation's stump, to a depth just below
 24 grade level, and to dispose of all vegetation removed, including the stump, at a
 25 location away from the highway right-of-way.

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INSERT 7-21:

SECTION 5. 84.305 (6) of the statutes is renumbered 84.305 (6) (a) and amended to read:

84.305 (6) (a) The department shall have authority to supervise and determine how the work authorized under a permit issued under this section is carried out.

(b) The department may ~~require as a~~ impose any condition or restriction ~~under any on a~~ permit issued under this section that ~~the work authorized under the permit meet standards established by the department~~ customarily imposes in connection with work performed on highway rights-of-way.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT,
TO 2011 ASSEMBLY BILL 216**

INSERTS

LPS: THAW bill
section numbers

1 At the locations indicated, amend the bill as follows:

2 1. Page 5, line 15: delete that line and substitute:

3 SECTION 15m. 84.305 (3) (c) 1. (intro.) of the statutes is amended to read:

4 84.305 (3) (c) 1. (intro.) The owner of any property adjacent to the vegetation
5 specified in the permit application if the work proposed in the permit application
6 includes removal or relocation of individual plants and any of the following apply:

7 2. Page 6, line 12: after that line insert:

8 SECTION 19m. 84.305 (3) (h) of the statutes is created to read:

9 84.305 (3) (h) Unless different hours are authorized by the department, all
10 trimming and removal of vegetation under a permit issued under sub. (2), and all

Insert
5-15

Insert
6-13

✓
✓
✓

1 planting of vegetation under sub. (5), shall be conducted between the hours of 9 a.m.

2 and 4 p.m. *fe*

3

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0278/P1dn

ARG:.....

gjs

- date -

ATTN: Tim Fiocchi and Derek Punches

Please review the attached draft carefully to ensure that it is consistent with your intent.

Following our discussions, I have added an amendment to s. 84.305 (1) (e) changing the definition of "sign" and I have also included a provision in renumbered s. 84.305 (2m) (a) relating to signs on buildings. I had thought that the definition of "sign" in s. 84.30 (2) (j), which is adopted in s. 84.305 (1) (e), also includes signs on buildings that are meant to be visible from the highway. But I could be mistaken. I would defer to DOT's expertise on whether the amendment to s. 84.305 (1) (e) makes sense or whether it is redundant of the existing meaning of "sign."

The instructions use the phrase "mapped habitat of endangered or threatened species." I am uncertain what this phrase means, and I note that nothing similar is used in the statutes or the administrative code. If it is a habitat identified on a map, one might ask whose map? The language I have instead used in created s. 84.305 (2m) (b) 2. is not necessarily good and may not reflect your intent, but it does tie into the pertinent statute. You may wish to consult with DNR as to how best to describe these "mapped habitats." Please let me know if you would like the language in ~~this~~ ^{these} provision changed.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

not

I'm also not certain what an Indian site (site of [an] ... Indian tribe or band; in the draft) means. Is this intended to cover a burial site or some other state or federally protected site?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0278/P1dn

ARG:cjs:jm

January 19, 2012

ATTN: Tim Fiocchi and Derek Punches

Please review the attached draft carefully to ensure that it is consistent with your intent.

Following our discussions, I have added an amendment to s. 84.305 (1) (e) changing the definition of "sign" and I have also included a provision in renumbered s. 84.305 (2m) (a) relating to signs on buildings. I had thought that the definition of "sign" in s. 84.30 (2) (j), which is adopted in s. 84.305 (1) (e), also includes signs on buildings that are meant to be visible from the highway. But I could be mistaken. I would defer to DOT's expertise on whether the amendment to s. 84.305 (1) (e) makes sense or whether it is redundant of the existing meaning of "sign."

The instructions use the phrase "mapped habitat of endangered or threatened species." I am uncertain what this phrase means, and I note that nothing similar is used in the statutes or the administrative code. If it is a habitat identified on a map, one might ask whose map? The language I have instead used in created s. 84.305 (2m) (b) 2. is not necessarily good and may not reflect your intent, but it does tie into the pertinent statute. You may wish to consult with DNR as to how best to describe these "mapped habitats." I'm also not certain what an "Indian site" ("site of [an] ... Indian tribe or band," in the draft) means. Is this intended to cover a burial site or some other state or federally protected site? Please let me know if you would like the language in these provisions changed.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Gary, Aaron
Sent: Thursday, February 02, 2012 10:53 AM
To: Fiocchi, Tim
Subject: RE: Suggested Changes to LRBs0278/P1 -- Petrowski ASA Draft to AB 216

Hi Tim,
A few quick follows ups:

- 1. Regarding the 6th bullet down, what is a "vegetation relief application"? Does that mean an application for a permit under s. 84.305? *yes*
- 2. Regarding the 7th bullet down, this treatment is a technical one to maintain statutory consistency. The initial request was in part to abandon the idea of relocating vegetation. The bill removes all other references to relocation in the statutes (for example, see p. 5, line 3, p. 6, line 13, etc. of s0278/P1). If I remove these lines, the term "relocation" will stay in that stat, which would be a mistake. *OK not to remove*
- 3. Regarding 3rd bullet down, I have more of a comment. As you know, I've had difficulty with the snow fence issue in this draft, particularly trying to discern why one needs the specific type of treatment at p. 6, lines 1-9, and the changes you describe below make it even harder for me to understand. I wonder why snow fences wouldn't just be added to the list appearing at p. 5, lines 18-24 of the s0278/P1, with the "equally effective substitute" change of yours also added somewhere.

In par. (c) [on p. 6, lines 1-9], it says in the first half of the first sentence that DOT cannot deny a permit for a snow fence 5' or higher if trimming meets ANSI standards. But under the rest of the bill, DOT cannot deny a permit for a snow fence regardless. Was it your intent that DOT be able to deny a permit for a 4.5' snow fence? If not, I wonder what is the purpose of this provision. Second, in the second half of this first sentence, it says that DOT can impose conditions or restrictions on a snow fence permit. So would it be cleaner to just add snow fence as part of the list on p. 5, lines 18-24? In the second sentence of par. (c), with this change allowing removal and replacement, isn't it pretty much the same as the standard for all trimming (see p. 8, lines 11-15).

I can make the change you indicate in the third bullet, and will do so unless you tell me otherwise. But the statute will be there for years to come (I assume), and I think it is kind of a baffling provision. I would recommend rewriting it to add snow fences to the list at p. 5, lines 18-24, eliminating p. 6, lines 1-9 from the draft, and adding the "equally effective" language at a different, suitable location. (Even though this "equally effective" requirement seems like it would be suitable for DOT to just state as a condition in the permit.) I also realize that you are looking to move quickly, so I understand if there is not either time or will to take a different approach at this point.

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

2/2 t/c w/ Tim ↗ see above

*OK to do as I suggest →
replacement can be a condition*

From: Fiocchi, Tim
Sent: Wednesday, February 01, 2012 11:31 AM
To: Gary, Aaron; Queensland, Michael

*of the permit → talking
about man-made snow fence
as replacement*

Cc: 'byarmark@lamar.com'; 'Kilgore@swandby.com'; Krieser, Steven - DOT; 'Swandby@swandby.com'

Subject: RE: Suggested Changes to LRBs0278/P1 -- Petrowski ASA Draft to AB 216

Hi Aaron,

After reviewing the language in the P draft and discussing it with the parties copied above we would like to make the following changes:

- Remove Department authority to deny a permit for failure to meet specified conditions, but do not eliminate the ability of the Department to place conditions upon the permit as provided under the sub.
 - Page 5, Lines 14 and 15: Strike the words "deny an application for a permit under this section, or"
- Remove reference to "vegetation not owned by the department or another state agency."
 - Page 5, line 24: Delete this line.
- Change treatment of snow fences to allow for the removal of affected vegetation and the replacement of it by an equally effective measure for controlling snow blowing and drifting.
 - Page 6, line 9: this vegetation may ~~not be removed and replaced.~~ and an equally effective substitute provided.
- Give the Department the authority to set the days and hours of trimming as a condition of the permit.
 - Page 8, line 17: Strike "~~Unless different hours are authorized by the department, a~~". Add "All"
 - Page 8, lines 19 and 20: Strike "~~between the hours of 9 a.m. and 4 p.m.~~" After "conducted", add "within the hours of the day and days of the week specified by the department within the permit."
- Require stumps to be removed just to ground level, instead of below ground level.
 - Page 9, line 9: Strike the words "~~just below~~" and replace the stricken language with "at"
- In the language on page 5, line 22 regarding illegal signs: remove the language from the list beginning on line 14 and moved to its own section and revised to read "The Department may deny a permit for a sign that was deemed illegal or was subject to a removal order prior to the receipt of a vegetation relief application for that sign".
- On page 7, lines 9 – 12 should be removed.

We are hoping to take this up for an executive session this coming Tuesday. Please call with any questions.

Thank you,

2/2/2012

Tim

Tim Fiocchi
Clerk, Assembly Transportation Committee
Office of Representative Jerry Petrowski
(608) 266-1182