



in  
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LRBs0278 P2  
ARG:cjs:jm

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Stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2011 ASSEMBLY BILL 216**

SAV ✓

Gen Cat

1 AN ACT *to repeal* 84.305 (1) (c), 84.305 (1) (d), 84.305 (1) (f), 84.305 (1) (k), 84.305  
2 (2) (a) 1., 84.305 (2) (a) 2., 84.305 (2) (a) 4., 84.305 (2) (b), 84.305 (3) (f), 84.305  
3 (5) (b) and 84.305 (5) (c); *to renumber and amend* 84.305 (3) (e) and 84.305  
4 (6); *to consolidate, renumber and amend* 84.305 (2) (a) (intro.) and 3.; *to*  
5 *amend* 84.305 (1) (e), 84.305 (1) (h), 84.305 (3) (a), 84.305 (3) (b), 84.305 (3) (c)  
6 1. (intro.), 84.305 (3) (d), 84.305 (3) (g), 84.305 (5) (a) and 84.305 (7); and *to*  
7 *create* 84.305 (1) (cm), 84.305 (2m) (b) and (c), 84.305 (3) (h), 84.305 (5) (am),  
8 84.305 (5) (d) and 84.305 (5) (e) of the statutes; **relating to:** maintenance and  
9 removal of vegetation obstructing the view of outdoor advertising signs along  
10 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 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 substitute amendment makes various changes to DOT's permit system for maintenance and removal of vegetation obstructing signs, including the following:

1. The substitute amendment 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 substitute amendment also eliminates an exception that allowed DOT to issue a permit for a noncontinuous 500 feet viewing distance.

2. The substitute amendment specifies that, with limited exceptions, DOT must issue permits to eligible applicants. Also under the substitute amendment,

DOT permits authorize the trimming or removal, but not the relocation, of obstructing vegetation. The substitute amendment also requires all trimming to be performed in compliance with applicable standards of the American National Standards Institute.

3. The substitute amendment 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 substitute amendment 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 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. 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. 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. The substitute amendment 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 substitute amendment 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), except a sign attached to a building or similar structure within 100 feet of the highway right-of-way.

6. The substitute amendment 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. 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. The substitute amendment retains current law that DOT has authority to supervise and determine how the work authorized under a permit is carried out.

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 ~~specifying~~ a natural snow fence ~~which is defined as~~ vegetation in a highway right-of-way that functions as a ~~term~~ or barrier to inhibit the accumulation of snow on the highway during the winter season. 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.~~

or  
\*

✓

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ANAL-A

that  
serves  
as

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X  
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X

insert  
ANAL-B

8. The substitute amendment eliminates a provision of current law requiring DOT, within 30 days of receiving an application for a permit, to determine whether the application is complete and to return it to the applicant if incomplete.

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

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*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) (cm) of the statutes is created to read:

3           84.305 (1) (cm) "Natural snow fence" means vegetation in a highway  
4 right-of-way that functions as a berm or barrier to inhibit the accumulation of snow  
5 on the highway during the winter season.

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

7           **SECTION 4.** 84.305 (1) (e) of the statutes is amended to read:

8           84.305 (1) (e) "Sign" has the meaning given in s. 84.30 (2) (j), but also includes  
9 any sign that is attached to a building or similar structure and that is within 100 feet  
10 of a highway right-of-way.

11           **SECTION 5.** 84.305 (1) (f) of the statutes is repealed.

12           **SECTION 6.** 84.305 (1) (h) of the statutes is amended to read:

13           84.305 (1) (h) "Vegetation" means any tree, shrub, hedge, ~~or other~~ woody plant,  
14 ~~and includes planted vegetation, natural vegetation, and specimen trees.~~  
15 "Vegetation" does not include or grass.

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

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

1           84.305 (2) Notwithstanding ss. 66.1037 and 86.03, and subject to sub. (2m),  
 2           upon application, the department ~~may~~ shall issue permits to sign owners for the  
 3           trimming, or removal, ~~or relocation~~ of vegetation that is located in the right-of-way  
 4           of a highway under the jurisdiction of the department for maintenance purposes and  
 5           that obstructs a sign if ~~any of the following applies:~~ 3. Subject to par. (b), within a  
 6           distance of 500 continuous feet along any portion of the viewing zone, any portion of  
 7           the face of the sign is not viewable because of an obstruction to sight by ~~natural~~  
 8           vegetation in the highway right-of-way.

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

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

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

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

13          **SECTION 13.** 84.305 (2m) (b) and (c) of the statutes are created to read:

14          84.305 (2m) (b) The department may ~~deny an application for~~ a permit under  
 15          this section ~~or~~ impose on ~~the permit~~ any condition or restriction determined to be  
 16          necessary or suitable by the department if the <sup>permit</sup> application seeks authorization for  
 17          the trimming or removal of vegetation at or with respect to any of the following:

18               1. An archaeological site or site of a federally recognized American Indian tribe  
 19               or band.

20               2. A location that is part of a known habitat of endangered species or threatened  
 21               species under s. 29.604.

22               3. An illegal sign or sign subject to a removal order of the department.

23               4. Vegetation that serves as a junkyard screen, as described in s. 84.31.

24               5. Vegetation not owned by the department or another state agency.

Insert  
5-21



Insert  
6-1 →

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

11 84.305 (3) (a) Subject to pars. (d) to ~~(g)~~ (h) and ~~sub. subs. (2m) (b) and (c)~~ (4),  
 12 and (6), a permit issued under this section authorizes the permittee to trim  
 13 ~~obstructing vegetation~~ or remove or relocate ~~obstructing individual plants~~  
 14 vegetation to the extent necessary to eliminate the obstruction and ~~remedy any~~  
 15 ~~condition specified under sub. (2) (a) 1. to 4~~ provide an unobstructed view of a sign  
 16 for 500 continuous feet within the viewing zone. A permit issued under this section  
 17 shall specify the vegetation or the portion of the highway right-of-way to which the  
 18 permit applies.

19 SECTION 15. 84.305 (3) (b) of the statutes is amended to read:

20 84.305 (3) (b) An application for a permit under this section shall specifically  
 21 describe the work proposed by the applicant. The department shall grant or deny an  
 22 application for a permit under this section, and notify the applicant of the  
 23 department's decision, within 60 days of receipt of the application. ~~Within 30 days~~  
 24 ~~of receipt of the application, the department shall determine whether the application~~  
 25 ~~is complete and, if not, the department shall return the application to the applicant~~

1 ~~and inform the applicant of what information, specifically described, must be~~  
2 ~~provided by the applicant to complete the application. The department may not deny~~  
3 ~~an application for a permit under this section based solely upon receipt by the~~  
4 ~~department of an objection or complaint from a property owner or municipality~~  
5 ~~receiving notice under par. (c), but the department may consider the objection or~~  
6 ~~complaint in determining whether to grant or deny the application for a permit. If~~  
7 ~~the department denies an application for a permit under this section, the department~~  
8 ~~shall notify the applicant of reasons for the denial.~~

9 **SECTION 16.** 84.305 (3) (c) 1. (intro.) of the statutes is amended to read:

10 84.305 (3) (c) 1. (intro.) The owner of any property adjacent to the vegetation  
11 specified in the permit application if the work proposed in the permit application  
12 includes removal ~~or relocation~~ of individual plants and any of the following apply:

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

14 84.305 (3) (d) A permit issued under this section may not authorize trimming,  
15 or removal, ~~or relocation~~ of vegetation located within a municipality and within 10  
16 feet of the nearest edge of the highway pavement without prior approval for the  
17 trimming, or removal, ~~or relocation~~ from the municipality.

18 **SECTION 18.** 84.305 (3) (e) of the statutes is renumbered 84.305 (2m) (a) and  
19 amended to read:

20 84.305 (2m) (a) ~~A permit issued under this section may not authorize the~~  
21 ~~permittee to trim, remove, or relocate vegetation in existence prior to the erection of~~  
22 ~~the sign obstructed by the vegetation. Nothing in this paragraph prohibits the~~ The  
23 ~~department from issuing~~ may not issue a permit under this section authorizing the  
24 trimming, or removal, ~~or relocation~~ of vegetation that, at the time the sign was  
25 erected, ~~did not obstruct~~ obstructing the view of the a sign if the department first

1 collected a permit fee under s. 84.30 (10m) for that sign within the immediately  
 2 preceding 5 years. This paragraph does not apply with respect to a sign that is  
 3 attached to a building or similar structure and that is within 100 feet of a highway  
 4 right-of-way.

5 **SECTION 19.** 84.305 (3) (f) of the statutes is repealed.

6 **SECTION 20.** 84.305 (3) (g) of the statutes is amended to read:

7 84.305 (3) (g) A permit issued under this section may not authorize the  
 8 permittee to clear-cut any highway right-of-way. The permit authorizes the  
 9 permittee to trim, or remove, or relocate only the vegetation specified in the permit,  
 10 or only vegetation within the area of the right-of-way specified in the permit, in  
 11 accordance with the terms of the permit. All trimming of vegetation authorized  
 12 under a permit shall be performed in compliance with applicable standards of the  
 13 American National Standards Institute, but if the trimming cannot be accomplished  
 14 in compliance with these standards, the vegetation may be removed and replaced as  
 15 provided in sub. (5).

16 **SECTION 21.** 84.305 (3) (h) of the statutes is created to read:

17 84.305 (3) (h) Unless different hours are authorized by the department, <sup>A</sup> all  
 18 trimming and removal of vegetation under a permit issued under sub. (2), and all  
 19 planting of vegetation under sub. (5), shall be conducted <sup>(insert 8-19)</sup> ~~between the hours of 9 a.m.~~

20 ~~and 2 p.m.~~

21 **SECTION 22.** 84.305 (5) (a) of the statutes is amended to read:

22 84.305 (5) (a) <sup>↓ Subject to par. (a)(2) each</sup> ~~Each~~ permit issued under this section shall require a permittee  
 23 that removes ~~planted vegetation to either relocate the planted vegetation or~~  
 24 ~~reimburse the department for the value of the planted vegetation.~~ The department  
 25 shall present to the permittee the department's calculation of the value of the planted



2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0278/P2ins  
ARG:.....

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**INSERT ANAL-A:**

(no ¶) for a sign that was deemed illegal or was subject to a removal order prior to DOT's receipt of the application. DOT may also

4

**INSERT ANAL-B:**

(no ¶) within the hours of the day and days of the week specified by DOT in the permit. ✓

5

**INSERT 5-21:**

6

3. Vegetation that serves as a natural snow fence.

7

8

**INSERT 6-1:**

9

(c) The department may deny an application under this section for a permit for

10

a sign that was deemed illegal or was subject to a removal order prior to the

11

department's receipt of the application.

12

13

**INSERT 8-19:**

14

(no ¶) within the hours of the day and days of the week specified by the department ✓

15

in the permit.

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17

**INSERT 9-11:**

18

(ar) As a permit condition or restriction authorized under sub. (2m) (b) 3., the ✓

19

department may require that, if the vegetation serving as a natural snow fence

1 cannot be trimmed in compliance with the standards specified in sub. (3) (g) and is  
2 removed, this vegetation shall be replaced with an equally effective, substitute means  
3 of controlling blowing and drifting snow, which means may be synthetic or artificial.  
4  
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1 ~~vegetation, and the permittee may elect to relocate the planted vegetation or to~~  
 2 ~~reimburse the department for the value of the planted vegetation as determined by~~  
 3 ~~the department any tree with a diameter of 4 inches or more as measured at 3 feet~~  
 4 ~~from the ground, or any other vegetation with a diameter of 4 inches or more, to plant~~  
 5 ~~comparable replacement vegetation to compensate for all such vegetation removed,~~  
 6 ~~in compliance with the requirements under pars. (d) and (e).~~

7 **SECTION 23.** 84.305 (5) <sup>(ag) and (ar)</sup> ~~(am)~~ of the statutes <sup>are</sup> ~~is~~ created to read:

8 84.305 (5) <sup>ag</sup> ~~(am)~~ Each permit issued under this section shall require a permittee

9 that removes vegetation to also remove the vegetation's stump, to depth just below  
 10 grade level, and to dispose of all vegetation removed, including the stump, at a  
 11 location away from the highway right-of-way.

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

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

14 **SECTION 26.** 84.305 (5) (d) of the statutes is created to read:

15 84.305 (5) (d) 1. In planting replacement vegetation under par. (a), the  
 16 permittee shall determine the diameters of all trees with a diameter of 4 inches or  
 17 more, as measured at 3 feet from the ground, and of all other vegetation with a  
 18 diameter of 4 inches or more, that was removed and shall calculate the sum total of  
 19 these diameters for each category of vegetation, such as for trees, for shrubs, and for  
 20 hedges. In calculating the sum total of these diameters, the permittee shall not  
 21 include in the calculation the diameter of any vegetation that was dead, diseased, or  
 22 determined to be an invasive species at the time of its removal.

23 2. The permittee shall plant sufficient replacement vegetation with a diameter  
 24 of at least 2 inches so that the sum total of the diameters of the replacement

Insert  
9-11

1 vegetation, for each category of vegetation, at least equals the sum total of the  
2 diameters as calculated under subd. 1. for that category.

3 **SECTION 27.** 84.305 (5) (e) of the statutes is created to read:

4 84.305 (5) (e) 1. Subject to subd. 2., the department shall determine where  
5 replacement vegetation required under this subsection is to be planted.

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

10 **SECTION 28.** 84.305 (6) of the statutes is renumbered 84.305 (6) (a) and  
11 amended to read:

12 84.305 (6) (a) The department shall have authority to supervise and determine  
13 how the work authorized under a permit issued under this section is carried out.

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

18 **SECTION 29.** 84.305 (7) of the statutes is amended to read:

19 84.305 (7) Nothing in this section prohibits a sign owner and the department  
20 from voluntarily negotiating for, and the department from authorizing without the  
21 issuance of a permit under this section, the trimming, ~~or~~ removal, ~~or relocation~~ of any  
22 vegetation in a highway right-of-way in order to provide an unobstructed view of a  
23 sign, except in situations where sub. (3) (d) would apply if a permit were issued under  
24 this section. Nothing in this section restricts the department's authority with respect

1 to departmental maintenance operations in the rights-of-way of highways under  
2 the department's jurisdiction.

3 **SECTION 30. Effective date.**

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

5 (END)

**Gary, Aaron**

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**From:** Janet Swandby [Swandby@swandby.com]  
**Sent:** Sunday, February 05, 2012 9:06 PM  
**To:** Krieser, Steven - DOT; Fiocchi, Tim  
**Cc:** Kathi Kilgore; Brad Yarmark  
**Subject:** RE: AB 216 - Draft P2  
**Attachments:** AB 216 - Changes to LRBs0278P2 02-04-12.doc

Thanks Steve.

Tim:

I've attached the memo that I sent to Steve yesterday.

Janet

-----Original Message-----

**From:** Krieser, Steven - DOT [mailto:Steven.Krieser@dot.wi.gov]  
**Sent:** Sunday, February 05, 2012 8:54 PM  
**To:** Janet Swandby; Fiocchi, Tim - LEGIS  
**Cc:** Kathi Kilgore; Brad Yarmark  
**Subject:** RE: AB 216 - Draft P2

Hello,

Sorry for the delay in getting back to you. I was out of town at my daughter's basketball tournament all day yesterday, and did not get back until 1:30 this morning. Today was "catch up" on all the neglected stuff around the house.

Anyhow, I shared the following with Janet tonight. It captures the Department's position on the changes she suggested in her memo to me yesterday. I appreciate the opportunity to fine-tune this draft. Thanks!

---

Hello All,

Thanks, Janet, for doing this over the weekend. Your memo describes the discussion we had on the phone on Friday evening, and I'm fine with the changes you suggest, including the business about keeping the trimming restrictions on the snow fence vegetation simple (that is, "subject to ANSI standards," absent all the extra material regarding height, etc.) I'd note, for the benefit of the drafter, that some minor provision may need to be included to ensure that the Department has the authority to apply the specific conditions regarding snow fence that we have negotiated. But otherwise, this looks good.

**Steve Krieser**

Executive Assistant

Wisconsin Department of Transportation

Phone: 608-266-1114

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**From:** Janet Swandby [Swandby@swandby.com]  
**Sent:** Sunday, February 05, 2012 7:06 PM

2/6/2012

**To:** Flocchi, Tim - LEGIS  
**Cc:** Krieser, Steven - DOT; Kathi Kilgore; Brad Yarmark  
**Subject:** AB 216 - Draft P2

Tim:

I reviewed the draft and, unfortunately, there are a number of areas that do not reflect the negotiated agreement between OAAW and DOT. I have discussed this with Steve Krieser late Friday and I agreed to put together an outline to serve as drafting instructions. I emailed the list to Steve yesterday (Saturday) and I haven't yet received a response from him.

If we don't hear from Steve in time to give the drafter the set of agreed upon revisions, I guess we'll have to wait until Feb. 14<sup>th</sup> for the Committee's Executive Session.

We'll be in touch.

Thanks for all of your help.

Janet

Janet R. Swandby  
Swandby/Kilgore Associates, Inc.  
608.286.9599  
swandby@swandby.com

February 4, 2012

**MEMORANDUM**

TO: Steve Krieser, DOT

FROM: Janet Swandby, OAAW

RE: **OAAW Proposed Changes to LRBs 0278/P2**

As we discussed by phone yesterday, my suggestions on changes to the P2 draft follow:

Page 5, Line 20: Delete "Vegetation that serves as a snow fence".

Page 5, Lines 22-24: Change to read, "The department may deny an application under this section for a permit for a sign that the department has issued a removal order and the removal order has been received by the sign owner prior to the department's receipt of the application."

Page 7, Lines 1-3: Delete entirely (this language was related to the notification of adjacent landowners and that requirement has been removed).

Page 9, Line 3: Delete "As a permit condition or restriction authorized under sub.(2m)(b)3.,"

As I review the language on snow fences in P1, page 6, Lines 1-9, I can see why the drafter eliminated them and replaced it with the P2 language on Page 9, Lines 3-8. Since call trimming will have to meet ANSI standards, we would prefer not to complicate things by restoring the language about the height of the snow fence. Is that acceptable to you?

Let me know what you think. I can be reached on my cell at 262.370.1714.

Thanks again for all of your help.



**Gary, Aaron**

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**From:** Gary, Aaron  
**Sent:** Wednesday, February 08, 2012 10:47 AM  
**To:** Fiocchi, Tim  
**Subject:** RE: AB 216 - Draft P2

Hi Tim,

I just spoke with Janet Swandby, who had talked to Steve. She clarified the following:

On item 1., she said there is agreement that I can simply remove that line - it is not needed by DOT.

On item 3., she revealed the source of the confusion. The written instructions say to delete lines 1 to 3. The effect of this is to restore current law. However, the actual intent was to repeal this provision, not to restore current law - which means going back to the version in the bill, which included at p. 5 line 15 (of AB-216) the repeal of s. 84.305 (3) (c).

I will get the redraft out to you shortly.

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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**From:** Gary, Aaron  
**Sent:** Monday, February 06, 2012 1:13 PM  
**To:** Fiocchi, Tim  
**Subject:** RE: AB 216 - Draft P2

Hi Tim,

Again, I need to follow up on the instructions, although they mostly look fine. (There are four (unnumbered) items in the instructions in the Memorandum, and I will take them up in order in 1. to 4. below)

1. On the first item, the instructions are to delete the line that explicitly allows DOT to impose conditions relating to snow fences. Steve Krieser's response includes the following: "I'd note, for the benefit of the drafter, that some minor provision may need to be included to ensure that the Department has the authority to apply the specific conditions regarding snow fence that we have negotiated. " So I'm not sure where that leaves me. The draft also gives DOT a more general authority to impose conditions that are customarily imposed in connection with highway ROW work. Do the snow fence conditions fit within this more general DOT authority to impose conditions? If not, I don't know what to do on this issue, as the OAAW instructions direct me to take out the explicit snow fence condition authority and DOT's response suggests that DOT wants the draft to reflect DOT's authority to impose conditions on snow fences (in which case, the authority should appear in the draft in the place where OAAW says to take it out).

2. On the second item, this looks fine, but I've had to rework the text slightly for grammatical reasons.

3. On the third item, we discussed why these lines need to stay in. It is a technical change for statutory consistency. Note how the word stricken on p. 7, line 3, is also stricken on p. 7, lines 6, 8, 15, 25 and every other place it appears in s. 84.305.

2/8/2012

4. No new comment - this relates back to the first item.

Please let me know whether p. 5, line 20 should in fact be deleted, or retained, or retained and limited in a specified way.

Thanks. Aaron

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

---

**From:** Fiocchi, Tim  
**Sent:** None  
**To:** Gary, Aaron  
**Subject:** Fwd: AB 216 - Draft P2

Hi Aaron,

We will plan on taking this one up on the 14th. If you could make these changes and send a new draft. Give me a call if you have questions.

Thank you,

Tim

Sent from my Verizon Wireless Phone

----- Forwarded message -----  
From: "Janet Swandby" <Swandby@swandby.com>  
Date: Sun, Feb 5, 2012 9:02 pm  
Subject: AB 216 - Draft P2  
To: "Krieser, Steven - DOT" <Steven.Krieser@dot.wi.gov>, "Fiocchi, Tim - LEGIS" <Tim.Fiocchi@legis.wisconsin.gov>  
Cc: "Kathi Kilgore" <Kilgore@swandby.com>, "Brad Yarmark" <byarmark@lamar.com>

2/8/2012



in 2/8



LRBs0278 P3

ARG:cjs:jf

Wanted  
by 2/10

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY SUBSTITUTE AMENDMENT ,**  
**TO 2011 ASSEMBLY BILL 216**

stays

SA

Gen Cat

1 **AN ACT to repeal** 84.305 (1) (c), 84.305 (1) (d), 84.305 (1) (f), 84.305 (1) (k), 84.305  
2 (2) (a) 1., 84.305 (2) (a) 2., 84.305 (2) (a) 4., 84.305 (2) (b), 84.305 (3) (f), 84.305  
3 (5) (b) and 84.305 (5) (c); **to renumber and amend** 84.305 (3) (e) and 84.305  
4 (6); **to consolidate, renumber and amend** 84.305 (2) (a) (intro.) and 3.; **to**  
5 **amend** 84.305 (1) (e), 84.305 (1) (h), 84.305 (3) (a), 84.305 (3) (b), 84.305 (3) (c)  
6 1. (intro.), 84.305 (3) (d), 84.305 (3) (g), 84.305 (5) (a) and 84.305 (7); and **to**  
7 **create** 84.305 (1) (cm), 84.305 (2m) (b) and (c), 84.305 (3) (h), 84.305 (5) (ag) and  
8 (ar), 84.305 (5) (d) and 84.305 (5) (e) of the statutes; **relating to:** maintenance  
9 and removal of vegetation obstructing the view of outdoor advertising signs  
10 along 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 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 substitute amendment makes various changes to DOT's permit system for maintenance and removal of vegetation obstructing signs, including the following:

1. The substitute amendment 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 substitute amendment also eliminates an exception that allowed DOT to issue a permit for a noncontinuous 500 feet viewing distance.

2. The substitute amendment specifies that, with limited exceptions, DOT must issue permits to eligible applicants. Also under the substitute amendment,

DOT permits authorize the trimming or removal, but not the relocation, of obstructing vegetation. The substitute amendment also requires all trimming to be performed in compliance with applicable standards of the American National Standards Institute.

3. The substitute amendment 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 substitute amendment 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 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. 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. 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. The substitute amendment 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 substitute amendment replaces this provision with a provision that DOT may not issue a permit to trim or remove 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), except a sign attached to a building or similar structure within 100 feet of the highway right-of-way.

6. The substitute amendment 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. 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. The substitute amendment retains current law that DOT has authority to supervise and determine how the work authorized under a permit is carried out.

7. Under the substitute amendment, DOT may deny an application for a permit for a sign ~~that was deemed illegal or was subject to a removal order~~ prior to DOT's receipt of the application. DOT may also impose conditions or restrictions on a permit under certain circumstances, including that the application seeks authorization for the trimming or removal of vegetation at an archaeological site ~~or~~ ~~that is a natural resource~~. Under the substitute amendment, all trimming and removal of vegetation, as well as all planting of replacement vegetation, must be conducted within the hours of the day and days of the week specified by DOT in the permit.

8. The substitute amendment eliminates a provision of current law requiring DOT, within 30 days of receiving an application for a permit, to determine whether the application is complete and to return it to the applicant if incomplete.

Insert ANAC-A \*

Insert ANAC-B \*

9. 8

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

---

***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) (cm) of the statutes is created to read:

3 84.305 (1) (cm) "Natural snow fence" means vegetation in a highway  
4 right-of-way that functions as a berm or barrier to inhibit the accumulation of snow  
5 on the highway during the winter season.

6 SECTION 3. 84.305 (1) (d) of the statutes is repealed.

7 SECTION 4. 84.305 (1) (e) of the statutes is amended to read:

8 84.305 (1) (e) "Sign" has the meaning given in s. 84.30 (2) (j), but also includes  
9 any sign that is attached to a building or similar structure and that is within 100 feet  
10 of a highway right-of-way.

11 SECTION 5. 84.305 (1) (f) of the statutes is repealed.

12 SECTION 6. 84.305 (1) (h) of the statutes is amended to read:

13 84.305 (1) (h) "Vegetation" means any tree, shrub, hedge, ~~or other~~ woody plant,  
14 ~~and includes planted vegetation, natural vegetation, and specimen trees.~~  
15 "Vegetation" ~~does not include~~ or grass.

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

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

19 84.305 (2) Notwithstanding ss. 66.1037 and 86.03, and subject to sub. (2m),  
20 upon application, the department ~~may~~ shall issue permits to sign owners for the

1 trimming, ~~or removal, or relocation~~ of vegetation that is located in the right-of-way  
2 of a highway under the jurisdiction of the department for maintenance purposes and  
3 that obstructs a sign if ~~any of the following applies:~~ 3. Subject to par. (b), within a  
4 distance of 500 continuous feet along any portion of the viewing zone, any portion of  
5 the face of the sign is not viewable because of an obstruction to sight by natural  
6 vegetation in the highway right-of-way.

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

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

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

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

11 SECTION 13. 84.305 (2m) (b) and (c) of the statutes are created to read:

12 84.305 (2m) (b) The department may impose on a permit under this section any  
13 condition or restriction determined to be necessary or suitable by the department if  
14 the permit application seeks authorization for the trimming or removal of vegetation  
15 at or with respect to any of the following:

16 1. An archaeological site or site of a federally recognized American Indian tribe  
17 or band.

18 2. A location that is part of a known habitat of endangered species or threatened  
19 species under s. 29.604.

20 3. Vegetation that serves as a natural snow fence. X

21 ~~3.~~ Vegetation that serves as a junkyard screen, as described in s. 84.31.

22 (c) The department may deny an application under this section for a permit for  
23 a sign ~~that was deemed illegal or was subject to a removal order~~ prior to the  
24 department's receipt of the application. X

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

Insert  
5-23

1           84.305 (3) (a) Subject to pars. (d) to ~~(g)~~ (h) and ~~sub. subs. (2m) (b), (4), and (6),~~  
2 a permit issued under this section authorizes the permittee to trim ~~obstructing~~  
3 ~~vegetation~~ or remove ~~or relocate~~ obstructing ~~individual plants~~ vegetation to the  
4 extent necessary to eliminate the obstruction and ~~remedy any condition specified~~  
5 ~~under sub. (2) (a) 1. to 4.~~ provide an unobstructed view of a sign for 500 continuous  
6 feet within the viewing zone. A permit issued under this section shall specify the  
7 vegetation or the portion of the highway right-of-way to which the permit applies.

8           **SECTION 15.** 84.305 (3) (b) of the statutes is amended to read:

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

23           ~~**SECTION 16.** 84.305 (3) (c) 1. (intro.) of the statutes is amended to read:~~

Insert  
6-23

X  
✓



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

4 SECTION 17. 84.305 (3) (d) of the statutes is amended to read:

5 84.305 (3) (d) A permit issued under this section may not authorize trimming,  
6 ~~or removal, or relocation~~ of vegetation located within a municipality and within 10  
7 feet of the nearest edge of the highway pavement without prior approval for the  
8 trimming, ~~or removal, or relocation~~ from the municipality.

9 SECTION 18. 84.305 (3) (e) of the statutes is renumbered 84.305 (2m) (a) and  
10 amended to read:

11 84.305 (2m) (a) ~~A permit issued under this section may not authorize the~~  
12 ~~permittee to trim, remove, or relocate vegetation in existence prior to the erection of~~  
13 ~~the sign obstructed by the vegetation. Nothing in this paragraph prohibits the~~ The  
14 ~~department from issuing~~ may not issue a permit under this section authorizing the  
15 trimming, ~~or removal, or relocation~~ of vegetation ~~that, at the time the sign was~~  
16 ~~erected, did not obstruct~~ obstructing the view of the a sign if the department first  
17 collected a permit fee under s. 84.30 (10m) for that sign within the immediately  
18 preceding 5 years. This paragraph does not apply with respect to a sign that is  
19 attached to a building or similar structure and that is within 100 feet of a highway  
20 right-of-way.

21 SECTION 19. 84.305 (3) (f) of the statutes is repealed.

22 SECTION 20. 84.305 (3) (g) of the statutes is amended to read:

23 84.305 (3) (g) A permit issued under this section may not authorize the  
24 permittee to clear-cut any highway right-of-way. The permit authorizes the  
25 permittee to trim, ~~or remove, or relocate~~ only the vegetation specified in the permit,

1 or only vegetation within the area of the right-of-way specified in the permit, in  
2 accordance with the terms of the permit. All trimming of vegetation authorized  
3 under a permit shall be performed in compliance with applicable standards of the  
4 American National Standards Institute, but if the trimming cannot be accomplished  
5 in compliance with these standards, the vegetation may be removed and replaced as  
6 provided in sub. (5).

7 **SECTION 21.** 84.305 (3) (h) of the statutes is created to read:

8 84.305 (3) (h) All trimming and removal of vegetation under a permit issued  
9 under sub. (2), and all planting of vegetation under sub. (5), shall be conducted within  
10 the hours of the day and days of the week specified by the department in the permit.

11 **SECTION 22.** 84.305 (5) (a) of the statutes is amended to read:

12 84.305 (5) (a) ~~Each Subject to par. (ar), each~~ permit issued under this section  
13 shall require a permittee that removes ~~planted vegetation to either relocate the~~  
14 ~~planted vegetation or reimburse the department for the value of the planted~~  
15 ~~vegetation. The department shall present to the permittee the department's~~  
16 ~~calculation of the value of the planted vegetation, and the permittee may elect to~~  
17 ~~relocate the planted vegetation or to reimburse the department for the value of the~~  
18 ~~planted vegetation as determined by the department~~ any tree with a diameter of 4  
19 inches or more as measured at 3 feet from the ground, or any other vegetation with  
20 a diameter of 4 inches or more, to plant comparable replacement vegetation to  
21 compensate for all such vegetation removed, in compliance with the requirements  
22 under pars. (d) and (e).

23 **SECTION 23.** 84.305 (5) (ag) and (ar) of the statutes are created to read:

24 84.305 (5) (ag) Each permit issued under this section shall require a permittee  
25 that removes vegetation to also remove the vegetation's stump, to grade level, and

1 to dispose of all vegetation removed, including the stump, at a location away from the  
2 highway right-of-way.

3 (ar) As a permit condition or restriction authorized under sub. (2m) (b) 3., the  
4 department may require that, if ~~the~~ <sup>that serves</sup> vegetation ~~is~~ as a natural snow fence  
5 cannot be trimmed in compliance with the standards specified in sub. (3) (g) and is  
6 removed, this vegetation shall be replaced with an equally effective, substitute  
7 means of controlling blowing and drifting snow, which means may be synthetic or  
8 artificial.

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

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

11 SECTION 26. 84.305 (5) (d) of the statutes is created to read:

12 84.305 (5) (d) 1. In planting replacement vegetation under par. (a), the  
13 permittee shall determine the diameters of all trees with a diameter of 4 inches or  
14 more, as measured at 3 feet from the ground, and of all other vegetation with a  
15 diameter of 4 inches or more, that was removed and shall calculate the sum total of  
16 these diameters for each category of vegetation, such as for trees, for shrubs, and for  
17 hedges. In calculating the sum total of these diameters, the permittee shall not  
18 include in the calculation the diameter of any vegetation that was dead, diseased, or  
19 determined to be an invasive species at the time of its removal.

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

24 SECTION 27. 84.305 (5) (e) of the statutes is created to read:

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

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

7           **SECTION 28.** 84.305 (6) of the statutes is renumbered 84.305 (6) (a) and  
8 amended to read:

9           84.305 (6) (a) The department shall have authority to supervise and determine  
10 how the work authorized under a permit issued under this section is carried out.

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

15           **SECTION 29.** 84.305 (7) of the statutes is amended to read:

16           84.305 (7) Nothing in this section prohibits a sign owner and the department  
17 from voluntarily negotiating for, and the department from authorizing without the  
18 issuance of a permit under this section, the ~~trimming, or~~ removal, or relocation of any  
19 vegetation in a highway right-of-way in order to provide an unobstructed view of a  
20 sign, except in situations where sub. (3) (d) would apply if a permit were issued under  
21 this section. Nothing in this section restricts the department's authority with respect  
22 to departmental maintenance operations in the rights-of-way of highways under  
23 the department's jurisdiction.

24           **SECTION 30. Effective date.**



**ASSEMBLY BILL 216**

INSERT

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

insert  
6-23

X

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0278/P3ins  
ARG:.....

1

2 **INSERT ANAL-A:**

(no P) for which DOT has issued a removal order and the removal order was received  
by the sign owner

3

4

5 **INSERT 5-23:**

6 (no P) for which the department has issued a removal order and the removal order was  
7 received by the sign owner

ASSEMBLY BILL 216

INSERT

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.

substitute amendment

~~8. 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.~~

insert ANAL-B

~~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.~~

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*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.





State of Wisconsin  
2011 - 2012 LEGISLATURE

TODAY



LRBs0278/18  
ARG:cjs:ph

2/10 - per Tim, wants /1

in 2/10 stays RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

**ASSEMBLY SUBSTITUTE AMENDMENT ,**

**TO 2011 ASSEMBLY BILL 216**

No changes

Rezen

1 **AN ACT to ~~repeal~~ 84.305 (1) (c), 84.305 (1) (d), 84.305 (1) (f), 84.305 (1) (k), 84.305**  
2 **(2) (a) 1., 84.305 (2) (a) 2., 84.305 (2) (a) 4., 84.305 (2) (b), 84.305 (3) (c), 84.305**  
3 **(3) (f), 84.305 (5) (b) and 84.305 (5) (c); to renumber and amend 84.305 (3) (e)**  
4 **and 84.305 (6); to consolidate, renumber and amend 84.305 (2) (a) (intro.)**  
5 **and 3.; to amend 84.305 (1) (e), 84.305 (1) (h), 84.305 (3) (a), 84.305 (3) (b),**  
6 **84.305 (3) (d), 84.305 (3) (g), 84.305 (5) (a) and 84.305 (7); and to create 84.305**  
7 **(1) (cm), 84.305 (2m) (b) and (c), 84.305 (3) (h), 84.305 (5) (ag) and (ar), 84.305**  
8 **(5) (d) and 84.305 (5) (e) of the statutes; relating to: maintenance and removal**  
9 **of vegetation obstructing the view of outdoor advertising signs along highways**  
10 **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 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 substitute amendment makes various changes to DOT's permit system for maintenance and removal of vegetation obstructing signs, including the following:

1. The substitute amendment 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 substitute amendment also eliminates an exception that allowed DOT to issue a permit for a noncontinuous 500 feet viewing distance.

2. The substitute amendment specifies that, with limited exceptions, DOT must issue permits to eligible applicants. Also under the substitute amendment,

DOT permits authorize the trimming or removal, but not the relocation, of obstructing vegetation. The substitute amendment also requires all trimming to be performed in compliance with applicable standards of the American National Standards Institute.

3. The substitute amendment 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 substitute amendment 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 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. 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. 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. The substitute amendment 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 substitute amendment replaces this provision with a provision that DOT may not issue a permit to trim or remove 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), except a sign attached to a building or similar structure within 100 feet of the highway right-of-way.

6. The substitute amendment 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. 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. The substitute amendment retains current law that DOT has authority to supervise and determine how the work authorized under a permit is carried out.

7. Under the substitute amendment, DOT may deny an application for a permit for a sign for which DOT has issued a removal order and the removal order was received by the sign owner prior to DOT's receipt of the application. DOT may also impose conditions or restrictions on a permit under certain circumstances, including that the application seeks authorization for the trimming or removal of vegetation at an archaeological site. Under the substitute amendment, all trimming and removal of vegetation, as well as all planting of replacement vegetation, must be conducted within the hours of the day and days of the week specified by DOT in the permit.

8. The substitute amendment 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.

9. The substitute amendment eliminates a provision of current law requiring DOT, within 30 days of receiving an application for a permit, to determine whether the application is complete and to return it to the applicant if incomplete.

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

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*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) (cm) of the statutes is created to read:

3           84.305 (1) (cm) "Natural snow fence" means vegetation in a highway  
4 right-of-way that functions as a berm or barrier to inhibit the accumulation of snow  
5 on the highway during the winter season.

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

7           **SECTION 4.** 84.305 (1) (e) of the statutes is amended to read:

8           84.305 (1) (e) "Sign" has the meaning given in s. 84.30 (2) (j), but also includes  
9 any sign that is attached to a building or similar structure and that is within 100 feet  
10 of a highway right-of-way.

11           **SECTION 5.** 84.305 (1) (f) of the statutes is repealed.

12           **SECTION 6.** 84.305 (1) (h) of the statutes is amended to read:

13           84.305 (1) (h) "Vegetation" means any tree, shrub, hedge, ~~or other woody plant,~~  
14 ~~and includes planted vegetation, natural vegetation, and specimen trees.~~  
15 "Vegetation" ~~does not include~~ or grass.

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

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

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

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

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

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

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

15          **SECTION 13.** 84.305 (2m) (b) and (c) of the statutes are created to read:

16          84.305 (2m) (b) The department may impose on a permit under this section any  
17          condition or restriction determined to be necessary or suitable by the department if  
18          the permit application seeks authorization for the trimming or removal of vegetation  
19          at or with respect to any of the following:

20                1. An archaeological site or site of a federally recognized American Indian tribe  
21                or band.

22                2. A location that is part of a known habitat of endangered species or threatened  
23                species under s. 29.604.

24                3. Vegetation that serves as a junkyard screen, as described in s. 84.31.

1 (c) The department may deny an application under this section for a permit for  
2 a sign for which the department has issued a removal order and the removal order  
3 was received by the sign owner prior to the department's receipt of the application.

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

5 84.305 (3) (a) Subject to pars. (d) to ~~(g)~~ (h) and ~~sub. subs. (2m) (b), (4), and (6),~~  
6 a permit issued under this section authorizes the permittee to trim ~~obstructing~~  
7 ~~vegetation~~ or remove ~~or relocate~~ obstructing ~~individual plants~~ vegetation to the  
8 extent necessary to eliminate the obstruction and ~~remedy any condition specified~~  
9 ~~under sub. (2) (a) 1. to 4.~~ provide an unobstructed view of a sign for 500 continuous  
10 feet within the viewing zone. A permit issued under this section shall specify the  
11 vegetation or the portion of the highway right-of-way to which the permit applies.

12 **SECTION 15.** 84.305 (3) (b) of the statutes is amended to read:

13 84.305 (3) (b) An application for a permit under this section shall specifically  
14 describe the work proposed by the applicant. The department shall grant or deny an  
15 application for a permit under this section, and notify the applicant of the  
16 department's decision, within 60 days of receipt of the application. ~~Within 30 days~~  
17 ~~of receipt of the application, the department shall determine whether the application~~  
18 ~~is complete and, if not, the department shall return the application to the applicant~~  
19 ~~and inform the applicant of what information, specifically described, must be~~  
20 ~~provided by the applicant to complete the application. The department may not deny~~  
21 ~~an application for a permit under this section based solely upon receipt by the~~  
22 ~~department of an objection or complaint from a property owner or municipality~~  
23 ~~receiving notice under par. (c), but the department may consider the objection or~~  
24 ~~complaint in determining whether to grant or deny the application for a permit. If~~

1 the department denies an application for a permit under this section, the department  
2 shall notify the applicant of reasons for the denial.

3 **SECTION 16.** 84.305 (3) (c) of the statutes is repealed.

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

5 84.305 (3) (d) A permit issued under this section may not authorize trimming,  
6 or removal, or relocation of vegetation located within a municipality and within 10  
7 feet of the nearest edge of the highway pavement without prior approval for the  
8 trimming, or removal, or relocation from the municipality.

9 **SECTION 18.** 84.305 (3) (e) of the statutes is renumbered 84.305 (2m) (a) and  
10 amended to read:

11 84.305 (2m) (a) ~~A permit issued under this section may not authorize the~~  
12 ~~permittee to trim, remove, or relocate vegetation in existence prior to the erection of~~  
13 ~~the sign obstructed by the vegetation. Nothing in this paragraph prohibits the~~ The  
14 ~~department from issuing~~ may not issue a permit under this section authorizing the  
15 trimming, or removal, or relocation of vegetation that, ~~at the time the sign was~~  
16 ~~erected, did not obstruct~~ obstructing the view of the a sign if the department first  
17 collected a permit fee under s. 84.30 (10m) for that sign within the immediately  
18 preceding 5 years. This paragraph does not apply with respect to a sign that is  
19 attached to a building or similar structure and that is within 100 feet of a highway  
20 right-of-way.

21 **SECTION 19.** 84.305 (3) (f) of the statutes is repealed.

22 **SECTION 20.** 84.305 (3) (g) of the statutes is amended to read:

23 84.305 (3) (g) A permit issued under this section may not authorize the  
24 permittee to clear-cut any highway right-of-way. The permit authorizes the  
25 permittee to trim, or remove, or relocate only the vegetation specified in the permit,

1 or only vegetation within the area of the right-of-way specified in the permit, in  
2 accordance with the terms of the permit. All trimming of vegetation authorized  
3 under a permit shall be performed in compliance with applicable standards of the  
4 American National Standards Institute, but if the trimming cannot be accomplished  
5 in compliance with these standards, the vegetation may be removed and replaced as  
6 provided in sub. (5).

7 **SECTION 21.** 84.305 (3) (h) of the statutes is created to read:

8 84.305 (3) (h) All trimming and removal of vegetation under a permit issued  
9 under sub. (2), and all planting of vegetation under sub. (5), shall be conducted within  
10 the hours of the day and days of the week specified by the department in the permit.

11 **SECTION 22.** 84.305 (5) (a) of the statutes is amended to read:

12 84.305 (5) (a) ~~Each Subject to par. (ar), each~~ permit issued under this section  
13 shall require a permittee that removes ~~planted vegetation to either relocate the~~  
14 ~~planted vegetation or reimburse the department for the value of the planted~~  
15 ~~vegetation. The department shall present to the permittee the department's~~  
16 ~~calculation of the value of the planted vegetation, and the permittee may elect to~~  
17 ~~relocate the planted vegetation or to reimburse the department for the value of the~~  
18 ~~planted vegetation as determined by the department~~ any tree with a diameter of 4  
19 inches or more as measured at 3 feet from the ground, or any other vegetation with  
20 a diameter of 4 inches or more, to plant comparable replacement vegetation to  
21 compensate for all such vegetation removed, in compliance with the requirements  
22 under pars. (d) and (e).

23 **SECTION 23.** 84.305 (5) (ag) and (ar) of the statutes are created to read:

24 84.305 (5) (ag) Each permit issued under this section shall require a permittee  
25 that removes vegetation to also remove the vegetation's stump, to grade level, and



1 to dispose of all vegetation removed, including the stump, at a location away from the  
2 highway right-of-way.

3 (ar) The department may require that, if vegetation that serves as a natural  
4 snow fence cannot be trimmed in compliance with the standards specified in sub. (3)  
5 (g) and is removed, this vegetation shall be replaced with an equally effective,  
6 substitute means of controlling blowing and drifting snow, which means may be  
7 synthetic or artificial.

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

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

10 **SECTION 26.** 84.305 (5) (d) of the statutes is created to read:

11 84.305 (5) (d) 1. In planting replacement vegetation under par. (a), the  
12 permittee shall determine the diameters of all trees with a diameter of 4 inches or  
13 more, as measured at 3 feet from the ground, and of all other vegetation with a  
14 diameter of 4 inches or more, that was removed and shall calculate the sum total of  
15 these diameters for each category of vegetation, such as for trees, for shrubs, and for  
16 hedges. In calculating the sum total of these diameters, the permittee shall not  
17 include in the calculation the diameter of any vegetation that was dead, diseased, or  
18 determined to be an invasive species at the time of its removal.

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

23 **SECTION 27.** 84.305 (5) (e) of the statutes is created to read:

24 84.305 (5) (e) 1. Subject to subd. 2., the department shall determine where  
25 replacement vegetation required under this subsection is to be planted.

