



2013 ASSEMBLY BILL 258

June 28, 2013 – Introduced by Representatives HONADEL, BALLWEG, BERNIER, BIES, BROOKS, DOYLE, JACQUE, KOLSTE, T. LARSON, LEMAHIEU, A. OTT, RIPP, SPIROS, STONE, THIESFELDT and WEATHERSTON, cosponsored by Senators TIFFANY, FARROW and HANSEN. Referred to Committee on Transportation.

1 **AN ACT** *to repeal* 84.305 (1) (cm), 84.305 (5) (ar), 84.305 (5) (d) 2. and 84.305 (5)
2 (e); *to amend* 84.305 (1) (i), 84.305 (3) (g), 84.305 (3) (h), 84.305 (4), 84.305 (5)
3 (a) and 84.305 (5) (d) 1.; and *to create* 84.305 (1) (am), 84.305 (5) (d) 4. and
4 84.305 (5) (f) of the statutes; **relating to:** maintenance and removal of
5 vegetation obstructing the view of outdoor advertising signs along highways
6 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

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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. With limited exceptions, DOT issues permits to sign owners for the trimming or removal of vegetation in the highway right-of-way if, for a distance of 500 continuous feet within the 1,000-foot distance motorists travel immediately before reaching the sign, the vegetation obstructs the view of any portion of the face of the sign. A permit authorizes the sign owner, or a third-party contractor employed by the sign owner, to trim or remove obstructing vegetation to the extent necessary to eliminate the obstruction and restore an unobstructed view of the sign for a distance of 500 continuous feet along the highway. A permit must specify the vegetation or the portion of the highway right-of-way to which the permit applies. 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.

This bill eliminates the requirement that a permittee that removes vegetation with a diameter of four inches or more must plant replacement vegetation. Instead, the bill requires the permittee to compensate DOT \$140, adjusted annually for inflation, for each tree removed that has a diameter of four inches or more. The permittee must retain a certified arborist to determine the number of qualifying trees removed, for purposes of calculating payment to DOT.

The bill also specifies that a permit for the trimming or removal of vegetation applies with respect to a sign erected along the highway on the opposite side of the direction of travel if the sign face is visible and intended to be viewed from the direction of travel (known as a "cross-vista" sign).

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

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

- 1 **SECTION 1.** 84.305 (1) (am) of the statutes is created to read:
2 84.305 (1) (am) "Invasive species" has the meaning given in s. 23.22 (1) (c) and,
3 in addition, means species not indigenous to Wisconsin including hybrids, cultivars,

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1 subspecific taxa, and genetically modified variants whose introduction causes or is
2 likely to cause economic or environmental harm or harm to human health, and also
3 includes individual specimens, seeds, propagules, and any other viable life-stages
4 of such species.

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

6 **SECTION 3.** 84.305 (1) (i) of the statutes is amended to read:

7 84.305 (1) (i) "Viewing zone" means, with respect to a sign, the area
8 commencing at the point on the main-traveled way of the highway nearest the sign
9 for the direction of travel for which the sign face is oriented and extending, in a
10 direction opposite of the direction of travel ~~in the nearest through traffic lanes of the~~
11 main-traveled way from which the sign face is visible and intended to be viewed, in
12 a line along the highway ~~parallel to the highway~~ pavement edge for a distance of
13 1,000 feet.

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

15 84.305 (3) (g) A permit issued under this section may not authorize the
16 permittee to clear-cut any highway right-of-way. The permit authorizes the
17 permittee to trim or remove only the vegetation specified in the permit, or only
18 vegetation within the area of the right-of-way specified in the permit, in accordance
19 with the terms of the permit. All trimming of vegetation authorized under a permit
20 shall be performed in compliance with applicable standards of the American
21 National Standards Institute, but if the trimming cannot be accomplished in
22 compliance with these standards, the vegetation may be removed ~~and replaced~~ as
23 provided in sub. (5).

24 **SECTION 5.** 84.305 (3) (h) of the statutes is amended to read:

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1 84.305 (3) (h) All trimming and removal of vegetation under a permit issued
2 under sub. (2), and all planting of vegetation under sub. (5), shall be conducted within
3 the hours of the day and days of the week specified by the department in the permit.

4 **SECTION 6.** 84.305 (4) of the statutes is amended to read:

5 84.305 (4) Each permit issued under this section shall authorize the permittee
6 to employ 3rd-party contractors, including any arborist or landscape contractor, to
7 perform work authorized under the permit. Each permit issued under this section
8 shall require the permittee to retain a certified arborist for the purposes specified in
9 sub. (5) (d). A permittee shall be responsible for any such work performed by a
10 contractor on behalf of the permittee that is not authorized by the permit as if the
11 work were performed directly by the permittee.

12 **SECTION 7.** 84.305 (5) (a) of the statutes is amended to read:

13 84.305 (5) (a) ~~Subject to par. (ar), each~~ Each permit issued under this section
14 shall require a permittee that removes any tree with a diameter of 4 inches or more
15 as measured at 3 feet from the ground, ~~or any other vegetation with a diameter of 4~~
16 ~~inches or more, to plant comparable replacement vegetation~~ to compensate the
17 department for all such ~~vegetation~~ trees removed, in compliance with the
18 requirements under pars. (d) and (e) ~~(f)~~.

19 **SECTION 8.** 84.305 (5) (ar) of the statutes is repealed.

20 **SECTION 9.** 84.305 (5) (d) 1. of the statutes is amended to read:

21 84.305 (5) (d) 1. ~~In planting replacement vegetation under par. (a),~~ For each
22 permit issued under sub. (2), a certified arborist retained by the permittee shall
23 determine the diameters number of all trees with a diameter of 4 inches or more, as
24 measured at 3 feet from the ground, ~~and of all other vegetation with a diameter of~~
25 ~~4 inches or more, that was~~ are to be removed and ~~shall calculate the sum total of these~~

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1 diameters for each category of vegetation, such as for trees, for shrubs, and for
2 hedges.

3 3. In calculating the sum total of these diameters, the permittee number of
4 trees under subd. 1., a certified arborist shall not include in the calculation the
5 diameter of any vegetation that was dead, diseased, or determined to be an invasive
6 species at the time of its removal.

7 **SECTION 10.** 84.305 (5) (d) 2. of the statutes is repealed.

8 **SECTION 11.** 84.305 (5) (d) 4. of the statutes is created to read:

9 84.305 (5) (d) 4. In determining whether a tree with multiple leaders has a
10 diameter of 4 inches or more, as measured at 3 feet from the ground, for purposes of
11 calculating the total number of trees under subd. 1., a certified arborist shall consider
12 only the diameter of the tree's largest leader.

13 **SECTION 12.** 84.305 (5) (e) of the statutes is repealed.

14 **SECTION 13.** 84.305 (5) (f) of the statutes is created to read:

15 84.305 (5) (f) 1. A permittee shall compensate the department \$140, as adjusted
16 under subd. 2., for each tree removed under a permit, as calculated by the certified
17 arborist retained by the permittee according to the method specified in par. (d).

18 2. Annually, beginning on July 1, 2015, the department shall adjust the fee
19 under subd. 1. by a percentage that is equal to the percentage change in the U.S.
20 consumer price index for all urban consumers, U.S. city average, as determined by
21 the bureau of labor statistics of the U.S. department of labor, for the 12-month period
22 ending on December 31 of the previous calendar year. However, the department may
23 not adjust the fee under subd. 1. to an amount that is less than \$140.

24 **SECTION 14. Initial applicability.**

