



1997 SENATE BILL 8

January 15, 1997 - Introduced by Senators BURKE, SHIBILSKI, ADELMAN, CLAUSING, DECKER, GROBSCHMIDT, JAUCH, MOEN, MOORE, PLACHE, C. POTTER, RISSER, WINEKE, WIRCH and CHVALA, cosponsored by Representatives BLACK, BALDWIN, BAUMGART, BOCK, BOYLE, CARPENTER, KRUG, NOTESTEIN, R. POTTER, REYNOLDS, RILEY, SPRINGER, TURNER, WASSERMAN, R. YOUNG, VANDER LOOP, CULLEN, LA FAVE, ROBSON, DUEHOLM and MEYER. Referred to Committee on Agriculture and Environmental Resources.

1 **AN ACT to repeal** 15.05 (1) (c); **to renumber** 23.39 (5); **to renumber and amend**
2 15.345 (4), 23.39 (title), 23.39 (1), 23.39 (2) (a), 23.39 (2) (b), 23.39 (3) and 23.39
3 (4); **to amend** 15.05 (1) (b), 18.13 (4) and 814.245 (2) (d); and **to create** 15.05
4 (1) (bn), 15.07 (1) (b) 22. and 165.076 of the statutes; **relating to:** transferring
5 the public intervenor to the department of justice and making an appropriation.

Analysis by the Legislative Reference Bureau

Current law requires the secretary of natural resources to designate an attorney in the department of natural resources (DNR) as the public intervenor. With the approval of the 8-member public intervenor board, which consists of gubernatorial and legislative appointees, the public intervenor may intervene in administrative proceedings, including contested case hearings and rule-making proceedings, consistent with the public intervenor's duty to protect public rights in water and other natural resources.

This bill restores the duties and authority of the public intervenor that existed before 1995 Wisconsin Act 27 (executive budget act). The bill transfers the public intervenor from DNR to the department of justice. The bill generally authorizes the public intervenor to formally commence and intervene in all proceedings before any court where the intervention is needed to protect public rights in water and other natural resources. The bill directs the attorney general to appoint the public intervenor.

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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.** 15.07 (1) (b) 22. of the statutes is created to read:

2 15.07 (1) (b) 22. The 2 members of the public intervenor board appointed under
3 s. 15.255 (2) (b) 3.

4 **SECTION 2.** 15.345 (4) of the statutes is renumbered 15.255 (2), and 15.255 (2)
5 (a) and (b) 1., as renumbered, are amended to read:

6 15.255 (2) (a) There is created a public intervenor board attached to the
7 department of ~~natural resources~~ justice under s. 15.03.

8 (b) 1. Two members nominated by the attorney general and with the advice and
9 consent of the senate appointed.

10 **SECTION 3.** 18.13 (4) of the statutes is amended to read:

11 18.13 (4) PUBLIC INTERVENOR. Notwithstanding s. ~~23.39 (2) (b)~~ 165.075, the
12 public intervenor does not have authority to initiate any action or proceeding
13 concerning the issuance of obligations by the building commission under this
14 chapter.

15 **SECTION 4.** 23.39 (title) of the statutes is renumbered 165.07 (title) and
16 amended to read:

17 **165.07** (title) **Public Assistant attorney general — public intervenor.**

18 **SECTION 5.** 23.39 (1) of the statutes is renumbered 165.07 (1) and amended to
19 read:

20 165.07 (1) The ~~secretary~~ attorney general shall designate an assistant attorney
21 ~~in general on the department~~ attorney general's staff as public intervenor. Written

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1 notices of all ~~administrative~~ proceedings under chs. 30, 31, 281 to 285 and 289 to 299,
2 except s. 281.48, shall be given to the public intervenor and to the administrators of
3 divisions primarily assigned the departmental functions under chs. 29, 281, 285 and
4 289 to 299, except s. 281.48, by the agency head responsible for such proceedings.
5 A copy of such notice shall also be given to the natural areas preservation council.

6 **SECTION 6.** 23.39 (2) (a) of the statutes is renumbered 165.07 (2) and amended
7 to read:

8 165.07 (2) ~~With the approval of the public intervenor board the~~ The public
9 intervenor shall formally intervene in ~~administrative~~ such proceedings when
10 requested to do so by an administrator of a division primarily assigned the
11 departmental functions under chs. 29, 281, 285 or 289 to 299, except s. 281.48. ~~With~~
12 ~~the approval of the public intervenor board, the~~ The public intervenor may, on the
13 public intervenor's own initiative or upon request of any committee of the legislature,
14 formally intervene in all ~~administrative~~ such proceedings where such intervention
15 is needed for the protection of "public rights" in water and other natural resources,
16 as provided in chs. 30 and 31 and defined by the supreme court.

17 **SECTION 7.** 23.39 (2) (b) of the statutes is renumbered 165.075 and amended
18 to read:

19 **165.075** (title) **Assistant attorney general; public intervenor; authority.**
20 In carrying out his or her duty to protect public rights in water and other natural
21 resources, ~~with the approval of the public intervenor board~~ the public intervenor has
22 the authority to initiate actions and proceedings before any agency or court in order
23 to raise issues, including issues concerning constitutionality, present evidence and
24 testimony and make arguments.

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1 **SECTION 8.** 23.39 (3) of the statutes is renumbered 165.07 (3) and amended to
2 read:

3 165.07 (3) Personnel of the department of natural resources shall, upon the
4 request of the public intervenor, make such investigations, studies and reports as the
5 public intervenor may request in connection with administrative such proceedings,
6 either before or after formal intervention. Personnel of state agencies shall at the
7 public intervenor's request provide information, serve as witnesses in such
8 proceedings and otherwise cooperate in the carrying out of the public intervenor's
9 intervention functions. Formal intervention shall be by filing a statement to that
10 effect with the examiner or other person immediately in charge of the proceeding.
11 Thereupon the public intervenor shall be deemed a party in interest with full power
12 to present evidence, subpoena and cross-examine witnesses, submit proof, file briefs
13 or do any other acts appropriate for a party to the proceedings.

14 **SECTION 9.** 23.39 (4) of the statutes is renumbered 165.07 (4) and amended to
15 read:

16 165.07 (4) The public intervenor may ~~not~~ appeal from administrative rulings
17 to the courts. In all administrative proceedings and judicial review proceedings the
18 public intervenor shall be identified as "public intervenor". This section does not
19 preclude or prevent any division of the department of natural resources, or any other
20 department or independent agency from appearing by its staff as a party in
21 administrative such proceedings.

22 **SECTION 10.** 23.39 (5) of the statutes is renumbered 165.07 (5).

23 **SECTION 11.** 165.076 of the statutes is created to read:

24 **165.076 Assistant attorney general; public intervenor; advisory**
25 **committee.** The attorney general shall appoint a public intervenor advisory

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1 committee under s. 15.04 (1) (c). The public intervenor advisory committee shall
2 consist of not less than 7 nor more than 9 members. The members shall have
3 backgrounds in or demonstrated experience or records relating to environmental
4 protection or natural resource conservation. At least one of the members shall have
5 working knowledge in business. At least one of the members shall have working
6 knowledge in agriculture. The public intervenor advisory committee shall advise the
7 public intervenor consistent with his or her duty to protect public rights in water and
8 other natural resources. The public intervenor advisory committee shall conduct
9 meetings consistent with subch. V of ch. 19 and shall permit public participation and
10 public comment on public intervenor activities.

11 **SECTION 12.** 814.245 (2) (d) of the statutes is amended to read:

12 814.245 (2) (d) "State agency" does not include the public intervenor or citizens
13 utility board.

14 **SECTION 13. Appropriation changes.**

15 (1) DEPARTMENT OF NATURAL RESOURCES. In the schedule under section 20.005
16 (3) of the statutes for the appropriation to the department of natural resources under
17 section 20.370 (8) (ma) of the statutes, as affected by the acts of 1995 and 1997, the
18 dollar amount is decreased by \$120,700 for fiscal year 1996-97 to eliminate funding
19 for 1.0 FTE GPR attorney position, for the purpose of the public intervenor.

20 (2) DEPARTMENT OF JUSTICE. In the schedule under section 20.005 (3) of the
21 statutes for the appropriation to the department of justice under section 20.455 (1)
22 (a) of the statutes, as affected by the acts of 1995 and 1997, the dollar amount is
23 increased by \$120,700 for fiscal year 1996-97, for the purposes of the public
24 intervenor.

25 **SECTION 14. Nonstatutory provisions.**

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1 (1) TRANSFER OF PUBLIC INTERVENOR.

2 (a) *Assets and liabilities.* On the effective date of this paragraph, the assets and
3 liabilities of the department of natural resources that are primarily related to the
4 functions of the public intervenor, as determined by the secretary of administration,
5 shall become the assets and liabilities of the department of justice.

6 (b) *Transfer of position and employe.* On the effective date of this paragraph,
7 1.0 FTE GPR attorney position having duties primarily related to the public
8 intervenor, as determined by the secretary of administration, is transferred from the
9 department of natural resources to the department of justice. The employe
10 transferred under this paragraph has all the rights and the same status under
11 subchapter V of chapter 111 and chapter 230 of the statutes in the department of
12 justice that the employe enjoyed in the department of natural resources immediately
13 before the transfer. Notwithstanding section 230.28 (4) of the statutes, no employe
14 so transferred who has attained permanent status in class is required to serve a
15 probationary period.

16 (c) *Tangible personal property.* On the effective date of this paragraph, all
17 tangible personal property, including records, of the department of natural resources
18 that is primarily related to the functions of the public intervenor, as determined by
19 the secretary of administration, is transferred to the department of justice.

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

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1 (e) *Rules and orders.* All rules promulgated by the department of natural
2 resources in effect on the effective date of this paragraph that are primarily related
3 to the functions of the public intervenor, as determined by the secretary of
4 administration, remain in effect until their specified expiration dates or until
5 amended or repealed by the department of justice. All orders issued by the
6 department of natural resources in effect on the effective date of this paragraph that
7 are primarily related to the functions of the public intervenor, as determined by the
8 secretary of administration, remain in effect until their specified expiration dates or
9 until modified or rescinded by the department of justice.

10 (f) *Pending matters.* Any matter pending with the department of natural
11 resources on the effective date of this paragraph that is primarily related to the
12 functions of the public intervenor, as determined by the secretary of administration,
13 is transferred to the department of justice and all materials submitted to or actions
14 taken by the department of natural resources with respect to the pending matter are
15 considered as having been submitted to or taken by the department of justice.

16 (END)