



## 2003 ASSEMBLY BILL 46

February 13, 2003 - Introduced by Representatives BLACK, BOYLE, SHERMAN, BERCEAU, CULLEN, SINICKI, MILLER, YOUNG, TURNER, HUBER, BALOW, POPE-ROBERTS, PLOUFF, KRUG, LASSA, TRAVIS, RICHARDS, POCAN, COGGS, SHILLING and J. LEHMAN, cosponsored by Senators WIRCH, CARPENTER, RISSER, DECKER, HANSEN, CHVALA, ERPENBACH and M. MEYER. Referred to Committee on Natural Resources.

1     **AN ACT** *to amend* 814.245 (2) (d); and *to create* 18.13 (4g), 165.07, 165.075 and  
2           165.076 of the statutes; **relating to:** creating an Office of Public Intervenor in  
3           the Department of Justice.

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### *Analysis by the Legislative Reference Bureau*

This bill recreates an Office of Public Intervenor attached to the Department of Justice (DOJ), with the same duties and authority that existed before 1995 Wisconsin Act 27. That act transferred the Office of Public Intervenor from DOJ to the Department of Natural Resources (DNR), eliminated the public intervenor's authority to formally commence or intervene in lawsuits, and substituted an eight-member board (consisting of four members nominated by the governor and approved by the senate and four members each appointed by the majority and minority leaders of the senate and assembly) for the seven-to-nine-member advisory committee (consisting of members appointed by the attorney general). The Office of Public Intervenor and its board were eliminated by 1997 Wisconsin Act 27.

The bill requires the attorney general to appoint an assistant attorney general to serve as the public intervenor. The bill authorizes the public intervenor to do all of the following:

1. Formally commence or intervene in proceedings before any court whenever such intervention is necessary to protect the public rights in water and other natural resources of this state, and requires the public intervenor to intervene in such matters when requested to do so by a division administrator in DNR.

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2. Act as an interested party in actions in which he or she intervenes, with full power to present evidence, subpoena witnesses, cross-examine witnesses, file briefs, and do any other acts appropriate for a party to the proceedings.

3. Appeal administrative rulings to the courts.

The bill requires DNR personnel to notify the public intervenor of all administrative proceedings under the environmental protection chapters and to make such investigations, studies, and reports to assist the public intervenor either before or during such formal intervention.

The bill also requires the attorney general to appoint a Public Intervenor Advisory Council consisting of seven to nine members who have a background in or demonstrated experience or records relating to environmental protection or natural resource conservation. In addition, at least one member must have working knowledge of business and at least one member must have knowledge of agriculture. The advisory committee must hold open, publicized meetings and must advise the public intervenor consistent with his or her duties.

The bill authorizes 2.0 attorney positions in DOJ for the purposes of the public intervenor.

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.** 18.13 (4g) of the statutes is created to read:

2           18.13 **(4g)** PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public  
3 intervenor does not have authority to initiate any action or proceeding concerning  
4 the issuance of obligations by the building commission under this chapter.

5           **SECTION 2.** 165.07 of the statutes is created to read:

6           **165.07 Assistant attorney general — public intervenor.** (1) The attorney  
7 general shall designate an assistant attorney general on the attorney general's staff  
8 as public intervenor. The head of each agency responsible for proceedings under chs.  
9 30, 31, 281 to 285, and 289 to 299, except s. 281.48, shall give notice of those  
10 proceedings to the public intervenor, to the administrators of divisions primarily  
11 assigned the departmental functions under chs. 29, 281, 285, and 289 to 299, except  
12 s. 281.48, and to the natural areas preservation council.

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1           **(2)** The public intervenor shall formally intervene in proceedings described in  
2 sub. (1) when requested to do so by an administrator of a division primarily assigned  
3 the departmental functions under chs. 29, 281, 285, or 289 to 299, except s. 281.48.  
4 The public intervenor may, on the public intervenor's own initiative or upon request  
5 of any committee of the legislature, formally intervene in proceedings described in  
6 sub. (1) whenever that intervention is needed for the protection of public rights in  
7 water and other natural resources, as provided in chs. 30 and 31 and defined by the  
8 supreme court.

9           **(3)** Personnel of the department of natural resources shall, upon the request  
10 of the public intervenor, make such investigations, studies, and reports as the public  
11 intervenor may request in connection with proceedings described in sub. (1), either  
12 before or after formal intervention. Personnel of state agencies shall, at the public  
13 intervenor's request, provide information, serve as witnesses in proceedings  
14 described in sub. (1), and otherwise cooperate in the carrying out of the public  
15 intervenor's intervention functions. The public intervenor shall formally intervene  
16 by filing a statement to that effect with the examiner or other person immediately  
17 in charge of the proceeding. Upon that filing, the public intervenor shall be  
18 considered a party in interest with full power to present evidence, subpoena and  
19 cross-examine witnesses, submit proof, file briefs, or do any other acts appropriate  
20 for a party to the proceedings.

21           **(4)** The public intervenor may appeal from administrative rulings to the courts.  
22 In all administrative proceedings and judicial review proceedings, the public  
23 intervenor shall be identified as "public intervenor." This section does not preclude  
24 or prevent any division of the department of natural resources, or any other

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1 department or independent agency, from appearing by its staff as a party in any  
2 proceedings.

3 **SECTION 3.** 165.075 of the statutes is created to read:

4 **165.075 Assistant attorney general; public intervenor; authority.** In  
5 carrying out his or her duty to protect public rights in water and other natural  
6 resources, the public intervenor has the authority to initiate actions and proceedings  
7 before any agency or court in order to raise issues, including issues concerning  
8 constitutionality, present evidence and testimony, and make arguments.

9 **SECTION 4.** 165.076 of the statutes is created to read:

10 **165.076 Assistant attorney general; public intervenor; advisory**  
11 **committee.** The attorney general shall appoint a public intervenor advisory  
12 committee under s. 15.04 (1) (c). The public intervenor advisory committee shall  
13 consist of not less than 7 nor more than 9 members. The attorney general may only  
14 appoint members who have backgrounds in or demonstrated experience or records  
15 relating to environmental protection or natural resource conservation. The attorney  
16 general shall appoint at least one member who has working knowledge in business  
17 and at least one member who has working knowledge in agriculture. The public  
18 intervenor advisory committee shall advise the public intervenor consistent with his  
19 or her duty to protect public rights in water and other natural resources. The public  
20 intervenor advisory committee shall conduct meetings consistent with subch. V of  
21 ch. 19 and shall permit public participation and public comment on public intervenor  
22 activities.

23 **SECTION 5.** 814.245 (2) (d) of the statutes is amended to read:

24 814.245 (2) (d) "State agency" does not include the public intervenor or citizens  
25 utility board.

